



# STATE OF IOWA

THOMAS J. VILSACK  
GOVERNOR

PUBLIC EMPLOYMENT RELATIONS BOARD  
JAMES R. RIORDAN, CHAIR

SALLY J. PEDERSON  
LT. GOVERNOR

November 30, 2005

Margaret Thompson  
Chief Clerk  
Second Floor, Capitol  
-- L O C A L --

Dear Representative Thompson:

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 2005. The annual report presents an insight into the daily operation of the agency and the value that PERB brings to the citizens of Iowa.

2005 marks the 31st 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 686 bargaining impasses requesting mediation in 2005, only 22 went on to arbitration. That is a 96.8% 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 the two ALJ positions so that the agency can provide timely services to the public.

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

Sincerely,

A handwritten signature in cursive script that reads "James R. Riordan".

James R. Riordan  
Chair

**RECEIVED**

DEC 27 2005

**HOUSE OF REPRESENTATIVES**

**IOWA**

**PUBLIC EMPLOYMENT RELATIONS BOARD**

**ANNUAL REPORT**

**FY 2005**

**July 1, 2004 to June 30, 2005**

**TABLE OF CONTENTS**

**TABLE OF ORGANIZATION** ..... 1

**MISSION STATEMENT** ..... 2

**OVERVIEW** ..... 3

**SUMMARY OF PERB DUTIES** ..... 4

**BARGAINING UNIT DETERMINATIONS/REPRESENTATION**

**ELECTIONS** ..... 4

**ADJUDICATORY FUNCTIONS** ..... 4

**COURT ACTION: JUDICIAL REVIEW** ..... 5

**IMPASSE RESOLUTION SERVICES** ..... 5

**RESEARCH & INFORMATION SERVICES** ..... 8

**CERTIFIED EMPLOYEE ORGANIZATION REPORTS** ..... 8

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

**PROCESSES** ..... 8

**FY 2005 CASE REVIEW** ..... 10

**BOARD - DECLARATORY ORDERS** ..... 10

**BOARD - EXPEDITED NEGOTIABILITY RULINGS** ..... 10

**BOARD - OBJECTIONS TO IMPASSE** ..... 11

**OBJECTIONS TO ELECTIONS** ..... 11

**CONTESTED CASE DECISIONS** ..... 11

**JUDICIAL REVIEW DECISIONS** ..... 11

**LISTS OF QUALIFIED NEUTRALS MAINTAINED BY PERB** ..... 12

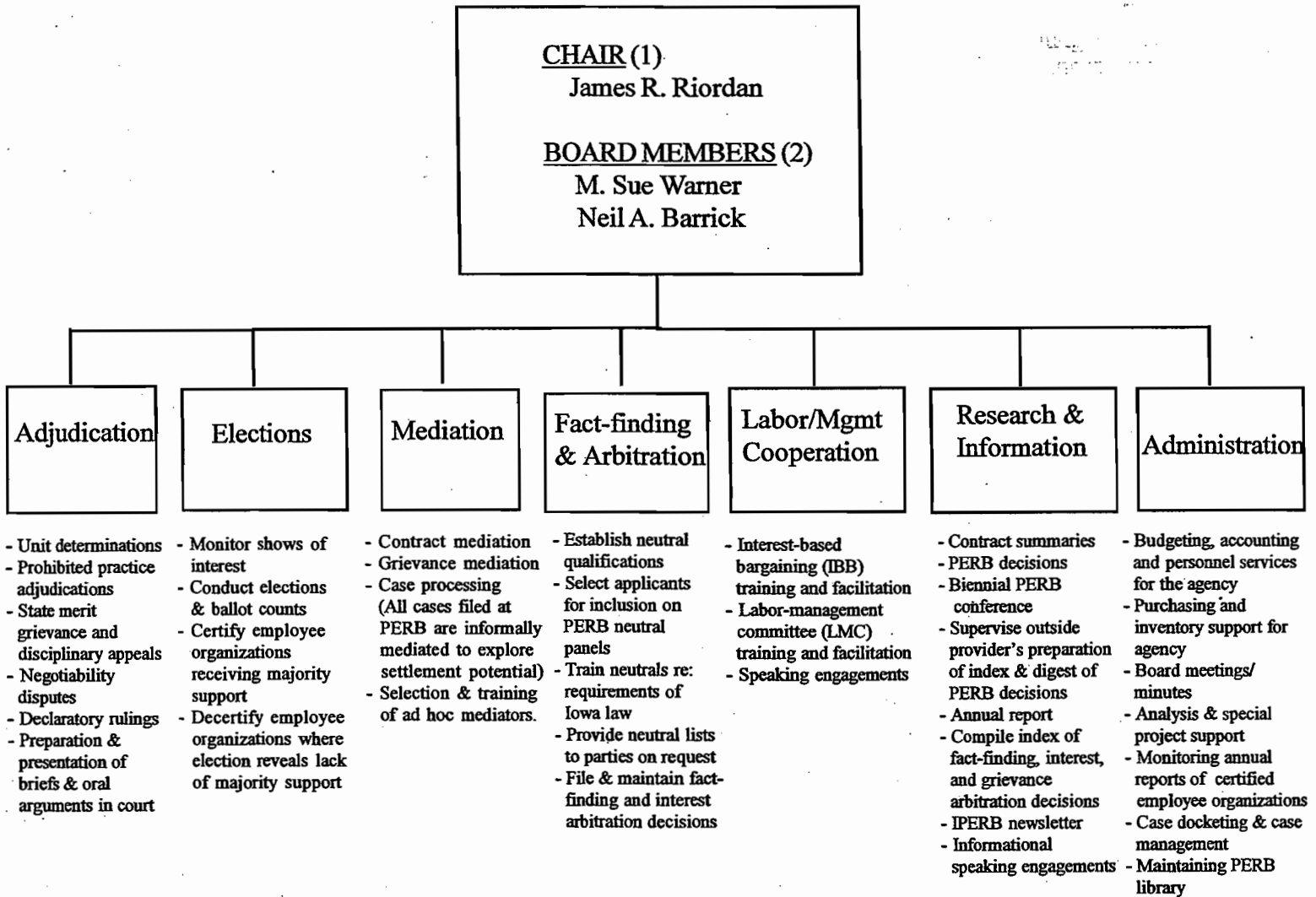
**AGENCY PERFORMANCE PLAN** ..... 12

**PERB BUDGET** ..... 14

# IOWA PUBLIC EMPLOYMENT RELATIONS BOARD

## TABLE OF ORGANIZATION

Total Staff = 10



**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: (3)**

Leisa Luttrell	Human Resources Associate
Barbara Marchant	Administrative Secretary
Sharon Wilkerson-Moore	Legal Secretary 3

510 East 12th St. Ste. 1B  
Des Moines, IA 50319  
515/281-4414      FAX 242-6511  
e-mail address: [iaperb@iowa.gov](mailto:iaperb@iowa.gov)  
<http://iowaperb.iowa.gov>

