

**IOWA**  
**PUBLIC EMPLOYMENT RELATIONS BOARD**

**ANNUAL REPORT**

**FY2016**

**July 1, 2015 to June 30, 2016**

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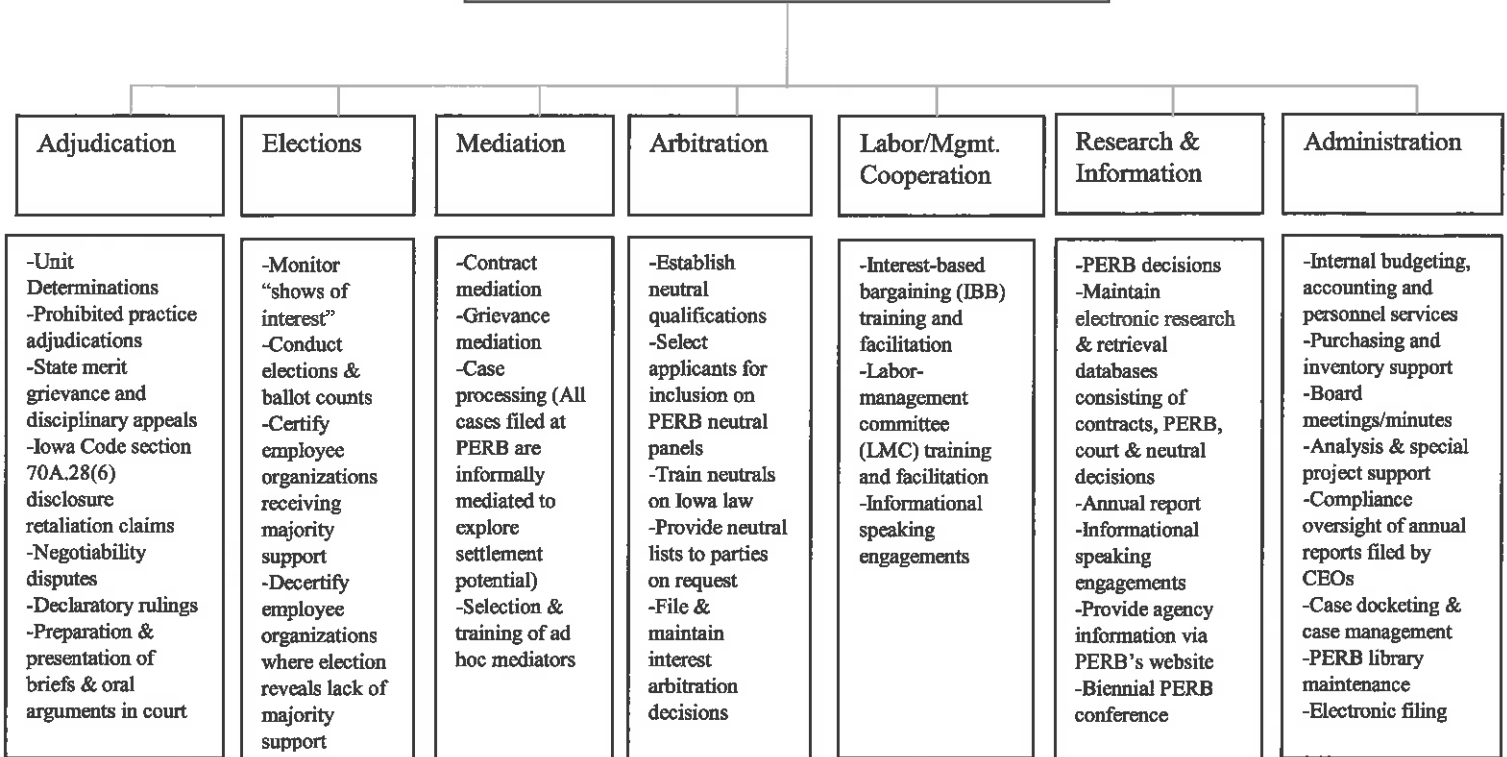
# IOWA PUBLIC EMPLOYMENT RELATIONS BOARD

## TABLE OF ORGANIZATION

FTE = 10

CHAIR  
Michael G. Cormack

BOARD MEMBERS  
Jamie K. Van Fossen  
Mary T. Gannon



PROFESSIONAL STAFF

Jan Berry	Administrative Law Judge
Susan Bolte	Administrative Law Judge
Amber DeSmet	Administrative Law Judge
Diana Machir	Administrative Law Judge
Jasmina Sarajlija	Administrative Law Judge

SUPPORT STAFF

Nancy Lawrence	Legal Secretary
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## PERB's MISSION STATEMENT

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PERB's mission is derived from Section 1 of the Public Employment Relations Act, Iowa Code chapter 20, which establishes the powers, duties and responsibilities of the Public Employment Relations Board. During FY16, that section provided:

- 1) The general assembly declares that it is the public policy of the state to promote harmonious and cooperative relationships between government and its employees by permitting public employees to organize and bargain collectively; to protect the citizens of this state by assuring effective and orderly operations of government in providing for their health, safety, and welfare; to prohibit and prevent all strikes by public employees; and to protect the rights of public employees to join or refuse to join, and to participate in or refuse to participate in, employee organizations.
  
