

PUBLIC EMPLOYMENT RELATIONS BOARD [621]

Notice of Intended Action

Pursuant to the authority of Iowa Code section 20.6(5) and Iowa Code section 20.24 (as amended by H.F. 2172 (2014), amendment effective July 1, 2014), the Public Employment Relations Board hereby gives Notice of Intended Action to amend 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 to adopt new Chapter 16, “Electronic Document Management System,” Iowa Administrative Code.

In 2014, the General Assembly passed and the Governor signed H.F. 2172, a bill for an act providing for the use of an electronic filing and notice system by the Public Employment Relations Board, to become effective July 1, 2014. The act directed that the board, by rule, establish an electronic filing system for the filing or service of any notice or other document required or permitted to be filed with or served on or by the board, and specifically authorized the board to require the filing or service of documents through the system. Accordingly, the board has drafted and proposes, as Item 1, the adoption of new Chapter 16, which contains rules governing the usage of the new system which have been modeled in substantial part on the court rules pertaining to the use of the judicial branch electronic document management

system. Items 2-11 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.

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).

Any interested person may make written suggestions or comments on this proposed rulemaking on or before July 15, 2014. Written suggestions or comments should be directed to Michael G. Cormack, Chairperson, Public Employment Relations Board, at 510 E. 12th Street, Des Moines, Iowa 50319 or 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 July 15, 2014.

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

New chapter 16 and the amendments to existing rules are intended to implement Iowa Code section 20.24, as amended by H.F. 2172 (2014).

The following rulemaking is proposed:

ITEM 1. 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 filed on or after the effective date of this chapter. This chapter also governs adjudicatory proceedings converted to electronic proceedings upon the board’s order. To the extent the rules in this chapter are inconsistent with any other PERB administrative rule, the rules in this chapter shall govern.

621—16.2(20) Definitions.

16.2(1) “*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.

16.2(2) “*Electronic record*” means a record, file, or document created, generated, sent, communicated, received, or stored by electronic means.

16.2(3) “*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.

16.2(4) “*Non-electronic filing*” means a process by which a paper document or other non-electronic item is filed with the agency.

16.2(5) “*Notice of electronic filing*” means a document generated by the electronic document management system when a document is electronically filed.

16.2(6) “*PDF*” means an electronic document filed in a portable document format which is readable by the free Adobe® Acrobat® Reader.

16.2(7) “*Public access terminal*” means a computer located at the agency’s offices where the public may view, print, and electronically file documents.

16.2(8) “*Registered user*” means an individual who can electronically file documents and electronically view and download files through the use of a username and password.

16.2(9) “*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 offices.

16.2(10) “*Signature*” means a registered user’s username and password accompanied by one of the following:

a. “*Digitized signature*” means an embeddable image of a person’s handwritten signature;

b. “*Electronic signature*” means an electronic symbol (“/s/” or “/registered user’s name/”) executed or adopted by a person with the intent to sign; or

c. “*Non-electronic signature*” means a handwritten signature applied to an original document, which is then scanned and electronically filed.

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

16.3(1) Registration.

a. Registration required. All individuals 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, individuals 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 designated a username and password and the registered user may utilize the electronic document management system.

d. Changing passwords. Once registered, the user may change his or her 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. Cancelling registration. Withdrawal from participation in the electronic document management system cancels the registered user's profile but does not authorize non-electronic 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 non-electronic 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.

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 non-electronic 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 offices.

621—16.5(20) Filing of paper documents.

16.5(1) *Conversion of paper documents filed.* If the agency allows a party to file paper documents in accordance with 621—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, deadlines.

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 non-electronic signature serves 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 non-electronically but shall be filed electronically.

16.7(3) *Format.* Any filing requiring a signature must be signed, with either a non-electronic 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 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 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 confidential and protected information is redacted in accordance with rule 621—2.13(20).

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 non-electronically 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 exempt from electronically filing documents by subrule 621—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 non-electronic filings.*

a. Parties filing pursuant to subrule 621—16.4(2)(b) shall file a proof of service electronically.

b. Parties filing pursuant to the exceptional circumstances provision in subrule 621—16.4(2)(c) must attach a non-electronic proof of service to the filing.

c. Parties to a proceeding initially filed prior to January 1, 2015 must attach a non-electronic proof of service to their non-electronic 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, which 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.

ITEM 2. Amend rule 621—1.6(20) by adding the following new subrules:

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

1.6(9) “*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(10) “*Jurisdictional deadline*” means a deadline set by rule or statute that the board may not extend or change;

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 3. Amend 621—chapter 1 by adding the following new rule:

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 4. 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~~ the agency prior to the hearing ~~or oral motion at the hearing~~. The application shall specify 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 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. A motion to quash a subpoena may be filed, and Where 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 5. Amend rule 621—2.13(20) as follows:

621—2.13(20) Form and redaction of documents. 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. It is the responsibility of the filer to ensure that confidential or protected information is omitted or redacted from documents before the documents are filed, unless the confidential or 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 6. 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 non-electronic 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 subrules 2.12(3) and ~~621—~~subrule 4.2(2), whenever non-electronic 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 or certified mail return receipt to~~ 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:

“I hereby certify that on (date) _____ I sent a copy of the foregoing matter to 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 subrule 16.4(2), proof of service shall be filed electronically in accordance with chapter 16 of these rules.

ITEM 7. Amend rule 621—2.18 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 chapter 16 of these rules.

ITEM 8. 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 subrule 2.15(1), and the complainant shall file proof thereof with the ~~board~~ agency in accordance with subrules 2.15(3) and 16.10(1).

ITEM 9. 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 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 10. 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~~ agency in accordance with rule 621—16.4(20) and served upon the other party. ~~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 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 11. 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.~~ The appealing party shall 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 12. 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 subrules 2.15(3) and 16.10(1).

ITEM 13. Amend rule 621—11.4(19A,20) by striking subrule 11.4(3).

May 28, 2014

/s/ _____
Michael G. Cormack, Chair
Public Employment Relations Board