

CHAPTER 7
IMPASSE PROCEDURES

621—7.1(20) General. Except as provided in the second paragraph of subrule 7.5(6), the rules set forth in this chapter are applicable only in the absence of an impasse agreement between the parties or the failure of either to utilize its procedures. Nothing in these rules shall be deemed to prohibit the parties, by mutual agreement, from proceeding directly to binding arbitration at any time after impasse.

621—7.2(20) Fees of neutrals. Transferred to 621—1.8(20,279), IAB 11/14/90, effective 12/19/90.

621—7.3(20) Mediation.

7.3(1) Request for mediation. Either party to an impasse may request the board in writing to appoint a mediator to the impasse.

An original and one copy of the request for mediation shall be filed with the board and shall, in addition to the request for mediation, contain:

a. The name, address, and telephone number of the requesting party, and the name, address, telephone number, and e-mail address of its bargaining representative or of the chairperson of its bargaining team.

b. The name, address, and telephone number of the opposing party to the impasse, and the name, address, telephone number, and e-mail address of its bargaining representative or of the chairperson of its bargaining team.

c. A description of the collective bargaining unit involved and the approximate number of employees in the unit.

d. A statement indicating whether the public employer of the unit involved is subject to the budget certification requirements of Iowa Code section 24.17 and, if the public employer is not subject to those requirements, a statement of the date upon which the public employer's next fiscal or budget year commences.

e. A statement indicating whether the bargaining unit is a public safety or non-public safety unit as specified by Iowa Code section 20.3 as amended by 2017 Iowa Acts, House File 291, section 1, and rule 621—6.4(20).

f. A concise and specific listing of the negotiated items upon which the parties have reached impasse.

7.3(2) Date, signature and notice. The request for mediation shall be dated and signed by an authorized representative of the requesting party. The requesting party shall also serve a copy of the request upon other parties to the negotiations either by personal delivery or by ordinary mail.

7.3(3) Appointment of mediator. Upon receipt of a request for mediation, the board may appoint an impartial and disinterested person as mediator of the dispute and notify all parties of the appointment of the mediator. The board shall determine the effective date of this appointment.

7.3(4) Confidential nature of mediation. Any information, either written or oral, disclosed by the parties to the mediator in the performance of mediation duties shall not be discussed by the mediator voluntarily or by compulsion unless approved by the parties involved or permitted by Iowa Code section 20.31.

The mediator shall not disclose any information with regard to any mediation conducted on behalf of any party to any cause pending in a proceeding before a court, board, investigatory body or arbitrator, except as permitted by Iowa Code section 20.31, without the written consent of the public employment relations board. Without such written consent, the mediator shall respectfully decline, by reason of this rule, to divulge any information disclosed by a party in the performance of the mediator's duties.

7.3(5) Mediation proceedings. The mediator may hold separate or joint meetings with the parties or their representatives, and those meetings shall not be public. Mediation meetings shall be conducted at a time and place designated by the mediator. If an impasse exists ten days after the effective date of the appointment of a mediator, the mediator shall so notify the board.

7.3(6) Board mediator. When the mediator is an employee of the Public Employment Relations Board, that mediator shall not participate in any contested case arising out of any transaction or occurrence relating to those mediation activities.

7.3(7) Costs of mediation. The mediator shall submit in writing to the board a list of fees and expenses.

[ARC 8317B, IAB 12/2/09, effective 11/1/09; ARC 8338B, IAB 12/2/09, effective 11/10/09; ARC 8953B, IAB 7/28/10, effective 9/1/10; ARC 3278C, IAB 8/30/17, effective 8/10/17]

621—7.4(20) Fact-finding. Rescinded IAB 7/28/10, effective 9/1/10.

621—7.5(20) Binding arbitration.

7.5(1) Request for arbitration. If the dispute remains unresolved ten days after the effective date of the appointment of the mediator, either party to the impasse may request the board to arrange for binding arbitration.

7.5(2) Form and contents of request. The request for arbitration shall be in writing and shall include the name, address and signature of the requesting party and the capacity in which acting.

7.5(3) Service of request. The requesting party shall serve a copy of the request for arbitration upon the opposing party by ordinary mail.

7.5(4) Exchange of final offers. Within four days of the board's receipt of the request for arbitration, each party shall serve its final offer on each of the impasse items to the other party to the impasse. Final offers shall not be amended. A party shall not submit a final offer for arbitration which has not been offered to the other party in the course of negotiations.

