

PUBLIC EMPLOYMENT RELATIONS BOARD[621]

Notice of Intended Action

Proposing rule making related to determination of bargaining units, certified employee representatives, and elections and providing an opportunity for public comment

The Public Employment Relations Board (PERB) hereby proposes to amend Chapter 4, “Bargaining Unit and Bargaining Representative Determination,” and Chapter 5, “Elections,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 20.6.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapter 20.

Purpose and Summary

This Notice of Intended Action proposes to amend rules relating to determination of bargaining units, certified employee representatives, and elections associated with these processes. It is the goal of the agency to work closely with employers and employee representatives to simplify these processes and move those processes to the agency’s secure upload system, commonly referred to as suPERB. The agency is proposing these amendments after feedback, internal review, and implementation of new data management systems. The proposed amendments are described in detail as follows.

Item 1 moves certain filings from email, mail or electronic document management system (EDMS) to suPERB. SuPERB will be configured to allow the filing of petitions electronically. Shifting petitions to suPERB creates greater transparency and faster processing.

Item 2 eliminates the option, and when applicable, requirement, that petitions be combined. Combining a petition appears to be exceptionally confusing to users and creates extra paperwork for users and the agency. Units must be determined prior to determination of certification. Moving this process to suPERB creates an opportunity to simplify the process and provide explanations that do not require legal training. Combining petitions confuses the processes without creating efficiencies for the user or agency.

Items 3 through 5 move the unit determination filing process to suPERB and describe the process.

Items 6 and 7 eliminate the combination of petitions for the same reasons as described for Item 2.

Item 8 moves the filing of petitions for amendment of a unit to suPERB.

Item 9 moves the filing of petitions for amendments of certification to suPERB and clarifies that reports requiring updates are annual reports filed by the employee organization found in 621—Chapter 8. The current language in paragraph 4.8(2)“b” is ambiguous.

Item 10 requires the filing of objections to processes, set forth in rule 621—4.8(20), in EDMS. These cases are likely to result in an adjudicatory hearing and should therefore remain in EDMS.

Item 11 eliminates the requirement that parties file combined petitions in cases where parties are seeking to merge two units previously determined by PERB and represented by the same affiliated certified employee organization.

Item 12 clarifies that reports requiring updates are annual reports filed by the employee organization found in 621—Chapter 8. The current language in paragraph 4.10(2)“b” is ambiguous.

Item 13 gives the agency the option to run a petition for amendment of unit and a petition for certification of employee representative concurrently if it is requested by the parties. For the merger of two units currently being represented by the same certified employee organization, it may be advantageous to run the processes concurrently.

Item 14 moves to suPERB all filings concerning elections, including voter lists, voter challenges, requests for extensions of time to pay applicable fees, and amendment to voter lists. The agency will use suPERB to file notices and orders for all elections activities other than those related to objections to elections. Currently, some documents are filed in EDMS and some in suPERB, depending on what type of election. This is a continuation of the effort to delineate EDMS into a legal case management system for adjudicated cases and suPERB for non-adjudicatory processes. This is intended to provide simplicity and accountability.

Item 15 eliminates the notice of nonpayment for employee organizations responsible for an election fee. The same result is accomplished by not paying the fee. The filing only creates work for the user and agency.

Item 16 restructures subrule 5.1(2) as a result of the change in Item 15.

Item 17 requires the submission of voter eligibility lists through suPERB and eliminates the requirement or ability to submit lists by email. SuPERB is a significantly safer and more efficient means of collecting voter information. Item 16 also eliminates unnecessary language stating the agency will provide the employee organization the voter lists and employee's contact information. This is a necessary and built-in function of suPERB. Historically, PERB has filed these lists in EDMS; this is no longer necessary and would be confusing. Proposed amendments to the voter eligibility list by employers and employee organizations will be handled officially through suPERB.

Item 18 clarifies that objections to elections are filed in EDMS, as is current practice.

