

**IOWA**  
**PUBLIC EMPLOYMENT RELATIONS BOARD**

**ANNUAL REPORT**

**FY2009**

**July 1, 2008 to June 30, 2009**

**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** ..... 8

**CERTIFIED EMPLOYEE ORGANIZATION REPORTS** ..... 9

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

**PROCESSES** ..... 10

**FY 2009 CASE REVIEW** ..... 11

**BOARD - DECLARATORY ORDERS** ..... 11

**BOARD - EXPEDITED NEGOTIABILITY RULINGS** ..... 11

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

**OBJECTIONS TO ELECTIONS** ..... 12

**CONTESTED CASE DECISIONS** ..... 12

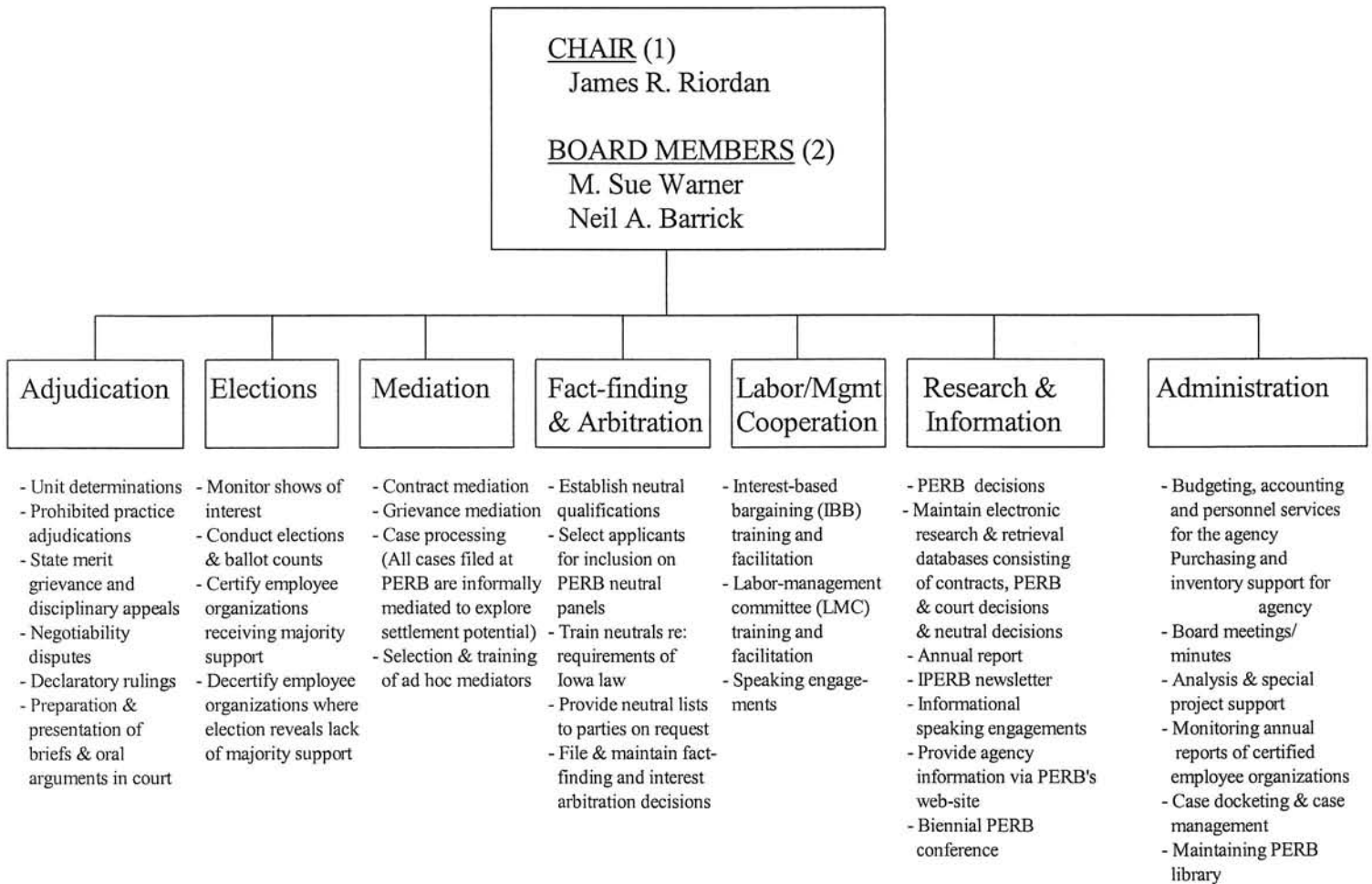
**JUDICIAL REVIEW DECISIONS** ..... 12

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

**PERB BUDGET** ..... 13

# IOWA PUBLIC EMPLOYMENT RELATIONS BOARD TABLE OF ORGANIZATION

Total Staff = 10



|                                |   |
|--------------------------------|---|
| <u>PROFESSIONAL STAFF:</u> (4) |   |
| Jan Berry                      | Administrative Law Judge/<br>Counsel                              |
| Susan Bolte                    | Administrative Law Judge/<br>Coordinator of Neutral Services      |
| James McClimon                 | Administrative Law Judge/<br>Coordinator of Mediation<br>Services |
| Diana Richeson                 | Administrative Law Judge/<br>Website-Database Administrator       |

|                           |                              |
|---------------------------|------------------------------|
| <u>SUPPORT STAFF:</u> (3) |                              |
| Leisa Luttrell            | Human Resources<br>Associate |
| Nancy Anders              | Legal Secretary 2            |
| 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](mailto:iaperb@iowa.gov)  
Agency Website: <http://iowaperb.iowa.gov>

One full-time ALJ retired in January 2009. This position was not filled and was then eliminated by legislative action.

## 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."

Other states without an effective law continue to suffer costly strikes among teachers and other public employees. 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 1,500 bargaining units and has issued approximately 1,640 formal decisions. During FY 09, PERB provided impasse resolution services (mediators, fact finders and/or arbitrators) in 603 disputes involving county, city, state, school district, area education agency and community college employers and their employees.

