

PUBLIC EMPLOYMENT RELATIONS BOARD[621]

Adopted and Filed Emergency

Pursuant to the authority of 2017 Iowa Acts, House File 291, section 25, the Public Employment Relations Board hereby amends Chapter 7, “Impasse Procedures,” Iowa Administrative Code.

2017 Iowa Acts, House File 291, which became effective upon its February 17, 2017, enactment, made significant changes to Iowa Code chapter 20 (2017) concerning employee representative certification and decertification elections and to the existing collective bargaining and impasse procedures. House File 291 specifically requires the Board to adopt emergency rules as deemed necessary to provide for and implement the transition to the new procedures contained in House File 291.

These amendments provide for the transition to and implementation of the provisions of 2017 Iowa Acts, House File 291. Item 1 implements section 25 of House File 291, which requires parties to terminate bargaining under the prior statutory provisions if a collective agreement had not been reached prior to February 17, 2017, and to then commence bargaining as provided in House File 291. Item 2 provides alternative deadlines for the completion of the various steps in the bargaining and impasse procedures. This schedule is severely compressed of necessity, because House File 291 effectively requires some parties to complete what is typically a 120-plus-day process in a 26-day period ending March 15, 2017. These emergency alternative deadlines affect only bargaining and impasse procedures for collective agreements to become effective in 2017 which are subject to a March 15, 2017, completion deadline. The Board intends to replace these emergency deadlines by adopting permanent rules applicable to later bargaining and impasse procedures. Item 3 specifies House File 291-imposed requirements applicable to arbitrations conducted on or after February 17, 2017, generally, as well as the distinctions between arbitrations involving the different types of bargaining units identified by House File 291.

The Public Employment Relations Board adopted these amendments on February 22, 2017.

Pursuant to Iowa Code section 17A.4(3), the Board finds that notice and public participation are unnecessary because time is of the essence to the affected parties, a fact recognized by the General Assembly when it directed the Board to adopt emergency rules to facilitate the timely completion of its bargaining and impasse procedures.

Pursuant to Iowa Code section 17A.5(2)“b”(1)(a), the Board also finds that the normal effective date of these amendments, 35 days after publication, should be waived and the amendments made effective upon filing because House File 291 so requires.

These amendments do not provide for waivers in specified situations since the purpose of the rules is to establish specific, compressed procedural deadlines which, when followed, will result in a collective bargaining agreement or arbitrator’s award not later than the applicable deadline for the parties’ completion of bargaining and impasse procedures. Flexibility is, however, available to the parties because House File 291 allows them to waive not only the deadlines established by these amendments but also the ultimate completion deadline established by either existing law or House File 291.

After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement 2017 Iowa Acts, House File 291, sections 25, 26 and 27.

These amendments became effective February 22, 2017.

The following amendments are adopted.

ITEM 1. Adopt the following new rule 621—7.8(20):

621—7.8(20) Termination and resumption of bargaining and impasse procedures not completed on or before the enactment of 2017 Iowa Acts, House File 291. Parties who have not completed a collective bargaining agreement under the procedures in effect prior to the enactment of 2017 Iowa Acts, House File 291, by ratification as provided in Iowa Code section 20.17(4) or by the issuance of an

arbitrator's final determination as described in Iowa Code section 20.22(11) shall immediately terminate their bargaining and impasse procedures in process. The parties shall commence bargaining and impasse procedures anew in accordance with the provisions of 2017 Iowa Acts, House File 291.

ITEM 2. Adopt the following new rule 621—7.9(20):

621—7.9(20) Bargaining and impasse procedures conducted on or after February 17, 2017.

