

# 2014 PERB CONFERENCE: Celebrating 40 Years

## PERB Case Law Update & Statutory & Administrative Rule Amendments

Presented by

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### I. CASE LAW UPDATE

Final decisions of interest issued since September 1, 2012.

#### NEGOTIABILITY RULINGS

***Fort Dodge Community School Dist. v. PERB et al., (entitled Fort Dodge Community School Dist. & Fort Dodge Education Assn. et al. before the agency)***, 12 PERB 8512 (7/2/12); Polk Co. Dist Ct. No. CVCV009290 (5/20/13); Iowa Court of Appeals No. 3-1179/13-0879 (6/25/14).

In October, 2007, the Iowa Supreme Court decided *Waterloo Education Assn. v. PERB and Waterloo Comm. School Dist.*, 740 N.W.2d 418 (Iowa 2007), (now commonly referred to as *Waterloo II*), a negotiability dispute over whether a proposal for teacher “overload” pay was mandatorily negotiable as “wages”. *Waterloo II* was significant for a number of reasons, one of which was the court’s apparent rejection of the oft-repeated principle that the mandatory topics of bargaining specified in Iowa Code section 20.9 were to be given narrow and restrictive meanings. Instead, the *Waterloo II* court stated:

[T]he legislature’s use of a laundry list of negotiable subjects does not mean the listed terms are subject to the narrowest possible interpretation, but only that the listed terms cannot be interpreted in a fashion so expansive that the other specifically identified subjects of mandatory bargaining become redundant. The approach most consistent with legislative intent thus is to give the term “wages” its common and ordinary meaning within the structural parameters imposed by section 20.9.

Five years later, PERB issued a decision (discussed at PERB’s 2012 Conference) concerning the negotiability status of five severance pay proposals advanced by the certified employee organizations representing employees of the Fort Dodge Community School District. *Fort Dodge Comm. School Dist.*, 12 PERB 8512. The employee organizations in that case argued that the proposals were mandatorily negotiable as “supplemental pay,” even though the Iowa Supreme Court, expressly applying the narrow and restrictive approach to the interpretation of the section 20.9 topics, had held in 1982 that

“supplemental pay” was limited to pay for services rendered over and above an employee’s primary duties—such as a teacher who performs extra duties as a coach. *Fort Dodge Comm. School Dist. v. PERB*, 319 N.W.2d 181, 184 (Iowa 1982). The Iowa Court of Appeals, citing the Supreme Court’s *Fort Dodge CSD* decision, had also ruled that a proposal similar to those at issue before the Board was only a permissive topic of bargaining. *Professional Staff Assn. of AEA 12 v. PERB*, 373 N.W.2d 516 (Iowa App. 1985).

In considering the negotiability of the employee organizations’ severance pay proposals in its 2012 decision, the Board noted *Waterloo II*’s subscription to the principle that the section 20.9 topics are to be given their common and ordinary meaning, which it viewed as a rejection of the “narrow and restrictive” approach previously given to the interpretation of the topics. The Board stated:

Accordingly, when determining the negotiability status of a proposal in the wake of *Waterloo II*, it is necessary that the Board consider not only the appellate court precedents concerning the meaning of a given section 20.9 topic, but also whether those precedents were the result of the application of the now-disapproved narrow and restrictive approach to interpretation and should no longer be viewed as controlling authority.

Because the courts’ earlier view of supplemental pay had been based upon a narrow and restrictive interpretation of the term, the Board addressed the question of the term’s “common and ordinary” meaning in the context of section 20.9. After consideration of dictionary definitions, definitions from other jurisdictions and IRS regulations, the Board ultimately defined supplemental pay as “a payment of money or other thing of value that is in addition to compensation received under another section 20.9 topic and is related to the employment relationship.” Accordingly, the Board concluded that the severance pay proposals before it, which provided for a cash payment upon termination, were conditioned upon length of service and were calculated based upon unused accumulated sick leave, were not included within any other section 20.9 topic and were mandatorily negotiable “supplemental pay” proposals.

On judicial review, the district court agreed that the courts’ earlier supplemental pay cases were no longer controlling in view of *Waterloo II*, and also noted the legislature’s 2010 amendment of section 20.6(1) which had empowered the Board to interpret and apply the provisions of chapter 20. Accordingly, it affirmed PERB’s negotiability ruling.

On the employer’s appeal from the district court, the Court of Appeals characterized *Waterloo II* as “rejecting the conclusion the terms in section 20.9 should be given a restrictive reading as opposed to their ordinary and common reading,” with the result that this rejection of the narrow and restrictive

approach had largely undermined the precedential value of the earlier decisions which had employed it. The court found itself unable to conclude that PERB's interpretation of the supplemental pay topic was irrational, illogical, or wholly unjustifiable, and it too affirmed the PERB negotiability ruling.

The school district's application for further review of the PERB decision by the Iowa Supreme Court was denied on September 11, 2014.

***AFSCME Iowa Council 61 & State of Iowa v. PERB, (entitled State of Iowa and AFSCME Iowa Council 61 before the agency)*** 13 PERB 8604 (2/8/13); Polk Co. Dist. Ct. No. CVCV9631 (7/15/13); Iowa S.Ct. No. 13-1158 (5/9/14).

In response to a petition filed by the State, PERB issued a negotiability ruling in February, 2013, on 12 bargaining proposals made by AFSCME, and found eight of them to be permissive subjects of bargaining and four to be mandatorily negotiable, at least in part.

AFSCME sought judicial review of PERB's ruling on six of the proposals held to be permissive, and the State sought review of PERB's ruling that a portion of another proposal was mandatory under the topic of "procedures for staff reduction." The Polk County District Court affirmed the PERB decision except for its ruling on section B of proposal 8, which provided:

B. If, as a result of outsourcing or privatization following an Employer initiated competitive activities process, positions are eliminated, the Employer shall offer affected employees other employment within Iowa State government. Other employment shall first be sought within the affected employee's department and county of employment. Affected employees accepting other employment shall not be subject to loss of pay nor layoff pending placement in other employment under this Section. Neither shall such employees be subject to a decrease in pay in their new position. However, affected employees will not be eligible for any pay increase until such time as their pay is within their new pay grade range. In the alternative, employees may elect to be laid off.

Employees placed in other employment under this Section, as well as those electing to be laid off, will be eligible for recall to the classification held at the time of outsourcing or privatization, in accordance with Article VI of this Agreement.

The Board had found this proposal to be a mandatory subject of bargaining as a "procedure for staff reduction" noting,

[The proposal] requires the employer to offer employees, whose positions would be eliminated due to outsourcing, the choice of either being laid off or being employed elsewhere within Iowa State

government. It includes other procedures and restrictions on where the displaced employee can be employed and how the employee shall be paid. At its core, its predominant purpose is to designate a process for implementing a staff reduction that occurs due to outsourcing. It addresses what will happen to bargaining unit members once the employer has determined it will eliminate positions within the bargaining unit.

The Board rejected the State's argument that the predominant purpose was "staff retention" rather than "staff reduction," finding that this argument related to the proposal's merits rather than its negotiability status.

The Polk County District Court reversed the Board's decision on this proposal, explaining:

The court concludes that the statutory phrase "procedures for staff reduction" relates to the manner in which the contemplated reduction will take place, not how to manage the consequences associated with a reduction that has already taken place. In the court's mind, this conclusion hinges upon the word "for," which is defined in this context as a function word used to indicate purpose or an intended goal. *Merriam-Webster's Collegiate Dictionary* 454 (10th ed. 2001); see also *Wiseman v. Armstrong*, 269 Conn. 802, 811, 850 A.2d 114, 119 (2004). In other words, for the procedures in question to be considered mandatory under § 20.9, they must have as their purpose, goal or object a reduction in staff. As measured by this standard, [the] proposal [] falls short; its predominant purpose relates to the aftermath of a reduction that has already resulted from outsourcing or privatization. It would, therefore, not qualify as a mandatory subject for bargaining under § 20.9. Even allowing for the deference PERB is afforded in this case, its analysis does not comply with the "definitional exercise" reaffirmed in *Waterloo II*.

AFSCME appealed the district court's ruling on the above proposal and the Supreme Court retained the case, issuing its decision in July 2014. The Court noted that the legislature vested PERB with express interpretive authority in 2010; thus its review was restricted to determining whether PERB's decision was "irrational, illogical or wholly unjustifiable" under Iowa Code § 17A.19(10)(l), (m). It also reaffirmed that *Waterloo II* established the correct analytical approach for negotiability disputes. Further, it held that PERB's definition of "procedures for staff reduction" as "procedures that describe the order and manner of how a staff reduction will be carried out" is consistent with a common and ordinary meaning of the term and was not irrational, illogical or wholly unjustifiable. However, it was unable to determine whether the predominant purpose of the proposal was "staff reduction" or "staff retention." It concluded that "a staff reduction occurs only when an employee

leaves the State payroll, not merely when a particular job position is eliminated.” It continued:

[a] “staff reduction” under section 20.9 requires “that there has, in fact, been a reduction in the total work force and not simply the substitution of one position for another.”

However, the court concluded that the record was inadequate to determine whether a staff reduction actually occurs through the proposal. It ultimately instructed the district court to remand the case back to PERB for a new determination of the issue stating,

[W]e hold, to the extent the primary purpose of [the proposal] is to preclude the State from reducing staff in response to outsourcing, it is a permissive rather than mandatory subject of bargaining. Nevertheless, if PERB determines on remand that the State is permitted to reduce employment by bumping employees after transfers resulting from outsourcing, then [the proposal] can be found to be a mandatory subject of bargaining.

As of this date, the district court has not remanded the case back to PERB so no further proceedings are scheduled at this time.

***Cedar Falls Community School Dist. & Cedar Falls Education Assn.***, 13 PERB 8627 (4/24/13).

The employer petitioned for a negotiability ruling on the underlined portion of this proposal offered by the certified employee organization:

#### ARTICLE 12 -HOURS

(12.1) The official standard teaching day i.e. work day shall consist of seven (7) hour [sic] and fifty (50) minutes and shall include a scheduled lunch period of at least thirty (30) minutes. Employees shall report to duty at least thirty (30) minutes prior to the beginning of the pupils' school day, and shall remain at their places of assignment, as determined by the principal, for at least thirty (30) minutes after the close of the pupils' school day. On Fridays and days immediately preceding a holiday or vacation, employees may depart their buildings fifteen (15) minutes prior to the end of the standard work day.

The Board identified the predominant characteristic or purpose of the proposal as establishing the starting and ending times of the employees' work day by setting their arrival and dismissal times (matters long held to be within the scope of the mandatory topic of “hours”), doing so in this case by reference to

the pupil school day. Because the predominant purpose of the proposal was within the common and ordinary meaning of the section 20.9 topic of “hours,” the Board held it to be a mandatory subject of bargaining.

