



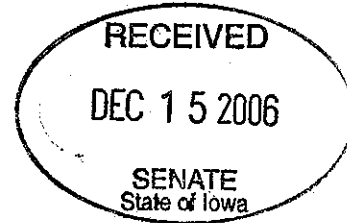
STATE OF IOWA

THOMAS J. VILSACK
GOVERNOR

PUBLIC EMPLOYMENT RELATIONS BOARD
JAMES R. RIORDAN, CHAIR

SALLY J. PEDERSON
LT. GOVERNOR

November 30, 2006



Mike Marshall
Secretary of Senate
State Capitol Building
-- L O C A L --

Dear Senator Marshall:

Pursuant to Iowa Code section 7E.3(4), we hereby submit for your review the Public Employment Relations Board (PERB) Annual Report for fiscal year 2006. The annual report presents an insight into the daily operation of the agency and the value that PERB brings to the citizens of Iowa.

2006 marks the 32nd anniversary of PERB's creation by the General Assembly. The statute has worked well in protecting the interests of public employees and public employers through collective bargaining. Of 623 bargaining impasses requesting mediation in 2006, only 17 went on to arbitration. That is a 97.3% success rate and is due in large part to dedicated PERB staff, ad hoc mediators, and Federal mediators working as problem solvers with the parties on behalf of the agency.

While PERB continues to provide excellent impasse services to the parties, the adjudication function of the agency continues to suffer due to the loss of two of our six professional staff positions in the 2002 budget cuts. It is increasingly difficult for the agency to process, hear, research, write and decide contested cases in a timely manner and perform all of the agency's other dispute resolution functions with the staff currently available. PERB respectfully asks for consideration in providing funding to allow the reinstatement of one of the two ALJ positions and a small amount of additional operating funds because of the increase in the mileage reimbursement rate instituted last year.

Thank you for your consideration. Please call me with any questions or concerns you may have regarding the annual report or agency functions.

Sincerely,

James R. Riordan
Chair

IOWA
PUBLIC EMPLOYMENT RELATIONS BOARD

ANNUAL REPORT

FY 2006

July 1, 2005 to June 30, 2006

TABLE OF CONTENTS

TABLE OF ORGANIZATION 1

HISTORY AND PURPOSE 2

MISSION STATEMENT 3

OVERVIEW 4

SUMMARY OF PERB DUTIES 5

BARGAINING UNIT DETERMINATIONS/REPRESENTATION

ELECTIONS 5

ADJUDICATORY FUNCTIONS 5

COURT ACTION: JUDICIAL REVIEW 6

IMPASSE RESOLUTION SERVICES 6

RESEARCH & INFORMATION SERVICES 9

CERTIFIED EMPLOYEE ORGANIZATION REPORTS 10

PERB'S INTEREST-BASED COOPERATION (IBC) PROBLEM-SOLVING

PROCESSES 10

FY 2006 CASE REVIEW 12

BOARD - DECLARATORY ORDERS 12

BOARD - EXPEDITED NEGOTIABILITY RULINGS 12

BOARD - OBJECTIONS TO IMPASSE 12

OBJECTIONS TO ELECTIONS 13

CONTESTED CASE DECISIONS 13

JUDICIAL REVIEW DECISIONS 13

LISTS OF QUALIFIED NEUTRALS MAINTAINED BY PERB 14

AGENCY PERFORMANCE PLAN 14

PERB BUDGET 16

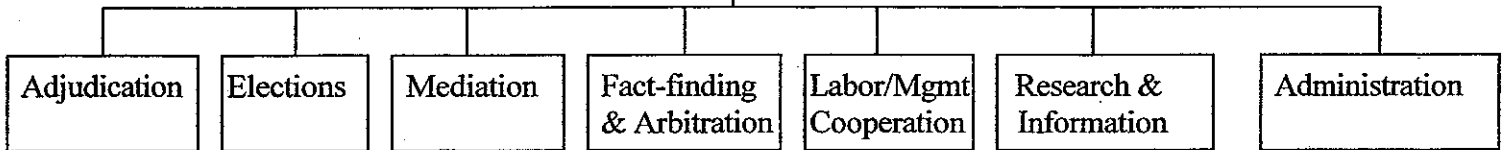
IOWA PUBLIC EMPLOYMENT RELATIONS BOARD

TABLE OF ORGANIZATION

Total Staff = 9

CHAIR (1)
James R. Riordan

BOARD MEMBERS (2)
M. Sue Warner
Neil A. Barrick



- Adjudication**
- Unit determinations
 - Prohibited practice adjudications
 - State merit grievance and disciplinary appeals
 - Negotiability disputes
 - Declaratory rulings
 - Preparation & presentation of briefs & oral arguments in court

