

IOWA
PUBLIC EMPLOYMENT RELATIONS BOARD

ANNUAL REPORT FY 2018

July 1, 2017 to June 30, 2018

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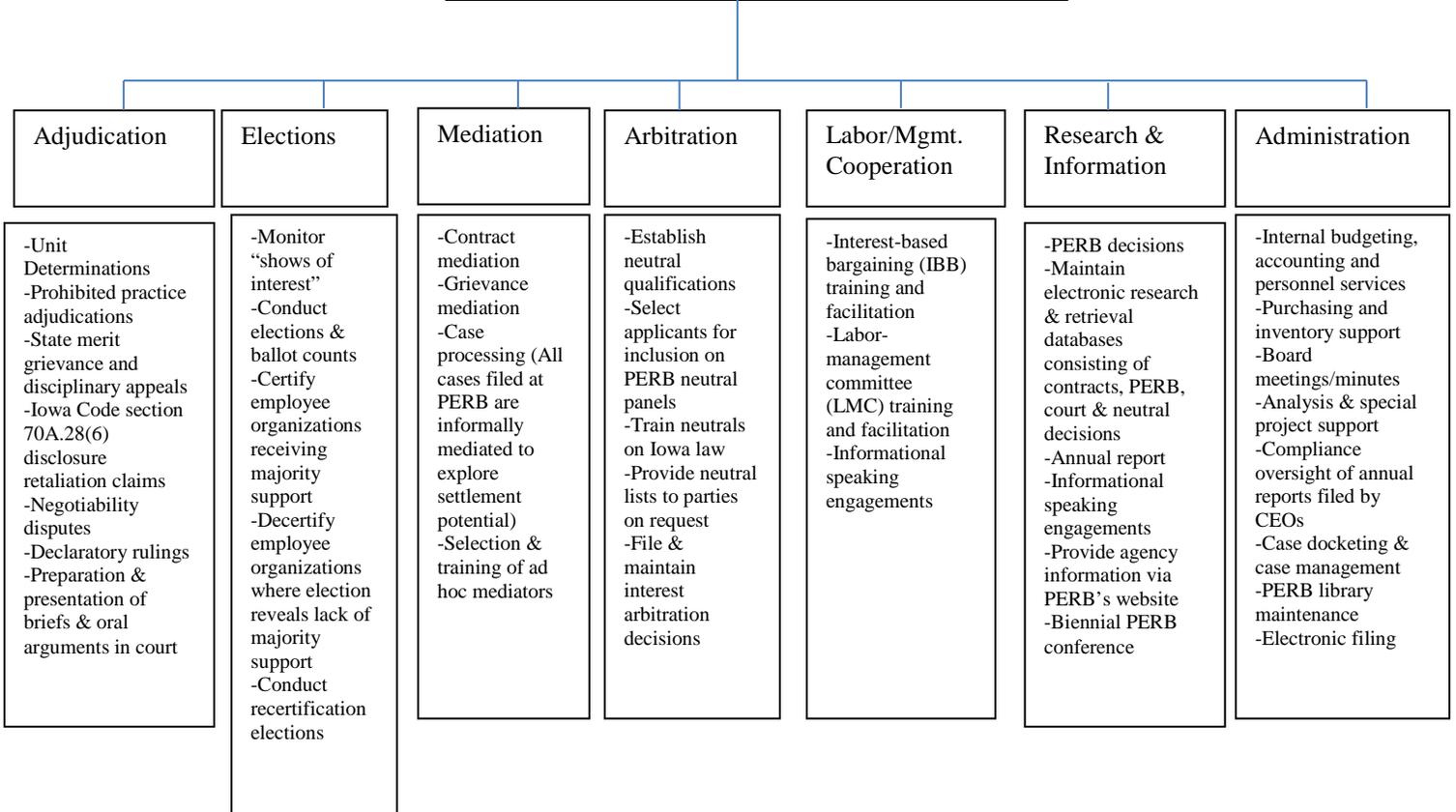
IOWA PUBLIC EMPLOYMENT RELATIONS BOARD

TABLE OF ORGANIZATION

FTE = 11

INTERIM CHAIR
Jamie Van Fossen

BOARD MEMBERS
Mary T. Gannon
Vacant



PROFESSIONAL STAFF

Susan Bolte	Administrative Law Judge
Amber DeSmet	Administrative Law Judge
Diana Machir	Administrative Law Judge
Jasmina Sarajlija	Administrative Law Judge
Patrick Thomas	Administrative Law Judge

SUPPORT STAFF

Leisa Luttrell	Executive Secretary
Stephanie Jewell	Para-Legal
Valerie Van Horne	Clerk-Specialist

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PERB's MISSION STATEMENT

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 and provides:

- 1) 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.
- 2) 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:
 - a. Determining appropriate bargaining units and conducting representation elections.
 - b. 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.
 - c. 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.
 - d. 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.
 - e. Providing mediators and arbitrators to resolve impasses in negotiations.
 - f. Collecting and disseminating information concerning the wages, hours, and other conditions of employment of public employees.
 - g. Preparing legal briefs and presenting oral arguments in the district court, the court of appeals, 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 (the Act), Iowa Code Chapter 20.

Chapter 20 defines the collective bargaining rights and duties of Iowa public employers and public employees. 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.