### DECLARATORY ORDERS

***Board of Regents, State of Iowa and the University of Northern Iowa v. PERB and UNI-United Faculty, (entitled UNI-United Faculty & State (Board of Regents, University of Northern Iowa) before the agency) 12 PERB 8502 (5/30/12); Polk Co. Dist. Ct. No. CVCV009268 (9/29/13).***

In 2012 the Board issued a declaratory order in response to a petition filed by UNI-United Faculty and ruled that an “early separation incentive program” offered by UNI to certain tenured faculty in program areas identified for closure or restructuring was a mandatory subject of bargaining within the topic of “procedures for staff reduction,” but was not mandatory under the topics of “wages” or “insurance.”

The program was a self-described “tool to shape, redirect, and focus the faculty work force” at UNI and was acknowledged by the employer as having been designed to induce eligible employees to voluntarily leave their employment. The program operated by soliciting volunteers from discontinued or restructured programs who were willing to resign their positions in exchange for a stated financial incentive (based upon a formula which involved accrued sick leave, salary at the date of separation and health and dental insurance costs), then provided the employer with an opportunity to accept the resignations of those whose departure it deemed most advantageous, based upon its assessment of UNI’s best interests.

The Board identified the predominant purpose, goal, characteristic or topic of the program as the reduction of the number of tenured faculty in certain program areas, and thought it clear that the detailed program constituted a procedure, with staff reduction as its purpose. It rejected the argument that the program was not within the procedures for staff reduction topic because it did not involve the order and manner in which staff reduction will occur and because it was voluntary, with no possibility of recall or re-employment for participants. While acknowledging that the topic includes the order and manner in which staff reductions will occur, the Board noted that it had never so limited the topic and that the UNI program did in fact relate to the order of staff reduction since its effect was to place those volunteers whose incentivized offers to resign were accepted at the head of the line of those to be reduced. And the Board was similarly unpersuaded by the argument that its voluntary nature took the program outside the topic—an argument the Board viewed as a claim that “procedures for staff reduction” was intended by the legislature to instead mean “procedures for *involuntary* staff reduction. The Board also rejected the argument that the program was a prohibited/illegal topic of

bargaining as a “retirement system” because it did not augment or supplement statutory retirement benefits participating employees would receive (even if they did retire upon separation). The Board viewed the incentive payment provided by the program as much more akin to the one-time-at-separation payments in *Professional Staff Association*, 373 N.W.2d 516 (Iowa App. 1985) and *Taylor County*, 02 PERB 6490.

The public employer sought judicial review in the Polk County District Court, which affirmed the Board’s declaratory order and rejected the employer’s argument that PERB had misapplied the two-step negotiability analysis set out in *Waterloo II*. The court determined that PERB’s interpretation of section 20.9 was not an irrational, illogical or wholly unjustifiable interpretation of the statute, or was unreasonable, arbitrary, capricious or an abuse of discretion. The court also rejected reversal of the PERB ruling that the program was not a retirement system excluded from the scope of bargaining.

The employer filed a timely appeal from the district court’s order, and the appeal was transferred to the Iowa Court of Appeals. All parties have filed briefs and the case is awaiting decision by that Court, having been submitted, without oral argument, on June 17, 2014.

***Cedar Rapids Airport Commission and IAFF Local 2607***, 13 PERB 8645 (6/17/13); Polk Co. Dist. Ct. CV046087 (2/10/14).

The public employer’s petition for declaratory order posed the question of whether the employer has the exclusive right and authority under chapter 20 to determine the hours of operation of its airport, including the right and authority to determine that the airport’s hours of operation will be fewer than 24 hours per day. The employer maintained that it possessed such authority, while the employee organization urged that the Board answer the employer’s question in the negative because, it argued, the airport’s hours of operation is a matter within the scope of the 20.9 mandatory topic of “hours.”

The Board ultimately determined that the employer does possess the exclusive right and authority under chapter 20 to determine the airport’s hours of operation will be fewer than 24 per day, subject to its duty to negotiate true “hours” proposals which predominantly relate to the employment relationship. In reaching that conclusion the Board noted established caselaw to the effect that “hours” includes the total number of hours in an employee’s workday, the starting and quitting times, break times and employees’ right to be notified of their hours of work—all matters which are predominantly related to the employment relationship, unlike the times the employer is open for business. But proposals dealing with the employer’s ability to direct its operations, such as assignments and staffing, have been held to be non-mandatory. The Board stated:

The mandatory topics outlined in section 20.9, including “hours,” address issues uniquely related to the employees’ relationship with their employer. The Board must define “hours” as an exception to the employer’s section 20.7 rights through this lens. If the “hours” proposal is not predominantly related to the employment relationship, then it is not a mandatory subject of bargaining.

The Board indicated that an employer’s hours of operation are not predominantly related to the employment relationship, but rather to the relationship between the public employer and its constituents—when and how long a public employer operates or is “open for business” affects the level of service the public employer provides to the public. It concluded:

The context of section 20.9 requires that each mandatory topic, including “hours,” predominantly relate to the employment relationship. Employees’ starting and quitting times, break times, and the number of hours an employee works in a given shift, day, week, month, or year undisputedly relate predominantly to the employment relationship. But operational hours are “essentially an issue of level of service to the public, a policy matter reserved to the [Commission].” *City of Sioux City*, 78 PERB 1211, at p. 2 (Feb. 22, 1978)(citing *City of Dubuque*, 77 PERB 964 (Mar. 9, 1977)).

Local 2607 sought judicial review in the Polk County District Court, which affirmed PERB’s declaratory order. The court, characterizing the issue as whether “operational hours” is a mandatory or merely permissive topic of bargaining, noted that Iowa Code section 20.6(1) states that PERB shall “interpret, apply, and administer the provisions of this chapter,” and that since it has been vested with such interpretive authority a court may reverse the agency’s interpretation only if it is irrational, illogical or wholly unjustifiable. Concluding that PERB’s interpretation of “hours” suffered from none of these defects, the court affirmed.

Local 2607 filed a timely appeal from the District Court’s ruling, but voluntarily dismissed its appeal prior to the filing of briefs in the Supreme Court.

***Scott County & Scott County Corrections and Communications Assn.***, 12 PERB 8540 (11/15/12).

The employer petitioned for a declaratory order, posing three questions concerning communications between the certified employee organization and a member of the employer’s board of supervisors who is not the employer’s designated bargaining representative or a member of its bargaining team.

The Board declined to answer two of the questions on at least two of the grounds specified in PERB subrule 621—10.9(1), including the ground that the questions would be more appropriately addressed in a different type of proceeding (here, in proceedings on a prohibited practice complaint).

The Board did, however, address the third question posed by the employer's petition:

(3) Whether the prohibition stated in [Iowa Code section 20.17(9)] ("A public employee or any employee organization shall not negotiate or attempt to negotiate directly with a member of the governing board of a public employer if the public employer has appointed or authorized a bargaining representative for the purpose of bargaining with the public employees or their representative, unless the member of the governing board is the designated bargaining representative of the public employer") is applicable regardless of the employment status of the bargaining representative selected by the public employer.

The Board answered the question affirmatively, stating:

This provision is clear and unambiguous. A public employee or employee organization cannot negotiate or attempt to negotiate directly with a member of a governing board of a public employer (*e.g.* Board of Supervisors) if two conditions are met: (1) the public employer has designated a bargaining representative and (2) that bargaining representative is not a member of the governing board. Nothing in this provision, or elsewhere in chapter 20, so much as suggests that this prohibition is inapplicable if the designated representative is an employee of the public employer. Thus, a plain reading of subsection 20.17(9) requires an employee or employee organization to negotiate with the employer's designated bargaining representative, regardless of the employment status of that individual.

Therefore, the answer to question 3 is "yes."

**Scott County & Scott County Corrections and Communications Assn., 12 PERB 8541 (11/21/12).**

The employer's petition sought answers to two questions, the first of which was whether the following provision of the parties' collective bargaining agreement is a mandatory subject of bargaining:

Section 2.9 Shift Bidding Procedure for Correction Officers.

A. Semi-Annual Shift Bidding. The following procedure shall apply only to employees covered by the terms of this agreement and have successfully completed their probationary period.

For the purpose of this section, a shift assignment includes the regular hours of work and the regular days off as designated as “male”, “female”, or “either”. Assignments may only be designated as “male” or “female” in order to comply with legal requirements or mandates. All other assignments shall be designated as either. It is understood that a shift assignment does not include an employee’s post assignment (e.g., booking, main control room, support services, etc.). Post assignments shall be made at the sole discretion of the Employer.

On or about January 1 and July 1 of each year, the Employer shall post a list of all shift assignments to be bid. Employees shall have seven (7) calendar days to designate their choice of shift assignment. In the case of a conflict between designated choices, seniority shall govern such assignments. The Employer shall notify all officers of their shift assignment seven (7) calendar days after all bids have been submitted. New shift assignments shall become effective on the first pay period of March and September of each year.

Applying the negotiability analysis prescribed in *Waterloo II*, the Board identified the predominant characteristic or purpose of the provision as establishing a procedure for shift assignments (as distinguished from establishing the hours when work shifts will begin and end). Analyzing the meaning of both of the mandatory topics of “hours” and “seniority,” the Board concluded that the contractual procedures for shift bidding, although affecting the hours individual employees would work and incorporating employee seniority to determine who would receive a given assignment should conflicting bids be made, were not mandatorily negotiable under either topic.

The second question posed by the petition was “whether the County has the exclusive right to assign or determine the specific schedule of days of the week that a bargaining unit employee may be required to work.”

The Board repeated that the County has an obligation to bargain the total number of hours in the workday, starting and quitting times and break times—all matters long held to be within the meaning of the mandatory topic of “hours”—but retains the authority to assign employees to particular tasks or shifts, a matter not within any mandatory topic. The employer’s question, the Board noted, seemingly combined these distinct concepts and asked for a determination about scheduling as a general concept, without providing either

factual context or an actual bargaining proposal or contract language upon which the Board could base its ruling. It consequently viewed the second question as unclear, overbroad and inappropriate for consideration in the context of a declaratory order proceeding (see paragraph “f” of subrule 621—10.9(1)), and declined to answer the question on that ground.

### PROHIBITED PRACTICE DECISIONS

#### ***IUOE Local 234 & Chickasaw County***, 13 HO 8600 (6/24/13).

In this case involving a somewhat-unusual fact pattern, the employer had discussed its health insurance administrator’s recommendations for changes in its plan with the two employee organizations representing its employees. The employer, however, ultimately implemented none of the changes under discussion and maintained the insurance *status quo*, even though the parties were aware the existing self-funded plan’s cost would increase 40 per cent, to be shared by the employer and employees under the percentage-based formula specified in their multi-year agreement.

In support of its complaint, one of the certified employee organizations maintained that the employer had failed to negotiate contemplated changes to the insurance program, insisted on its changes, failed to provide insurance information and placed unreasonable time limits on the organization’s acceptance or rejection of the proposed changes. The employee organization also asserted that even though no change in the plan had actually taken place, the employer had a duty to bargain in good faith once it proposed possible insurance changes, and had not done so.