7.9(1) Applicability.

a. This rule applies to parties that, on February 17, 2017:

(1) Were engaged in bargaining or impasse procedures for a collective bargaining agreement to become effective in 2017;

(2) Were engaged in bargaining or impasse procedures for a collective bargaining agreement which would be applicable to a bargaining unit of employees of a state public employer or of a city, county or other public employer with a certified budget submission date of March 15, 2017;

(3) Are not parties to an independent impasse agreement establishing a bargaining and impasse completion deadline other than the employer's certified budget submission date; and

(4) Are not excepted by subrule 7.9(2).

b. All other provisions of 621—Chapters 6 and 7 shall apply to such parties except as altered by this rule.

c. 2017 Iowa Acts, House File 291, establishes a deadline for the completion of collective bargaining and impasse procedures of June 30, 2017, for bargaining units employed by a school district, area education agency or community college, unless the parties establish a different deadline by mutual agreement. The procedures applicable to such bargaining units are not subject to this rule.

7.9(2) Exceptions. The emergency bargaining and impasse procedures provided by this rule do not apply to parties to a collective bargaining agreement which, as of the enactment of 2017 Iowa Acts, House File 291:

a. Has been ratified in a ratification election referred to in Iowa Code section 20.17(4);

b. Has been established by an arbitrator's final determination specifying the terms of the collective bargaining agreement as described in Iowa Code section 20.22(11); or

c. Has become effective.

7.9(3) Waiver of completion deadlines. Because of the short period of time between the enactment of 2017 Iowa Acts, House File 291, and March 15, 2017, parties subject to a March 15 completion deadline are encouraged to negotiate and enter into an independent impasse agreement waiving that deadline and establishing an alternative deadline which allows for a less hurried procedure than is required by subrule 7.9(4).

7.9(4) Bargaining and impasse procedures conducted on or after February 17, 2017. For parties, mediators, arbitrators and bargaining units within the scope of this rule, the following procedures apply:

a. The parties must complete their exchange of initial bargaining positions not later than Monday, February 27, 2017. Subject to the requirements of Iowa Code chapter 21, the parties may make their exchanges on the same day, with the certified employee organization presenting its initial bargaining position first.

b. If the impasse has not been resolved, the parties must participate in mediation not later than Thursday, March 2, 2017, if requested by either party. A party that has previously filed a request for mediation need not file a new request, and may instead renew the party's prior request by e-mail to the agency at iaperb@iowa.gov. Other parties shall complete a formal request for mediation form which shall be signed by at least one party and be personally delivered or e-mailed to the agency. The party requesting mediation shall copy the other party on its e-mail renewing its earlier request or shall serve a copy of its formal request upon the other party by personal service or e-mail. The renewal of an earlier request or new formal request must be made as soon as possible to allow the agency to assign a mediator and the mediator to schedule and hold mediation with the parties not later than March 2, 2017.

c. If the impasse has not been resolved, either party may, not later than Friday, March 3, 2017, request that the agency arrange for binding arbitration. A party that has previously filed a request for arbitration need not file a new request, and may instead renew the party's prior request by e-mail to the

agency at iaperb@iowa.gov. Other parties shall complete a formal request for arbitration form which shall be completed and signed by at least one party and be personally delivered or e-mailed to the agency. The party requesting arbitration shall copy the other party on its e-mail renewing its earlier request or shall serve a copy of its formal request upon the other party by personal service or e-mail.

d. The agency will provide the parties with a list of available arbitrators by e-mail as soon as is practicable following the agency's receipt of the renewed or new request for arbitration.

e. If the impasse has not been resolved, the parties must strike the list of arbitrators, notify the agency of the parties' selected arbitrator and exchange their final offers by personal delivery or e-mail not later than Monday, March 6, 2017. All disputes concerning the negotiability of any final offer shall be submitted to the agency by personal delivery or e-mail not later than March 7, 2017.

f. All arbitration hearings must be held not later than March 10, 2017.

g. Arbitrators must consider the criteria listed in Iowa Code section 20.22 as amended by 2017 Iowa Acts, House File 291, section 12, and issue a written award specifying and explaining the arbitrator's selection(s) and specifically addressing the section 20.22 criteria not later than March 15, 2017.