- Elections**
- Monitor shows of interest
 - Conduct elections & ballot counts
 - Certify employee organizations receiving majority support
 - Decertify employee organizations where election reveals lack of majority support

- Mediation**
- Contract mediation
 - Grievance mediation
 - Case processing (All cases filed at PERB are informally mediated to explore settlement potential)
 - Selection & training of ad hoc mediators

- Fact-finding & Arbitration**
- Establish neutral qualifications
 - Select applicants for inclusion on PERB neutral panels
 - Train neutrals re: requirements of Iowa law
 - Provide neutral lists to parties on request
 - File & maintain fact-finding and interest arbitration decisions

- Labor/Mgmt Cooperation**
- Interest-based bargaining (IBB) training and facilitation
 - Labor-management committee (LMC) training and facilitation
 - Speaking engagements

- Research & Information**
- Contract summaries
 - PERB decisions
 - Biennial PERB conference
 - Supervise outside provider's preparation of index & digest of PERB decisions
 - Annual report
 - Compile index of fact-finding, interest, and grievance arbitration decisions
 - Website development
 - Informational speaking engagements

- Administration**
- Budgeting, accounting and personnel services for the agency
 - Purchasing and inventory support for agency
 - Board meetings/minutes
 - Analysis & special project support
 - Monitoring annual reports of certified employee organizations
 - Case docketing & case management
 - Maintaining PERB library

PROFESSIONAL STAFF: (4)

Jan Berry	Administrative Law Judge/ Counsel
Charles Boldt	Administrative Law Judge/ Coordinator of Mediation Services
Susan Bolte	Administrative Law Judge/ Coordinator of Neutral Services
James McClimon	Administrative Law Judge/ Coordinator of Alternative Dispute Resolution Processes

SUPPORT STAFF: (2)

Leisa Luttrell	Human Resources Associate
Barbara Marchant	Administrative Secretary

510 East 12th Street, Suite 1B
Des Moines IA 50319
515/281-4414 FAX 242-6511
E-mail address: iaperb@iowa.gov
Agency Website: <http://iowaperb.iowa.gov>

HISTORY AND PURPOSE

In the earlier part of the 20th century, the labor movement in the United States was focused largely on the private sector. By 1970, the labor movement had grown in the public sector, including in Iowa. Even though union activity in the public sector was generally not legally protected, public employees were organizing anyway. Since most states provided no peaceful dispute resolution alternatives to the strike, disruptive strikes among teachers, nurses, city garbage and transit workers, firefighters, and other public employees were rampant across the country. These disruptions in the delivery of public services and the hostilities that developed between public employers and employees were devastating and costly to communities nation-wide. Recognizing this fact and wishing to prevent such problems in Iowa, the legislature passed the Public Employment Relations Act, Iowa Code chapter 20 (PERA) in 1974, and established the Public Employment Relations Board (PERB) to administer it.

The PERA has been such a resounding success that it is now simply taken for granted that labor disputes between public employers and employees in Iowa will be resolved peacefully and without a strike or other costly disruption of public services. The impasse resolution system adopted by the legislature and administered by PERB has been hailed by other states as a model for effective and peaceful dispute resolution. An April 24, 2002 editorial in the Buffalo News stated, "To those who insist that there has to be a better way than New York's for resolving municipal labor disputes, look west. Iowa has devised a system that encourages negotiation, even after impasse is declared....Iowa's law continually pushes the parties closer together, while New York's rewards mulishness....New York's law needs to change. Any legislator who wants to take on the task should begin by looking to the Hawkeye state."