The ALJ rejected both arguments and proposed dismissal of the complaint, explaining that the case involved the employer’s duty to negotiate mid-term changes to a mandatory topic of bargaining (insurance) in a situation where the potential changes were to matters not “contained in” the parties’ collective agreement. But while noting that the employer has the duty to provide notice of contemplated changes to such matters and an opportunity for the certified representative to bargain over them before instituting any change, the duty to bargain, the ALJ further noted, is a prerequisite to the implementation of a change. But the employer had not implemented any such change so as to require bargaining as a prerequisite.

Although thus rejecting the idea that the employer had a bargaining obligation under the particular circumstances, the ALJ assumed, for argument’s sake, that a good-faith bargaining duty had arisen when the employer proposed insurance changes and turned to the claim that it had not thereafter bargained in good faith. After analyzing the factual record and applying established

caselaw requiring an examination of the totality of the party's conduct in "bad faith bargaining" cases, the ALJ ultimately concluded that the bargaining unit's representative had failed to establish that the employer's bargaining had been in bad faith.

***AFSCME/Iowa Council 61 & State of Iowa (Dept. of Corrections)***, 13 HO 8619 (10/15/13).

The ALJ concluded that the State had committed a prohibited practice within the meaning of section 20.10(2)(a) by interfering, restraining and coercing a correctional officer's exercise of his section 20.8 right to engage in concerted activities for the purpose of mutual aid or protection when it failed to provide him with requested union representation at an investigatory interview the employee reasonably believed might result in discipline.

Rejecting the argument that management's meeting with the employee was not an investigatory interview and could thus not trigger the so-called *Weingarten* right, the ALJ concluded that the clear purpose of the meeting in question was to find out why the employee had been absent from work and what type of leave he was seeking, *i.e.*, that it was an investigation. And, the ALJ indicated, the meeting was designed to elicit information from the employee and constituted an interview, even though management did not directly ask the employee questions, but instead told him what management wanted to know and instructed him to compose a written statement providing that information.

The ALJ also rejected the argument that the *Weingarten* right had not been triggered because the purpose of the meeting had not been to elicit facts to support disciplinary action that was "probable" or being "seriously considered." Instead, the ALJ followed private-sector authority to the effect that the right to representation arises whenever the risk of discipline reasonably inheres in an investigatory interview, and not only when disciplinary action is "probable" or "seriously considered."

#### BARGAINING UNIT CASES

***Muscatine County & AFSCME/Council 61 and Muscatine County & Teamsters Local 238***, 13 HO 8396 and 8404 (1/15/13).

AFSCME filed a combined petition for unit determination and representative certification, proposing a bargaining unit of food service workers, nurses and clerical employees at the employer's jail facility. The employer then filed a petition to amend the employees AFSCME sought to represent into an existing

unit of jail correctional officers represented by the Teamsters. The cases were consolidated for hearing before a single ALJ.

In a proposed decision which systematically discusses the Iowa Code section 20.13 unit determination criteria, and which could serve as a worthwhile tutorial on how those criteria are applied by PERB, the ALJ concluded that the bargaining unit composition proposed by AFSCME, rather than the amendment of the existing represented unit, was appropriate under the circumstances. The ALJ accordingly entered a proposed order dismissing the employer's amendment of unit petition, establishing that new bargaining unit and directing that a representation election be conducted among the employees in that unit.

***Lakes Regional Healthcare & Lakes Regional Healthcare Nurses Assn.,***  
13 HO 8430 (4/16/13).

An amendment of bargaining unit proceeding in which the employer sought to remove employees in the then-included classifications of "patient care supervisor" and "obstetrics supervisor" from the existing represented bargaining unit on the grounds they were "representatives of a public employer" (in this case, supervisory or managerial employees) and thus excluded from chapter 20's coverage by Iowa Code section 20.4(2).

The ALJ ultimately concluded that one of the classifications at issue was supervisory, that employees in the other classification were managerial employees, and that both were thus "representatives of a public employer" excluded from the coverage of the statute. A good review of the supervisory and so-called "managerial" exclusions for those involved in or contemplating a bargaining unit case where a claim is or may be made that employees are ineligible for inclusion in a bargaining unit based upon either of these grounds.

***City of Onawa & AFSCME/Council 61,*** 12 HO 8505 (11/27/12).

A unit determination case which presented the question of whether the employer's maintenance operations coordinator and foremen in three of the employer's departments should be excluded from a new bargaining unit due to their status as representatives of the public employer.

In concluding that the employees at issue were not the administrative officers, directors or chief executive officers of a major division of the City, and were not managerial or supervisory employees excluded by section 20.4(2), the ALJ detailed the requirements for each of those possible bases for exclusion. The proposed decision, like *Lakes Regional Healthcare*, provides a useful review or tutorial on the supervisory and managerial exclusions, as well as on the issues involved in claims that employees are excluded from coverage based upon their leadership roles in "major divisions" of the public employer.

***Mary Greeley Medical Center & Mary Greeley Medical Center Paramedics,***  
13 HO 8560 (4/19/13).

The employee organization's unit determination petition proposed a new unit of paramedics in the employer hospital's mobile intensive care services department, while the employer proposed a much broader unit composed of all professional and nonprofessional patient-care employees.

In a proposed decision discussing how each of the section 20.13 unit determination criteria applied to the factual record, the ALJ ultimately concluded that the appropriate unit was composed of a long list of patient-care employee classifications, both professional and nonprofessional, rather than the much smaller "paramedics only" unit sought by the employee organization.

The ALJ noted, however, that section 20.13(4) provides that professional and nonprofessional employees shall not be included in the same bargaining unit unless a majority of both groups agree, and that consequently a professional/nonprofessional election pursuant to PERB subrule 621—4.2(5) would be necessary. Because the "combined" unit proposed by the ALJ was thus necessarily contingent on the results of that election, and could effectively be rendered a nullity should either the professionals or nonprofessionals not agree, the ALJ addressed the contingency by concluding that should the combined unit not be agreed to by the two groups of employees, two separate units (professional patient-care and nonprofessional patient-care), which the ALJ defined in detail, would be appropriate.

***Dubuque County & Teamsters Local 120,*** 14 HO 8700 (5/12/14).

The certified representative of an existing bargaining unit petitioned to amend the unit to specifically include the newly created position of assistant health administrator in the employer's health department. The employer resisted the amendment, arguing that the position at issue was the deputy or first assistant of the administrative officer, director or chief executive officer of a major division of the public employer, or was a supervisory employee, any of which would bring the position within the definition of "representatives of a public employer" excluded from coverage by section 20.4(2).

After reviewing pertinent authority concerning what constitutes a "major division" of the public employer, the ALJ concluded that the health department was one of the City's major divisions. The ALJ then reviewed the authority a position must possess in order to constitute a "first assistant" to the head of a major division and concluded that the assistant health administrator met the Board's established standard for exclusion on that ground because the position's function of aiding the major division's executive officer with his or her managerial responsibilities was greater than that of any other employee in

the division. Worthwhile reading for parties considering whether a given position is properly excluded from a bargaining unit by section 20.4(2) as a “first assistant.”

## **II. STATUTORY AMENDMENT**

Only one amendment to chapter 20 has been enacted since the 2012 PERB Conference—HF 2172, an Act providing for the use of an electronic filing and notice system by the Public Employment Relations Board. The bill, signed by the Governor on March 7, 2014 and effective July 1, 2014, amended existing Iowa Code section 20.24 as follows:

### **20.24 Notice and service — electronic filing system.**

~~Any~~ The board shall by rule establish an electronic filing system for the filing or service of any notice or other document required under the provisions of this chapter shall be in writing, but service thereof shall be sufficient if mailed by restricted certified mail, return receipt requested, addressed to the last known address of the intended recipient, unless or permitted by law to be filed with or served on or filed or served by the board. Unless otherwise provided in this chapter by law, the board may by rule require the filing or service of such notice or other document through the system, notwithstanding the provisions of chapter 17A concerning service or filing by mail. Refusal of restricted certified mail by any party shall be considered service. Any notice or other document not required by rule to be filed or served through the system shall be filed or served in accordance with chapter 17A. Unless otherwise provided in this chapter by law, prescribed time periods shall commence from the date of the receipt of the notice filing or service through the system.

### **III. AMENDMENT OF PERB ADMINISTRATIVE RULES**

Three separate packages of rule amendments have been filed since the 2012 PERB Conference. The general subject matter, relevant dates and Administrative Rules Committee identification numbers of each package is as follows, and the most recent filing concerning each is attached.

#### **A. New chapter 16 (Electronic Document Management System) and conforming and related amendments to chapters 1, 2, 3, 6, 7, 9, 10 and 11.**

- Notice of Intended Action, ARC 1507C, published 6/25/14.
- Adopted, ARC 1583C, published 8/20/14. (Attachment "A")
- Effective 9/24/14.

#### **B. New chapters 13 (Mediators) and 14 (Arbitrators) and related rescission of rule 621—1.8(20,279) (relocated to new ch. 14).**

- Notice of Intended Action, ARC 1570C, published 8/6/14.
- Adopted, ARC 1642C, to be published 10/1/14. (Attachment "B")
- To become effective 11/5/14.

#### **C. New rules 621—2.23(20) and 2.24(20) and amendments to 621—chapter 3 (Prohibited Practice Complaints), including new rule 3.12(20) (costs of certified shorthand reporters and transcripts).**

- Notice of Intended Action, ARC \_\_\_\_\_, expected to be published 10/15/14. (Attachment "C")
- Anticipated effective date 1/14/15.

**PUBLIC EMPLOYMENT RELATIONS BOARD[621]**

**Adopted and Filed**

Pursuant to the authority of Iowa Code section 20.6(5) and section 20.24 as amended by 2014 Iowa Acts, House File 2172 (effective July 1, 2014), the Public Employment Relations Board hereby amends Chapter 1, "General Provisions," Chapter 2, "General Practice and Hearing Procedures," Chapter 3, "Prohibited Practice Complaints," Chapter 6, "Negotiations and Negotiability Disputes," Chapter 7, "Impasse Procedures," Chapter 9, "Administrative Remedies," Chapter 10, "Declaratory Orders," and Chapter 11, "State Employee Appeals of Grievance Decisions and Disciplinary Actions," and adopts new Chapter 16, "Electronic Document Management System," Iowa Administrative Code.

New Chapter 16 (Item 13) contains rules that govern the use of the electronic filing and notice system which 2014 Iowa Acts, House File 2172, directed the Board to establish and that are modeled in substantial part on the Iowa Court Rules pertaining to the use of the judicial branch electronic document management system. Items 1 through 12 consist of conforming, clarifying and related amendments to existing rules where references to the electronic filing system, the provisions of new Chapter 16 or related supplemental or clarifying provisions are necessary or appropriate.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 1507C** on June 25, 2014, with written or oral comment, or requests for a public hearing, accepted through July 15, 2014. No request for public hearing was received, although written questions, comments and suggestions were received and reviewed and prompted clarifying changes to the proposed amendments published under Notice of Intended Action. Specifically, the Board added a definition of "agency" and eliminated an unnecessary definition of "jurisdictional deadline," added clarification concerning the obligations of a person filing documents through the electronic filing system concerning the redaction of protected or confidential information from a document or the certification of the confidential nature of an entire document, and incorporated nonsubstantive language, style and punctuation changes.

