

MAR 1 1 2005
Place On Calendar

HOUSE FILE 707
BY COMMITTEE ON COMMERCE,
REGULATION AND LABOR

(SUCCESSOR TO HSB 233)

Passed House, Date _____ Passed Senate, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act concerning public employee collective bargaining.
2 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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HF 707

1 Section 1. Section 20.1, subsection 7, Code 2005, is
2 amended to read as follows:

3 7. ~~Assisting the attorney general in the preparation of~~
4 Preparing legal briefs and ~~the presentation of~~ presenting oral
5 arguments in the district court, the court of appeals, and the
6 supreme court in cases affecting the board.

7 Sec. 2. Section 20.3, subsection 4, Code 2005, is amended
8 to read as follows:

9 4. "Employee organization" means an organization of any
10 kind in which public employees participate and which exists
11 for the primary purpose of representing ~~public~~ employees in
12 their employment relations.

13 Sec. 3. Section 20.5, subsection 5, Code 2005, is amended
14 to read as follows:

15 5. Members of the board and ~~other~~ employees of the board
16 shall be allowed their actual and necessary expenses incurred
17 in the performance of their duties. All expenses and salaries
18 shall be paid from appropriations for such purposes and the
19 board shall be subject to the budget requirements of chapter
20 8.

21 Sec. 4. Section 20.6, subsection 3, Code 2005, is amended
22 to read as follows:

23 3. Establish minimum qualifications for arbitrators, fact-
24 finders, and mediators, establish procedures for appointing,
25 maintaining, and removing from a list persons representative
26 of the public to be available to serve as arbitrators, fact-
27 finders, and mediators, and establish compensation rates for
28 arbitrators, fact-finders, and mediators.

29 Sec. 5. Section 20.10, subsection 2, paragraph f, Code
30 2005, is amended to read as follows:

31 f. Deny the rights accompanying certification ~~or exclusive~~
32 ~~recognition~~ granted in this chapter.

33 Sec. 6. Section 20.10, subsection 3, paragraph b, Code
34 2005, is amended to read as follows:

35 b. Interfere, restrain, or coerce a public employer with

1 respect to rights granted in this chapter or with respect to
2 selecting a representative for the purposes of negotiating
3 collectively ~~on~~ or the adjustment of grievances.

4 Sec. 7. Section 20.10, subsection 3, paragraph f, Code
5 2005, is amended to read as follows:

6 f. Violate the provisions of sections 732.1 to 732.3,
7 which are hereby made applicable to public employers, public
8 employees, and ~~public~~ employee organizations.

9 Sec. 8. Section 20.10, subsection 4, Code 2005, is amended
10 to read as follows:

11 4. The expressing of any views, argument or opinion, or
12 the dissemination thereof, whether orally or in written,
13 printed, graphic, or visual form, shall not constitute or be
14 evidence of any ~~unfair-labor~~ prohibited practice under any of
15 the provisions of this chapter, if such expression contains no
16 threat of reprisal or force or promise of benefit.

17 Sec. 9. Section 20.11, subsections 1, 2, and 3, Code 2005,
18 are amended to read as follows:

19 1. Proceedings against a party alleging a violation of
20 section 20.10, shall be commenced by filing a complaint with
21 the board within ninety days of the alleged violation, causing
22 a copy of the complaint to be served upon the accused party in
23 ~~the-manner-of-an-original-notice-as-provided-in-this-chapter.~~
24 The accused party shall have ten days within which to file a
25 written answer to the complaint. However, the board may
26 conduct a preliminary investigation of the alleged violation,
27 and if the board determines that the complaint has no basis in
28 fact, the board may dismiss the complaint. The board shall
29 promptly thereafter set a time and place for hearing in the
30 county where the alleged violation occurred, provided,
31 however, that the presiding officer may conduct the hearing
32 through the use of technology from a remote location. The
33 parties shall be permitted to be represented by counsel,
34 summon witnesses, and request the board to subpoena witnesses
35 on the requester's behalf. Compliance with the technical

1 rules of pleading and evidence shall not be required.