As the recent teacher strike in Detroit, Michigan illustrates (see Des Moines Register, 9/11/06), other states without an effective law continue to suffer costly strikes. Their absence in the Iowa public sector makes it clear that PERB provides vital cost-saving services to the state. The citizens of Iowa can be proud of the success of the PERA and PERB in fostering cooperative employment relationships and peacefully resolving public sector labor disputes.

MISSION STATEMENT

To promote harmonious and cooperative relationships between government and its employees without disruption of public services, via the expert and timely services of a neutral agency.

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:

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. 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:

1. Determining appropriate bargaining units and conducting representation elections.
2. 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.
3. 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.
4. 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.
5. Providing mediators, fact finders, and arbitrators to resolve impasses in negotiations.
6. Collecting and disseminating information concerning the wages, hours, and other conditions of employment of public employees.
7. Assisting the attorney general in the preparation of legal briefs and the presentation of oral arguments in the district court and the supreme court in cases affecting the board.

OVERVIEW

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

The PERA defines the collective bargaining rights and duties of public employers and public employees in Iowa. 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.

The PERA provides that public employees may organize and bargain collectively with their employers through labor organizations of their own choosing. To assure that representation by a labor organization is truly the employees' choice, secret ballot representation elections are conducted by PERB. To insure 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, the Act defines certain prohibited labor practices and provides PERB with the statutory authority to fashion appropriate remedial relief for violations of the PERA.

The PERA 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, the PERA contains a detailed procedure for the resolution of collective bargaining impasses. Until 1991, the statutory impasse-resolution procedure which applied to all bargaining units and public employers was a three-step system consisting of mediation, followed by fact-finding and culminating in binding arbitration if no voluntary agreement had been reached. In 1991 the General Assembly modified the statutory procedure for bargaining units of teachers licensed under Iowa Code chapter 272 who are employed by school districts, area education agencies and community colleges, adopting a two-step procedure for those employees which omits fact-finding. The former three-step procedure remains applicable to other represented bargaining units.

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.

Since its inception, PERB has certified representatives for over 1,475 bargaining units and has issued approximately 1,600 formal decisions. During FY 06, PERB provided impasse resolution services (mediators, fact finders and/or arbitrators) in 623 disputes involving county, city, state, school district, area education agency and community college employers and their employees.

SUMMARY OF PERB DUTIES

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 53 petitions in FY 06 (62 in FY 05) raising issues concerning the composition of bargaining units. 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 by eliminating the expense and travel time necessary for PERB employees to conduct representation elections at work sites throughout the state, during FY 06 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 85-100% are not uncommon.

During FY 06, PERB processed 32 election petitions (35 in FY 05) and conducted 23 elections (35 in FY 05). The number of representation elections during FY 06 demonstrates a continued interest in collective bargaining activities in the Iowa public sector. The number of public sector bargaining units in Iowa has increased from 421 in 1975 to 1,168 during FY 06.

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 the PERA, 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 rulings (cases seeking PERB's interpretation of PERA provisions) and negotiability disputes (cases interpreting the scope of the mandatory subjects of bargaining). Although some acts 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.

Each petition filed with the agency is initially assigned to a case processor 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 an administrative law judge (ALJ), and a hearing is held. In cases assigned to an 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 rulings 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 administrative law judges act as grievance mediators and arbitrators, upon mutual request of the parties, in cases involving disputes arising under collective bargaining agreements.

During FY 06, 196 prohibited practice complaints, petitions for declaratory rulings, merit appeals, petitions for resolution of negotiability disputes and other non-unit cases were filed with PERB (compared with 165 such filings in FY 05).

See page 10 for further review of FY 06 cases.

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, and provide the Attorney General's office with reports of PERB's judicial activities to keep it advised of litigation relating to PERB's specialized area of expertise.

During FY 06, five new petitions for judicial review were filed in the district courts. At the close of the fiscal year, four cases were pending in the district courts, and two before the Iowa Supreme Court.

During the fiscal year, three cases were judicially resolved by the district courts, and one appeal from those decisions was taken. One case was decided by the Court of Appeals.

See page 13 for a review of FY 06 judicial review decisions.

IV. IMPASSE RESOLUTION SERVICES

One often-overlooked aspect of collective bargaining impasse resolution under the PERA 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 their own impasse procedures is the section's requirement that any agreed or "independent" impasse-resolution procedures provide for their 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 eliminate a step in the otherwise-applicable statutory procedure 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.

