

**NEGOTIATIONS  
&  
NEGOTIABILITY DISPUTES**

**PUBLIC EMPLOYMENT RELATIONS BOARD  
Prairie Meadows Conference Center  
September 22, 2014  
3:15 – 4:15 p.m.**

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## Bargaining Basics – Negotiations and Negotiability Disputes

### Pre-mediation:

- The duty to bargain arises when a public employer receives a request to bargain from the employee organization. §20.16
- Employee organization and public employer designate their representatives to engage in collective bargaining negotiations. §20.17(2)
- Exchange of Initial Bargaining Positions §20.17(3)
  - Employee organization presents its initial position to the employer.
  - Public employer presents its initial position to the employee organization within 2 weeks.
  - If using a cooperative bargaining process initial interest statements are exchanged.
  - Meetings are open to the public and subject to the provisions of chapter 21.
- Negotiations:
  - Negotiating sessions, strategy meetings of public employers are exempt from the provisions of chapter 21. §20.17(3)
  - Impasse Season:
    - November 14 – March 15 – City, County or State
      - ✓ Impasse procedures for state employees are somewhat different. See: §20.15(6)(c), 20.17(10) and 621 IAC 7.7
    - December 15 – April 15 – School District or AEA Non Teachers
    - January 31 – May 31 – Community College Teachers and Non-Teachers, School District or AEA Licensed Teachers.
  - Parties should attempt to agree upon an independent impasse procedure - Failure to do so means that the statutory impasse procedures apply. §20.19
- Are you ready for mediation?
  - Working under an independent impasse agreement or using the statutory timelines (i.e. completion deadline of March 15th, April 15th or May 31th)?
  - Agree on costing or understand costing differences.
  - Know your priorities.
    - Not every issue can be top priority.
  - Narrow the issues.
  - Discuss and exchange proposals at the table.
    - Understand the proposals.
    - Do not disguise the purpose of a proposal – be honest with what they mean and what you are trying to achieve.
- Either party may request the Board to appoint a mediator. §20.20 and 621 IAC 7.3(1)

- Mechanics:
  - Can use “Request for Impasse Services” form.
  - Send request to other party by ordinary mail or in person.  
621 IAC 7.3(2)
  - Board appoints a mediator and sends an appointment letter.  
621 IAC 7.3(3)

Mediation:

- Mechanics:
  - Mediator designated the time and place for mediation session.  
621 IAC 7.3(5)
    - Effective date of the appointment is the mediation date.
    - Role of the mediator is to bring the parties together and facilitate an agreement. Mediator may not compel the parties to agree. §20.20
  - Not open to the public and exempt from the provisions of chapter 21. §20.17(3) and 621 IAC 7.3(5)
  - Mediator’s confidentiality – any information disclosed by the parties in mediation is confidential unless approved by the parties involved or permitted by §20.31. 621 IAC 7.3(4)
- Beginning the mediation – Joint Session:
  - Ground rules are identified.
  - Review of open items:
    - When these items are resolved, you have a contract.
    - Do not back up.
    - Do not add other issues (i.e. grievances).
  - Whose “turn” is it?
    - If it is your turn – be ready.
- Let the mediating begin!
  - Caucuses:
    - Let the mediator into caucus.
    - Be willing to compromise, open to ideas.
    - Recognize that sometimes the problem is not with the other side, but within your caucus.
    - Offers should be written by the parties.
  - Settlement cannot be reached without movement.
    - Do not expect equal moves.
    - Do not draw artificial lines in the sand.
  - Offers:
    - Should be written by the parties.
    - Supposals – “what ifs”; would this idea resolve the issue?
  - Side-Bars may be used.
- Winding Down:
  - Mediator may make a supposal.