Chapter 20 provides that public employees may organize and bargain collectively with their employers through labor organizations of the employees' choosing. To assure that representation by a labor organization is truly the employees' choice, secret ballot representation elections are conducted by PERB. To ensure 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, Chapter 20 defines certain prohibited labor practices and provides PERB with the statutory authority to fashion appropriate remedial relief for violations of Chapter 20.

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, Chapter 20 contains a detailed procedure for the resolution of collective bargaining impasses.

Iowa Code sections 20.2 (d) 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. Iowa Code section 70A.28 also directs PERB to hear and decide appeals filed by certain state employees who assert they were retaliated against after disclosing information which purportedly evidenced a violation of law or rule, mismanagement, a gross abuse of funds, an abuse of authority, or a substantial and specific danger to public health or safety.

Since its inception, PERB has certified representatives for approximately 1,620 bargaining units and has issued approximately 1,800 formal decisions. During FY 18, PERB provided impasse resolution services (mediators and/or arbitrators) in 280 disputes involving county, city, school district, area education agency and community college employers and employees.

On February 17, 2017, Governor Terry Branstad signed House File 291 which made significant changes to Chapter 20. The law was effective upon enactment. The law:

- Makes distinctions between the bargaining rights of public safety bargaining units and nonpublic safety bargaining units leaving the list of mandatory subjects largely unchanged for public safety bargaining units but limiting nonpublic safety units to the mandatory subject of base wage.
- Added the topics of dues deductions and payroll deductions for PACS and other political contributions for all union employees to the list of prohibited subjects of bargaining.
- Limits arbitration awards on the topic of base wages to the lesser of three percent or a percentage equal to the increase in the consumer price index for all urban consumers in the midwest region. PERB updates this data monthly on its web site.
- Requires recertification elections for all unions approximately 10 months before the expiration of the applicable collective bargaining agreement.

As a result of immediate enactment, PERB began working on amendments to administrative rules as the changes were effective mid-bargaining season. The rules also had to include the

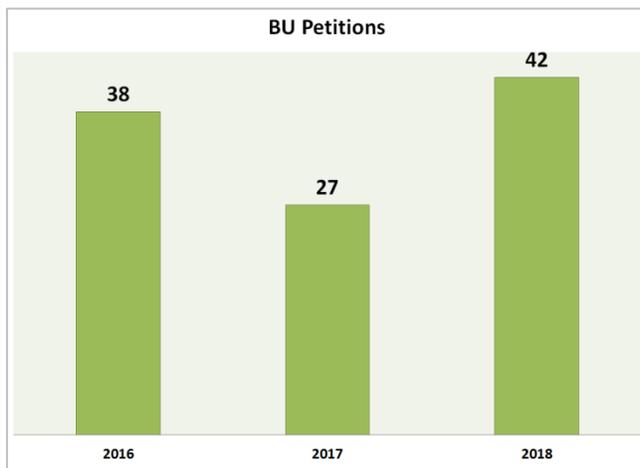
recertification election rules as the first set of elections were held in the fall of 2017. Emergency rules providing for the transition and implementation of HF 291's provisions were adopted and became effective on February 22, 2017. The staff issued an RFP for a vendor to conduct the retention and recertification elections for the almost 500 units up for retention and recertification. The Notice of Intent to Award the contract to the election vendor was issued in early June, 2017.

In order to ensure Iowans, employers and employees knew about the changes to the law and the new recertification process, PERB held almost 40 training sessions around the state regarding the new law focusing on the recertification elections beginning in late FY 17.

Fiscal 2018 was a year of change in the world of public employment relations in Iowa. PERB continues to serve Iowans as a neutral state agency dedicated to enforcing the law in an impartial manner. While some state laws have changed and other state laws have remained the same, in both cases, PERB continues to work to enact Iowa law in a manner that fosters harmonious and cooperative relationships throughout our state.