Items 19 and 20 require the submission of voter eligibility lists for professional and nonprofessional elections as well as elections for amendment of units through suPERB and eliminates the requirement or ability to submit these lists by email. SuPERB is a significantly safer and more efficient means of collecting voter information. Items 18 and 19 also eliminate unnecessary language stating the agency will provide the employee organization the voter lists and employees' contact information. This is a necessary and built-in function of suPERB. Historically, PERB has filed these lists in EDMS; this is no longer necessary and would be confusing. Proposed changes to the voter eligibility list by employers and employee organizations will be handled officially through suPERB.

Fiscal Impact

There will be small changes to the existing database and the web interface for suPERB. These have been accounted for in budgeting.

Jobs Impact

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

Waivers

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

Public Comment

Any interested person may submit written or oral comments concerning this proposed rule making. Written or oral comments in response to this rule making must be received by PERB no later than 4:30 p.m. on May 1, 2023. Comments should be directed to:

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510 East 12th Street
Des Moines, IA 50319
Phone: 515.281.4414
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Public Hearing

No public hearing is scheduled at this time. As provided in Iowa Code section 17A.4(1)“b,” an oral presentation regarding this rule making may be demanded by 25 interested persons, a governmental subdivision, the Administrative Rules Review Committee, an agency, or an association having 25 or more members.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee’s meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making actions are proposed:

ITEM 1. Adopt the following new paragraph **4.1(1)“d”**:

d. Filing system. Except where noted, petitions for amendment of unit, petitions for reconsideration of the unit, and petitions for clarifications of the unit will be filed in the secure upload PERB (suPERB) system.

ITEM 2. Rescind and reserve subrule **4.1(3)**.

ITEM 3. Amend subrules 4.2(1) and 4.2(2) as follows:

4.2(1) Content of petition. A petition for bargaining unit determination shall be on an agency-prescribed form and filed with the agency in suPERB. The petition shall identify and describe the proposed unit and indicate the unit’s status as a public safety or non-public safety unit.

4.2(2) Notice to parties. Upon the filing of a proper petition, the agency ~~shall serve copies thereof upon other interested parties by certified mail, return receipt requested~~ will create a proposed unit designating the appropriate representatives for employers, bargaining unit representatives, and if applicable, representatives of the certified employee organization. The agency shall file a notice to employees, giving notice that the petition has been filed and setting forth the rights of employees under Iowa Code chapter 20. The employer shall promptly distribute, electronically or by hard copy, the petition and notice to the affected employees. The employer shall also promptly post the petition and notice in the manner and locations customarily used for the posting of information to employees.

ITEM 4. Amend subrule 4.2(6) as follows:

4.2(6) Informal settlement of bargaining unit determination. Cases on bargaining unit determination may be informally settled in the following manner:

a. The parties may stipulate to the composition of the unit.

(1) The petitioning party shall prepare in suPERB a stipulation setting forth in detail the composition of the bargaining unit as agreed upon by all parties. ~~The stipulation shall be signed by the authorized representatives of the parties involved and shall be filed with the agency for informal review and tentative approval.~~ In the event the parties agree to a combined unit of professional and nonprofessional employees, the stipulation shall set forth both those job classifications included within the professional category and those job classifications included within the nonprofessional category.

(2) If the agency fails to tentatively approve the stipulation, the agency shall notify the parties and, unless the parties amend the stipulation in a manner to gain tentative approval of the agency, the matter shall proceed to hearing. If a matter proceeds to hearing, notices of hearing and related documents will be filed in the electronic document management system (EDMS).

(3) If the agency tentatively approves the stipulation, the agency shall file a public notice of proposed decision in suPERB. The public employer shall promptly post copies of the notice of the proposed decision, for a period of not less than one calendar week, in a prominent place in the main office of the public employer accessible to the general public. The employer shall promptly distribute,

electronically or by hard copy, the notice to the affected employees. The employer shall also promptly post the notice in the manner and locations customarily used for the posting of information to employees.

b. to e. No change.

ITEM 5. Adopt the following **new** subrule 4.3(7):

4.3(7) *Electronic filing and notices.* Unless otherwise stated, all filings covered in this rule will be filed in suPERB.

ITEM 6. Rescind and reserve rule **621—4.4(20)**.