- Mediation length:
  - No more progress can be made.
  - PERB's 5 hour limit.
- Mediator notifies PERB of outcome of mediation. 621 IAC 7.3(5)

#### Tentative Agreement Reached:

- Ratification:
  - Tentative agreements should be written.
  - After tentative agreement, terms shall be made public by the employer. §20.17(4) and 621 IAC 6.4
  - Ratification timelines may be modified by written mutual agreement. 621 IAC 6.4
  - Ratification election – Employee Organization: 621 IAC 6.4
    - At least 24 hours notice is given to members prior to the ratification election.
    - Election within seven days of the tentative agreement.
    - Vote by secret ballot and only members shall be entitled to vote. May extend voting rights to nonmembers pursuant to internal procedures.
    - Ratified by a majority of those voting. §20.17(4)
    - Notify employer of outcome of vote within 24 hours of the vote.
  - Ratification election – Employer Organization: 621 IAC 6.4
    - Within 10 days of the tentative agreement.
    - Notify employee organization of outcome of vote within 24 hours of the vote.
    - If employee organization rejects tentative agreement, public employer does not have to vote on the tentative agreement.

#### Tentative Agreement Not Reached:

- Interest Arbitration:
  - Parties may agree upon an independent impasse agreement. Failure to do so means that the statutory impasse procedures apply.
  - Mechanics of the statutory impasse procedure:
    - 10 days after mediation, either party may request arbitration list. §20.22(1) and 621 IAC 7.5(1)
      - ✓ Can use “Request of Impasse Services” form
    - Within 4 days of request, exchange of final offers. §20.22(2) and 621 IAC 7.5(4)
      - ✓ Final offers shall not be amended. 621 IAC 7.5(4)
      - ✓ Shall not submit a final offer which has not been offered to the other party in the “course of negotiations.” 621 IAC 7.5(4).

- List of five arbitrators is sent to parties. §20.22(4) and 621 IAC 7.5(5)
- Within 5 days of PERB sending the list, arbitrator is selected. §20.22(4) and 621 IAC 7.5(5)
- Parties notify PERB of selection and PERB notifies arbitrator. §20.22(4).
- Questions as to which §20.9 impasse item a proposal falls is determined by PERB. Mechanics: 621 IAC Chapter 10.
- May continue to negotiate until an agreement is reached or an arbitration award is rendered. §20.22(2) and 621 IAC 7.5(7)

### Interest Arbitration Hearing:

- Arbitrator sets time and place for hearing. §20.22(4)
- Hearing:
  - Arbitration hearing is open to the public and subject to the provisions of chapter 21. §20.17(3)
  - Hearing is recorded. 621 IAC 7.5(6)
  - Impasse items submitted to the arbitrator are limited to those items upon which the parties have not reached agreement. §20.22(3)
  - Arbitrator shall not mediate or attempt to settle the dispute. §§20.22(5) and 20.22 (6)
  - Procedure if question arises as to which §20.9 impasse item a proposal falls: is determined by PERB.
    - Not for the arbitrator to decide
      - ✓ Need to determine who will file the petition (arbitrator or representative). 621 IAC Chapter 10
    - Hearing continues as if there is no question.
    - Board may stay issuance of the award pending the Board's determination.
- Post-Hearing:
  - Arbitrator considers §20.22(7) criteria and other such relevant factors. §20.22(7) and 621 IAC 7.5(6)
    - §20.22(7) statutory criteria:
      - ✓ Past collective bargaining contracts between the parties including the bargaining that led up to such contracts.
      - ✓ Comparison of wages, hours and conditions of employment of the involved public employees with those of other public employees during comparable work, giving consideration to factors peculiar to the area and the classifications involved.
      - ✓ Interests and welfare of the public, the ability of the public employer to finance economic adjustments and the effect of such adjustments on the normal standard of services
      - ✓ Power of the public employer to levy taxes and appropriate funds for the conduct of its operations.