- 2) The general assembly declares that the purposes of the public employment relations board established by this chapter are to implement the provisions of this chapter and adjudicate and conciliate employment-related cases involving the state of Iowa and other public employers and employee organizations. For these purposes the powers and duties of the board include but are not limited to the following:
  - a. Determining appropriate bargaining units and conducting representation elections.
  - b. Adjudicating prohibited practice complaints including the exercise of exclusive original jurisdiction over all claims alleging the breach of the duty of fair representation imposed by section 20.17.
  - c. Fashioning appropriate remedial relief for violations of this chapter, including but not limited to the reinstatement of employees with or without back pay and benefits.
  - d. Adjudicating and serving as arbitrators regarding state merit system grievances and, upon joint request, grievances arising under collective bargaining agreements between public employers and certified employee organizations.
  - e. Providing mediators and arbitrators to resolve impasses in negotiations.
  - f. Collecting and disseminating information concerning the wages, hours, and other conditions of employment of public employees.
  - g. Preparing legal briefs and presenting oral arguments in the district court, the court of appeals, and the Supreme Court in cases affecting the board.

## OVERVIEW

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The Public Employment Relations Board (PERB) was established effective July 1, 1974, by the General Assembly's enactment of the Public Employment Relations Act (the Act), Iowa Code chapter 20.

Chapter 20 defines the collective bargaining rights and duties of Iowa public employers and public employees. It has broad coverage, applying to virtually all public employees within the state except supervisors, confidential employees and other classifications specified in Iowa Code section 20.4.

Chapter 20 provides that public employees may organize and bargain collectively with their employers through labor organizations of the employees' choosing. To assure that representation by a labor organization is truly the employees' choice, secret ballot representation elections are conducted by PERB. To ensure that the rights of public employers, employee organizations and employees are protected and to prevent labor disputes from resulting in the disruption of services to the public, Chapter 20 defines certain prohibited labor practices and provides PERB with the statutory authority to fashion appropriate remedial relief for violations of Chapter 20.

Chapter 20 requires a public employer to bargain with its employees' designated labor organization. The subjects upon which bargaining is mandatory are set forth in Iowa Code section 20.9 which provides a more limited scope of bargaining than the traditional "wages, hours, and other terms and conditions of employment" applicable in the private sector under the National Labor Relations Act.

Strikes are prohibited in the Iowa public sector with strong sanctions imposed in the event of an illegal work stoppage. In lieu of the right to strike, Chapter 20 contains a detailed procedure for the resolution of collective bargaining impasses.

Iowa Code sections 20.1(4) and 8A.415 impose upon PERB the responsibility to hear and decide grievance and disciplinary action appeals filed by certain employees covered by the state merit system. Iowa Code section 70A.28 also directs PERB to hear and decide appeals filed by certain state employees who assert they were retaliated against after disclosing information which purportedly evidenced a violation of law or rule, mismanagement, a gross abuse of funds, an abuse of authority, or a substantial and specific danger to public health or safety.

Since its inception, PERB has certified representatives for over 1,600 bargaining units and has issued approximately 1,765 formal decisions. During FY 16, PERB provided impasse resolution services (mediators and/or arbitrators) in 469 disputes involving county, city, school district, area education agency and community college employers and employees. State contracts are two-year contracts and are bargained in odd-numbered years.

## SUMMARY OF PERB DUTIES

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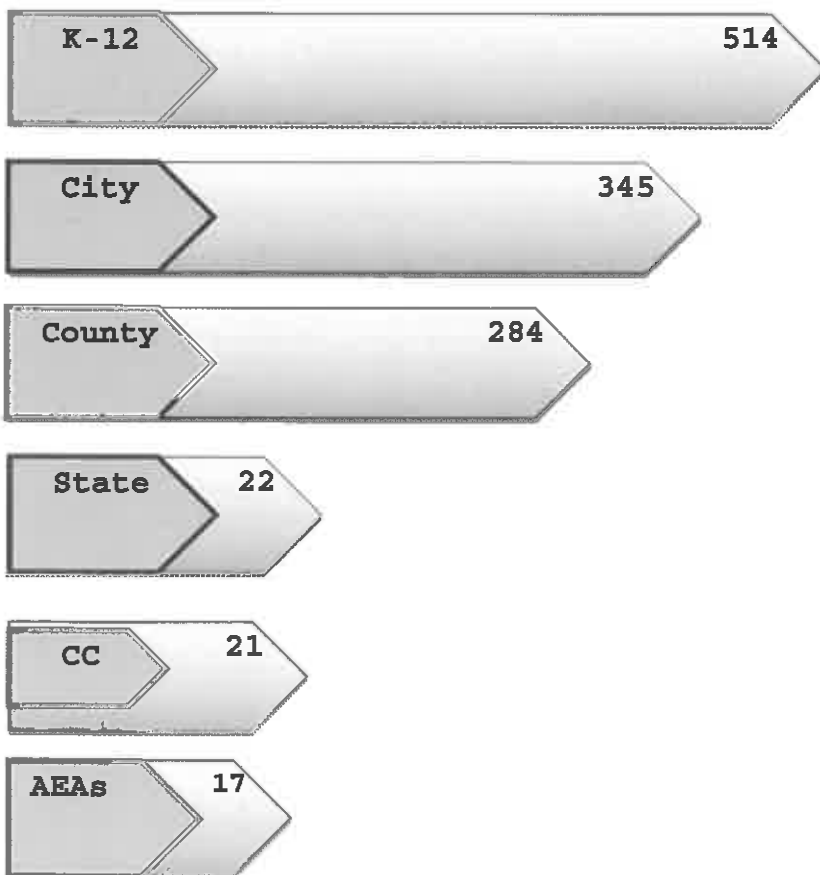
### I. BARGAINING UNIT DETERMINATIONS/REPRESENTATION ELECTIONS

Bargaining unit questions continue to generate a great deal of agency activity. As part of its statutory responsibility to determine appropriate bargaining units and conduct representation elections under Iowa Code sections 20.13-20.15, the Board received 38 petitions in FY 16. Petitions to amend the composition of existing bargaining units were the most frequent type of unit filings.