However, 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. Those sections set out two separate procedures, both administered by PERB, for

resolving collective bargaining impasses. The type of employees within the affected bargaining unit determines which of these statutory variations applies to a given bargaining impasse. For bargaining units which include teachers licensed under Iowa Code chapter 272 who are employed by school districts, area education agencies or community colleges, the statutory impasse-resolution procedure consists of two steps: mediation, which if unsuccessful in producing a complete agreement, is followed by binding arbitration. For other bargaining units of public employees a three-step statutory procedure applies: mediation, followed by non-binding fact-finding, culminating in binding arbitration. PERB's professional staff and board members serve as mediators, and PERB also maintains a list of qualified ad hoc mediators, as well as lists of fact finders and 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. For bargaining units to which the three-step procedure applies, if mediation fails to resolve the dispute PERB issues a list of five fact finders, from which the parties are allowed to select. A fact-finding hearing is held, and the fact finder issues written recommendations for the resolution of the impasse. If either party rejects the recommendations, binding arbitration may be requested. For bargaining units to which the two-step procedure applies, if mediation has not produced a complete agreement upon the terms of a contract, arbitration may be requested. Upon receipt of an arbitration request, PERB provides a list of arbitrators to the parties from which one is selected to serve as the sole arbitrator or as chairperson of an arbitration panel. 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 success of Iowa's impasse-resolution process is evinced by the fact that since the PERA became effective there has been only one public-sector strike and, most significantly, approximately 95% of all bargaining impasses have been resolved without resort to binding arbitration. In FY 06, the agency received requests for mediation in 623 bargaining impasses (686 in FY 05), only 16 of which ultimately proceeded through arbitration--a pre-arbitration resolution rate of 97.3%. The tables below provide more detailed impasse data concerning FY 06.

HISTORICAL IMPASSE ACTIVITY

YEAR	TOTAL CERTIFIED UNITS	REQUESTS FOR IMPASSE SERVICES	MEDIATED SETTLEMENTS	FACT-FINDING REPORTS ISSUED	INTEREST ARB. AWARDS ISSUED
1975-76	421	305	195	44	25
1976-77	572	357	203	60	41
1977-78	638	440	253	36	27
1978-79	680	448	258	57	22
1979-80	724	475	323	43	28
1980-81	765	522	332	74	46
1981-82	800	568	347	42	43
1982-83	815	593	402	94	53
1983-84	826	611	399	71	41
1984-85	863	695	385	103	51
1985-86	863	792	356	94	45
1986-87	899	680	431	86	42
1987-88	935	673	430	70	38
1988-89	969	628	410	97	45
1989-90	992	673	457	110	48
1990-91	999	693	456	65	30
1991-92	1017	627	413	29	53
1992-93	1027	740	496	33	36
1993-94	1036	698	391	37	42
1994-95	1052	726	398	21	31
1995-96	1062	575	340	21	24

1996-97	1070	619	351	26	34
1997-98	1087	569	312	19	40
1998-99	1098	661	369	23	35
1999-00	1106	582	305	20	34
2000-01	1111	589	313	19	30
2001-02	1114	604	325	15	25
2002-03	1130	677	354	37	33
2003-04	1154	644	332	30	26
2004-05	1157	686	319	19	22
2005-06*	1171	623	303	17	16

*As of 11/21/06
there was 1
impasse still open.

FACT-FINDING REPORTS ISSUED

	<u>School District, Area Ed. Agencies & Comm. Colleges</u>	City	County	State	Other
79-80	24	15	4	0	0
80-81	41	22	9	2	0
81-82	25	11	4	0	2
82-83	60	15	17	1	1
83-84	48	9	13	0	1
84-85	70	16	15	2	0
85-86	54	14	26	0	0
86-87	60	8	18	0	0
87-88	41	14	15	0	0
88-89	68	17	12	0	0
89-90	80	17	13	0	0
90-91	41	14	9	1	0
91-92	4	12	13	0	0
92-93	5	14	14	0	0
93-94	5	21	11	0	0
94-95	4	12	4	1	0
95-96	2	10	9	0	0
96-97	4	12	9	1	0
97-98	6	7	6	0	0
98-99	6	7	10	0	0
99-00	5	8	7	0	0
00-01	3	8	8	0	0
01-02	2	5	8	0	0
02-03	6	18	12	1	0
03-04	2	15	13	0	0
04-05	1	8	10	0	0
05-06*	3	9	5	0	0

