

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 amends Chapter 2, “General Practice and Hearing Procedures,” and Chapter 3, “Prohibited Practice Complaints,” Iowa Administrative Code.

Items 1 and 2 reflect changes to existing rules identified in the Board’s ongoing rules review project and the Board’s transfer of those rules to a more appropriate and intuitive location in Chapter 2 as new rules 621—2.23(20) and 621—2.24(20).

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

Item 12 rescinds rules 621—3.10(20) and 621—3.11(20), the content of which is revised and incorporated into Chapter 2 in Items 1 and 2.

Item 13 adopts new rule 621—3.12(20), which implements the Iowa Code section 20.11(3) requirements that the Board appoint a certified shorthand reporter to report prohibited practice proceedings and that the Board tax the reasonable amount of compensation for such reporting, and for any transcript requested by the Board, as costs.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 1670C** on October 15, 2014. Written and oral comments and requests for a public hearing were accepted through November 4, 2014. No request for a 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.

These rules do not 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.

These amendments will become effective January 14, 2015.

The following amendments are adopted.

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 **621—Chapter 3**, title, as follows:

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 its agents have 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. ~~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~~ with standing 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 Web site, shall be in writing, shall be signed by the complainant or its designated representative, and shall include the following:

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

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

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 act(s), the dates date(s) and places place(s) of the alleged occurrence act(s), 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. ~~The board~~ Although compliance with technical rules of pleading is not required, the 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 respondent(s) all named respondents 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 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 subrule 2.15(3) and 621—subrule 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 a written agency an 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. ~~Upon~~ 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 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 or, if and may set forth additional facts deemed to constitute a defense. 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 allegation. ~~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. ~~A~~ At any time prior to the issuance of a proposed decision (or final decision if heard originally by the board), a complaint or any part thereof may be withdrawn with the consent of the board, and upon conditions the board may deem proper voluntarily dismissed by the complainant. Withdrawal shall constitute a bar to refileing the same complaint or part thereof by the complainant. Following the issuance of a proposed decision, but before the proposed decision becomes the agency's final decision, complaints may be withdrawn only with the consent of the board and upon conditions the board deems proper.

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

ITEM 11. Amend rule 621—3.8(20) 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 rules **621—3.10(20)** and **621—3.11(20)**.

ITEM 13. 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 initially shall 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 nonprevailing 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.

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