Neither new Chapter 16 nor the amendments to existing rules provide for a waiver of their terms, but are instead subject to the Board's general waiver provisions found at rule 621—1.9(17A,20).

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

These amendments are intended to implement Iowa Code section 20.24 as amended by 2014 Iowa Acts, House File 2172.

These amendments will become effective September 24, 2014.

The following amendments are adopted.

ITEM 1. Adopt the following **new** subrules 1.6(8) to 1.6(11):

**1.6(8)** "*Adjudicatory proceeding*" means a contested case, a proceeding that may culminate in a contested case, a petition for declaratory order, a petition for expedited resolution of a negotiability dispute, or any other proceeding which may require the board or its designee to issue a decision, order, or ruling.

**1.6(9)** "*Agency*" as used in these rules means the public employment relations board and the board's employees.

**1.6(10)** "*Confidential information*" means information excluded from public access by federal or state law or administrative rule, court rule, court or administrative order, or case law.

**1.6(11)** "*Protected information*" means personal information, the nature of which warrants protection from unlimited public access, including:

- a. Social security numbers.
- b. Financial account numbers.
- c. Dates of birth.
- d. Names of minor children.
- e. Individual taxpayer identification numbers.
- f. Personal identification numbers.
- g. Other unique identifying numbers.

ITEM 2. Adopt the following new rule 621—1.10(20):

**621—1.10(20) Agency record and files.**

**1.10(1) Agency record.** The official agency record for all adjudicatory proceedings includes the following:

- a. Electronic files maintained in the agency's electronic document management system;
- b. Paper documents maintained by the agency in paper form when permitted by the board's order; and
- c. Exhibits and other materials filed with or delivered to and maintained by the agency as part of the case file.

**1.10(2) Paper case files.** Except as otherwise provided in the agency's rules or directed by the board, the agency will not maintain paper case files in adjudicatory proceedings filed on or after January 1, 2015.

ITEM 3. Amend subrule 2.12(1) as follows:

**2.12(1) Attendance of witnesses.** The board, an administrative law judge, or an arbitrator selected pursuant to Iowa Code section 20.22 shall issue subpoenas to compel the attendance of witnesses and the production of relevant records upon written application of any party filed with the ~~presiding officer~~ agency prior to the hearing ~~or oral motion at the hearing~~. ~~The party requesting subpoenas shall serve the subpoenas and notify the presiding officer in writing prior to hearing, or orally at the time of hearing,~~ of application shall specify the names and addresses of the witnesses or the person or party having possession of the requested documents and shall list with specificity the records or other items sought. The requested subpoenas may be provided electronically to a registered user of the electronic document management system. Where a A motion to quash a subpoena may be filed, and when the subpoena has been served more than seven days prior to the hearing, ~~a party may move to quash the subpoena the motion shall be filed~~ not less than three days prior to the hearing. Subpoenas for production of records shall list with specificity the items sought for production and the name and address of the person or party having possession or control thereof. A written motion to quash subpoenas may be filed with the presiding officer issuing the subpoenas, and the moving party shall serve copies upon all parties of record.

ITEM 4. Amend rule 621—2.13(20) as follows:

**621—2.13(20) Form of documents and treatment of confidential or protected information.**

**2.13(1) Form.** All documents, ~~other than forms provided by the board,~~ which relate to any proceeding before the ~~board~~ agency should be typewritten and bear the docket number of the proceeding to which it relates. Such documents may be single- or double-spaced at the option of the submitting party.

**2.13(2) Confidential information.** When a party files any document which contains material or a reproduction, quotation, or extensive paraphrase of confidential information as defined by 621—subrule 1.6(10), it is the responsibility of the filer to ensure that confidential information is omitted or redacted, or to certify the confidential nature of the document in the manner provided by the electronic document management system. If a document is certified as confidential, omission or redaction of the confidential information contained in the document is not required. The agency will not review filings to determine whether appropriate omissions or redactions have been made.

**2.13(3) Protected information.** When a party files any document which contains protected information as defined by 621—subrule 1.6(11), it is the responsibility of the filer to ensure that the protected information is omitted or redacted from the document before the document is filed unless the protected information is required by statute or rule to be included or is material to the proceeding. The agency will not review filings to determine whether appropriate omissions or redactions have been made.

ITEM 5. Amend rule 621—2.15(20) as follows:

**621—2.15(20) Service of pleadings and other papers.**

**2.15(1) Service—upon whom made.** Whenever under these rules nonelectronic service is required or permitted to be made upon a person or party, such service shall be as follows:

- a. Upon any city, or board, commission, council or agency thereof, by serving the mayor or city clerk.
- b. Upon any county, or office, board, commission or agency thereof, by serving the county auditor or the chairperson of the county board of supervisors.
- c. Upon any school district, school township, or school corporation, by serving the presiding officer or secretary of its governing body.
- d. Upon the state of Iowa, or board, commission, council, office or agency thereof, by serving the governor or the director of ~~personnel~~ the department of administrative services.
- e. Upon the state judicial department, by serving the state court administrator.
- f. Upon any other governing body, by serving its presiding officer, clerk or secretary.
- g. Upon an employee organization, by serving the person designated by the employee organization to receive service pursuant to 621—subrule 8.2(2); or, by service upon the president or secretary of the employee organization.
- h. Upon any other person, by serving that person or that person's attorney of record.

**2.15(2) Service—how made.** Except as provided in rules 621—3.4(20) and 621—5.7(20) and subrule 2.12(3) and 621—subrule 4.2(2), whenever nonelectronic service of any document is permitted or required by these rules, ~~require service upon any person or party~~ the service shall be sufficient if made by ordinary mail. If the document served is an initial filing in a proceeding, the serving party shall also serve with the document an agency-approved information sheet regarding mandatory electronic filing.

**2.15(3) Proof of service.** Where personal service or service is by restricted certified or ordinary mail or personal service is permitted or required by these rules, the serving party shall ~~forward file the return receipt or return of personal service to~~ or certified mail return receipt with the board for filing agency. Where service by ordinary mail is permitted under these rules, the serving party shall include the following or a substantially similar certificate on the original document filed with the ~~board~~ agency:

"I hereby certify that on \_\_\_\_\_ I sent a copy of the foregoing matter to

(date)

the following parties of record or their representatives at the addresses indicated, by depositing same in a United States mail receptacle with sufficient postage affixed.

(Signed) \_\_\_\_\_"

(party or representative)

Unless excepted by 621—subrule 16.4(2), proof of service shall be filed electronically in accordance with 621—Chapter 16.

ITEM 6. Amend rule 621—2.18(20) as follows:

**621—2.18(20) Delivery of decisions and orders.** Decisions and orders of the board or administrative law judge shall be ~~delivered to the parties by ordinary mail~~ filed and served in accordance with 621—Chapter 16.

ITEM 7. Amend rule 621—3.4(20) as follows:

**621—3.4(20) Service of complaint.** The complainant shall, within a reasonable time following the filing of a complaint, serve the respondent(s) with a copy of the complaint in the manner of an original notice or by ~~restricted~~ certified mail, return receipt requested. Such service shall be upon the person designated for service by 621—subrule 2.15(1), and the complainant shall file proof thereof with the ~~board~~ agency in accordance with 621—subrules 2.15(3) and 16.10(1).

ITEM 8. Amend subrule 6.3(2) as follows:

**6.3(2) Expedited resolution.** In the event that a negotiability dispute arises between the employer and the certified employee organization, either party may petition the board agency for expedited resolution of the dispute. The petition shall set forth the material facts of the dispute, and the precise question of negotiability submitted for resolution, and certificate of service upon the other party. The petitioner shall promptly serve the other party with a copy of the petition and file proof thereof with the agency in accordance with 621—subrules 2.15(3) and 16.10(1). Unless the dispute is resolved by the board prior to the arbitration hearing, the parties shall present evidence on all items to the arbitrator, including the item which is the subject of the negotiability dispute. A negotiability dispute raised at the arbitration hearing shall be upon written objection to the submission of the proposal to the arbitrator. The objection shall request the arbitrator to seek a negotiability ruling from the board agency regarding the proposal or state that the objecting party will file a petition for resolution of the dispute ~~with the board~~, which petition shall be filed within five days of the making of the objection. Arbitrators shall rule on all items submitted to them including the item which is the subject of the negotiability dispute, unless explicitly stayed by the board. Arbitration awards issued prior to the final determination of the negotiability dispute will be contingent upon that determination.

ITEM 9. Amend subrule 7.6(1) as follows:

**7.6(1) Objections.** Any objection by a party to mediation or the conduct of arbitration proceedings which will not be completed by the applicable deadline for completion of impasse procedures shall be filed with the ~~board and served upon the other party~~ agency in accordance with rule 621—16.4(20). ~~Such filing and service shall take place~~ The objecting party shall promptly serve the other party with a copy of the objection and file proof thereof with the agency in accordance with 621—subrules 2.15(3) and 16.10(1). The objection shall be filed and served no later than 10 days after the filing with the ~~board agency~~ of the request for mediation or arbitration to which the objection refers. For purposes of this rule, a single-party request for mediation which is filed more than 120 days prior to the applicable deadline for completion of impasse procedures or a request for arbitration which is filed prior to the filing period specified in subrule 7.5(1) shall be deemed filed on the first day of that filing period. Failure to file an objection in a timely manner may constitute waiver of such objection, in which case the applicable deadline for completion of impasse procedures shall not apply.

ITEM 10. Amend subrule 9.2(1) as follows:

**9.2(1) Notice of appeal.** An appeal to the board from a proposed decision of an administrative law judge in a contested case proceeding shall be commenced within 20 days of the filing of the proposed decision by filing a written notice of appeal with the board agency in accordance with rule 621—16.4(20). The appealing party shall ~~serve a copy of the notice upon all opposing parties as provided in rule 621—2.15(20), or by ordinary mail upon the parties' attorneys of record~~ promptly serve all other parties with a copy of the notice and file proof thereof with the agency in accordance with rule 621—16.10(20).

ITEM 11. Amend subrule 10.2(9) as follows:

**10.2(9)** A certificate of service of the petition upon any persons or entities required to be served with a copy by rule 621—10.7(17A,20). Service of the petition and proof thereof shall be in accordance with 621—subrules 2.15(3) and 16.10(1).

ITEM 12. Rescind subrule **11.4(3).**

ITEM 13. Adopt the following new 621—Chapter 16:

CHAPTER 16  
ELECTRONIC DOCUMENT MANAGEMENT SYSTEM

**621—16.1(20) Effective date and scope.** This chapter governs the filing of all documents in adjudicatory proceedings before the agency that are filed on or after September 24, 2014. This chapter also governs the filing of all documents in adjudicatory proceedings converted to electronic

proceedings upon the board's order. To the extent the rules in this chapter are inconsistent with any other administrative rule of the board, the rules in this chapter shall govern.

**621—16.2(20) Definitions.**

*“Electronic filing”* means the electronic transmission of a document to the electronic document management system together with the production and transmission of a notice of electronic filing.