Representation elections constitute the most visible PERB activity in these statutory areas. In an effort to minimize costs during FY 16 all elections were conducted utilizing PERB's established mail-balloting procedures. Public employees are provided maximum opportunity to participate in the process which determines, by secret ballot, whether they will be represented by an employee organization for the purpose of collective bargaining and, if so, the identity of their labor representative. Eligible voter participation rates of 75-100% are not uncommon. The average participation rate was 73.82%, ranging from 50% to 100%.

During FY 16, PERB processed 19 election petitions and conducted 17 elections. The number of representation elections during FY 16 demonstrates a continued interest in collective bargaining activities in the Iowa public sector. The number of represented public sector bargaining units in Iowa has increased from 421 in 1975 to 1,203 during FY 16.

**Number of Units based upon Employer Type – please note an individual employer may have more than one unit.**



## II. ADJUDICATORY FUNCTIONS

One of PERB's primary responsibilities involves the processing and adjudication of a variety of cases filed with the agency pursuant to Chapter 20, including:

- unit determination cases (those involving the composition, amendment, clarification and reconsideration of appropriate bargaining units);
- prohibited practice complaints (cases involving claimed violations of the statutory rights of public employers, public employees or employee organizations);
- declaratory orders (cases seeking PERB's interpretation of the Act's provisions); and,
- negotiability disputes (cases interpreting the scope of the mandatory subjects of bargaining).

Although some acts allegedly constituting prohibited practices may also be remedied by resort to contractual grievance procedures or action in the district courts, PERB possesses exclusive original jurisdiction over all employee claims which allege an employee organization's breach of its Iowa Code section 20.17 duty to fairly represent all employees in a collective bargaining unit. PERB also serves as the final administrative step in personnel action cases adjudicating grievances and disciplinary actions filed by state merit system employees pursuant to Iowa Code section 8A.415. Additionally, certain state employees may file an appeal with PERB claiming retaliation for the disclosure of information that may provide evidence of a violation of law or rule, mismanagement, a gross abuse of funds, an abuse of authority or a substantial and specific danger to public health or safety under Iowa Code section 70A.28.

Each petition or complaint filed with the agency is initially assigned to a PERB Administrative Law Judge (ALJ) who, by working with the parties involved, attempts to informally resolve the matter prior to a hearing. If all issues are not resolved, the case is referred to either the Board or a PERB ALJ and a hearing is held. In cases assigned to another PERB ALJ, a proposed decision and order is issued which becomes the final agency decision unless it is appealed to, or reviewed on motion of, the Board. Declaratory order petitions and negotiability disputes are heard and decided by the Board without the involvement of an ALJ.

Judicial review of PERB decisions is governed by the Iowa Administrative Procedure Act, Iowa Code chapter 17A. The district courts, sitting in an appellate capacity, review the record created before the agency to determine whether any of the grounds for reversal or modification of agency action specified by Iowa Code section 17A.19 have been established. District court decisions reviewing PERB actions are appealable to the Iowa Supreme Court.

In addition to deciding contested cases, the Board and its ALJs act as grievance mediators in cases involving disputes arising under collective bargaining agreements if requested by both parties.

During FY 16, 41 prohibited practice complaints, petitions for declaratory rulings, state employee grievance or discipline appeals, petitions for resolution of negotiability disputes and other non-unit cases were filed with PERB.

## III. COURT ACTION: JUDICIAL REVIEW

In addition to serving as ALJs, PERB staff attorneys represent PERB in the courts when any final agency action is judicially reviewed. In so doing, PERB attorneys prepare pleadings, draft briefs and deliver oral arguments in cases before the district courts, the Iowa Court of Appeals and the Iowa Supreme Court.

During FY 16, two new petitions for judicial review were filed in the district courts. Five decisions judicially reviewing final agency action/PERB decisions were issued in FY 16. For highlights of the three most significant decisions, see "Judicial Review Decisions" at p. 12.

At the conclusion of FY 16, one case was pending before the district court.

#### **IV. IMPASSE RESOLUTION SERVICES**

One often-overlooked aspect of collective bargaining impasse resolution under Chapter 20 is the parties' ability to design their own impasse-resolution procedure. Iowa Code section 20.19 directs the parties, as the first step in the performance of their duty to bargain, to endeavor to agree upon impasse-resolution procedures. The only restriction specifically placed upon the parties' ability to tailor the parties own impasse procedures is the section's requirement that any agreed or "independent" impasse-resolution procedures provide for the parties implementation not later than 120 days prior to the applicable deadline for the completion of the process.