SUMMARY OF PERB DUTIES

I. BARGAINING UNIT DETERMINATIONS/REPRESENTATION ELECTIONS



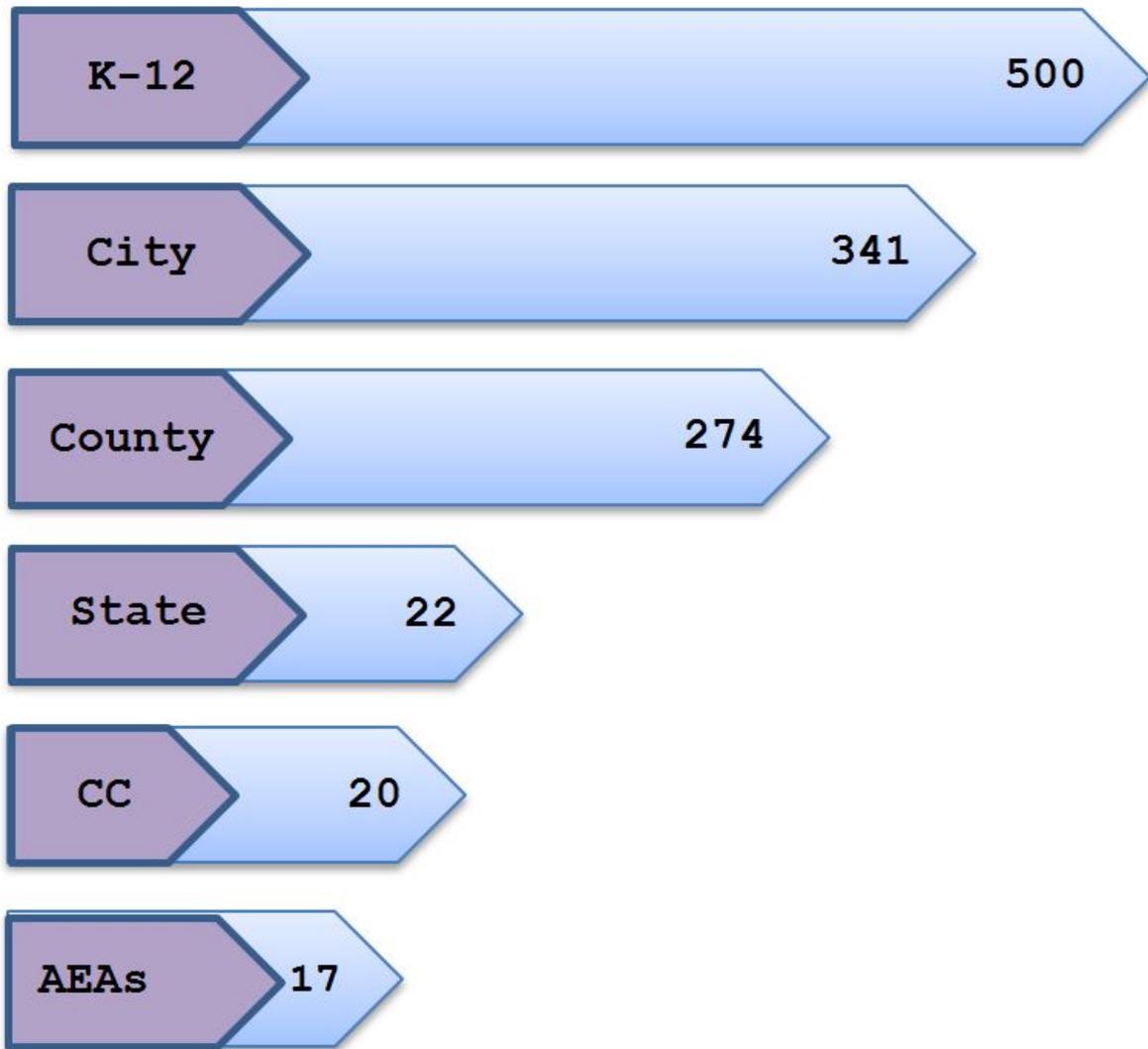
Bargaining unit questions continue to generate a great deal of agency activity. As part of its statutory responsibility to determine appropriate bargaining units and conduct representation elections under Iowa Code sections 20.13-20.15, the Board received 42 petitions in FY 18. Petitions to amend the 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. During FY 18, 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. For these elections the average participation rate was 82.08% ranging from 38% to 100%.

Representation elections constitute the most visible PERB activity in these statutory areas. During FY 18, all elections were conducted utilizing PERB's established mail-

During FY 18, PERB processed 13 election petitions and conducted 11 elections. The number of represented public sector bargaining units in Iowa was 421 in 1975. As of June 30, 2018, there were 1,174 represented bargaining units. The breakdown is reflected on the next page.

Number of Units based upon Employer Type – please note an individual employer may have more than one unit.



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 Chapter 20, 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 orders (cases seeking PERB's interpretation of the Act's provisions);
- negotiability disputes (cases interpreting the scope of the mandatory subjects of bargaining);
- objections to elections; and,
- public safety unit determinations (cases seeking PERB's determination whether a unit is one considered public safety or one considered non-public safety).

Although some acts allegedly 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. Additionally, certain state employees may file an appeal with PERB claiming retaliation for the disclosure of information that may provide evidence of a violation of law or rule, mismanagement, a gross abuse of funds, an abuse of authority or a substantial and specific danger to public health or safety under Iowa Code section 70A.28.

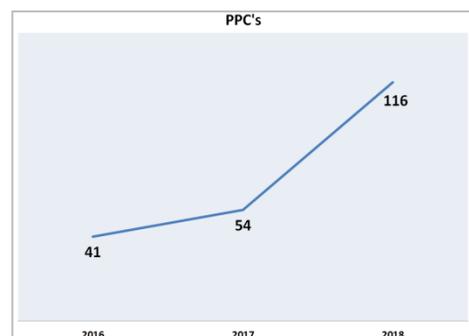
Each petition or complaint filed with the agency is initially assigned to a PERB Administrative Law Judge (ALJ) who, by working with the parties involved, attempts to informally resolve the matter prior to a hearing. If all issues are not resolved, the case is referred to either the Board or to another PERB ALJ and a hearing is held. In cases assigned to another PERB 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 order petitions 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 ALJs act as grievance mediators in cases involving disputes arising under collective bargaining agreements if requested by both parties.

During FY 18, 116 prohibited practice complaints, petitions for declaratory orders, state employee grievance or discipline appeals, petitions for resolution of negotiability disputes, petitions for public safety unit determinations, and other non-unit cases were filed with PERB.

PERB's caseload increased substantially in FY 18, due to the increased number of state employee grievance appeals from 7 in FY17 to 41, and prohibited practice complaints which increased from 24 in FY17 to 41.



III. COURT ACTION: JUDICIAL REVIEW

In addition to serving as ALJs, PERB 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.

During FY 18, five new petitions for judicial review were filed in district courts in addition to an appeal of a district court ruling filed in the appellate court. In two of the district court cases, the respective petitioner filed a voluntary dismissal following PERB's filing of a motion to dismiss. Two decisions judicially reviewing final agency action/PERB decisions were issued in FY 18. For highlights of the two decisions, see "Judicial Review Decisions" at p. 15.