*“Electronic record”* means a record, file, or document created, generated, sent, communicated, received, or stored by electronic means.

*“Electronic service”* means the electronic transmission of a link where the registered users who are entitled to receive notice of the filing may view and download filed documents.

*“Nonelectronic filing”* means a process by which a paper document or other nonelectronic item is filed with the agency.

*“Notice of electronic filing”* means a document generated by the electronic document management system when a document is electronically filed.

*“PDF”* means an electronic document filed in a portable document format which is readable by the free Adobe® Acrobat® Reader.

*“Public access terminal”* means a computer located at the agency's office where the public may view, print, and electronically file documents.

*“Registered user”* means an individual who can electronically file documents and electronically view and download files through the use of a username and password.

*“Remote access”* means a registered user's ability to electronically search, view, copy, or download electronic documents in an electronic record without the need to physically visit the agency's office.

*“Signature”* means a registered user's username and password accompanied by one of the following:

1. *“Digitized signature”* means an embeddable image of a person's handwritten signature;
2. *“Electronic signature”* means an electronic symbol (“/s/” or “/registered user's name/”) executed or adopted by a person with the intent to sign; or
3. *“Nonelectronic signature”* means a handwritten signature applied to an original document that is then scanned and electronically filed.

**621—16.3(20) Registration, username, and passwords.**

**16.3(1) Registration.**

a. *Registration required.* Every individual filing documents or viewing or downloading documents filed in an adjudicatory proceeding must register as a registered user of the electronic document management system.

b. *How to register.* To register, the individual must complete the registration process located at <https://perb.iowa.gov/efiling> and obtain a username and password for the electronic document management system.

c. *Registration complete.* When the registration process is completed, the registered user will be assigned a username and password and the registered user may utilize the electronic document management system.

d. *Changing passwords.* Once registered, the user may change the user's password. If the registered user believes the security of an existing password has been compromised, the registered user must change the password immediately. The agency may require password changes periodically.

e. *Changes in registered user's contact information.* If a registered user's e-mail address, mailing address, or telephone number changes, the user must promptly make the necessary changes to the registered user's information contained in the electronic document management system. The registered user shall promptly give notice of changes in contact information to any nonregistered party in every active proceeding in which the registered user is a party.

f. *Duties of registered user.* Each registered user shall ensure that the user's e-mail account information is current, that the account is monitored regularly, and that e-mail notices sent to the account are timely opened.

*g. Canceling registration.* Withdrawal from participation in the electronic document management system cancels the registered user's profile but does not authorize nonelectronic filing of documents and is not a withdrawal from a proceeding.

**16.3(2) Use of username and password.** A registered user is responsible for all documents filed with the user's username and password unless proven by clear and convincing evidence that the registered user did not make or authorize the filing.

**16.3(3) Username and password security.** If a username or password is lost, misappropriated, misused, or compromised, the registered user of that username/password shall notify the agency promptly.

**16.3(4) Denial of access.** The agency may refuse to allow an individual to electronically file or download information in the electronic document management system due to misuse, fraud or other good cause.

**621—16.4(20) Mandatory electronic filing and exceptions.**

**16.4(1) Electronic filing mandatory.** Unless otherwise required or authorized by these rules, all documents in adjudicatory proceedings commenced on or after January 1, 2015, must be filed using the agency's electronic document management system.

**16.4(2) Exceptions.**

*a.* A show of interest submitted in a representative certification, combined bargaining unit determination or reconsideration/representative certification, or decertification proceeding shall not be filed electronically.

*b.* Any item that is not capable of being filed in an electronic format shall be filed in a nonelectronic format.

*c.* Upon a showing of exceptional circumstances that it is not feasible for an individual to file documents by electronic means, the board may excuse the individual from electronic filing in a particular proceeding.

*d.* All filings in proceedings initially filed prior to January 1, 2015, unless converted to an electronic proceeding by board order shall not be filed electronically.

**16.4(3) What constitutes filing.** The electronic transmission of a document to the electronic document management system consistent with the procedures specified in these rules, together with the production and transmission of a notice of electronic filing, constitutes filing of the document.

**16.4(4) Electronic file stamp.** Electronic documents are officially filed when affixed with an electronic file stamp. Filings so endorsed shall have the same force and effect as documents time-stamped in a nonelectronic manner.

**16.4(5) E-mail or fax.** E-mailing or faxing a document to the agency will not generate a notice of electronic filing and does not constitute electronic filing of the document unless otherwise ordered by the agency.

**16.4(6) Public access terminal.** At least one public access terminal shall be maintained at the agency's office.

**621—16.5(20) Filing of paper documents.**

**16.5(1) Conversion of paper documents filed.** If the board allows a party to file paper documents in accordance with paragraph 16.4(2) "c," the agency will convert the filed documents to an electronic format viewable to registered users of the electronic document management system.

**16.5(2) Form of paper documents.** Each document must be printed on only one side and be delivered to the agency with no tabs, staples, or permanent clips, but may be organized with paperclips, clamps, or some other type of temporary fastener or may be delivered to the agency in an appropriate file folder.

**16.5(3) Return of copies by mail.** If a party wants a document filed in paper form to be returned by mail, the party must deliver to the agency a self-addressed envelope, with proper postage, large enough to accommodate the returned document.

**621—16.6(20) Date and time of filing.**

**16.6(1) *Date of filing.*** An electronic filing may be made any day of the week, including holidays and weekends, and any time of the day the electronic document management system is available.

**16.6(2) *Time of filing.*** A document is timely filed if it is filed before midnight on the date the filing is due.

**621—16.7(20) Signatures.**

**16.7(1) *Registered user.*** A username and password accompanied by a digitized, electronic, or nonelectronic signature serve as the registered user's signature on all electronically filed documents.

**16.7(2) *Documents requiring oaths, affirmations or verifications.*** Any document filed requiring a signature under oath or affirmation or with verification may be signed electronically or nonelectronically but shall be filed electronically.

**16.7(3) *Format.*** Any filing requiring a signature must be signed, with either a nonelectronic signature (actual signature scanned), an electronic signature (the symbol “/s/” or “/registered user's name/”), or a digitized signature (an inserted image of a handwritten signature). The following information about the person shall be included under the person's signature:

- a. Name;
- b. Name of firm, certified employee organization, or governmental agency;
- c. Mailing address;
- d. Telephone number; and
- e. E-mail address.

**16.7(4) *Multiple signatures.*** By filing a document containing multiple signatures, the registered user confirms that the content of the document is acceptable to all persons signing the document and that all such persons consent to having their signatures appear on the document.

**621—16.8(20) Format and redaction of electronic documents.** All documents must be converted to a PDF format before they are filed in the electronic document management system. Prior to filing any document, the registered user shall ensure that the document is certified as confidential or the confidential information is omitted or redacted in accordance with 621—subrule 2.13(2), and that protected information is omitted or redacted in accordance with 621—subrule 2.13(3).

**621—16.9(20) Exhibits and other attachments.** Any attachments to a filing, such as an exhibit, shall be uploaded and electronically attached to the filing.

**621—16.10(20) Service.**

**16.10(1) *Initial filing.*** An initial filing in a proceeding shall be served upon other parties nonelectronically in the manner specified in rule 621—2.15(20). The document being served must be accompanied by an agency-approved information sheet regarding mandatory electronic filing. Unless exempted by subrule 16.4(2), proof of service of the initial filing shall be electronically filed.

**16.10(2) *Subsequent filings.*** All subsequent filings shall be electronically served via the electronic document management system, unless a party to the proceeding is exempted from electronically filing documents by subrule 16.4(2). If a party is so exempted, all documents filed by all parties to the proceeding shall be served in accordance with rule 621—2.15(20).

**16.10(3) *Proof of service of nonelectronic filings.***

- a. Parties filing pursuant to paragraph 16.4(2)“b” shall file a proof of service electronically.
- b. Parties filing pursuant to the exceptional circumstances provision in paragraph 16.4(2)“c” must attach a nonelectronic proof of service to the filing.
- c. Parties to a proceeding initially filed prior to January 1, 2015, must attach a nonelectronic proof of service to their nonelectronic filings.

**16.10(4) *Electronic service and distribution of electronic filings.***

*a.* When a document is electronically filed, it will be served through the electronic document management system to all parties to the adjudicatory proceeding who are registered users. No other service is required unless ordered by the agency.

*b.* Notices of electronic filing will continue to be sent to registered users appearing or intervening in a proceeding until they have filed a withdrawal of appearance.

**16.10(5) *Agency-generated documents.***

*a. Electronic filing and service.* All agency-generated documents issued in adjudicatory proceedings governed by this chapter shall be electronically filed and served.

*b. Paper copies.* The agency shall not mail paper copies of any documents absent approval by the board.

**621—16.11(20) Discovery.** Parties shall file a notice with the agency when a notice of deposition or a discovery request or response is served on another party. The notice filed with the agency shall include the date, manner of service, and the names and addresses of the persons served. Other discovery materials shall not be filed unless ordered by the presiding officer.

**621—16.12(20) Transcripts, briefs and exhibits.**

**16.12(1) *Transcripts.*** If a hearing or oral argument is transcribed, the transcript shall be made available to registered users electronically after final agency action.

**16.12(2) *Briefs.*** Briefs and memoranda shall be electronically filed.

**16.12(3) *Exhibits.*** A party's exhibits admitted into evidence at a hearing shall be electronically filed by the party not later than the date ordered by the presiding officer or board.

These rules are intended to implement Iowa Code section 20.24 as amended by 2014 Iowa Acts, House File 2172.

[Filed 7/30/14, effective 9/24/14]

[Published 8/20/14]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 8/20/14.

**PUBLIC EMPLOYMENT RELATIONS BOARD [621]**

**Adopted and Filed**

Pursuant to the authority of Iowa Code section 20.6(5), the Public Employment Relations Board hereby rescinds rule 621—1.8(20) and adopts new Chapter 13, “Mediators,” and new Chapter 14, “Arbitrators,” Iowa Administrative Code.

New Chapters 13 and 14 fulfill, in a more formal and available manner than in the past, the Board’s Iowa Code section 20.6(3) responsibility to “[e]stablish minimum qualifications for arbitrators and mediators, [and] establish procedures for appointing, maintaining, and removing from a list persons representative of the public to be available to serve as arbitrators and mediators.” While the Board has long maintained publicly available policies and procedures compliant with this statutory directive, they have not heretofore been reflected by Board rules.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 1570C** on August 6, 2014, with written or oral comment, or requests for a public hearing, accepted through August 26, 2014. No request for public hearing was received and no written or oral questions, comments or suggestions were submitted. These amendments are identical to those published under Notice of Intended Action.

Neither new Chapter 13 nor new Chapter 14 provide for a waiver of their terms, but are instead subject to the Board’s general waiver provisions found at rule 621—1.9(17A,20).

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

These amendments are intended to implement Iowa Code chapter 20 and Iowa Code section 279.17.

These amendments will become effective November 5, 2014.

The following amendments are adopted:

ITEM 1. Rescind rule 621-1.8(20) (*transferred to new 621—chapter 14 and amended*).