- Arbitrator selects the most reasonable offer on each impasse item. §20.22(9) and 621 IAC 7.5(6)
- Arbitrator issues and mails written award to the parties and PERB within 15 days after the arbitration hearing commences. §20.22(11) and 621 IAC 7.5(6)
- Selections by the arbitrator and items agreed upon shall be deemed to be the collective bargaining agreement. §20.22(10) and 621 IAC 7.5(7)
- Cost of arbitration is shared equally by the parties. §20.22(2) and 621 IAC 7.5(10).
- Final and binding subject to §20.17(6). §20.22(11)
- Terms may be enforced by civil action in the district court in the county in which the agreement was made. §20.17(5)

Contract Submission to PERB:

- Not later than 60 days after the conclusion of an agreement, the employer shall submit a copy of the agreement to PERB. 621 IAC 6.5

Negotiability Disputes:

- Subjects of bargaining are divided into three categories:
  - Mandatory subjects listed in §20.9 on which bargaining is required if requested:
    - Wages, hours, vacations, insurance, holidays, leaves of absence, shift differentials, overtime compensation, supplemental pay, seniority, transfer procedure, job classifications, health and safety matters, evaluation procedures, procedures for staff reduction, in-service training, and other matters mutually agreed upon. Negotiations shall also include terms authorizing dues checkoff for members of the employee organization and grievance procedures for resolving any questions arising under the agreement.
  - Permissive subjects are those which bargaining is permitted but not required.
  - Illegal subjects are excluded by law from negotiations or which, if included in a collective bargaining agreement would require or allow the violation of some other provision of law.
- Negotiability dispute arises when there is an issue as to whether a proposal is subject to collective bargaining under §20.9 or whether a proposal which is subject to collective bargaining under §20.9 is a mandatory topic of bargaining. 621 IAC 6.3(1)
- Can arise during negotiations or at the arbitration hearing. 621 IAC 6.3(2)

- If arises at the arbitration: 621 IAC 6.3(2):
  - Arbitration hearing proceeds as through there is no dispute.
  - Not for the arbitrator to decide.
    - ✓ Need to determine who will file the petition (arbitrator or representative).
  - Award issued prior to Board's determination is "contingent on PERB's determination".
- Mechanics:
  - "Petition for Resolution of Negotiability Dispute" is filed with PERB.
    - ✓ Need to include the proposal(s) in question.
  - Board determines if oral arguments will be held
    - ✓ Usually telephonic.
  - Briefs, may, but are not required to, be submitted.
    - ✓ Brief filed before day of hearing.
    - ✓ Send to other party.
- Preliminary Ruling on Negotiability Dispute is not final agency action.
- Final Ruling:
  - Written request received within 60 days of the date of the preliminary ruling.
  - Identify the precise language upon which a final ruling is sought.
  - Final agency action.

Relevant Statute and Rules:

Chapter 20:

§20.9 – Scope of negotiations

§20.16 – Duty to bargain

§20.17 – Procedures

§20.19 – Impasse procedures – agreement of parties

§20.20 – Mediation

§20.22 – Binding arbitration

PERB administrative rules

Chapter 6 – Negotiations and Negotiability Disputes

Chapter 7 – Impasse Procedures

Chapter 10 – Declaratory Orders

**IOWA STATUTORY IMPASSE TIMELINE GUIDE<sup>1</sup>**

<b>EMPLOYER TYPE(S)</b>	<b>UNIT TYPE</b>	<b>FIRST DATE PERB WILL ACT ON A UNILATERAL MEDIATION REQUEST (120 days prior to completion deadline)</b>	<b>DEADLINE TO COMMENCE ARBITRATION HEARING</b>	<b>COMPLETION DEADLINE</b>
City, County or State	All Units	11/15		3/15
School District or AEA	Non-Teachers	12/15		4/15
School District or AEA	Licensed Teachers	1/31	5/13	5/31
Community College	All units	1/31	5/13	5/31
Public Employers not subject to Iowa Code §24.17 budget certification requirements	All units	120 days prior to the date the employer's next fiscal or budget year commences.		The date upon which the employer's next fiscal or budget year commences.

<sup>1</sup> Subject to modification by parties' §20.19 independent impasse agreement.