Parties have frequently exercised this ability to design and utilize independent impasse procedures which may take many forms. Such procedures often change the date for exchange of final offers or provide for a completion date different than the otherwise-applicable statutory deadline. As with the "statutory" impasse-resolution procedures, summarized below, PERB offers parties, operating under independent procedures, whatever impasse-resolution services they may require which are within PERB's ability to provide.

If the parties fail to agree upon independent impasse procedures as contemplated by section 20.19, the statutory impasse-resolution procedures set out in Iowa Code sections 20.20-20.22 apply. For all bargaining units the statutory impasse-resolution procedure consisted of two steps – first, mediation, which if unsuccessful in producing a complete agreement, is followed by binding arbitration. PERB's professional staff and board members serve as mediators. PERB also maintains a list of qualified ad hoc mediators, as well as lists of arbitrators to assist in the resolution of bargaining impasses. Mediators from the Federal Mediation and Conciliation Service (FMCS) also provide mediation services for PERB.

Statutory impasse procedures are initiated by the filing of a request for mediation. Upon the filing of such a request, PERB appoints a mediator to the dispute during a statutorily-prescribed period who meets with the parties to assist them in reaching a voluntary agreement. If mediation does not produce a complete agreement upon the terms of a contract, arbitration can be requested. Upon receipt of an arbitration request, PERB provides a list of five arbitrators to the parties from which both parties strike two until one arbitrator is left on the list. A hearing is held, and an arbitration award is issued which, absent judicial intervention, is binding on the parties and establishes the disputed terms of their collective bargaining agreement.

The numbers tell the story of how successful Iowa's impasse resolution processes work. In FY 16, the agency received requests for mediation in 469 bargaining impasses, only 11 of these impasses ultimately proceeded through arbitration--a pre-arbitration resolution rate of 97.7%. Only 10 interest arbitration awards were issued as two impasse requests were consolidated and only one hearing was held. The table below provides more detailed impasse data concerning the previous five years.



## HISTORICAL IMPASSE ACTIVITY

YEAR	TOTAL REPRESENTED UNITS	REQUESTS FOR IMPASSE SERVICES	MEDIATED SETTLEMENTS	INTEREST ARBITRATION AWARDS ISSUED
2011-12	1205	607	223	12
2012-13	1211	591	187	14
2013-14	1206	512	181	14
2014-15	1204	607	192	14
2015-16	1203	469	143	10

### V. RESEARCH & INFORMATION SERVICES

Pursuant to Iowa Code sections 20.1 and 20.6, PERB collects and makes available to the public various types of information relating to public employment and public sector collective bargaining in Iowa. During FY 06, the Board began the transition to an internet-based system for the distribution of agency information and to discontinue its existing “paper” systems for indexing/researching agency decisions and providing other informational services.

In FY 07, the Board partnered with an information technology provider to develop a database and search engine for all final agency decisions and PERB-related court decisions. This system became operational during FY 08. The system is a powerful search tool and offers a comprehensive collection of documents. There are four databases of full-text documents in the system: Contracts, PERB, Neutral and Court Decisions. For each database, the system displays an index of its full-text documents, allows electronic access to these documents and provides search functions to facilitate research by any user. The databases are accessible through the "Searchable Databases" link on the PERB website's homepage which allows public access. Volumes of the hard-copy index and digest of PERB decisions covering decisions issued from 1974 through June 30, 2005 are still available from the agency.

In the past, the Board produced annual “Contract Summaries” which summarized major contract provisions for units. During FY 07, the Board discontinued the publication of these summaries when it implemented the contracts database. The database is searchable and allows immediate access to more complete and accurate information than could be provided through the contract summaries. Biographical data concerning arbitrators listed with PERB is also available on the website.

As of FY 16, fact finding recommendations (formerly a step in the impasse-resolution procedures) and interest arbitration decisions since 1974 are now retrievable via the PERB electronic filing system on the PERB web site. Copies of collective bargaining agreements, some grievance arbitration awards and impasse resolution information are also available on the PERB web site. The PERB library is available to the general public for research purposes.

PERB’s website address is: <http://iowaperb.iowa.gov>.

The screenshot shows the PERB website interface. At the top, there is a navigation bar with the PERB logo and the text "Iowa Public Employment Relations Board". Below this, there are links for "Database Home", "Contents", and "Search".

The main content area is titled "WELCOME TO THE IOWA ONLINE DATABASE SITE" and "FULL-TEXT WEBSEARCH DATABASES". It features a table with the following data:

Database	Records	Date
<a href="#">Iowa Contracts</a>	1199	10/20/2016
<a href="#">Iowa Contracts Archive</a>	5006	10/20/2016
<a href="#">Iowa Neutral Decisions</a>	3099	8/23/2016
<a href="#">Iowa PERB and Court Decisions</a>	1583	8/10/2016

Below the table, there is a "GETTING STARTED" section with instructions on how to use the databases, including sections for "Database selection", "Contents tab", "Search tab", "Results tab", "Hit navigation", "Page navigation", and "Printing/Searching the downloaded document".

At the bottom of the page, it states: "Document Database Website provided by [MicroSearch Corporation](#)".