ITEM 2. Adopt the following **new** 621—chapter 13:

CHAPTER 13  
MEDIATORS

**621—13.1(20) Scope and authority.** This chapter applies to all mediators listed on the agency's Mediator List and to all persons applying for inclusion on the List.

**621—13.2(20) Definitions.**

“*Ad hoc mediator*” means a person included on the List who enters into an independent contractor agreement with the agency to provide mediation to parties requesting impasse services pursuant to Iowa Code section 20.20.

“*Advocate*” is a person who represents employers, employee organizations, or individuals or entities in labor relations or employment relations matters, including but not limited to the subjects of union representation and recognition matters, collective bargaining which includes mediation, arbitration, unfair or prohibited labor practices, equal employment opportunity, and other areas generally recognized as constituting labor or employment relations. “*Advocate*” includes representatives of employers or employees in individual cases or controversies involving workers' compensation, occupational health or safety, minimum wage, or other labor standards matters. “*Advocate*” also includes persons directly or indirectly associated with an advocate in a business or professional relationship as, for example, partners or employees of a law firm.

“*FMCS*” means the Federal Mediation and Conciliation Service.

“*Qualified mediator list*” or “*list*” means the list maintained by the agency of mediators who have met the criteria set forth in this chapter.

**621—13.3(20) List and status of members.**

**13.3(1) *The list.*** The agency shall maintain a list of mediators consisting of persons who meet the criteria for listing contained in rule 621—13.4(20) and who remain in good standing.

**13.3(2) *Adherence to standards and requirements.*** Persons included on the list shall comply with the agency's administrative rules pertaining to mediation. Mediators shall conform to the ethical standards and procedures set forth in the current Code of Professional Conduct for Labor Mediators, as approved and published by the Association of Labor Relations Agencies, and chapter 11 of the Iowa Court rules. When in conflict, the Code of Professional Conduct for Labor Mediators shall take precedence over the Iowa Court rules.

**13.3(3) *Status of FMCS and ad hoc mediators.*** Ad hoc mediators and mediators employed by FMCS are not employees of the State of Iowa.

**13.3(4) *Rights of persons on the List.*** Placement on the list shall be at the sole discretion of the board.

**13.3(5) *Assignments.*** The agency has sole discretion to make and modify mediation assignments.

**621—13.4(20) Mediator listing.**

**13.4(1)** The list shall consist of three categories of mediators:

- a. the agency's professional staff;
- b. mediators employed by FMCS; and
- c. ad hoc mediators.

**13.4(2)** *Application procedures for ad hoc mediators.* Persons seeking to be included on the list must complete and submit an application to the agency. Applicants shall submit at least two professional references, preferably one reference from management and one reference from labor. The board will review the application under the criteria set forth in this rule and shall make a final decision as to whether an applicant may be placed on the list. Satisfactorily meeting all criteria does not entitle an applicant to inclusion on the list. Each applicant shall be notified in writing of the board's decision.

**13.4(3)** *Knowledge and abilities.* Applicants must establish requisite knowledge and abilities of the following:

- a. good verbal and written communication skills;
- b. the ability and willingness to travel throughout Iowa and to work prolonged and unusual hours;
- c. knowledge of Iowa Code chapter 20, the agency's administrative rules, and principles and practices of contracts, public finance, and labor relations; and
- d. the ability and willingness to conduct a mediation in a fair and impartial manner.

**13.4(4)** *Experience.* Applicants must demonstrate requisite experience in labor relations or mediation in one of the following ways:

- a. at least three years of collective bargaining experience in the public or private sector;
- b. at least three years of actual mediation experience;
- c. at least five years of other relevant experience in labor-related fields including but not limited to human resource management, industrial relations, and labor unionism;
- d. a law degree or a masters or equivalent degree in industrial or labor relations or alternative dispute resolution; or
- e. a combination of paragraphs (a)—(d) of this subrule.

**13.4(5)** *Geographical location.* Preference will be given to applicants residing in or near areas of the state where few other listed mediators reside.

**13.4(6)** *Training.* Prior to inclusion on the list, the following training must be completed:

- a. Formal training provided by the agency; and
- b. Mentorship in at least two disputes with an experienced, listed mediator. The board may require additional mentoring if deemed necessary.
- c. Training requirements may be waived by the board for applicants with prior public sector mediation experience.

**13.4(7)** *Conflict of interest.* Prior to inclusion on the list, all applicants must disclose potential conflicts of interest as defined in subrule 13.6(1).

**13.4(8)** *Exemption.* Persons on the agency's professional staff and mediators employed by FMCS shall not be required to submit an application for listing and shall be deemed as meeting all criteria set forth in subrules 13.4(3)—(6) throughout the duration of their employment with the agency or FMCS.

**13.4(9)** *Grandfather clause.* Any person listed prior to the enactment of this chapter shall be deemed as meeting all criteria set forth in subrules 13.4(3), (4) and (6).

**621—13.5(20) Independent contractor agreement.** An ad hoc mediator must enter into an

independent contractor agreement with the agency prior to receiving mediation assignments. The independent contractor agreement between the ad hoc mediator and the agency shall establish the hourly rate, reimbursable fees and expenses, duration, and other terms and conditions.

**621—13.6(20) Advocacy and conflict of interest.**

**13.6(1) *Conflict of interest.*** The board shall determine whether a person has a conflict of interest which may require denial of an application or removal from the list or from individual assignments. A conflict of interest arises where:

*a.* a mediator is or has been an employee or advocate for a party to the mediation within the prior two years; or

*b.* a mediator's immediate family, or any other person with whom the mediator has close, personal ties is an interested party in the outcome of the mediation; or

*c.* any other matter that may create an appearance of bias, lack of impartiality, or interest in the proceedings to which the mediator may be or has been assigned.

**13.6(2) *Duty to disclose.*** A person applying for inclusion on the list or a person listed has a continuing duty to disclose to the board in writing any potential or actual conflicts of interest as defined in subrule 13.6(1).

**13.6(3) *Disclosure.*** The board may require a mediator to disclose certain matters to the parties of a mediation prior to its commencement. If either party objects to proceeding to mediation with that mediator, the board may assign a different mediator.

**621—13.7(20) Confidentiality.**

**13.7(1) *Exemption from Open Meetings law.*** In accordance with Iowa Code section 20.17(3), communications between the parties and the mediator during the course of a mediation shall be exempt from the provisions of chapter 21 of the Iowa Code.

**13.7(2) *Mediator privilege.*** In accordance with Iowa Code section 20.31(2), a mediator shall not testify in judicial, administrative, or grievance proceedings regarding any matters occurring in the course of a mediation, including any verbal or written communication or behavior, other than facts relating exclusively to the timing or scheduling of mediation. A mediator shall not produce or disclose any documents, including notes, memoranda, or other work product, relating to mediation, other than documents relating exclusively to the timing or scheduling of mediation.

**13.7(3) *Exception.*** Subrule 13.7(2) shall not apply in any of the following circumstances:

*a.* if the testimony, production, or disclosure is required by statute;

*b.* if the testimony, production, or disclosure provides evidence of an ongoing or future criminal activity; or

*c.* if the testimony, production, or disclosure provides evidence of child abuse as defined in Iowa Code section 232.68(2).

**621—13.8(20) Complaints.** Any affected person or party shall direct a complaint against a mediator from the list to the board. The board will consider the complaint and other relevant information and take such action it deems appropriate.

**621—13.9(20) Inactive status.** A member of the list who continues to meet the criteria for inclusion on the list shall inform the agency if he or she is unavailable for assignment on a temporary basis because of illness, vacation, schedule, or other reasons. That member will not receive assignments during his or her unavailability.

These rules are intended to implement Iowa Code sections 20.1, 20.6 and 20.20.

ITEM 3. Adopt the following **new** 621—chapter 14:

#### CHAPTER 14 ARBITRATORS

**621—14.1(20) Scope.** This chapter applies to all arbitrators listed on the agency’s qualified arbitrator roster and to all applicants for listing on the roster.

**621—14.2(20) Definitions.**

“*Advocate*” is a person who represents employers, employee organizations, or individuals or entities in labor relations or employment relations matters, including but not limited to the subjects of union representation and recognition matters, collective bargaining which includes mediation, arbitration, unfair or prohibited labor practices, equal employment opportunity, and other areas generally recognized as constituting labor or employment relations. “*Advocate*” includes representatives of employers or employees in individual cases or controversies involving workers’ compensation, occupational health or safety, minimum wage, or other labor standards matters. “*Advocate*” also includes persons directly or indirectly associated with an advocate in a business or professional relationship as, for example, partners or employees of a law firm.

“*Arbitrator*” means a person serving as a neutral decision-maker in interest arbitrations, grievance arbitrations, or teacher termination adjudications.

“*Grievance arbitration*” means the proceedings on an alleged contract violation as provided in a collective bargaining agreement entered into pursuant to Iowa Code chapter 20.

“*Grievance arbitrator*” means a person serving as a neutral decision-maker in a grievance arbitration.

“*Interest arbitration*” means the binding arbitration contemplated by Iowa Code section 20.22 or by an impasse agreement entered pursuant to Iowa Code section 20.19.

“*Interest arbitrator*” means a person serving as a neutral decision-maker in an interest arbitration.

“*Qualified arbitrator roster*” or “*roster*” means the list maintained by the agency of arbitrators who have met the criteria set forth in this chapter.

“*Teacher termination adjudication*” means the proceedings contemplated by Iowa Code section 279.17.

“*Teacher termination adjudicator*” means a person serving as a neutral decision-maker in a teacher termination adjudication.

**621—14.3(20) Roster and status of members.**

**14.3(1) *The roster.*** The agency shall maintain a roster of arbitrators consisting of persons who meet the criteria for listing contained in rule 621—14.5(20) and who remain in good standing.

**14.3(2) *Adherence to standards and requirements.*** Persons listed on the roster shall comply

with the agency's administrative rules pertaining to arbitrators. Arbitrators shall conform to the ethical standards and procedures set forth in the current Code of Professional Responsibility for Arbitrators of Labor Management Disputes, as approved and published by the National Academy of Arbitrators, Federal Mediation and Conciliation Service, and the American Arbitration Association.

**14.3(3) Status of arbitrators.** Persons who are listed on the roster are not employees of the State of Iowa. A selected arbitrator's contractual relationship is solely with the parties to the dispute.

**14.3(4) Roster listing fee.** An annual listing fee of \$150.00 for each roster member is established to maintain the roster. Roster members shall remit payment to the agency by November 1 each year. This fee shall be considered a repayment receipt as defined in Iowa Code section 8.2.

**621—14.4(20) Fees of neutrals arbitrators.** (*Transfer from rule 621—1.8*) Qualified arbitrators and teacher termination adjudicators appointed selected from lists the roster maintained by the board may be compensated by a sum not to exceed \$1,200 per day of service, plus their necessary expenses incurred.

**621—14.5(20) Listing on the roster.**

**14.5(1)** The roster shall consist of three categories of arbitrators:

- a. interest arbitrators;
- b. grievance arbitrators; and
- c. teacher termination adjudicators.

