

IOWA
PUBLIC EMPLOYMENT RELATIONS BOARD

ANNUAL REPORT FY 2022

July 1, 2021 to June 30, 2022

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IOWA PUBLIC EMPLOYMENT RELATIONS BOARD

TABLE OF ORGANIZATION

FTE = 10

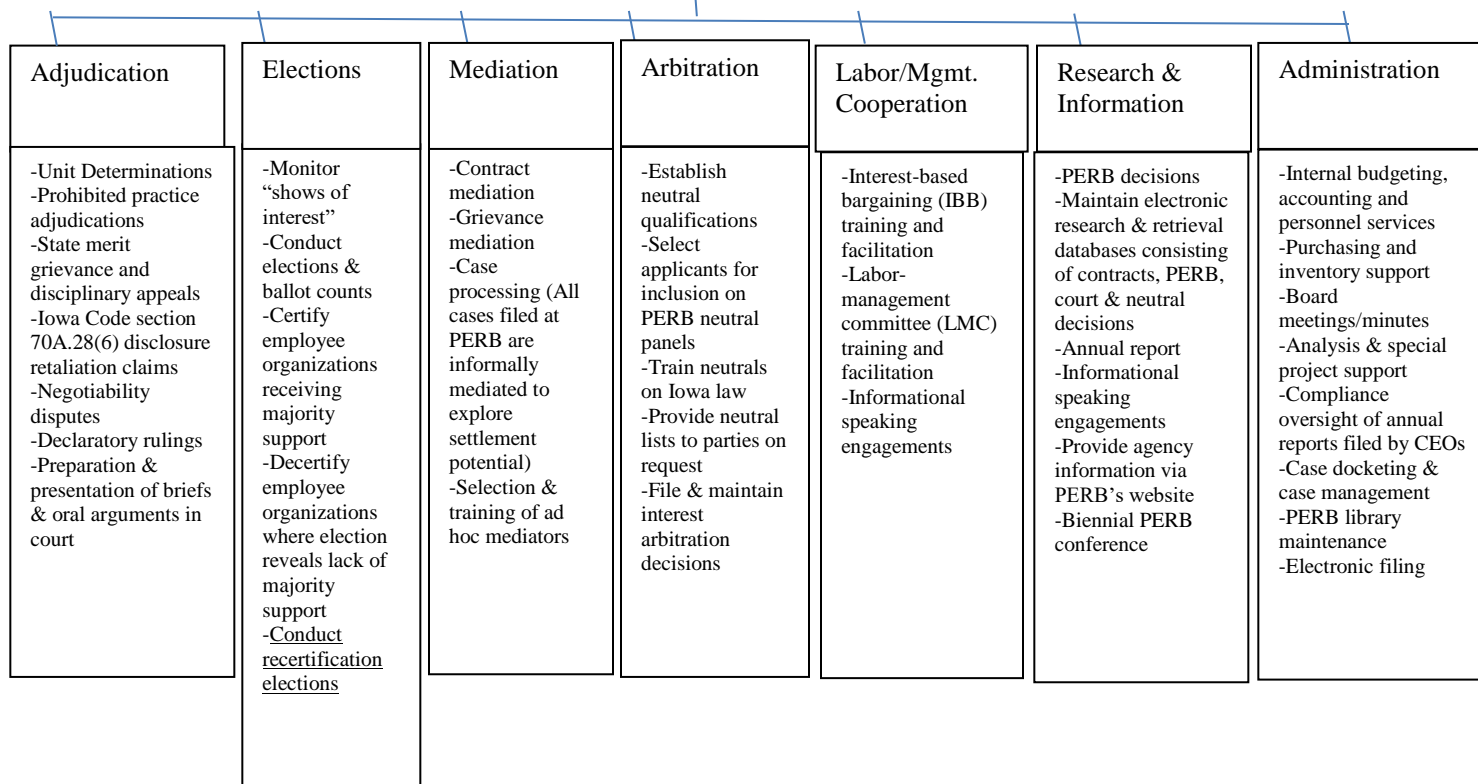
CHAIR

Erik Helland

BOARD MEMBER

Mary Gannon September, 2021

Jane Dufoe July, 2022



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 Bainter	Executive Secretary
Sheri Howard	Paralegal
Unfilled	Clerk Specialist