At the conclusion of FY 18, two cases were pending before the district court and one case was pending before the appellate court.

IV. IMPASSE RESOLUTION SERVICES

One often-overlooked aspect of collective bargaining impasse resolution under Chapter 20 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 the parties own impasse procedures is the section's requirement that any agreed or "independent" impasse-resolution procedures provide for the parties 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 change the date for exchange of final offers 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.

If the parties fail to agree upon independent impasse procedures as contemplated by Iowa Code section 20.19, the statutory impasse-resolution procedures set out in Iowa Code sections 20.20-20.22 apply. For all bargaining units the statutory impasse-resolution procedure consists of two steps – first, mediation, which if unsuccessful in producing a complete agreement, is followed by binding arbitration. PERB's professional staff and board members serve as mediators. PERB also maintains a list of qualified ad hoc mediators, as well as lists of arbitrators to assist in the resolution of bargaining impasses. Last year, PERB staff and Commissioners from the Federal Mediation and Conciliation Service (FMCS) provided mediation services.

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. If mediation does not produce a complete agreement upon the terms of a contract, arbitration can be requested. Upon receipt of an arbitration request, PERB provides a list of five arbitrators to the parties from which both parties strike two until one arbitrator is left on the list. 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 numbers tell the story of how successful Iowa's impasse resolution processes work. Due to the passage of HF 291 mid-bargaining season and the significant changes in the scope of negotiations, there were fewer requests for impasse than in previous years. In FY 18, the agency received requests for mediation in 280 bargaining impasses, only 2 of these impasses ultimately proceeded through arbitration.

The table below provides more detailed impasse data concerning the previous five years.

HISTORICAL IMPASSE ACTIVITY

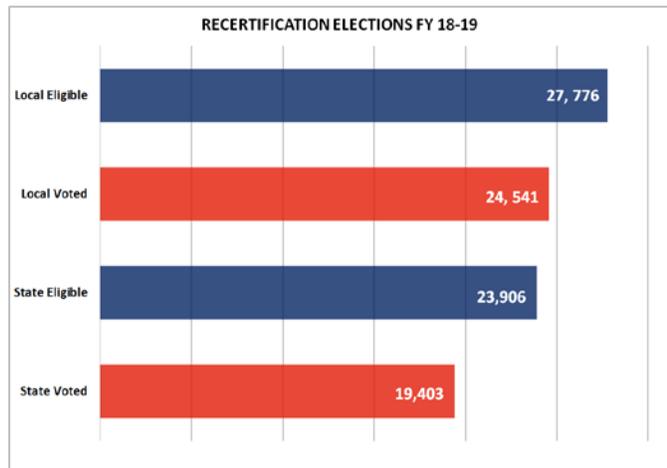
YEAR	TOTAL REPRESENTED UNITS	REQUESTS FOR IMPASSE SERVICES	MEDIATED SETTLEMENTS	INTEREST ARBITRATION AWARDS ISSUED
2013-14	1206	512	181	14
2014-15	1206	607	192	14
2015-16	1203	469	143	10
2016-17	1209	353	46	2
2017-18	1174	280	57	2

V. RETENTION AND RECERTIFICATION ELECTIONS

Upon passage of House File 291, all bargaining units must now undergo retention and recertification elections at least every five years. The elections are held approximately 8-10 months before the expiration of the bargaining unit and the employer's applicable collective bargaining agreement.

PERB contracted with an election services vendor to provide telephonic and web-based voting for the vast majority of these elections. The vendor provides the platform for voting, provides voters with technical assistance through a help desk, receives the ballots, and provides PERB with the tally of all the elections. PERB manages all communications with the employers, employees and certified employee organizations prior to and after the election.

To ensure the parties and voters were aware of the changes to the law and the new election process, PERB held training sessions around the state. Labor and management representatives, as well as members of the public and media, were all invited. The meetings focused on the recertification election process including the duties of the employer, employee organization and the election process itself.



Multiple training tools and informational documents were available on the PERB web site.

In FY 18, PERB conducted 484 recertification elections in three different election periods. In September, 2017 PERB conducted 13 elections by mail ballot. In October, 2017 PERB conducted 468 elections through telephonic and web-based voting using the vendor. In March, 2018, PERB conducted 3 elections by mail ballot.

There were 34,605 total eligible voters in FY 18 elections, and 30,406 of those employees voted, approximately an 88% participation rate. In October 2018, PERB conducted recertification elections, which included State employees. There were 51,682 total eligible voters in that election and 43,944 of those employees voted, approximately an 85% participation rate.

As a result of the FY 18 recertification elections, 453 out of the 484, or approximately 94% of the bargaining units recertified their representative.

VI. 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. PERB utilizes a powerful search tool and offers a comprehensive collection of documents. There are four databases of full-text documents in the system: Contracts, Contract Archive, Neutral Decisions and PERB and Court Decisions. For each database, the system displays an index of its full-text documents, allows electronic access to these documents and provides search functions to facilitate research by any user. The databases are accessible through the "Searchable Databases" link on the PERB website's homepage which allows public access. 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.

The database is searchable and allows immediate access to more complete and accurate information than could be provided through the contract summaries. Biographical data concerning arbitrators listed with PERB is also available on the website. Upon passage of HF 291, employers are now required to file the signed contracts with PERB within 10 days of the date the agreement was entered into.