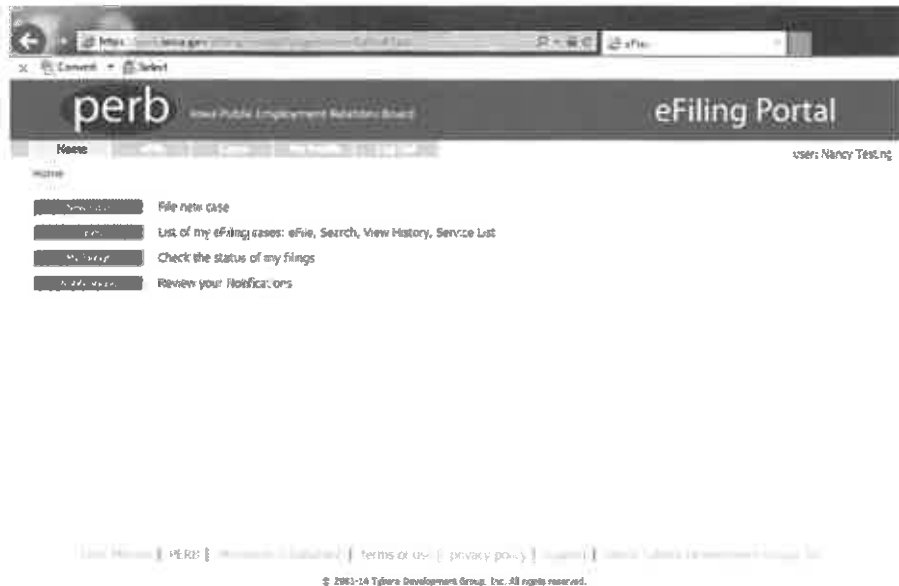
## VI. ELECTRONIC FILING

In 2014, PERB began moving to a mandatory electronic filing system. Statutory changes were made during 2014 which included the hiring of a technology development company to design an all-inclusive system for the filing, service, management and storage of all documents in adjudicatory proceedings before the agency. Three distinct technological products comprise the e-filing system:

- an online filing interface – the online filing interface interacts with the document management system and the case management system to recall information for the user to access and allows the user to submit information and documents to the document management system and case management system. The online filing interface is accessible through the “eFiling” link on the PERB website’s homepage.
- case management system – the case management system stores the data associated with a case and allows for queries to be run against that data.
- document management system – the document management system stores all documents filed with the agency.

PERB’s online filing system became operational in FY 15. All cases initiated on or after January 1, 2015, must be electronically filed.

Based off the same platform, PERB’s online filing interface mimics the look and feel of the Iowa Judicial Branch’s e-filing system, and therefore, provides ease of use for constituents already familiar with the Iowa court’s system. These advanced systems improve workflow; reduce costs associated with paper filings for both PERB and its constituents and grant the public real-time access to all case filings, unless otherwise protected by law.



## VII. CERTIFIED EMPLOYEE ORGANIZATION REPORTS

Pursuant to Iowa Code section 20.25, PERB monitors certain internal operations of certified employee organizations and enforces compliance with statutory requirements. PERB ensures that each certified employee organization has a constitution and by-laws filed with the agency that contain certain safeguards relating to financial accountability and membership rights as set out in the statute. It maintains these records which are updated when changes in the organizations' governing documents are reported. PERB also receives, reviews and maintains each certified employee organization's annual report, including a financial statement and audit, which is required for the employee organization to maintain its certification. PERB assists with the completion of the documents, issues delinquency letters and orders hearings when organizations are not in compliance.

## VIII. PERB'S PROBLEM-SOLVING PROCESSES

During its 42-year history, PERB has provided mediation, training, and facilitation services to Iowa public employers. PERB's statutory duty is to promote harmonious and cooperative relationships between government and its employees by utilizing problem-solving processes.

### INTEREST-BASED BARGAINING

Interest-based bargaining (IBB) is a process designed as an alternative to the traditional, historically adversarial process to settle contract disputes.

The legal duty to bargain a contract requires labor and management to follow an impasse resolution process if a voluntary agreement is not reached. The statute's "default" process includes mediation and arbitration to resolve disputes over the list of mandatory subjects of bargaining contained in Chapter 20. Labor and management have typically used traditional, adversarial bargaining methods and strategies under Chapter 20's impasse resolution process. That is, each have taken positions and offered proposals and counterproposals to resolve the outstanding issues before them.

IBB focuses on labor and management interests as opposed to bargaining positions. IBB contains three key elements.

- a commitment from labor and management leadership to move from an adversarial to a joint problem-solving process.
- the use of consensus decision-making.
- an agreement on specific ground rules; that is, how the parties will conduct themselves during contract negotiations.

PERB serves as facilitators and trainers of the IBB process.

## **LABOR-MANAGEMENT COMMITTEE**

A labor-management committee (LMC) is an alternative dispute resolution process. An LMC is designed to build better working relationships through cooperation and problem-solving using consensus decision-making. An LMC is not intended to replace either contract negotiations or a contractual grievance procedure.

The initial focus of an LMC is to develop its statement of purpose, and establish ground rules. An LMC's statement of purpose varies according to labor and management's needs. LMCs have been established to address specific needs, for example health care costs, as well as broader issues such as how to build and maintain trust in the workplace. In addition to establishing procedural ground rules, *i.e.* who are the members of the LMC and when it will meet, the LMC also establishes substantive ground rules including respecting each other's opinions, developing a working definition of consensus decision-making and requiring the LMC to focus on problems, not people.