* As of 11/21/06

ARBITRATION AWARDS ISSUED

	School District, Area Ed. Agencies & Comm. Colleges	City	County	State	Other
79-80	12	11	4	0	1
80-81	21	17	5	3	0
81-82	11	13	18	0	1
82-83	20	11	19	1	2
83-84	22	14	4	1	0
84-85	25	17	7	2	0
85-86	18	11	14	2	0
86-87	18	13	11	0	0
87-88	12	17	9	0	0
88-89	35	8	2	0	0
89-90	34	8	6	0	0
90-91	16	7	2	5	0
91-92	30	13	10	0	0
92-93	16	12	6	2	0
93-94	26	14	2	0	0
94-95	15	12	3	1	0
95-96	10	9	5	0	0
96-97	21	8	3	2	0
97-98	20	8	12	0	0
98-99	21	7	6	1	0
99-00	14	12	8	0	0
00-01	12	11	4	3	0
01-02	6	8	11	0	0
02-03	9	5	19	0	0
03-04	7	10	9	0	0
04-05	5	9	7	1	0
05-06*	7	4	6	0	0

* As of 11/21/06

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 decided to 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.

During FY 06, the Board began working with the State's information technology providers to post all final agency decisions and PERB-related court decisions on the agency's website with a search engine (initially for at least those cases issued since June 30, 2005) which will allow researchers to easily find cases by various methods. This system should be operational sometime during FY 07. 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 has produced annual "Contract Summaries" which summarized major contract provisions for City, county, police/fire, and school district support units. During FY 06, the Board decided to discontinue the publication of these summaries and to instead place all collective bargaining agreements received by the agency on the website. This service should be operational in late 06, and will allow immediate access to more complete and accurate

information than could be provided through the contract summaries. Biographical data concerning fact-finders and arbitrators listed with PERB is now available on the website.

Copies of collective bargaining agreements, fact-finder's recommendations, and the awards of interest and grievance arbitrators are available from PERB and from a network of community college and other libraries throughout the state. Persons may continue to purchase subscriptions to receive monthly mailings of PERB and court decisions and/or decisions of fact-finders and arbitrators. The Board also makes available the impasse-resolution information contained in PERB's data files and provides access to the PERB library for research purposes.

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

VI. CERTIFIED EMPLOYEE ORGANIZATION REPORTS

Pursuant to Iowa Code section 20.25, PERB monitors certain internal operations of certified employee organizations. It maintains copies of every certified employee organization's constitution and by-laws, and updates these files as changes in the organizations' governing documents occur. The Board also receives, reviews and maintains each certified employee organization's statutorily-required annual report, which includes a financial statement and an audit. During FY 06, PERB received reports from 624 certified employee organizations representing the 1,168 collective bargaining units for which a representative is currently certified.

VII. PERB'S INTEREST-BASED COOPERATION (IBC) PROBLEM-SOLVING PROCESSES

During its 32-year history, PERB has provided mediation, training, and facilitation services to state, county, city, and school district employees and their employers. It is PERB's statutory duty to promote harmonious and cooperative relationships between government and its employees which motivates PERB's interest-based cooperation (IBC) problem-solving processes.

◇ INTEREST-BASED BARGAINING ◇

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

The legal duty to bargain a contract requires labor and management to follow an impasse resolution process contained in the Public Employment Relations Act (PERA). This process includes mediation, fact-finding, and arbitration as the legislatively mandated steps to resolve disputes over the list of mandatory subjects of bargaining contained in the PERA. Labor and management have typically used traditional, adversarial bargaining methods and strategies under the PERA'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. First, a commitment from labor and management leadership to move from an adversarial to a joint problem-solving process. Second, the use of consensus decision-making. Third, an agreement on specific groundrules; that is, how the parties will conduct themselves during contract negotiations.