ITEM 7. Amend rule 621—4.5(20) as follows:

621—4.5(20) Unit reconsideration. A petition for reconsideration of an agency-established bargaining unit may be filed by an employee organization, a public employer, or an employee of the public employer. ~~This petition may be filed only in combination with a certification petition.~~ Rules 621—4.1(20), 621—4.2(20), and 621—4.3(20) ~~and 621—4.4(20)~~ shall apply. A petition for reconsideration of an agency-established bargaining unit covering state employees may not be filed for at least one year after the initial unit determination. The agency may dismiss the petition for unit reconsideration if the petitioner fails to establish that the previously determined bargaining unit is inappropriate.

ITEM 8. Amend subrule 4.6(1) as follows:

4.6(1) *Petition.* A petition for amendment of an agency-determined bargaining unit may be filed by the public employer or the certified employee organization. The petition shall be filed in suPERB and contain:

a. to f. No change.

ITEM 9. Amend subrules 4.8(1) and 4.8(2) as follows:

4.8(1) *Petitions.* A petition for the amendment of a certified employee organization's certification may be filed in suPERB by the certified employee organization, the public employer or the agency to reflect an act or occurrence affecting the organization or the public employer, such as a name change or merger.

4.8(2) *Employee organization.* The employee organization must file its petition with the following:

a. An affidavit(s) that establishes:

(1) The act or occurrence, which the requested amendment would reflect, was authorized by and accomplished in accordance with the certified employee organization's constitution and bylaws, which provided members with adequate due process; and

(2) Substantial continuity of representation has been maintained.

b. Updated agency employee organization reports if there is a change in the employee organization's name or if there is a change to the employee organization's governing body. The reports shall include the following:

(1) An updated ~~PERB~~ employee organization annual report that covers the time period from the last annual report to the time of the filing of the petition.

(2) An updated ~~PERB~~ employee organization registration report.

(3) An updated constitution and bylaws.

c. Final ~~agency~~ reports for dissolved organizations resulting from a merger. The final ~~agency~~ employee organization report shall include a ~~PERB~~ an employee organization annual report that covers the time period from the last annual report to the time of the merger and shall reflect the closing of the books and accounts of the dissolved employee organization. The certified employee organization may wait and submit its final ~~agency~~ reports following the board's tentative approval of the amendment of certification.

ITEM 10. Amend paragraph **4.8(5)“b”** as follows:

b. Objections to the proposed decision must be electronically filed in the electronic document management system (EDMS) with the agency by the date specified in the notice. Objections shall set out the specific grounds of objection. The objecting party must identify itself and provide a mailing address, telephone number and email address. The agency shall promptly advise the parties of the objections and

make any investigation deemed appropriate. When an objection is raised, the agency may investigate and dismiss the objection or conduct a hearing pursuant to 621—Chapter 2.

ITEM 11. Amend subrule 4.10(1) as follows:

4.10(1) *Petition.* ~~A combined petition~~ Petitions to amend a bargaining unit and an employee organization's certification may be filed by a successive employee organization to reflect a merger of two agency-determined bargaining units that have the same public employer and are represented by affiliated certified employee organizations. ~~The combined petition petitions~~ shall contain:

a. to g. No change.

ITEM 12. Amend paragraphs **4.10(2)“b”** and **“c”** as follows:

b. Updated ~~agency~~ employee organization reports if there is a change in the employee organization's name or if there is a change to the employee organization's governing body. The reports shall include the following:

(1) An updated ~~PERB~~ employee organization annual report that covers the time period from the last annual report to the time of the filing of the petition.

(2) An updated ~~PERB~~ employee organization registration report.

(3) An updated constitution and bylaws.

c. Final agency reports for dissolved organizations resulting from a merger. The final ~~agency~~ employee organization report shall include a ~~PERB~~ an employee organization annual report that covers the time period from the last annual report to the time of the merger and shall reflect the closing of the books and accounts of the dissolved employee organization. The certified employee organization may wait and submit its final ~~agency~~ reports following the board's tentative approval of the amendment of certification.

ITEM 13. Adopt the following **new** subrule 4.10(6):

4.10(6) *Concurrent processes.* If a party to these proceedings requests and PERB concurs, the agency may run both processes described in rule 621—4.9(20) concurrently, including the combination of any and all notices.