As of FY 16, fact finding recommendations (formerly a step in the impasse-resolution procedures) and interest arbitration decisions since 1974 are now retrievable via the PERB electronic filing system on the PERB web site. Copies of collective bargaining agreements, some grievance arbitration awards and impasse resolution information are also available on the PERB web site. The PERB library is available to the general public for research purposes.

VII. ELECTRONIC FILING

In 2014, PERB began moving to a mandatory electronic filing system. Statutory changes were made during 2014 which included the hiring of a technology development company to design an all-inclusive system for the filing, service, management and storage of all documents in adjudicatory proceedings before the agency. Three distinct technological products comprise the e-filing system:

- an online filing interface – the online filing interface interacts with the document management system and the case management system to recall information for the user to access and allows the user to submit information and documents to the document management system and case management system. The online filing interface is accessible through the “eFiling” link on the PERB website’s homepage.
- case management system – the case management system stores the data associated with a case and allows for queries to be run against that data.
- document management system – the document management system stores all documents filed with the agency.

PERB’s online filing system became operational in FY 15. All cases initiated on or after January 1, 2015, and all employee organization annual reports submitted after February 22, 2017 must be electronically filed. Additionally, PERB also utilizes its online filing system when filing notices and information pertaining to the recertification elections now required by HF 291.

Based off the same platform, PERB’s online filing interface mimics the look and feel of the Iowa Judicial Branch’s e-filing system, and therefore, provides ease of use for constituents already familiar with the Iowa court’s system. These advanced systems improve workflow; reduce costs associated with paper filings for both PERB and its constituents and grant the public real-time access to all case filings, unless otherwise protected by law.



VIII. CERTIFIED EMPLOYEE ORGANIZATION REPORTS

Pursuant to Iowa Code section 20.25, PERB monitors certain internal operations of certified employee organizations and enforces compliance with statutory requirements. PERB ensures that each certified employee organization has a constitution and bylaws in 20.25 (3) filed with the agency that contain certain safeguards relating to financial accountability and membership rights as set out in the statute. It maintains these records which are updated when changes in the organizations' governing documents are reported. PERB also receives, reviews and maintains each certified employee organization's annual report, including a financial statement and audit, which is required for the employee organization to maintain its certification.

PERB assists with the completion of the documents, issues delinquency letters and orders hearings when organizations are not in compliance. As of February 2017, any documents submitted to PERB pursuant to section 20.25 are electronically maintained and readily available on PERB's online filing system.

IX. PERB'S PROBLEM-SOLVING PROCESSES

During its 44-year history, PERB has provided mediation, training, and facilitation services to Iowa public employers. PERB's statutory duty is to promote harmonious and cooperative relationships between government and its employees by utilizing problem-solving processes.

INTEREST-BASED BARGAINING

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

The legal duty to bargain a contract requires labor and management to follow an impasse resolution process if a voluntary agreement is not reached. The statute's "default" process includes mediation and arbitration to resolve disputes over the list of mandatory subjects of bargaining contained in Chapter 20. Labor and management have typically used traditional, adversarial bargaining methods and strategies under Chapter 20'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:

- a commitment from labor and management leadership to move from an adversarial to a joint problem-solving process.
- the use of consensus decision-making.
- an agreement on specific ground rules; that is, how the parties will conduct themselves during contract negotiations.

PERB staff serves as facilitators and trainers of the IBB process.

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

LMCs facilitated by PERB continue to function primarily with Iowa public employers and their respective unions or associations to address workplace issues.

FY 2018 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. 621--ch. 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--those which raise negotiability questions requiring expedited processing. During FY 18, no petition for a declaratory order was filed.

II. BOARD - EXPEDITED NEGOTIABILITY RULINGS

The scope of bargaining for public employers and employee organizations is set out in Iowa Code section 20.9. HF 291 significantly changed the scope of bargaining. There are now two distinct classes of public employees - public safety units and non-public safety units. A public safety unit is comprised of at least 30 percent public safety employees, as defined by the Iowa Code. Public safety units' scope of bargaining is broader than that of the non-public safety units. Public safety units' mandatory subjects of bargaining are

wages, hours, vacations, insurance, holidays, leaves of absence, shift differentials, overtime compensation, supplemental pay, seniority, transfer procedures, job classifications, health and safety matters, evaluation procedures, procedures for staff reduction, in-service training, grievance procedures for resolving any questions arising under the agreement, and other matters mutually agreed upon.

For non-public safety units, the mandatory subject of bargaining is *base wages*.

Both types of units are prohibited from negotiating retirement systems, dues checkoffs and other payroll deductions for political action committees or other political contributions or political activities. In addition to those topics, non-public safety units are also prohibited from bargaining

insurance, leaves of absence for political activities, supplemental pay, transfer procedures, evaluation procedures, procedures for staff reduction, and subcontracting public services.

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. This past season saw a number of cases focused on interpreting the new language defining the scope of bargaining. 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, a party petitions 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 typically issues a short-form "Preliminary Ruling" on the matter, designating each proposal at issue as mandatory, permissive or prohibited, 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 30 days and a final ruling will be issued.

During FY 18, the agency received two petitions and issued two preliminary and two final negotiability rulings.

Greene Cnty. Cmty. Sch. Dist. and Construction and Pub. Emps. LiUna Local 177,
17 PERB 100828 (8/16/17).