IBB contains four steps in which PERB serves as facilitators and trainers. The IBB steps are:

- **Readiness Assessment.** A meeting conducted by a PERB facilitator at which labor and management leaders discuss their needs and expectations for a non-adversarial process.
- **Overview.** A meeting attended by bargaining team members at which a PERB facilitator outlines the basic elements of consensus decision-making and effective meeting groundrules.
- **Training.** Based on labor's and management's assessment of needs and expectations, as well as feedback during the overview, a PERB facilitator customizes a training session to assist bargaining teams to implement the IBB process.
- **Implementation.** Labor and management implement the IBB process, and a PERB facilitator assists the parties in developing specific groundrules and otherwise generally assists labor and management to stay focused and on task throughout the negotiations process.

Significantly, as the name suggests, IBB is founded on the principles that effective contract negotiations are based on interests and interdependence, not positions. That is, even though labor and management know that they can influence each other's goals, they recognize that they need each other in order to accomplish their goals.

The number of IBB cases facilitated by PERB has increased primarily with school districts and education associations using IBB instead of the traditional, adversarial process to settle their collective bargaining agreements.

◇ 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 the LMC's statement of purpose, and establish the LMC's groundrules. An LMC's statement of purpose varies according to labor's 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 at the work place. In addition to establishing procedural groundrules, *i.e.* who are the members of the LMC and when the LMC will meet, the LMC also establishes substantive groundrules including respecting each other's opinions, developing a working definition of consensus decision-making, and requiring the LMC to focus on problems, not people.

The number of LMCs facilitated by PERB have increased primarily with state, county, and cities, and their respective unions and associations using LMCs to address workplace and health insurance issues.

◇ GRIEVANCE MEDIATION ◇

Grievance mediation is an alternative dispute resolution process designed to address and resolve workplace disputes. In grievance mediation, labor and management explore possible "win-win" settlements of grievances in order to avoid the "win-lose" scenario which results from a grievance arbitration. PERB provides experienced mediators to assist parties in resolving grievances prior to arbitration. PERB's experience has been that, in approximately 90% of the

cases, mediation settles the issue without the need for arbitration. Grievance mediation is not a substitute for arbitration. However, if the parties can reach a mutually acceptable resolution this process can save arbitration expenses.

The number of grievance cases mediated by PERB have increased primarily with school districts, state, county and cities, and their respective unions and associations, using mediation to address contract interpretation issues.

FY 2006 CASE REVIEW

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. Chapter 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 06 the agency issued two Declaratory Orders.

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 illegal 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, the parties petition 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 issues a short-form "Preliminary Ruling" on the matter, designating each proposal at issue as mandatory, permissive or illegal, 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 60 days and a final ruling will be issued.

During FY 06, the agency issued preliminary negotiability rulings concerning numerous proposals in three different cases and issued final negotiability rulings concerning numerous proposals in seven cases.

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 06 the Board was not required to issue any rulings in this area.

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 06, no election objection cases were filed with the agency.

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 06 the Board and its administrative law judges issued approximately 42 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 06, one opinion of the Court of Appeals and three district court opinions were issued on judicial review of PERB decisions:

- *Giles v. PERB*, Ct. App. 6-070/05-0322 (3/1/06): The Court of Appeals affirmed the Polk County District Court's dismissal of a petition for judicial review on PERB's motion, due to the petitioner's failure to substantially comply with the jurisdictional service requirements of Iowa Code section 17A.19.
- *Kunzman v. PERB*, Polk Co. CV5682 (10/13/05): The District Court affirmed PERB's decision that an employee had failed to establish that his certified representative's refusal to arbitrate the employee's grievance against his employer was arbitrary, discriminatory or in bad faith and breached the union's duty of fair representation imposed by Iowa Code section 20.17.
- *Des Moines Police Bargaining Unit Assn. v. PERB*, Polk County CV5738 & 5739 (12/8/05): In consolidated proceedings on two PERB decisions, the District Court affirmed PERB's decisions that (1) a provision of the collective bargaining agreement between the employer and union concerning the content of employee personnel files and employee discipline was a permissive, rather than mandatory, subject of bargaining pursuant to Iowa Code section 20.9 and (2) that the employer's petition seeking PERB's negotiability ruling on a provision of the parties' existing collective agreement was not untimely when filed at the fact-finding stage of impasse resolution procedures for a successor agreement.