Persons may be listed on the roster in each category in which they meet the criteria.

**14.5(2) Initial application procedures.** Persons seeking to be listed on the roster in one or more categories must complete and submit an application to the board. Applicants shall submit at least one reference from management and one reference from labor and applicable writing samples. The board will review the application under the criteria, as set forth in subrules 14.5(3), (4), (5), and (6), and shall make a final decision whether an applicant will be listed on the roster and for which category or categories an applicant qualifies. Each applicant shall be notified in writing of the board's decision.

**14.5(3) Knowledge and abilities.** Applicants must establish requisite knowledge and abilities of the following:

- a. For listing as an interest arbitrator on the roster:
  - (1) good verbal and written communication skills;
  - (2) the ability and willingness to travel throughout Iowa and to work prolonged and unusual hours;
  - (3) knowledge of Iowa Code chapter 20, the agency's rules, and principles and practices of contracts, public finance, and labor relations; and
  - (4) the ability to conduct evidentiary hearings in a fair and impartial manner, develop an accurate record, and prepare and issue clear, reasoned and timely awards. For purposes of this subparagraph, "timely" means within 15 days after the interest arbitration hearing pursuant to Iowa Code section 20.22(9) or in a timeframe established by an impasse agreement entered pursuant to Iowa Code section 20.19.
- b. For listing as a grievance arbitrator on the roster:
  - (1) good verbal and written communication skills;
  - (2) the ability and willingness to travel throughout Iowa and to work prolonged and unusual

hours;

(3) knowledge of arbitral principles and practices, contracts, and labor relations; and

(4) the ability to conduct evidentiary hearings in a fair and impartial manner, develop an accurate record, and prepare and issue clear, reasoned and timely awards. For purposes of this subparagraph, “timely” means within the timeframe established by the parties’ collective bargaining agreement entered pursuant to Iowa Code chapter 20.

c. For listing as a teacher termination adjudicator on the roster:

(1) good verbal and written communication skills;

(2) the ability and willingness to travel throughout Iowa and to work prolonged and unusual hours;

(3) knowledge of Iowa Code section 279.17; and

(4) the ability to review adjudicatory records developed by another body, hear legal arguments in a fair and impartial manner, and prepare and issue clear, reasoned and timely decisions. For purposes of this subparagraph, “timely” means within 15 days after the teacher termination adjudication hearing pursuant to Iowa Code section 279.17(7).

**14.5(4) Experience.** Applicants must demonstrate requisite experience in labor relations or arbitration in the category in which the applicant seeks listing in one of the following ways:

a. For listing as an interest arbitrator on the roster:

(1) Issuance of at least four (4) fact-finding and/or interest decisions;

(2) At least three years’ experience as a mediator in collective bargaining interest disputes with training and experience in conducting hearings and issuing reasoned awards; or

(3) At least five years’ experience in labor relations or labor law with training and experience in conducting hearings and issuing reasoned awards.

b. For listing as a grievance arbitrator on the roster:

(1) Issuance of at least four (4) grievance awards; or

(2) At least five years’ experience in labor relations or labor law with training and experience in conducting hearings and issuing reasoned awards.

c. For listing as a teacher termination adjudicator on the roster:

(1) Issuance of at least four (4) decisions rendered in an appellate capacity; or

(2) At least five years’ experience in the field of education with training and experience in reviewing adjudicatory records and issuing reasoned decisions.

d. The board may give credit against the years of experience requirement to a candidate who has received a masters or equivalent degree in a related area, or who has adjudicatory experience in a field or fields other than labor relations.

**14.5(5) Conflict of interest.** Prior to inclusion on the roster, all applicants must disclose potential conflicts of interest as defined in subrule 14.8(1).

**14.5(6) Training.** Prior to inclusion on the roster as an interest arbitrator, applicants must complete formal training provided by the agency.

**14.5(7) Exemption.** Applicants who qualify for and complete the agency’s interest arbitrator mentorship program, as outlined in rule 621—14.6(20), shall be exempt from the criteria set forth in subrules 14.5(4)a. and 14.5(6).

**14.5(8) Duration of listing.** Listing on the roster shall be for a term of three years.

**14.5(9) Renewal application.**

a. The board shall notify a roster member not less than 120 days before the expiration of his or her three-year term of the procedures necessary to continue inclusion on the roster.

b. Persons desiring to renew their listing must submit a written application to the board not less than 60 days before the expiration of their three-year term.

c. When reviewing a renewal application, the board shall consider the following criteria, plus any other relevant information, in determining whether to renew the person's listing:

- (1) demonstration of the requisite knowledge and abilities as listed in subrule 14.5(3);
- (2) acceptability, which may be based on the agency's records that show the number of times the arbitrator's name has been proposed to the parties and the number of times he or she has been selected. Such cases will be reviewed for extenuating circumstances, such as length of time on the roster or prior history;
- (3) timeliness of decisions;
- (4) feedback from the parties; and
- (5) attendance at agency-sponsored events, including conferences and trainings.

d. The board shall issue and serve in accordance with subrule 621—2.15(2) a written decision granting or denying the renewal application within 60 days of receipt of the completed application.

(1) If granted, the roster member shall remit payment of the annual listing fee in accordance with subrule 14.3(4).

(2) If denied, the renewal applicant may request reconsideration of the denial within 14 days of issuance of the denial. The board shall hold a hearing conducted in accordance with 621—chapter 2 within 60 days of the request for reconsideration and shall issue its final ruling within 30 days of the hearing. Absent a timely request for reconsideration, the board's denial of the renewal application becomes final, and the arbitrator shall be removed from the roster.

**14.5(10) Grandfather clause.** Any arbitrator listed on the roster prior to the enactment of this chapter shall be deemed to meet all criteria set forth in subrules 14.5(3), (4), and (6) for up to three years following the date of enactment. For purposes of renewal, the agency shall divide arbitrators listed on the roster at the time of the enactment of this chapter into three groups with staggered renewal dates and will notify each group when its renewal application is due.

#### **621—14.6(20) Interest arbitrator mentorship program.**

**14.6(1) Goal of program.** It is a goal of the board to increase the number of Iowa residents qualified to be on the roster. Such increase should provide constituents additional arbitrator options that have lesser reimbursable expenses, such as mileage and accommodations, and are more familiar with situations facing the parties. The board may suspend this program at any time.

**14.6(2) Application procedures.** Persons seeking to participate in the program must complete and submit an application on a form prescribed by the board. The board will review the application and make a final decision whether an applicant qualifies for the program in accordance with subrule 14.6(3). Each applicant shall be notified in writing of the board's decision.

**14.6(3) Qualifications.** To be eligible to participate in the program, an applicant must meet the following qualifications:

- a. be a resident of the State of Iowa at the time of application and throughout the duration of the mentorship program and maintain the residency for the first year of listing;
- b. have at least five (5) years of collective bargaining experience in the public or private sector as an advocate, mediator, or combination of both;
- c. possess good verbal and written communication skills;
- d. have the ability and willingness to travel throughout Iowa and to work prolonged and/or unusual hours; and
- e. not have a conflict of interest as defined in subrule 14.8(1).

**14.6(4) *The program.*** The program shall consist of the following steps:

- a.* formal training by the agency on Iowa Code chapter 20, the agency's administrative rules, and how to conduct hearings and write awards;
- b.* shadowing of at least two (2) interest arbitrations conducted by an experienced arbitrator listed on the roster; and
- c.* submission of at least two (2) mock interest arbitration awards that comply with statutory and regulatory requirements. The board may require additional mock awards if deemed necessary. Successful completion of the program will result in the participant being included as an interest arbitrator on the roster. Participants must satisfy the criteria for grievance arbitrators and teacher termination adjudicators outlined in subrules 14.5(3) and (4) prior to inclusion on the roster under those categories.

**621—14.7(20) *Biography.*** Each roster member shall maintain a biography in a form prescribed by the board. The roster member is responsible for ensuring that his or her biography is accurate and current. The agency bears no responsibility for inaccurate, incomplete, or outdated information on biographies. The biography shall contain the following:

- a.* name, address, phone number, and email address;
- b.* current and past employment, including his or her representative client base if not readily identifiable;
- c.* educational history;
- d.* per diem rate and other applicable charges or fees;
- e.* relevant experience, including but not limited to listing on other arbitrator rosters or memberships/associations; and
- f.* potential or actual conflicts of interest as defined in subrule 14.8(1).

**621—14.8(20) *Conflict of interest.***

**14.8(1) *Conflict of interest.*** The board shall determine whether a person has a conflict of interest which may require denial of an initial or renewal application or removal from the roster or from individual selections. A conflict of interest arises where:

- a.* an arbitrator is or has been an employee or advocate for a party to the arbitration within the prior two years;
- b.* an arbitrator's immediate family, or any other person with whom the arbitrator has close, personal ties, is an interested party in the outcome of the arbitration; or
- c.* any other matter that may create an appearance of bias, lack of impartiality, or interest in the proceedings to which the arbitrator may be or has been selected.

**14.8(2) *Duty to disclose.*** A person applying for inclusion on the roster or a person listed on the Roster has a continuing duty to disclose to the board in writing any potential or actual conflicts of interest as defined in subrule 14.8(1).

**14.8(3) *Disclosure.*** The board may require an arbitrator to disclose certain matters to the parties of an arbitration prior to its commencement. If either party objects to proceeding to arbitration with that arbitrator, the board may require the parties to make an alternate selection.

**621—14.9(20) *Procedures for discipline and removal.***

**14.9(1) *Grounds.*** Probation, suspension, or removal may be based upon one or a combination of any of the following, including but not limited to:

- a.* failure to comply with statutory provisions, the agency's administrative rules, and agency guidelines and policies;

- b. delinquency in submitting awards;
- c. existence of a conflict of interest as defined in subrule 14.8(1) that requires exclusion from the Roster;
- d. failure to disclose to the board or the parties any conflict of interest as defined in subrule 14.8(1);
- e. failure to demonstrate the requisite knowledge and abilities listed in subrule 14.5(3);
- f. any other reason the board deems discipline or removal to be in the best interest of the agency, its constituents, or the public-at-large.

**14.9(2) *Automatic removal.*** Any member who fails to pay the annual listing fee pursuant to subrule 14.3(4) shall be removed from the roster, absent good cause shown for why removal is inappropriate. Any member who fails to submit a renewal application pursuant to paragraph 14.5(9) “b” shall be removed from the roster 30 days after the expiration of the term, absent good cause shown for why removal is inappropriate.

**14.9(3) *Filing of a complaint.*** Any affected person or party may file with the board a complaint against an arbitrator from the roster. The board may also file a complaint pursuant to this subrule. Such complaint shall be in writing and shall contain:

- a. the name, address, telephone number, and email address of the complaining party;
- b. the dispute(s) in which the complaining party has interacted with the arbitrator;
- c. the specific allegations on which the complaint is based;
- d. the requested discipline;
- e. the signature of the complaining party; and
- f. the date on which the complaint was prepared.

The board shall serve written notice of the complaint in accordance with rule 621—2.15 on the arbitrator within 14 days of receipt of the complaint.