7.5(5) Selection of arbitrator. Upon the filing of a timely request for arbitration, the board shall serve a list of five arbitrators upon the parties. Within five days of service of the list, the parties shall select their arbitrator from the list in the manner specified in Iowa Code section 20.22(4) as amended by 2010 Iowa Acts, House File 2485, section 26.

7.5(6) Date and conduct of hearings.

a. Impasse items are deemed submitted to binding arbitration on the date of the commencement of the arbitration hearing, regardless of its duration. In disputes where the public employer is a community college, or where all or a portion of the public employees in the bargaining unit are teachers licensed under Iowa Code chapter 272 and the public employer is a school district or area education agency, the submission of impasse items to binding arbitration shall occur not later than May 13 of the year when the resulting collective bargaining agreement is to become effective.

b. Arbitration hearings shall be open to the public and shall be recorded either by mechanized means or by a certified shorthand reporter.

c. The arbitration hearing shall be limited to those factors listed in Iowa Code section 20.22 as amended by 2017 Iowa Acts, House File 291, sections 12 and 13, and subrules 7.5(7) and 7.5(8), and such other relevant factors as may enable the arbitrator to select the most reasonable offer, in the arbitrator's judgment, of the final offers submitted by the parties on each impasse item. Arbitrators appointed pursuant to impasse procedures agreed upon by the parties shall likewise consider these same factors.

During the hearing, the parties shall not introduce, and the arbitrator shall not accept or consider, any direct or indirect evidence regarding any subject excluded from negotiations pursuant to Iowa Code section 20.9 as amended by 2017 Iowa Acts, House File 291, section 6, except as required for purposes of the consideration of the factors specified in subrule 7.5(7) and paragraph 7.5(8) "a."

7.5(7) Arbitration involving a bargaining unit that has at least 30 percent of members who are public safety employees. The arbitrator shall consider and specifically address in the arbitrator's determination, in addition to any other relevant factors, the following factors:

a. Past collective bargaining contracts between the parties including the bargaining that led up to such contracts.

b. Comparison of wages, hours and conditions of employment of the involved public employees with those of other public employees doing comparable work, giving consideration to factors peculiar to the area and the classifications involved.

c. The interests and welfare of the public, the ability of the public employer to finance economic adjustments and the effect of such adjustments on the normal standard of services.

7.5(8) *Arbitration involving a bargaining unit that does not have at least 30 percent of members who are public safety employees.*

a. The arbitrator shall consider and specifically address in the arbitrator's determination, in addition to any other relevant factors, the following factors:

(1) Comparison of base wages, hours, and conditions of employment of the involved public employees with those of other public employees doing comparable work, giving consideration to factors peculiar to the area and the classifications involved. To the extent adequate, applicable data is available, the arbitrator shall also compare base wages, hours, and conditions of employment of the involved public employees with those of private sector employees doing comparable work, giving consideration to factors peculiar to the area and the classifications involved.

(2) The interests and welfare of the public.

(3) The financial ability of the employer to meet the cost of an offer in light of the current economic conditions of the public employer. The arbitrator shall give substantial weight to evidence that the public employer's authority to utilize funds is restricted to special purposes or circumstances by state or federal law, rules, regulations, or grant requirements.

b. The arbitrator shall not consider the following factors:

(1) Past collective bargaining agreements between the parties or bargaining that led to such agreements.

(2) The public employer's ability to fund an award through the increase or imposition of new taxes, fees, or charges or to develop other sources of revenue.

c. The arbitrator's award on the impasse item of base wages shall not exceed the lesser of the following percentages in any one-year period in the duration of the bargaining agreement:

(1) Three percent.

(2) A percentage equal to the increase in the consumer price index for all urban consumers for the Midwest region, if any, as provided by the agency.

d. Should the final offers of both parties on the impasse item of base wages exceed the lesser of the percentages specified in paragraph 7.5(8) "c," the arbitrator shall select neither of the parties' offers, but shall instead award the lesser of the amounts listed in that paragraph.

7.5(9) *Continued bargaining.* The parties may continue to bargain on the impasse items before the arbitrator until the arbitrator's selections are made. Should the parties reach agreement on an impasse item following its submission to arbitration, they shall immediately report their agreement to the arbitrator. The agreed upon term shall be incorporated into the parties' collective bargaining agreement, and the arbitrator shall no longer consider the final offers of the parties on that impasse item.