LMCs facilitated by PERB continue to function primarily with Iowa public employers and their respective unions or associations to address workplace issues.

## **FY 2016 CASE REVIEW**

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### **I. BOARD - DECLARATORY ORDERS**

Iowa Code section 17A.9 requires each agency to provide, by rule, for the filing and disposition of petitions for declaratory orders as to the applicability to specified circumstances of a statute, rule, or order within the primary jurisdiction of the agency. 621 Ch. 10 of PERB's rules governs such proceedings. In addition, the Board has enacted other rules for a specialized type of petition for declaratory order (discussed below)--those which raise negotiability questions requiring expedited processing. During FY 16, the agency received two petitions and issued one Declaratory Order.

### **II. BOARD - EXPEDITED NEGOTIABILITY RULINGS**

The scope of bargaining for public employers and employee organizations is set out in Iowa Code section 20.9. Subjects of bargaining are divided into three categories. There are mandatory subjects, on which bargaining is required if requested (wages, hours, vacations, etc.), permissive subjects, on which bargaining is permitted but not required, and prohibited subjects, on which bargaining is precluded by law. The classification of a particular item is important not only as it relates to the duty to bargain, but also because only mandatory items may be taken through statutory impasse-resolution procedures absent mutual agreement of the parties.

Because it is not uncommon for the parties to disagree, either during negotiations or impasse-resolution procedures, as to whether certain contract proposals are mandatorily negotiable, it is sometimes necessary for PERB to make a legal determination as to the negotiability status of disputed proposals. Pursuant to its Iowa Code section 17A.9 authority to establish rules for the disposition of petitions for declaratory orders, PERB has established, by rule, an expedited mechanism for the resolution of such negotiability issues.

Pursuant to this procedure, a party petitions PERB for an expedited negotiability ruling, setting out the precise language of the proposal(s) at issue. The parties are allowed to submit written and/or oral arguments to PERB on the issues. PERB then typically issues a short-form "Preliminary Ruling" on the matter, designating each proposal at issue as mandatory, permissive or prohibited, without supporting rationale or discussion. This preliminary ruling is not final agency action. If, after receiving a preliminary ruling, a party desires a final agency ruling supported by written reasoning, such may be requested in writing within 30 days and a final ruling will be issued.

During FY 16, the agency received three petitions and issued one preliminary and one final negotiability ruling.

### **III. BOARD - OBJECTIONS TO IMPASSE**

Chapter 20 has been interpreted by the Board and the courts as requiring the completion of bargaining and impasse-resolution services by a particular date, absent certain recognized exceptions. The Board has established, by rule, a procedure for raising objections to the conduct of further impasse-resolution procedures where it appears the applicable deadline will not be met. Although this has at times been a fertile area for litigation, in FY 16 no objections to impasse cases were filed.

### **IV. OBJECTIONS TO ELECTIONS**

Upon written objections filed by any party to a representation election, the Act allows the Board to invalidate an election and hold a second election if the Board finds that misconduct or other circumstances prevented the eligible voters from freely expressing their preferences. The Board has established rules governing objections to elections. In FY 16, no objections were filed.

## V. CONTESTED CASE DECISIONS

"Contested cases" are proceedings in which the opportunity for an evidentiary hearing is required by statute or constitution before the rights, duties or privileges of parties are determined by an agency. Although at times forming a significant part of the Board's caseload, neither petitions for declaratory orders, petitions seeking the resolution of negotiability disputes nor objections to continued impasse-resolution procedures constitute true contested cases.

During FY 16, the Board and its administrative law judges issued 23 rulings or decisions in true contested cases involving the composition of collective bargaining units, alleged prohibited practices and state employee grievance or disciplinary action appeals.

## VI. JUDICIAL REVIEW DECISIONS

Final PERB decisions are subject to judicial review by the district courts pursuant to Iowa Code section 17A.19, and the resulting district court judgments are then subject to review by the Iowa Supreme Court or Court of Appeals.

In FY 16, five decisions reviewing PERB cases were issued by the courts — three by the District Court and two by the Court of Appeals. The Board's decisions were affirmed in each case.

Highlights of the three most significant decisions follow:

***Des Moines Association of Professional Firefighters, Local No. 4, v. PERB & City of Des Moines (entitled Des Moines Assn. of Prof. Firefighters, Local 4, & City of Des Moines before the agency)***, Supreme Court No. 15-0456 (4/6/16); Ct. of Appeals No. 15-0456 (2/10/16); Polk Co. Dist. Ct. No. CV047951 (2/16/15); 14 PERB 8535 (6/2/14).

In 2014 the Board adopted and affirmed an ALJ's proposed decision dismissing the employee organization's prohibited practice complaint. The complaint's primary claim was that the City had implemented an unlawful unilateral change in the mandatory topics of "wages" and "job classifications" when it changed its existing staffing pattern by assigning some lieutenants to be in charge of "single-company" fire stations—work previously performed by captains—while continuing to pay the affected lieutenants at the lieutenant wage rate specified in the collective agreement, all without bargaining with the employee organization.