In FY 09 PERB's budget was reduced by approximately 8.5%. The majority of these cuts were covered by the mid-year retirement of an ALJ. The position was not refilled and was later eliminated by legislative action. The cuts caused the agency to reduce services primarily in the areas of interest-based bargaining and labor-management cooperation committee training and facilitation and grievance mediation services.



## 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 49 petitions in FY 09. 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 09 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 09, PERB processed 22 election petitions and conducted 11 elections. The number of representation elections during FY 09 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 1,178 during FY 09.

### 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 orders (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 order 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 09, 85 prohibited practice complaints, petitions for declaratory rulings, merit appeals, petitions for resolution of negotiability disputes and other non-unit cases were filed with PERB.

See page 11 for further review of FY 09 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 09, no new petitions for judicial review were filed in the district courts. At the close of the fiscal year, there were no cases pending in the district court, and one was pending before the Iowa Supreme Court.

During the fiscal year, no cases were judicially resolved by the district courts, and no PERB cases were decided by the appellate courts.

### **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 09, the agency received requests for mediation in 603 bargaining impasses (582 in FY 08), only 6 of which ultimately proceeded through arbitration--a pre-arbitration resolution rate of 99%. This is the lowest number of cases ever taken to arbitration. The table below provides more detailed impasse data concerning FY 09.

**HISTORICAL IMPASSE ACTIVITY**

| <b>YEAR</b> | <b>TOTAL REPRESENTED UNITS</b> | <b>REQUESTS FOR IMPASSE SERVICES</b> | <b>MEDIATED SETTLEMENTS</b> | <b>FACT-FINDING REPORTS ISSUED</b> | <b>INTEREST ARB. AWARDS ISSUED</b> |
|-------------|--------------------------------|--------------------------------------|-----------------------------|------------------------------------|------------------------------------|
| 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 | 321 | 18 | 23 |
| 2005-06  | 1171 | 623 | 303 | 17 | 17 |
| 2006-07  | 1169 | 587 | 272 | 8  | 12 |
| 2007-08  | 1174 | 582 | 248 | 12 | 15 |
| 2008-09* | 1178 | 603 | 297 | 12 | 6  |

\*Not all impasses are completed.