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PERB BUDGET
FISCAL YEARS 2022 & 2023

RECEIPTS		ACTUAL FY 22	ACTUAL FY 23
Appropriations		\$1,492,452	
Salary Adjustment		0	
Training & Technology Carry Forward		59,245	
Legislative Reduction		0	0
Transfer		0	0
DAS Distribution		0	0
Reimbursement from Other Agencies		0	0
Miscellaneous Income			
TOTAL		\$1,626,327	
EXPENDITURES			
101	Personal Services	\$1,220,268	\$1,220,268
202	In State Travel	635	635
205	Out of State Travel	0	
301	Office Supplies	10,534	13,534
309	Printing & Binding	943	943
313	Postage	991	
401	Communications	7,344	7,344
406	Outside Services	33,568	33,568
409	Outside Repairs	983	983
414	Reimbursements –Other agencies	45,356	45,356
416	ITS Reimbursements	29,293	29,293
418	IT Outside Services	76,435	76,435
434	Gov Fund Transfers-Other Agencies Serv.	0	0
501	Office Equipment	0	
503	Equip Non-Inventory	1,198	1,198
510	IT Equipment	383	383
705	Refunds/Other	672	672
TOTAL		\$1,431,602	
BALANCE		\$194,724	
REVERSIONS		\$111,529	
CARRY FORWARD (50% of reversion)		TRAINING & TECHNOLOGY \$83,196	

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 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 representation by a labor organization is truly the employees' choice, secret ballot representation elections are conducted by PERB. To ensure 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 by public employees are prohibited 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 20.1(2) and 8A.415 give 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, also known as whistleblower protections.

Chapter 20 distinguishes bargaining rights of public safety and nonpublic safety bargaining units. Nonpublic safety units are limited in their bargaining to the mandatory subject of base wages. Under Chapter 20 arbitration awards on the topic of base wages are limited to the lesser of three percent, for nonpublic safety units, or a percentage equal to the increase in the consumer price index (CPI) for all urban consumers in the Midwest region. PERB updates CPI data monthly on its website. Chapter 20 requires recertification elections for all unions approximately 10 months before the expiration of the applicable collective bargaining agreement and at least one election every five years.

MODERNIZATION AND CHANGE IN DIRECTION

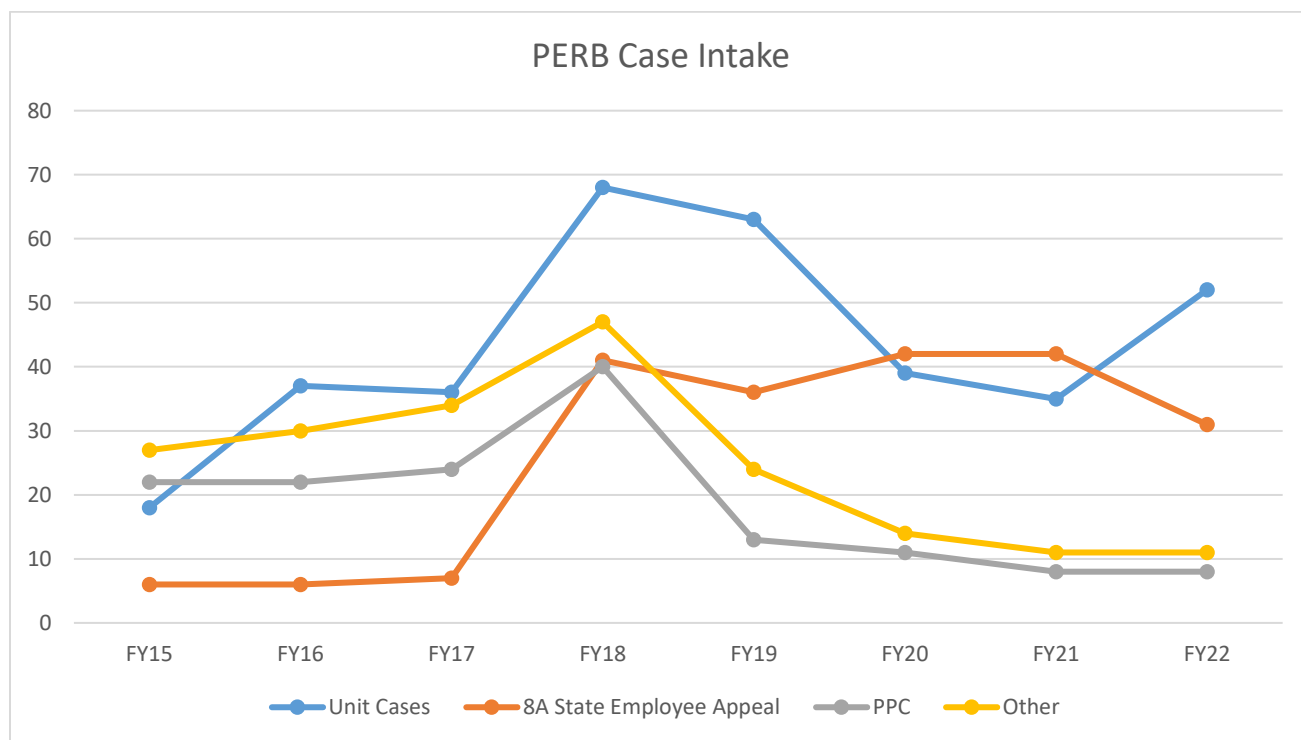
As a result of the 2017 changes to Chapter 20, PERB's case intake and resource utilization has shifted.