- Based on prior cases, a “base wage” is defined as the minimum (bottom) pay for a job classification, category or title, exclusive of additional pay such as bonuses, premium pay, performance pay or longevity pay.
- Occasional bus driver duties, such as sports shuttles and activity driving, are not part of established or required duties. These services are not distinct jobs/positions/job classifications and the compensation is within the permissive subject of “wages” rather than the excluded subject for a non-public safety unit—“supplemental pay.”
- “Regular-route-plus” or extra “shuttling” driving that is done as a regular, required function of employee’s job is a distinct job classification. The base wage for each is mandatorily negotiable if the position/job classification is created or maintained by the employer and is or may be occupied by bargaining unit employees.
- Although the existence of job classifications and matters relating to the work which is to be performed in exchange for employees’ base wages are permissive subjects of bargaining, a public employer has an affirmative obligation to inform the employee organization whether those job classifications and conditions of employment will exist and to what extent for the term of the agreement being negotiated.

Muscatine Cmty. Sch. Dist. and AFSCME/Iowa Council 61 and AFSCME/Local 1560,
18 PERB 100835 (4/5/18).

- The manner in which an employee receives “base wages,” such as by bi-monthly payment and direct deposit, is a mandatorily negotiable subject as a part of “base wages.”
- Distinction of bus driving duties set out in *Greene* applied where bus driver route duties that are regular, required functions constitute distinct positions/job classifications and their compensation for actual route time is mandatorily negotiable as “base wages.”
- Negotiability analysis of structural elements of salary schedule in *Oskaloosa Cmty. Sch. Dist. and Oskaloosa Educ. Ass’n*, 17 PERB 100823, is equally applicable to salary matrix for administrative support staff. Horizontal “lanes” represent paygrades for one or more job classifications and are not themselves mandatory, but the base (minimum) wage for each created or maintained by the employer is mandatorily negotiable.
- Starting point or base step hourly rate on salary matrices is mandatorily negotiable as “base wages” while longevity “steps” represent additional pay above the minimum in a lane and are therefore permissive “wage” proposals, not “base wages.”
- Minimum maintenance pay for regular and routine duties required of every driver is mandatorily negotiable as “base wages” as are minimum bus inspection pay and compensation for required training.

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 18, no objections were filed.

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 18, there were two objections filed and one decided.

City of Indianola and Construction and Pub. Emps. LiUNA Local 177,
17 PERB 100819 (11/17/17).

- PERB followed its established mail-balloting practices and procedures. The return envelopes of two officers were accounted for, but arrived past the deadline and could not be counted and included in the tally.
- As a result, PERB rejected employee organization's claim that circumstances other than misconduct prevented officers from freely expressing their preferences.

V. DETERMINATION OF PUBLIC SAFETY UNIT STATUS

The scope of bargaining for public employers and employee organizations, as set out in Iowa Code section 20.9, now depends on whether the unit is a public safety unit or a non-public safety unit. Pursuant to section 20.9, a public safety unit is one comprised of at least 30 percent public safety employees. Iowa Code section 20.3(11) lists public employees employed in particular positions as “[p]ublic safety employee[s].”

PERB administrative rules provide a process by which the parties can mutually agree to a particular unit's public safety status prior to their negotiation of a new collective bargaining agreement. The rules also provide a procedure and deadlines for a party to file a petition for PERB's determination of the unit's public safety status in the event there is a dispute. In FY 18, there were 16 petitions filed and 1 decided.

Scott Cnty. And Int'l Brotherhood of Electrical Workers, Local 204,
18 PERB 102131 (2/5/18).

- The filing deadline for a petition for public safety unit determination, as set by PERB administrative rule, is directory, not mandatory.
- Although directory, the filing deadlines are designed to promptly resolve public safety unit status disputes in time for the parties to negotiate a subsequent collective bargaining agreement and complete impasse procedures in accordance with statutory deadlines.
- The Scott County bailiffs were not effectively “[a] sheriff's regular deput[ies].” Among other dissimilarities, they are not subject to Civil Service or ILEA requirements, and they are not sworn in as peace officers upon hire. Thus, the bailiffs are not “public safety employees” within the meaning of Iowa Code section 20.3(11) thereby making the bargaining unit a non-public safety unit.

VI. 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, petitions seeking the determination of public safety or non-public safety unit status, nor objections to continued impasse-resolution procedures constitute true contested cases.

During FY 18, the Board and its administrative law judges issued 10 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.

Before HF 291 amended Iowa Code chapter 20 on February 17, 2017, state collective bargaining agreements contained “grievance procedures” provisions which had been a mandatorily negotiable subject of bargaining. Accordingly, state employees followed their contractual grievance procedures that culminated in the parties proceeding to hearing before an independent arbitrator. After “grievance procedures” became a permissive subject of bargaining for all, but one state unit of public safety employees, the state removed grievance provisions from state collective bargaining agreements thereby leaving state employees with no recourse to a third-party arbitrator. As a result, state employees who are covered by collective bargaining agreements, but with no grievance procedures, began filing appeals to PERB pursuant to Iowa Code section 8A.415. For section 8A.415(1) grievance appeals, PERB has taken the position that it has jurisdiction with respect to section 8A.415(1) grievance appeals if the employee is covered by a collective bargaining agreement that does not have grievance procedures. However, for section 8A.415(2) disciplinary action appeals, PERB does not have jurisdiction if the respective employee is covered by a collective bargaining agreement—regardless of whether the agreement has grievance procedures. Nonetheless, PERB agreed to hear the parties’ argument on the jurisdictional issue and issued a decision allowing the agency to have jurisdiction over the section 8A.415(2) state employee disciplinary action appeals:

Renee V. Sneitzer and State of Iowa (Dep’t of Corrections).
18 PERB 102064 (1/9/18).