- *State of Iowa v. PERB*, Polk Co. CV5224 (2/6/06): The District Court reversed PERB's decision that the Iowa Code section 20.1(3) grant of authority to PERB to fashion "appropriate remedial relief for violations of this chapter" empowered PERB to remedy non-willful violations of chapter 20 which do not rise to the level of prohibited practices within the meaning of section 20.10. (PERB has appealed the District Court's decision to the Iowa Supreme Court, where the case is pending.)

LISTS OF QUALIFIED NEUTRALS MAINTAINED BY PERB

The PERA requires PERB to maintain lists of qualified mediators, fact-finders 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, 2006, PERB's neutral lists included 71 grievance arbitrators (16 of whom are Iowans), 29 active ad hoc mediators (28 of whom are Iowans), 62 fact-finders and interest arbitrators (14 of whom are Iowans), and 27 teacher termination adjudicators (4 of whom are Iowans).

During FY 06, one neutral was added to PERB's neutral lists.

AGENCY PERFORMANCE PLAN

Mission:

To promote harmonious and cooperative relationships between government and its employees without disruption of public services, via the expert and timely services of a neutral labor relations agency.

CORE FUNCTION: Adjudication and dispute resolution

Outcome Measure: Percent of requests for service resolved during the impasse year.

Agency goal was to resolve 90% request for services.

Result was 94.5%.

SERVICES, PRODUCTS, ACTIVITIES (SPA):

1. Bargaining unit determination

PERFORMANCE MEASURE:

- A. Percent of cases settled by stipulation of the total number of cases filed.
Agency goal was 85%.
Result was 93.75%.

2. Adjudication

PERFORMANCE MEASURE:

- A. Percent of cases settled by case processor
Agency goal was 75%.
Result was 87.97%.
- B. Percent of cases assigned to a hearing officer (Administrative Law Judge)
Agency goal was 25%.
Result was 10.67%.
- C. Percent of timely issued decisions per statute
Agency goal was 50%.
Result was 50%.

3. Impasse Services

PERFORMANCE MEASURE

- A. Of the total number of requests for mediation the actual number that require mediation.

Agency goal was 50%.
Result was 51.67%.

- B. Percent of cases where the parties receive a list of qualified fact-finders within ten calendar days of their first scheduled mediation, when fact-finding is prescribed, absent an independent impasse agreement.

Agency goal was 100%.
Result was 86.36%.

- C. Percent of cases in which arbitration was requested, a list of qualified arbitrators was mailed to the parties within three business days of the Board's receipt of the timely request, absent an independent impasse agreement.

Agency goal was 100%.
Result was 100%.

- D. Of the total number of requests for alternative dispute resolution services the number of training, facilitation and/or grievance mediations held.

Agency count goal was 252.
Actual count was 176.

PERFORMANCE TARGET:

Percent-Outcome on all measures except 3D, which is Count-Output.

**PERB BUDGET
FISCAL YEARS 2005 & 2006**

RECEIPTS	ACTUAL FY 05	ACTUAL FY 06
Appropriations	895,752	923,850
Salary Adjustment		106,529
DAS Distribution	28,098	228
Transfer	10,000	20,000
Miscellaneous Income	<u>35,066</u>	<u>62,569</u>
TOTAL	968,916	\$1,113,176
 EXPENDITURES		
101 Personal Services	849,947	960,041
202 In State Travel	21,037	28,864
205 Out of State Travel	3,571	3,593
301 Office Supplies	5,163	6,921
309 Printing & Binding	9,744	18,950
313 Postage	7,253	9,291
401 Communications	8,801	8,386
406 Outside Services	20,006	38,090
409 Outside Repairs	4,837	1,530
414 Reimbursements	20,634	23,825
416 ITS Reimbursements	6,146	6,564
417 Workers Compensation	443	468
503 Equip Non-Inventory	11,279	245
504 Data Processing - Inventory	0	0
505 Data Processing-Non-Inventory	0	0
510 IT Equipment	0	1,725
705 Refunds/Other	<u>0</u>	<u>2,100</u>
TOTAL	968,861	\$1,110,593
 REVERSION	 55	 2,583