ITEM 3. Adopt the following **new** rule 621—7.10(20):

621—7.10(20) Binding arbitrations conducted on or after February 17, 2017.

7.10(1) *Applicability.* All parties engaged in bargaining or impasse procedures for a collective bargaining agreement to become effective in 2017 are subject to the binding arbitration procedures specified in this rule unless otherwise specified in rule 621—7.8(20). All other provisions of 621—Chapters 6 and 7 shall apply except as altered by this rule.

7.10(2) *Exchange of offers.* Except for parties utilizing the procedures specified in rule 621—7.8(20), each party shall serve its final offer on each of the impasse items upon the other party within four days of the board's receipt of the request for arbitration, or by a deadline otherwise agreed upon by the parties.

7.10(3) *Submission of impasse items and limitation of evidence.* The submission of the impasse items to the arbitrator shall be limited to those mandatorily negotiable items upon which the parties have not reached agreement and any permissive items which the parties have agreed to submit to arbitration. With respect to each such impasse item, the arbitrator's award shall be restricted to the final offers on each impasse item submitted by the parties to the arbitrator, except as provided in paragraph 7.10(5) "d." The parties shall not introduce, and the arbitrator shall not accept or consider, any direct or indirect evidence regarding any subject excluded from negotiations pursuant to Iowa Code section 20.9 as amended by 2017 Iowa Acts, House File 291, except as required for purposes of the consideration of the factors specified in subrule 7.10(4) and paragraph 7.10(5) "a."

7.10(4) *Arbitration involving a bargaining unit that has at least 30 percent of members who are public safety employees.* The arbitrator shall consider and specifically address in the arbitrator's determination, in addition to any other relevant factors, the following factors:

a. Past collective bargaining contracts between the parties including the bargaining that led up to such contracts.

b. Comparison of wages, hours and conditions of employment of the involved public employees with those of other public employees doing comparable work, giving consideration to factors peculiar to the area and the classifications involved.

c. The interests and welfare of the public, the ability of the public employer to finance economic adjustments and the effect of such adjustments on the normal standard of services.

7.10(5) *Arbitration involving a bargaining unit that does not have at least 30 percent of members who are public safety employees.*

a. The arbitrator shall consider and specifically address in the arbitrator's determination, in addition to any other relevant factors, the following factors:

(1) Comparison of base wages, hours, and conditions of employment of the involved public employees with those of other public employees doing comparable work, giving consideration to factors peculiar to the area and the classifications involved. To the extent adequate, applicable data

is available, the arbitrator shall also compare base wages, hours, and conditions of employment of the involved public employees with those of private sector employees doing comparable work, giving consideration to factors peculiar to the area and the classifications involved.

(2) The interests and welfare of the public.

(3) The financial ability of the employer to meet the cost of an offer in light of the current economic conditions of the public employer. The arbitrator shall give substantial weight to evidence that the public employer's authority to utilize funds is restricted to special purposes or circumstances by state or federal law, rules, regulations, or grant requirements.

b. The arbitrator shall not consider the following factors:

(1) Past collective bargaining agreements between the parties or bargaining that led to such agreements.

(2) The public employer's ability to fund an award through the increase or imposition of new taxes, fees, or charges or to develop other sources of revenue.

c. The arbitrator's award on the impasse item of base wages shall not exceed the lesser of the following percentages in any one-year period in the duration of the bargaining agreement:

(1) Three percent.

(2) A percentage equal to the increase in the consumer price index for all urban consumers for the Midwest region, if any, as provided by the agency.

d. Should the final offers of both parties on the impasse item of base wages exceed the lesser of the percentages specified in paragraph 7.10(5) "*c.*," the arbitrator shall select neither of the parties' offers, but shall instead award the lesser of the amounts listed in paragraph 7.10(5) "*c.*."

Rules 621—7.8(20) to 621—7.10(20) are intended to implement Iowa Code chapter 20 as amended by 2017 Iowa Acts, House File 291.

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 3/15/17.