The ALJ and the Board had concluded that changes to the fire department's staffing pattern and to the regular duties of the lieutenants permanently assigned to be in charge of the single-company stations had plainly occurred. But after discussing the meanings of the "wages" and "job classifications" bargaining topics, the ALJ and Board concluded that the changes implemented by the City did not alter the *status quo* concerning those or any other section 20.9 mandatory topics, but instead were plainly related to the assignment of employees and the job content or duties of employees—long recognized as merely permissive topics of bargaining. The employee organization's complaint was consequently dismissed, because an employer's unilateral change to a permissive topic of bargaining is not a prohibited practice.

The employee organization petitioned for judicial review and the Polk County District Court affirmed the PERB decision, *concluding*:

The Court finds that PERB applied the proper analysis in determining whether the City's action involved a mandatory bargaining topic. It found accepted definitions of wages and job classifications based upon their common and ordinary meanings, and concluded that the City's action did not affect either term. The Court gives deference to PERB's interpretation of the topics of "wages" and "job classifications" in § 20.9, and finds that its interpretation is not irrational, illogical, or wholly unjustifiable as to require reversal.

The employee organization appealed from the District Court's ruling and the appeal was transferred to the Iowa Court of Appeals, which affirmed the District Court, agreeing with its conclusion that the PERB decision was not the result of an irrational, illogical, or wholly unjustifiable interpretation or application of the statute

The employee organization sought further review by the Iowa Supreme Court but its application was denied, rendering the Court of Appeals' decision the final ruling on the complaint.

***AFSCME Iowa Council 61 v. PERB (entitled AFSCME & State of Iowa (Department of Corrections) before the agency), Ct. of Appeals No. 15-1045 (6/15/16); Polk Co. Dist. Ct. No. CVCV048806 (6/14/15); 14 PERB 8494 (10/31/14).***

After the Iowa Department of Corrections issued a directive forbidding employees from wearing certain AFSCME-distributed pins while on duty or in uniform, AFSCME filed a prohibited practice complaint alleging, among other theories, that the ban unlawfully interfered, restrained or coerced employees in the exercise of their section 20.8(3) right to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection.

The pins in question featured a black and white photograph of Gov. Terry Branstad's face, bisected by a red diagonal slash. In the red border surrounding the picture, black type proclaiming "1991 OR 2011" appeared around the top and "NOTHING HAS CHANGED" around the bottom—a reference to AFSCME's litigation against the Governor in both years due to what it viewed as his improper exercise of an item veto which detrimentally affected state employees.

Applying PERB and NLRB case law to the effect that employees' wearing and display of union insignia is concerted activity protected by the statute, but that the right can be limited or prohibited if the employer can show the limitation or prohibition is mandated by "special circumstances," an ALJ issued a proposed decision concluding that the ban constituted a prohibited practice. The ALJ rejected the employer's claim that special circumstances existed, concluding that the employer's assertions that the pin's message interfered with the operation of the institution, adversely affected discipline, decorum, public trust and the Department's reputation were wholly speculative and based upon the unsupported subjective impressions of DOC officials. The ALJ rejected the idea that the fact that two employees at one correctional institution had complained about others wearing the buttons demonstrated an adverse effect on discipline and decorum, viewing the complaints instead as the orderly expression of objections by employees using the established chain of command.

On appeal a majority of the Board disagreed with the ALJ's application of the law to the circumstances and dismissed AFSCME's complaint, concluding that the employer had established the existence of special circumstances:

Due to the paramilitary structure of the Department of Corrections and its need to maintain a high degree of uniformity, discipline and safety within Iowa's prisons, we conclude the State does not need to provide actual evidence of disruption among employees or inmates or adverse effects on the public to establish special circumstances. The ALJ concluded the State failed to establish special circumstances because only a couple of employees had complained about the pins and did so through normal complaint procedures. However, we interpret this fact differently. We find the fact that employees had actually complained is sufficient evidence of workplace disruption in a prison setting to establish special circumstances.

AFSCME sought judicial review in the Polk County District Court, which affirmed the Board's decision and concluded that the Board's finding that special circumstances existed was

supported by substantial evidence. The Court also concluded that the Board's application of the statute to the facts was not irrational, illogical or wholly unjustifiable, noting that "given the volatile environment of a prison, the DOC should not be required to wait until correctional staff or inmate safety is actually jeopardized through actual workplace disruption to prove special circumstances."

AFSCME's appeal was transferred to the Iowa Court of Appeals, which quoted the District Court's ruling extensively in affirming dismissal of the complaint and concluded that AFSCME had been "unable to carry its heavy burden to show that the PERB decision was based upon an irrational, illogical, or wholly unjustifiable application of law to fact."

***Board of Regents, State of Iowa and the University of Iowa v. PERB and UE Local 896/COGS, (entitled State of Iowa (Board of Regents/University of Iowa) & UE Local 896/COGS before the agency) Polk Co. Dist. Ct. No. CVCV049496 (7/31/15); 15 PERB 100003 (2/25/15).***

The employer petitioned for a negotiability ruling on the following proposal made during the course of bargaining by the certified employee organization:

## ARTICLE XII FEES REIMBURSEMENT

Section 1. All bargaining unit employees appointed for a total of twenty-five percent (25%) or more for the entire semester, academic year, or fiscal year will be assured a one hundred percent (100%) mandatory fees reimbursement.

Section 2. All bargaining unit employees appointed for a total of twenty-five percent (25%) or more for the academic year, fiscal year, or spring semester will be assured a one hundred percent (100%) mandatory fees reimbursement for all subsequent summer sessions of that calendar year.