- PERB had interpreted section 8A.415(2) as unambiguously limiting disciplinary action appeals to merit system employees who were not covered by a collective bargaining agreement. While section 8A.415(1) provides for grievance appeals for an employee, “except an employee covered by a collective bargaining agreement which provides otherwise,” section 8A.415(2) provides for disciplinary action appeals for an employee, “except an employee covered by a collective bargaining agreement.”
- In both chapters 8A and 20, statutory language reflects legislative awareness that collective bargaining agreements may not always provide grievance procedures.
- The plain and rational meaning of section 8A.415(2) excludes state merit employees who are covered by a collective bargaining agreement regardless of whether the agreement provides grievance procedures. There is no ambiguity to utilize statutory rules of construction to interpret section 8A.415(2) in any other manner than its plain and rational meaning.
- PERB noted that, had the rules of statutory construction applied, the legislative history of section 8A.415(2) supported PERB’s interpretation. Section 8A.415(2) had once contained the same qualifying language as section 8A.415(1), “except an employee covered under a collective bargaining agreement which provides otherwise...” This qualifying language was removed in 1998.
- PERB found, however, that the literal application of section 8A.415(2) left state employees without some avenue of recourse to grieve disciplinarian action. PERB invoked the absurdity doctrine to avoid the absurd result of leaving contract-covered state merit employees without recourse to grieve discipline and discharge.
- Accordingly, PERB interprets section 8A.415(2) as excluding only state merit employees who are covered by a collective bargaining agreement “which provides otherwise,” *i.e.*, provides grievance procedures.

VII. 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 18, there were five petitions filed seeking judicial review of PERB decisions and there was one appeal to the Iowa Supreme Court. Two petitions were dismissed. The Polk County District Court issued rulings on two petitions and upheld the PERB decision on review in each.

The highlights follow:

Oskaloosa Educ. Ass'n v. Iowa Pub. Emp't Rel. Bd. and Oskaloosa Cmty. Sch. Dist. (entitled ***Oskaloosa Cmty. Sch. Dist. and Oskaloosa Educ. Ass'n*** before the agency), Polk Cnty. Dist. Ct. CVCV054286 (1/26/18); 17 PERB 100823 (5/17/17).

After 2017 Iowa Acts, House File 291 amended Iowa Code chapter 20, there were several petitions filed with PERB that sought resolution of negotiability disputes between the parties in their negotiations. In ***Columbus Cmty. Sch. Dist. and Columbus Educ. Ass'n***, 17 PERB 100820 (***Columbus***), PERB defined “base wages” in a narrow and restrictive manner and applied the new definition of Iowa Code section 20.13(12) “supplemental pay” to the proposals at issue. In ***Oskaloosa***, the Board applied its definition of “base wages” to proposals containing salary matrices for a non-public safety unit of teachers and nurses. Each salary matrix reflected a stated range of wages based on a combination of educational level and years of service (longevity).

In analyzing the structural elements of the matrices, the Board concluded that the first step, *i.e.*, Step 1, for each lane was mandatorily negotiable as “base wages,” while the succeeding steps in a lane represented additional pay above the minimum for a classification and were permissive “wage” proposals. The Board determined the horizontal “lanes” (BA, BA+30, MA, MA+30, etc.) were job classification and not themselves mandatory, but the base (minimum) for each classification created or maintained by the employer was mandatorily negotiable.

The employee organization petitioned for judicial review and the Polk County District Court affirmed the PERB ruling.

The Court rejected the employee organization’s argument that the step increases were anything other than longevity and determined that PERB did not err in concluding vertical step movement on the schedule (in each lane) was a permissive subject of bargaining. Only the first step or minimum step in each lane represented “base wages.” The Court also agreed with PERB’s determination that each salary matrix lane represented a distinct job classification and for each created and maintained by an employer, the employer is required to negotiate a base wage. The Court stated, “Once the classification is established by the public employer the mandatory subject of bargaining is the ‘base wage’ or minimum wage that will be paid for the position.” The Court concluded:

To adopt the Association’s proposal that each bargaining unit member has a unique set of education, training, experience and/or skills that requires the employer to adopt a classification or title for each bargaining unit member and thus negotiate base wages for each bargaining unit member is not a proper interpretation of the legislature’s use of the phrase “base wages” unless the public employer utilizes this system for classifying its employees.

United Elec., Radio, & Machine Workers of America v. Iowa Pub. Emp't Rel. Bd. and State of Iowa and Bd. of Regents (entitled ***United Elec., Radio & Machine Workers of America and State of Iowa and Iowa Bd. of Regents*** before the agency), Polk Cnty. Dist. Ct. CVCV054946 (3/15/18); 17 PERB 100825 (6/29/17).

Through the declaratory order process set out by administrative rules, PERB provides guidance on the negotiability of specified facts (“proposals”) on questions that arise for the parties outside of the context of negotiations and impasse procedures. After chapter 20 was amended, the employee organization in this case filed a petition for a declaratory order seeking the negotiability status of hypothetical bargaining proposals for a non-public safety bargaining unit and the Board’s determination on the extent of a section 20.22 arbitrator’s authority.