## 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.

In FY 07, the Board partnered with an information technology provider to develop a database and search engine for all final agency decisions and PERB related court decisions. This system became operational during FY 08. The system is a powerful search tool and offers a comprehensive collection of documents. There are three databases of full-text documents in the system: Contracts, PERB and Court Decisions and Neutral 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 <http://iowaperb.iowa.gov>. Feedback from users has been very positive. The system's capabilities meet the expectations of users experienced with search engines and its user-friendly features meet the expectations of those less experienced. 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 produced annual “Contract Summaries” which summarized major contract provisions for city, county, police/fire, and school district support units. During FY 07, the Board discontinued the publication of these summaries when it implemented the contracts database. 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 fact-finders and arbitrators listed with PERB is also 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. 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 09, PERB received reports from 619 certified employee organizations representing the 1,178 collective bargaining units for which a representative is currently certified.

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

During its 34-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.

IBB continues to be utilized primarily with school districts and education associations.

#### ◇ 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.

LMCs, facilitated by PERB, continue to function primarily with state, county, and cities, and their respective unions and associations 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.



---

## FY 2009 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 09 the agency received one petition, but issued no 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 09, the agency issued 4 preliminary rulings (one involving a consolidation of two separate petitions) and one final negotiability ruling.

### 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 09 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 09, 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 09 the Board and its administrative law judges issued 11 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 09, no appellate court opinions were issued on judicial review of PERB decisions. One case affirmed by a district court in late FY 08 was appealed to the Supreme Court in FY 09, and remains pending there.

---

### **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, 2009, PERB's neutral lists included 75 active grievance arbitrators, fact-finders and interest arbitrators (21 of whom are Iowans) and 36 active ad hoc mediators (31 of whom are Iowans).



**PERB BUDGET  
FISCAL YEARS 2008 & 2009**

| <b>RECEIPTS</b>                     | <b>ACTUAL<br/>FY 08</b> | <b>ACTUAL<br/>FY 09</b> |
|-------------------------------------|-------------------------|-------------------------|
| Appropriations                      | 1,170,486               | 1,233,283               |
| Salary Adjustment                   | 62,797                  | 38,558                  |
| Training & Technology Carry Forward | 2,721                   | 1,360                   |
| Chapter 8.31 Reduction              |                         | -19,098*                |
| Legislative Reduction               |                         | -25,617*                |
| Transfer                            |                         | 6,000                   |
| Miscellaneous Income                | <u>36,057</u>           | <u>20,595</u>           |
| <b>TOTAL</b>                        | <b>\$1,272,061</b>      | <b>\$1,255,081</b>      |

**EXPENDITURES**

|                          |                    |                    |
|--------------------------|--------------------|--------------------|
| 101 Personal Services    | 1,087,247          | 1,139,988          |
| 202 In State Travel      | 21,437             | 12,149             |
| 205 Out of State Travel  | 933                | 3,087              |
| 301 Office Supplies      | 7,594              | 1,317              |
| 309 Printing & Binding   | 11,124             | 923                |
| 313 Postage              | 10,412             | 2,338              |
| 401 Communications       | 8,463              | 8,581              |
| 406 Outside Services     | 77,913             | 45,343             |
| 409 Outside Repairs      | 3,342              | 1,447              |
| 414 Reimbursements       | 24,414             | 25,073             |
| 416 ITS Reimbursements   | 8,513              | 13,541             |
| 417 Workers Compensation | 0                  | 0                  |
| 503 Equip Non-Inventory  | 6,515              | 0                  |
| 510 IT Equipment         | 0                  | 0                  |
| 705 Refunds/Other        | <u>1,435</u>       | <u>0</u>           |
| <b>TOTAL</b>             | <b>\$1,269,342</b> | <b>\$1,253,787</b> |

TRAINING & TECHNOLOGY  
CARRY FORWARD

1,360

REVERSION

1,359

1,294

\*In FY 09 PERB's budget was reduced by approximately 8.5%. The majority of these cuts were covered by the mid-year retirement of an ALJ. The position was not refilled and was later eliminated by legislative action. The cuts caused the agency to reduce services primarily in the areas of interest-based bargaining and labor-management cooperation committee training and facilitation and grievance mediation services.