"Unit cases" (cases that determine the make up or representation of a bargaining unit) historically averaged 40% of PERB's case intake. Currently, resolution of all "unit cases" received requires less than one FTE. The other 60% of PERB's case load, the vast majority of which are Chapter 8A State Employee Appeals, consume the remainder of PERB's resources. This is a significant change in PERB staff responsibilities.

Over 3 fiscal years (2015-2017) PERB had 19 total 8A cases filed. Since FY18, that average has slightly more than doubled to 40. Prior to 2017, many of these cases had been resolved using the State's grievance process (GRIP) or through arbitration. If both parties aren't willing to consider alternative dispute resolution the case proceeds to a more lengthy, & more costly, resolution process requiring a judicial hearing.

In this same 3 year time frame (2015-2017) the requests for PERB to provide impasse services have reduced by 62% and mediated settlements have reduced by 61%. This is a steep decline that cannot be correlated to the mere 10% reduction in statewide bargaining units over this same time period.

In summary, since the 2017 changes to Chapter 20, PERB's roles have shifted. Requests for mediation services and Labor Management Committees (LMC's) is nearly nonexistent accordingly PERB no longer retains in house mediations, as the requests cannot justify the cost, and Federal Mediation and Conciliation Service (FMCS) offers the service free. The demands on PERB have shifted from assisting in efficient negotiations over contract and other labor management disagreements to resolving human resources disputes in hearing. In short, PERB is involved less in mediating and more with parties who are litigating.



SUMMARY OF DUTIES

I. BARGAINING UNIT DETERMINATIONS/REPRESENTATION ELECTIONS

As part of its statutory responsibility to determine appropriate bargaining units and conduct representation elections under Iowa Code sections 20.13-20.15. Petitions to amend the composition of existing bargaining units were the most frequent type of unit filings.

During FY21, 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 84.67%.

The number of represented public sector bargaining units in Iowa was 421 in 1975. As of June 30, 2022, there were 1,080 represented bargaining units. Below is a breakdown by employer type. Please note an individual employer may have more than one bargaining 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;
- objections and challenges in retention/recertification 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).
- 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.

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. 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 mediator who, by working with the parties involved, attempts to mediate the matter prior to a hearing. If all issues are not resolved, the case is referred to either the Board or to a PERB 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 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.

III. COURT ACTION: JUDICIAL REVIEW

PERB attorneys serve as ALJs but also represent PERB in the courts when any final agency action is judicially reviewed. In such instances, 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.

IV. IMPASSE RESOLUTION SERVICES

Chapter 20 allows parties 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 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 from the otherwise-applicable statutory deadline. As with the "statutory" impasse-resolution procedures, summarized below, PERB provides parties, operating under independent procedures, whatever impasse-resolution services PERB offers.