**14.9(4) *Preliminary investigation.*** Upon receipt of a complaint from an affected person or party, the board shall conduct a preliminary investigation into the allegations. In conducting the investigation, the board may require the production of evidence, including affidavits and documents. If the investigation reveals the complaint has no basis in fact or if the complaint is informally resolved with the approval of the board, the complaint shall be dismissed and the parties notified in accordance with rule 621—2.15.

**14.9(5) *Procedures.*** If the complaint is not dismissed following the preliminary investigation, the board shall schedule the complaint for hearing and notify the parties in accordance with rule 621—2.2. The hearing shall be held within 60 days of the completion of the preliminary investigation or the filing of a board-initiated complaint. The hearing and all subsequent proceedings and filings shall be in accordance with 621—chapter 2.

**14.9(6) *Timely resolution of complaints.*** Complaints filed with the board shall be resolved within 180 days unless good cause is shown for an extension. The board will notify the parties prior to taking action to extend this time limitation upon its own motion.

**621—14.10(20) Inactive status.** A member of the roster who continues to meet the criteria for listing on the roster shall inform the agency if he or she is unavailable for selection on a temporary basis because of illness, vacation, schedule, or other reasons. That member's name will not be included on a list of arbitrators sent to parties during his or her unavailability.

These rules are intended to implement Iowa Code sections 20.1, 20.6, 20.22 and 279.17.

September 10, 2014.

/s/

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Michael G. Cormack, Chair  
Public Employment Relations Board



## **PUBLIC EMPLOYMENT RELATIONS BOARD [621]**

### **Notice of Intended Action**

Pursuant to the authority of Iowa Code section 20.6(5), the Public Employment Relations Board hereby gives Notice of Intended Action to amend Chapter 2, “General Practice and Hearing Procedures,” and Chapter 3, “Prohibited Practice Complaints,” Iowa Administrative Code.

Items 1 and 2, although presented as new rules, instead reflect the transfer of present rules 621—3.10(20) and 621—3.11(20), including amendments identified in the Board’s ongoing review of its administrative rules, to a more appropriate and intuitive location in Chapter 2.

Items 3 through 11 reflect amendments to existing rules concerning proceedings on prohibited practice complaints which have also been identified in the Board’s ongoing rules review project.

Items 12 and 13 reflect the rescission of the two rules amended and transferred to Chapter 2 by items 1 and 2.

Item 14 proposes the adoption of a new rule which implements the Iowa Code section 20.11(3) requirements that the Board appoint a certified shorthand reporter to report prohibited practice proceedings and to tax the reasonable amount of compensation for such reporting, and for any transcript requested by the Board, as costs.

These rules do not provide for a waiver of their terms, but are instead subject of the Board’s general waiver provisions found at rule 621—1.9(17A,20).

Any interested person may make written suggestions or comments on the proposed amendments on or before October 21, 2014. Written suggestions or comments should be directed to Michael G. Cormack, Chairperson, Public Employment Relations Board, 510 E. 12th Street, Des Moines, Iowa 50319; or [Mike.Cormack@iowa.gov](mailto:Mike.Cormack@iowa.gov).

Persons who wish to convey their views orally should contact the office of the Public Employment Relations Board by telephone at (515)281-4414 or in person at the Board's office at the address noted above.

Requests for a public hearing must be received by October 21, 2014.

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

These amendments are intended to implement Iowa Code chapter 20.

The following amendments are proposed:

ITEM 1. Adopt the following **new** rule 621—2.23(20):

**621—2.23(20) Informal disposition.** The board may assign an administrative law judge to assist the parties in reaching a settlement of any dispute which is the subject of an adjudicatory proceeding. However, no party shall be required to participate in mediation or settle the dispute pursuant to this rule. An administrative law judge assisting the parties under this rule shall not serve as a presiding officer in any proceeding related to the dispute. Adjudicatory proceedings may be voluntarily dismissed without consent of the board except as provided in rule 621—3.6(20) and 621—subrule 4.1(3).

ITEM 2. Adopt the following **new** rule 621—2.24(20):

**621—2.24(20) Evidence of settlement negotiations.** Evidence of proposed offers of settlement of a contested case or a proceeding that may culminate in a contested case shall be inadmissible at the hearing thereon.

ITEM 3. Amend the title of 621—Chapter 3 as follows:

CHAPTER 3  
PROHIBITED PRACTICE ~~COMPLAINTS~~ PROCEEDINGS

ITEM 4. Amend rule 621—3.1(20) as follows:

**621—3.1(20) Filing of complaint.** A complaint that any ~~person, employee, organization or public employer, public employee or employee organization~~ has ~~engaged in or is engaging in~~ committed a prohibited practice under the Act within the meaning of Iowa Code section 20.10(1), that any public employer or the employer's designated representative has committed a prohibited practice within the meaning of Iowa Code section 20.10(2), or that any public employee, employee organization, person, union or organization or their agents has committed a prohibited practice within the meaning of Iowa Code section 20.10(3) may be filed with the agency by any person, employee organization or public employer with standing. ~~A complaint~~

shall be in writing and signed according to these rules, and may be on a form provided by the board. ~~The complaint shall be filed with the board within 90 days following the alleged violation commission of the prohibited practice.~~

ITEM 5. Amend rule 621—3.2(20) as follows:

**621—3.2(20) Contents of complaint.** The complaint, which may utilize the form available from the board’s website, shall be in writing, signed by the complainant or its designated representative, and shall include the following:

**3.2(1)** The name, address, telephone number and email address and organizational affiliation, if any, of the complainant, and, if filed by the complainant’s designated representative, the name, title, telephone number and email address of any that representative filing the complaint.

**3.2(2)** The name and address of the respondent(s) alleged to have committed the prohibited practice and any other party named therein.

**3.2(3)** A clear and concise statement of the facts constituting the alleged prohibited practice, including the names of the individuals involved in the alleged act(s), the date(s) and place(s) of the alleged act(s) occurrence, and the specific section(s) subsection(s) and paragraph(s) of the Act Iowa Code section 20.10 alleged to have been violated.

ITEM 6. Amend rule 621—3.3(20) as follows:

**621—3.3(20) Clarification of complaint.** Although compliance with technical rules of pleading is not required, the The board agency may, on either its own motion or motion of the respondent, require the complainant to make the complaint more specific.

ITEM 7. Amend rule 621—3.4(20) as follows:

**621—3.4(20) Service of complaint.** The complainant shall, within a reasonable time following the filing of a complaint, serve the all named respondent(s) with a copy of the complaint in the manner of an original notice or by certified mail, return receipt requested, together with an agency-approved information sheet regarding mandatory electronic filing. Such service shall be upon the person(s) designated for service by 621—subrule 2.15(1), and the complainant shall file proof thereof with the agency in accordance with 621—subrules 2.15(3) and 16.10(1).

ITEM 8. Amend rule 621—3.5(20) as follows:

**621—3.5(20) Answer to complaint.**

**3.5(1) Filing and service.** Within ten days of service of a complaint, the respondent(s) shall file with the board agency an written answer to the complaint, and cause a copy to be delivered to the complainant by ordinary mail to the address set forth in the complaint. The answer shall be signed by the respondent(s) or the its designated representative of the respondent(s). The answer shall be served through the electronic document management system unless the respondent is exempted from electronic filing in the proceeding, in which case service shall be in accordance with 621—subrules 2.15(2) and 2.15(3), and upon the person who signed the complaint being answered.

**3.5(2) Extension of time to answer.** The parties may agree to an extension of the time to answer and shall inform the agency of their agreement or the board may, Upon upon application and good cause shown, the board may extend the time to answer to a time and date certain.

**3.5(3) Contents of answer.** The answer shall ~~include a specific admission or denial of specifically admit or deny~~ each allegation of the complaint and may set forth additional facts deemed to constitute a defense. ~~or, if~~ If the respondent is without knowledge thereof sufficient to make an admission or denial concerning an allegation, the respondent answer shall so state and such statement shall operate as a denial. Admissions or denials may be made to all or part of an allegation, but shall fairly meet the ~~circumstances~~ substance of the allegations. ~~The answer shall include a specific statement of any affirmative defense.~~ Matters contained Additional facts set forth in the answer shall be deemed denied by the complainant.

**3.5(4) Admission by failure to answer.** If the respondent fails to file a timely answer, such failure may be deemed by the board to constitute an admission of the material facts alleged in the complaint and a waiver ~~by the respondent~~ of a hearing.

ITEM 9. Amend rule 621—3.6(20) as follows:

**621—3.6(20) ~~Withdrawal~~ Voluntary dismissal or withdrawal of complaint.** At any time prior to the issuance of a proposed decision (or final decision if heard originally by the board) A a complaint or any part thereof may be voluntarily dismissed by the complainant withdrawn with the consent of the board, and upon conditions the board may deem proper. ~~Withdrawal shall constitute a bar to re-filing the same complaint or part thereof by the complainant.~~ Complaints may be withdrawn following the issuance of a proposed decision, but before the proposed decision becomes the agency's final decision, only with the consent of the board and upon conditions the board may deem proper.

ITEM 10. Rescind and reserve rule **621—3.7(20).**

ITEM 11. Amend rule 621—3.8 as follows:

**621—3.8(20) Investigation of complaint.** The board or its designee may conduct a preliminary investigation of the allegations of any complaint. In conducting such investigation, the board may require the complainant and respondent to furnish evidence, including affidavits and other documents if appropriate. If a review of the evidence shows that the complaint has no basis in fact, the complaint may be dismissed with prejudice by the board and the parties notified. ~~Board employees~~ Administrative law judges involved in investigations under this rule shall not act as ~~administrative law judges presiding officers~~ in any proceeding related to the ~~investigation prohibited practice~~ complaint.

ITEM 12. Rescind and reserve rule **621—3.10(20).**

ITEM 13. Rescind and reserve rule **621—3.11(20).**

ITEM 14. Adopt the following **new** rule 621—3.12(20):

**621—3.12(20) Costs of certified shorthand reporters and transcripts.**

**3.12(1) Initial payment.** The agency will arrange for a certified shorthand reporter to report the contested case hearing and request that an original transcript of the hearing be prepared by the reporter for the agency's use. The agency shall initially pay the reporter's reasonable compensation for reporting the hearing and producing the agency-requested transcript.

**3.12(2) *Taxation as costs.*** The cost of reporting and of the agency-requested transcript shall be taxed as costs against the non-prevailing party or parties although the presiding officer, or the board on appeal or review of a proposed decision and order, may apportion such costs in another manner if appropriate under the circumstances.

**3.12(3) *Payment of taxed costs.*** Following final agency action in a case, the agency will prepare and serve a bill of costs upon the party or parties against whom the costs have been taxed. Those parties shall, within 30 days of such service, remit to the agency the amount specified in the bill of costs. Sums remitted to the agency shall be considered repayment receipts as defined in Iowa Code section 8.2.

These rules are intended to implement Iowa Code chapter 20.

September 10, 2014

/s/

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Michael G. Cormack, Chair  
Public Employment Relations Board