Section 3. All bargaining unit employees appointed for less than a full semester or term shall receive [mandatory] fees reimbursement pro-rated to reflect the length of their appointment.

Section 4. All international student bargaining unit employees will receive a one hundred percent (100%) international fee reimbursement.

Noting that the proposal would require the employer to make a payment which was triggered by the employee's appointment to a bargaining unit position, much like a hiring bonus, the Board held that the proposal was not a mandatory subject of bargaining as "wages" because the payment was not conditioned on the employee's provision of any services. But although not mandatory under "wages," the Board found the proposal to be mandatorily negotiable under the topic of "supplemental pay" because (1) it required the payment of money or other thing of value, (2) the payment was in addition to compensation received under another Iowa Code section 20.9 topic, and (3) the payment was related to the employment relationship—the definition of supplemental pay adopted by the Board in *Fort Dodge Cmty. Sch. Dist.*, 12 PERB 8512 and subsequently affirmed by the Iowa Court of Appeals, 855 N.W.2d 733 (Iowa Ct. App. 2014).

The Board rejected the employer's argument that the reimbursement of mandatory student fees was in no way related to the employment relationship, viewing the question not as whether student fees were related to the relationship but instead whether the payments which would be required by the proposal were so related. The payments required by the proposal were plainly related to the employment relationship, the Board concluded, because they were, under a literal reading of the proposal, triggered by the relationship's very creation. The fact that the amount of the payments would be determined by the amount of student fees the employee had paid, rather than by a set dollar amount or the cost of some other good or service, did not affect its negotiability status.



The employer sought judicial review in the Polk County District Court, which affirmed the Board's negotiability ruling:

The court finds PERB followed established precedent by looking to Iowa Code section 20.9 to determine if the fee proposal fell within the scope of one of the mandatory topics of collective bargaining. Employing the definition of "supplemental pay" recently approved by the Iowa Court of Appeals in *Fort Dodge Community School District*, PERB found the fee reimbursement proposal related to the employment relationship, and therefore fell within the definition of supplemental pay. PERB demonstrated a rational and logical approach for determining whether the payment of value relates to the employment relationship. For those reasons the court finds PERB was not irrational, illogical, or wholly unjustifiable, and did not exceed its authority, in finding the fee reimbursement proposal fell within the meaning of "supplemental pay" under Iowa Code section 20.9, and therefore constituted a mandatory bargaining subject.

## **LISTS OF QUALIFIED NEUTRALS MAINTAINED BY PERB**

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Chapter 20 requires PERB to maintain lists of qualified mediators and interest arbitrators, and Iowa Code chapter 279 requires PERB to maintain a list of qualified teacher-termination adjudicators. PERB also maintains a list of qualified grievance arbitrators for parties to utilize.

In 1991, pursuant to legislation which had amended Iowa Code section 20.6, PERB established minimum qualifications for these neutrals and established procedures for appointing neutrals to the various lists, for maintaining the lists, and for removing neutrals from the lists. A neutral may be removed from a list by request of the neutral or through procedures initiated by PERB or a complaining party. A neutral may also request that he or she be placed on inactive status for periods of time, due to unavailability.

As of June 30, 2016, PERB's neutral lists included 53 active grievance arbitrators and interest arbitrators (15 of whom are Iowans) and 26 active ad hoc mediators (25 of whom are Iowans).

**PERB BUDGET**

**FISCAL YEARS 2015 & 2016**

<b>RECEIPTS</b>	<b>ACTUAL FY 15</b>	<b>ACTUAL FY 16</b>
Appropriations	1,342,452	1,342,452
Salary Adjustment	0	0
Training & Technology Carry Forward	11,701	71,269
Chapter 8.31 Reduction	0	0
Legislative Reduction	0	0
Transfer	0	0
DAS Distribution	0	0
Reimbursement from Other Agencies	2,265	0
Miscellaneous Income	<u>37,612</u>	<u>9,079</u>
<b>TOTAL</b>	<b>\$1,394,030</b>	<b>\$1,422,800</b>

**EXPENDITURES**

101	Personal Services	\$1,088,543	\$1,090,610
202	In State Travel	24,454	8,824
205	Out of State Travel	3,733	8,264
301	Office Supplies	12,223	12,037
309	Printing & Binding	3,866	1,220
313	Postage	1,106	1,034
401	Communications	6,655	7,225
402	Rentals	1,391	0
406	Outside Services	44,553	32,007
409	Outside Repairs	1,553	974
414	Reimbursements –Other agencies	26,276	35,127
416	ITS Reimbursements	12,240	22,378
418	IT Outside Services	3,400	5,800
434	Gov Fund Transfers-Other Agencies Serv.	550	80
502	Office Equipment	9,955	0
503	Equip Non-Inventory	8,484	11,514
510	IT Equipment	1,535	9,711
705	Refunds/Other	<u>975</u>	<u>0</u>

**TOTAL** \$ 1,251,492 \$1,246,805

REVERSION \$ 142,538 \$ 175,995

TOTAL T&T RETURNED TO GENERAL FUND 0 \$41,465

FINAL REVERSION \$142,538 \$134,530

**TRAINING & TECHNOLOGY**

CARRY FORWARD (50% of reversion) \$ 71,269 \$ 67,265