7.5(10) *Report of the arbitrator.* With respect to each impasse item, the arbitrator's award shall be restricted to the final offers on each impasse item submitted by the parties to the arbitrator, except as provided in paragraph 7.5(8) "c." Within 15 days after the arbitration hearing, the arbitrator shall issue a written award specifying and explaining the arbitrator's selections and serve each party and the board with a copy by ordinary mail or by e-mail.

7.5(11) *Dismissal of arbitrator.* In the event of a failure of the arbitrator to issue an award within 15 days after the arbitration hearing, the arbitrator shall notify the board and the parties of this failure. Either party may thereafter request a new arbitrator. Unless the parties agree otherwise, the procedures in this rule shall apply; provided, however, that the parties may submit new final offers. No arbitrator shall issue a partial award except by mutual consent of the parties.

7.5(12) *Costs of arbitration.* The arbitrator shall submit to the parties a written statement of fees and expenses with a copy sent to the board. The parties shall share the costs of arbitration equally.

[ARC 8953B, IAB 7/28/10, effective 9/1/10; ARC 3278C, IAB 8/30/17, effective 8/10/17]

621—7.6(20) Impasse procedures after completion deadline.

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 agency in accordance with rule 621—16.4(20). 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 621—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 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.

7.6(2) *Response to objection.* The nonobjecting party may, within 10 days following the filing of an objection with the board, file a response asserting that, because of deliberate delay on the part of the objecting party, or unavoidable casualty, misfortune or other events beyond the parties' control, impasse procedures should continue beyond the applicable deadline. A response may additionally or alternatively assert that the deadline relied upon by the objecting party is inapplicable for reasons set forth in the response, or may assert other reasons why impasse procedures should not be terminated. If a response is not filed within the time allowed by this subrule, the board may issue an order terminating further impasse procedures.

7.6(3) *Procedure.* Filing of an objection before the applicable deadline for completion of impasse procedures shall not affect the obligation of each party to continue the impasse procedures. Further, the board may postpone hearing on the objection if it determines that mediation may take place or that an arbitration award may be rendered on or before the applicable deadline. In making that determination, the board will attempt to expedite any remaining impasse proceedings, but no party shall be required to waive or shorten any mandatory statutory time periods which apply to that party.

7.6(4) *Hearings.* Insofar as is applicable, hearings on a party's objection shall be conducted pursuant to 621—Chapter 2. The nonobjecting party shall proceed first and shall have the burden to show that impasse procedures should not be terminated. The board shall then issue a final order that further impasse procedures should be completed or should continue for a specified period of time or should be terminated. [ARC 8953B, IAB 7/28/10, effective 9/1/10; ARC 1583C, IAB 8/20/14, effective 9/24/14]

621—7.7(20) Impasse procedures for state employees.

7.7(1) *Procedures.* Statutory procedures in Iowa Code sections 20.20 to 20.22, and independent impasse procedures negotiated by the parties must provide that the impasse be submitted to binding arbitration and the arbitration hearing concluded no later than February 28, and that any arbitrator's award will be issued on or before March 15. This rule does not preclude the parties from mutually agreeing to a date other than February 28, but the agreement must result in an arbitration award on or before March 15.

7.7(2) *Independent procedures.* Independent impasse procedures negotiated by the parties must provide that the impasse will be submitted to binding arbitration, and any hearing thereon concluded no later than February 28, and that any arbitrator's award will be issued on or before March 15.

7.7(3) *Statutory procedures.* In the absence of independent procedures, the procedures in Iowa Code sections 20.20 and 20.22 and rules 621—7.1(20) to 621—7.5(20) shall apply, except that a single-party request for mediation must be filed no later than December 14, a request for binding arbitration must be filed by February 1, and an arbitration hearing must be concluded no later than February 28.

7.7(4) *New certifications.* Statutory impasse procedures under these rules shall not be available if the employee organization has been certified later than December 1. This rule does not preclude the parties from negotiating independent impasse procedures if an employee organization is certified after December 1 and the procedures will result in an arbitration award on or before March 15.

7.7(5) *Negotiability disputes.* Disputes concerning the negotiability of any subject of bargaining shall be submitted to the board for determination pursuant to 621—6.3(20) no later than March 1. An arbitration award rendered prior to final determination of the negotiability dispute will be made conditional upon such determination. Notwithstanding the provisions of 621—2.19(20), no stay of

impasse procedures will be granted during the pendency of any negotiability dispute, petition for declaratory order, or prohibited practice complaint.

This rule is intended to implement Iowa Code section 20.17.

[ARC 8953B, IAB 7/28/10, effective 9/1/10]

These rules are intended to implement Iowa Code chapter 20.

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