## 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 05, PERB provided impasse resolution services (mediators, fact finders and/or arbitrators) in 686 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 62 petitions in FY 05 (60 in FY 04) raising issues concerning the composition of bargaining units. Petitions to determine the composition of new 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 05 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 05, PERB processed 35 election petitions (53 in FY 04) and conducted 35 elections (37 in FY 04). The number of representation elections during FY 05 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 1,157 during FY 05.

### 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 05, 165 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 141 such filings in FY 04).

See page 10 for further review of FY 05 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 05, six new petitions for judicial review were filed in the district courts. At the close of the fiscal year, three cases were pending in the district courts.

During the fiscal year, five cases were judicially resolved by the district courts, and two appeals from those decisions were taken.

See page 11 for a review of FY 05 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 05, the agency received requests for mediation in 686 bargaining impasses (644 in FY 04), only 22 of which ultimately proceeded through arbitration—a pre-arbitration resolution rate of 96.8%. The tables below provide more detailed impasse data concerning FY 05.

YEAR	TOTAL CERTIFIED UNITS	TOTAL 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

\* As of 10/2/05 there were 2 impasses still open.

	<u>School District, Area Ed. Agencies &amp; Comm. Colleges</u>	<u>City</u>	<u>County</u>	<u>State</u>	<u>Other</u>
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

**ARBITRATION AWARDS ISSUED**

	<u>School District, Area Ed. Agencies &amp; Comm. Colleges</u>	<u>City</u>	<u>County</u>	<u>State</u>	<u>Other</u>
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

Rev. 11/30/05

## **V. RESEARCH & INFORMATION SERVICES**

Pursuant to Iowa Code sections 20.1 and 20.6, PERB collects, distributes and makes available to the public a wide range of information relating to public employment and public sector collective bargaining in Iowa. Through its PERB Information Service network of subscribing libraries around the state, PERB makes available copies of PERB decisions and PERB-related court decisions, which are mailed to the libraries. The libraries also periodically receive supplements to the Index and Digest of those decisions, as well as an index to fact-finding recommendations and arbitration awards issued each year. The recommendations and awards are indexed according to author, public employer and issues submitted. Copies of all fact-finding recommendations, arbitration awards, and collective bargaining agreements are on file at PERB, and are made available to the public at the cost of copying. 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.