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: mediation, which if unsuccessful in producing a complete agreement, is followed by binding arbitration. Federal Mediation and Conciliation Service (FMCS) provide mediation services. PERB fielded 103 requests for mediation, of these requests the majority do not actually use the mediation services, but simply put the agency on notice they have begun mediation. PERB also fielded 21 arbitration requests which resulted in 1 decision.

IMPASSE DATA

Year	Total Represented	Impasse Service Requests	Mediated Settlements	Arbitration Awards Issued
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	Units			
FY16	1203	469	143	10
FY17	1209	353	46	2
FY18	1174	280	57	2
FY19	1134	296	53	2
FY20	1110	210	36	1
FY21	1082	178	56	2
Change Since FY16	-10%	- 62%	-61%	-80%

*Not updated for FY22, shown for historical purposes

V. RETENTION AND RECERTIFICATION ELECTIONS

All bargaining units (BUs) must undergo retention and recertification elections at least every five years. The elections are held approximately 8-10 months before the expiration of the BU and the employer's applicable collective bargaining agreement. For the past four years, the elections have been held in October for those contracts expiring on or around the end of the fiscal year. For those contracts expiring on or around the end of the calendar year, the elections have been held in March.

PERB contracts with an election services vendor to provide telephonic and web-based voting for the October 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. The March elections have a small number of voters and are therefore conducted by paper ballot. Election results remain remarkably consistent year over year in terms of turnout and recertification.

For FY 22:

435 Notices of Intent to Conduct an Election (NOI) were filed.

254 employers (58%) submitted eligible employee voter lists & their recertification elections were held:

October 2022: 178 (by telephone and web-based)

17,203 total eligible voters.

13,931 (81%) eligible voters cast a vote.

93% of BUs voted to retain their representation.

The average margin to recertify was 84% "Yes" and 16% "No" or failed to vote.

VI. RESEARCH AND 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 has four separate and distinct data resources of full-text documents: Contracts, Contracts Archive, Neutral Decisions and PERB and Court Decisions.

PERB began the process in FY22 of converting all relevant information in the four databases into a centralized system to streamline workflows and increase transparency.

The new database will centralize the filing of non-adjudicatory matters and simplify the presentation to PERB's users. This system also serves as upload portal that dramatically increases the safety of bargaining unit members personal information which had been email prior to 2022.

VII. 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 each certified employee organization has a constitution and bylaws on file with the agency containing certain safeguards relating to financial accountability and membership rights as set out in the statute. PERB maintains & updates these records 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 documents, issues delinquency letters and orders hearings when organizations are not in compliance

VIII. PROBLEM-SOLVING PROCESSES

INTEREST-BASED BARGAINING (IBB)

IBB is a process designed as an alternative to the traditional processes used to settle contract disputes. IBB focuses on labor and management interests as opposed to bargaining positions.

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 has taken positions and offered proposals and counter proposals to resolve the outstanding issues before them.

LABOR-MANAGEMENT COMMITTEE (LMC)

LMCs are 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 contract negotiations or a contractual grievance procedure.

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. LMC requests have fallen to nearly zero. PERB turns over any requested LMC's to FMCS which provides the service at no cost.

FY 2022 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. Iowa Administrative Code 621—chapter 10 of PERB's rules governs such proceedings. In addition, the Board has enacted other rules for a specialized type of petition for a declaratory order--those which raise negotiability questions requiring expedited processing.

In FY22, the agency received zero one request for a declaratory order.

II. BOARD: EXPEDITED NEGOTIABILITY RULINGS

The scope of bargaining for public employers and employee organizations is set out in Iowa Code section 20.9. There are two distinct classes of public employees: public safety units and non-public safety units. Public safety units are composed of at least 30% public safety employees, as defined by the Iowa Code. Public safety units' bargaining scope is broader than 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.*

Non-public safety units have a mandatory subject of bargaining: *base wages.*

Both public safety and non-public safety units have the following excluded subjects of bargaining: *retirement systems, dues check offs and other payroll deductions for political action committees or other political contributions or political activities.*

Non-public safety units have additional subjects excluded 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. 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.