In analyzing the hypothetical proposals, PERB applied its definition of “base wages” that it had reached in *Columbus*. In the first hypothetical, the Board concluded that the stated annual base wage (\$50,000) and “bi-monthly” payment were mandatorily negotiable subjects of bargaining while stated working hours, holidays, vacation days, sick leave days, and overtime defined were permissive subjects “hours,” “holidays,” “vacations,” “leaves of absence,” and “overtime compensation” respectively. Facts were insufficient for the Board to make a determination on the second hypothetical. On the third hypothetical that listed different paygrades (job classifications) with increased salaries for each successive year, the Board concluded that the “Year 1” salary was mandatorily negotiable as “base wages” and the remainder of the proposal was a permissive subject of bargaining. For the fourth hypothetical proposal, the Board concluded that language establishing a higher salary for employees who work a late work schedule was a permissive subject of bargaining as “shift differentials.”

In response to the last question presented, the Board reconciled two statutory requirements of a section 20.22 interest arbitrator to determine whether the arbitrator could consider the parties’ current collective bargaining agreement in making an interest arbitration award. The Iowa Code section 20.22 (2017) provisions provided in relevant part:

7A. For an arbitration involving a bargaining unit that does not have at least thirty percent of members who are public safety employees, the following apply:

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, ...

....

b. The arbitrator shall not consider the following factors:

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

....

The Board determined that the parties’ current collective bargaining agreement was not a “past” agreement as referenced in section 20.22(7A)(b)(1). To the extent the phrase “past collective bargaining agreements” is read to include the current agreement, the Board determined that section 20.22(7A)(a)(1), that the arbitrator compare base wages of the employees in the affected unit with those of other employees doing comparable work, created a limited exception to the arbitrator’s ability to view past agreements. Thus, the Board disagreed with the employee organization’s asserted answer and concluded a section 20.22 interest arbitrator may look to the existing collective bargaining agreement to determine the existing base wages (as well as the hours and other conditions of employment) of the bargaining unit employees.

The employee organization filed a petition for judicial review in the district court.

The district court determined that PERB did not err in employing the two-part negotiability analysis, from *Waterloo Educ. Ass’n v. Iowa Pub. Emp’t Rel. Bd.*, 740 N.W.2d 418 (Iowa 2007), in reaching its conclusions. As to the Board’s definition of “base wages,” the Court stated in part:

PERB, clearly correctly, noted that the term “base wages” cannot be interpreted to have the same meaning as the term “wages.” The term “base wages,” on its face, is some narrower subset of the universe of what constitutes “wages.” Because the word “base” has no special meaning in the statute or in case law, PERB gave the word its ordinary dictionary meaning. This analysis resulted in PERB defining “base wages” as “the minimum (bottom) pay for a job classification, category or title, exclusive or additional pay such as bonuses, premium pay, merit pay, performance pay or longevity pay.

There is no error in PERB's analysis. There is also no error in PERB's application of what it concluded is the definition of "base wages" to the UE's proposals. All but the first two items of proposal 1 involve either non-wage matters or a category of "wages" that is beyond "base wages", such as higher pay for longevity and working a night shift. As PERB correctly noted, if the UE's argument were accepted, the terms "base wage" and "wage" would have co-extensive meaning. This would be contrary to both the plain meaning of the words used and the statutory mandate that the term be interpreted "narrowly and restrictively."

The court also agreed with PERB's determination that a section 20.22 interest arbitrator could consider the parties current collective bargaining agreement and stated in part, "this is the only reasonable interpretation of the two sections because section a.(1) unequivocally *requires* the arbitrator to consider the 'involved' employees' existing base wages." The court agreed "that under rules of statutory construction, two arguably conflicting provisions must be harmonized if possible," which PERB had done in reaching its conclusion.

The employee organization appealed the Polk County District Court ruling to the Iowa Supreme Court where it is currently pending.

**PERB BUDGET
FISCAL YEARS 2017 & 2018**

RECEIPTS	ACTUAL FY 17	ACTUAL FY 18
Appropriations	\$1,342,452	\$1,342,452
Salary Adjustment	0	0
Training & Technology Carry Forward	67,265	0
Legislative Reduction	(14,323)	0
Transfer	0	0
DAS Distribution	0	0
Reimbursement from Other Agencies	0	0
Miscellaneous Income	<u>36,305</u>	<u>47,519</u>
TOTAL	\$1,431,699	\$1,389,971
 EXPENDITURES		
101 Personal Services	\$1,180,841	\$1,143,560
202 In State Travel	23,186	6,573
205 Out of State Travel	10,959	0
301 Office Supplies	14,281	9,428
309 Printing & Binding	7,958	1,735
313 Postage	749	1,231
401 Communications	7,149	7,016
402 Rentals	4,121	20
406 Outside Services	29,368	19,665
409 Outside Repairs	1,052	1,971
414 Reimbursements –Other agencies	37,792	38,010
416 ITS Reimbursements	23,556	23,007
418 IT Outside Services	22,000	48,187
434 Gov FundTransfers-Other Agencies Serv.	0	0
502 Office Equipment	0	0
503 Equip Non-Inventory	3,156	1,251
510 IT Equipment	6,724	1,473
705 Refunds/Other	<u>1,135</u>	<u>160</u>
TOTAL	\$1,374,026	\$1,303,288
 REVERSION	 \$67,265	 0
TOTAL T&T RETURNED TO GENERAL FUND	\$16,435	0
FINAL REVERSION	\$57,673	\$86,683
 TRAINING & TECHNOLOGY		
CARRY FORWARD (50% of reversion)	\$ 0	\$43,341