ITEM 14. Amend rule 621—5.1(20), introductory paragraph, as follows:

621—5.1(20) General procedures. The agency shall determine the date of the election or election period, and the place, method, and other procedural aspects of conducting an election held pursuant to Iowa Code chapter 20. Elections shall be conducted under the direction and supervision of the agency or its election agent and shall be by secret ballot. ~~Parties shall electronically file all documents in the applicable adjudicatory case file in the agency's electronic document management system (EDMS) unless the rules specify otherwise.~~ Parties shall file all documents other than objections covered by rule 621—5.4(20) in suPERB, including voter lists, voter challenges, requests for extensions of time to pay applicable fees, and amendments to voter lists. The agency will use suPERB to file notices and orders for all elections activities other than those related to objections covered by rule 621—5.4(20).

ITEM 15. Rescind paragraph **5.1(2)“c.”**

ITEM 16. Reletter paragraph **5.1(2)“d”** as **5.1(2)“c.”**

ITEM 17. Amend paragraph **5.2(2)“b”** as follows:

b. Voter eligibility list.

(1) When the agency files an order that an election be conducted, the employer shall, within seven days of the notice or order, ~~email to the agency~~ upload to suPERB an alphabetical list of the names; addresses; email addresses, if known; telephone numbers, if known; and job classifications of the employees eligible to vote. When a telephonic/web-based election is ordered, the list of eligible voters shall also include the employee's date of birth, the last four digits of the employee's social security number and any other information required by the agency.

(2) ~~The agency shall file the list of eligible voters' names and job classifications. This list shall become the official voting list for the election to be conducted. The agency shall provide to the employee organization the voter list containing the employees' contact information.~~ The employer or

employee organization shall ~~email-proposed~~ propose in suPERB additions or deletions of employees' names, changes in job classifications, addresses, contact information, or other eligible voter changes to the agency and to the other party. The parties may further amend the list by agreement.

ITEM 18. Amend rule 621—5.4(20) as follows:

621—5.4(20) Objections to an election.

5.4(1) Objections. Written objections to an election may be filed in the electronic document management system (EDMS) by any public employee, public employer, or employee organization involved in the election or by the board on its own motion. Objections must be filed with the agency within ten days of the filing of the tally of ballots, even when challenges to eligible voters may be determinative of the outcome of the election. The objection must identify the objecting party; provide the objecting party's mailing address, telephone number, and email address, if available; and contain a statement of facts upon which the objections are based. The agency shall promptly advise the parties of the objections and make any investigation deemed appropriate. If the objections cannot be informally resolved, they may be dismissed or resolved at hearing. Hearings on objections shall be conducted pursuant to 621—Chapter 2. The objecting party shall present its evidence first.

5.4(2) No change.

ITEM 19. Amend subrule 5.7(2) as follows:

5.7(2) Voter eligibility list.

a. The public employer shall ~~email~~ upload to suPERB the lists of employees in the professional and nonprofessional categories ~~to the agency~~ within seven days of the agency's order. The lists shall be organized alphabetically and contain the names; addresses; email addresses, if known; telephone numbers, if known; and job classifications of the employees eligible to vote; and any other information required by the agency. The agency shall file the lists of eligible voters' names and job classifications. These lists shall become the official voting lists for the election to be conducted. ~~The agency shall provide to the employee organization the voter lists with the employees' contact information.~~

b. The employer or employee organization shall ~~email-proposed~~ propose in suPERB additions or deletions of employees' names, changes in job classifications, addresses, contact information, or other eligible voter changes ~~to the agency and other party~~. The parties may amend the lists by agreement.

ITEM 20. Amend subrule 5.8(2) as follows:

5.8(2) Voter eligibility list. The public employer shall ~~email~~ upload in suPERB the list of employees ~~to the agency~~ within seven days of the agency's order. The list shall be organized alphabetically and contain the names; addresses; email addresses, if known; telephone numbers, if known; and job classifications of the employees eligible to vote; and any other information required by the agency. ~~The agency shall file the list of eligible voters' names and job classifications, which shall become the official voting list for the election to be conducted.~~ The employer or employee organization shall ~~email-proposed~~ propose in suPERB additions or deletions of employees' names, changes in job classifications, addresses, contact information or other eligible voter changes ~~to the agency and other party~~. The parties may further amend the list by agreement.