In accordance with 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 typically issues a short-form "Preliminary Ruling", with no supporting rationale or discussion, designating each proposal at issue as either mandatory, permissive or prohibited. 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, to be issued, then such may be requested, in writing, within 30 days.

In FY22, there were zero petitions received requesting the Board's ruling on a negotiability dispute.

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.

In FY22, there were zero objections filed for a continuation of impasse-resolution services.

IV. BOARD: OBJECTIONS TO ELECTIONS

Chapter 20 allows PERB to invalidate an election and hold a second election if the Board finds misconduct or other circumstances which prevented the eligible voters from freely expressing their preferences. The Board has established rules governing objections to elections. A written objection must be filed by any party to a representation, retention or recertification election in order for the Board to investigate.

Additionally, Chapter 20 requires the agency to conduct a retention and recertification election of a certified employee organization prior to the expiration of a collective bargaining agreement between the organization and the public employer for a represented bargaining unit. The elections must occur within a statutory time frame. The Board has established rules setting out the election procedure and deadlines for the agency's conduct of the elections.

The certified employee organization or the public employer may file an objection to the Board's Notice of Intent to Conduct an Election in a specified case or in the absence of Notice when a party thinks PERB should conduct an election. PERB administrative rules further provide a process whereby a party can challenge a voter's eligibility and a process whereby the certified employee organization can make a post-election challenge. If the issue is outcome determinative on the election results in either instance, the Board may hold a hearing to make a determination on the merits of the challenge.

In FY22, there was one objection filed.

V. BOARD: 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 composed 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 FY22, there were zero petitions filed to determine the public safety status of a unit.

VI. BOARD: WAIVER OR VARIANCE OF RULE

Pursuant to Iowa Code Chapter 17A, the Board has established administrative rules providing a process whereby a party may petition the Board to suspend, in whole or in part, the requirements or provisions of a rule as applied to the individual or entity on the basis of particular circumstances.

In FY22, zero petitions for a waiver or variance of rule were filed.

VII. 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. PERBs contested cases consist almost entirely of two types: prohibited practice complaints (PPCs) & employee disciplines/grievances (8As). These two case types combine to create over 70% of PERBs docket. 8A cases consume double, or perhaps even triple, the resources over all other case types combined.

In FY22, PERB closed 47 total contested cases by decision.

This is an all-time high for PERB and an increase of nearly 25% over FY21, which in turn had been a 10% increase over the prior year.

Please note that "closed cases" does not equal "decisions written" as PERB may successfully close multiple cases with a single decision.

VIII. 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 FY22, there were two new petitions for judicial review and four decisions on PERB final agency actions which were up for judicial review.

CASE BREAKDOWN

	FY16	FY17	FY18	FY19	FY20	FY21	FY22
Chapter 8A State Employee Appeal	6	7	40	36	34	23	31
Prohibited Practice Complaint	22	24	41	14	11	6	8
Amendment of Unit	16	13	28	41	22	5	20
Amendment of Certification	3	11	12	13	8	13	6
Amendment of both Certification and Bargaining-Unit	2	1	0	0	0	0	0
Amendment of Bargaining Unit	0	0	0	0	0	0	0
Clarification of Bargaining Unit	1	1	1	1	0	0	1
Decertification	0	0	0	0	0	1	3
Declaratory Order	2	1	0	2	1	1	1
Expedited Negotiability	3	7	2	1	0	0	0
Miscellaneous	0	0	0	0	0	0	0
Neutral Complaint	2	0	0	0	0	0	0
Objection to Continuing Impasse Services	0	1	1	0	0	1	0
Objection to Recertification	0	0	2	5	2	1	0
Objection to Recertification Elections	0	0	2	5	2	1	1
Public Safety Determination	0	0	16	5	0	3	0
Representative Certification	1	5	6	3	7	5	3
Unit Representative	6	2	2	1	1	1	0
Revocation of Certification	3	2	1	0	0	2	17
Unit Determination	0	0	1	0	0	0	0
Unit Determination/Representation	12	3	3	1	3	2	3
Whistleblower	0	0	1	3	0	0	0

Total	79	78	159	131	91	65	94
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