Each year the Board publishes four contract summary volumes which summarize the major provisions of public sector collective bargaining agreements submitted to PERB by public employers. These contract summaries are then made available to any interested person, at the agency's cost. During FY 05 approximately 400 collective bargaining agreements were analyzed and summarized by PERB staff.

## **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 05, PERB received reports from 604 certified employee organizations representing the 1,157 collective bargaining units for which a representative is currently certified.

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

During its 31-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, without charge, 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, without charge, 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, without charge, have increased primarily with school districts, state, county and cities, and their respective unions and associations, using mediation to address contract interpretation issues.

---

**FY 2005 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 of any statutory provision, rule or other written statement of law or policy, decision or order 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.

**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 05, the agency issued preliminary negotiability rulings concerning numerous proposals in six 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 05 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 05, 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 rulings, petitions seeking the resolution of negotiability disputes nor objections to continued impasse-resolution procedures constitute true contested cases.

During FY 05 the Board and its administrative law judges issued approximately 33 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 05, three district court opinions were issued on judicial review of five PERB decisions:

- *Giles v. PERB*, Polk County No. CV5366 (12/6/04): On PERB's motion, the district court dismissed the judicial review petition due to the Petitioner's failure to substantially comply with the jurisdictional service requirements of Iowa Code section 17A.19.

- *AFSCME v. PERB and Dallas County*, Polk County No. CV5286 and *AFSCME v. PERB*, Polk County No. CV5287 (4/8/05): In a consolidated proceeding involving three separate PERB decisions which focused on the assignment of fault for two public employers' and the same union's failure to complete chapter 20's bargaining and impasse-resolution procedures by the applicable deadline, the district court reversed the PERB determinations. Because the court's decision was very fact-dependent and was not viewed by the Board as damaging to the statute's bargaining scheme, it elected not to appeal notwithstanding what the Board viewed as some obvious errors by the court.
- *Waterloo Education Association v. PERB and Waterloo Community School District*, Polk County No. AA5414 (6/7/05): The district court affirmed PERB's decision that existing Iowa Supreme Court precedent required the conclusion that a collective bargaining proposal advanced by the employee organization was only a permissive, rather than a mandatory, subject of bargaining.

---

### LISTS OF QUALIFIED NEUTRALS MAINTAINED BY PERB

---

The PERA requires PERB to maintain lists of qualified grievance arbitrators, mediators, fact-finders and interest arbitrators, and Iowa Code chapter 279 requires PERB to maintain a list of qualified teacher-termination adjudicators.

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, 2005, PERB's neutral lists included 71 grievance arbitrators (15 of whom are Iowans), 31 active ad hoc mediators (30 of whom are Iowans), 61 fact-finders and interest arbitrators (14 of whom are Iowans), and 29 teacher termination adjudicators (4 of whom are Iowans).

During FY 05, 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.

**SERVICES, PRODUCTS, ACTIVITIES (SPA):**

1. Bargaining unit determination

**PERFORMANCE MEASURE:**

- A. Percent of cases settled by stipulation of the total number of cases filed.

2. Adjudication

**PERFORMANCE MEASURE:**

- A. Percent of cases settled by case processor
- B. Percent of cases assigned to a hearing officer (Administrative Law Judge)
- C. Percent of timely issued decisions per statute

3. Impasse Services

**PERFORMANCE MEASURE**

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

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

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.

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

**PERFORMANCE TARGET:**

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



**PERB BUDGET  
FISCAL YEARS 2004 & 2005**

<b>RECEIPTS</b>	<b>ACTUAL FY 04</b>	<b>ACTUAL FY 05</b>
Appropriations	869,156	895,752
Salary Adjustment	16,556	
DAS Distribution		28,098
Governor Recommendation	32,584	
Deappropriation (2.5%)	-20,289	
Transfer		10,000
Miscellaneous Income	<u>32,775</u>	<u>35,066</u>
<b>TOTAL</b>	<b>930,782</b>	<b>968,916</b>
 <b>EXPENDITURES</b>		
101 Personal Services	823,510	849,947
202 In State Travel	20,689	21,037
205 Out of State Travel	1,287	3,571
301 Office Supplies	5,690	5,163
309 Printing & Binding	15,043	9,744
313 Postage	5,642	7,253
401 Communications	12,329	8,801
406 Outside Services	18,652	20,006
409 Outside Repairs	2,954	4,837
414 Reimbursements	702	20,634
416 ITS Reimbursements	3,929	6,146
417 Workers Compensation	464	443
503 Equip Non-Inventory	8,150	11,279
504 Data Processing - Inventory	4,744	
505 Data Processing-Non-Inventory	<u>0</u>	<u>0</u>
<b>TOTAL</b>	<b>923,785</b>	<b>968,861</b>
 REVERSION	 6,997	 55