2 2. The board may designate one of its members, an
3 administrative law judge, or any other qualified person
4 employed by the board to conduct serve as the presiding
5 officer at the hearing. The ~~administrative-law-judge~~
6 presiding officer has the powers as may be exercised by the
7 board for conducting the hearing and shall follow the
8 procedures adopted by the board for conducting the hearing.
9 The proposed decision of the ~~administrative-law-judge~~
10 presiding officer may be appealed to the board ~~and-the-board~~
11 ~~may-hear-the-case-de-novo-or-upon-the-record-as-submitted~~
12 ~~before-the-administrative-law-judge,-utilizing-procedures~~
13 ~~governing-appeals-to-the-district-court-in-this-section-so-far~~
14 as-applicable, or reviewed on motion of the board, in
15 accordance with the provisions of chapter 17A.

16 3. The board shall appoint a certified shorthand reporter
17 to report the proceedings and the board shall fix the
18 reasonable amount of compensation for such service, and for
19 any transcript requested by the board, which amount amounts
20 shall be taxed as other costs.

21 Sec. 10. Section 20.13, subsections 2 and 3, Code 2005,
22 are amended to read as follows:

23 2. Within thirty days of receipt of a petition ~~or-notice~~
24 ~~to-all-interested-parties-if-on-its-own-initiative~~, the board
25 shall conduct a public hearing, receive written or oral
26 testimony, and promptly thereafter file an order defining the
27 appropriate bargaining unit. In defining the unit, the board
28 shall take into consideration, along with other relevant
29 factors, the principles of efficient administration of
30 government, the existence of a community of interest among
31 public employees, the history and extent of public employee
32 organization, geographical location, and the recommendations
33 of the parties involved.

34 3. Appeals from such order shall be governed by ~~appeal~~
35 ~~provisions-provided-in-section-20-11~~ the provisions of chapter

1 17A.

2 Sec. 11. Section 20.14, subsection 2, paragraph a, Code
3 2005, is amended to read as follows:

4 a. The employee organization has submitted a request to a
5 public employer to bargain collectively with on behalf of a
6 designated group of public employees.

7 Sec. 12. Section 20.14, subsection 6, Code 2005, is
8 amended by striking the subsection.

9 Sec. 13. Section 20.15, subsections 1, 2, and 6, Code
10 2005, are amended to read as follows:

11 1. Upon the filing of a petition for certification of an
12 employee organization, the board shall submit a question to
13 the public employees at an election in an the appropriate
14 bargaining unit. The question on the ballot shall permit the
15 public employees to vote for no bargaining representation or
16 for any employee organization which has petitioned for
17 certification or which has presented proof satisfactory to the
18 board of support of ten percent or more of the public
19 employees in the appropriate unit.

20 2. If a majority of the votes cast on the question is for
21 no bargaining representation, the public employees in the
22 bargaining unit shall not be represented by an employee
23 organization. If a majority of the votes cast on the question
24 is for a listed employee organization, then the that employee
25 organization shall represent the public employees in an
26 appropriate the bargaining unit.

27 6. A petition for certification as an exclusive bargaining
28 representative, or a petition for decertification of a
29 certified bargaining representative, shall not be considered
30 by the board for a period of one year from the date of the
31 certification or noncertification of an employee organization
32 as an exclusive bargaining representative or. The board shall
33 also not consider a petition for decertification of an
34 exclusive bargaining representative during the duration of a
35 collective bargaining agreement which, for purposes of this

1 section, shall be deemed not to exceed two years. A
2 collective bargaining agreement with the state, its boards,
3 commissions, departments, and agencies shall be for two years
4 and the provisions of a collective bargaining agreement except
5 agreements-agreed-to-or-tentatively-agreed-to-prior-to-July-1,
6 1977, or arbitrators' arbitrator's award affecting state
7 employees shall not provide for renegotiations which would
8 require the refinancing of salary and fringe benefits for the
9 second year of the term of the agreement, except as provided
10 in section 20.17, subsection 6, and the effective date of any
11 such agreement shall be July 1 of odd-numbered years, provided
12 that if an exclusive bargaining representative is certified on
13 a date which will prevent the negotiation of a collective
14 bargaining agreement prior to July 1 of odd-numbered years for
15 a period of two years, the certified collective bargaining
16 representative may negotiate a one-year contract with a the
17 public employer which shall be effective from July 1 of the
18 even-numbered year to July 1 of the succeeding odd-numbered
19 year when new contracts shall become effective. However, if a
20 petition for decertification is filed during the duration of a
21 collective bargaining agreement, the board shall award an
22 election under this section not more than one hundred eighty
23 days nor less than one hundred fifty days prior to the
24 expiration of the collective bargaining agreement. If an
25 employee organization is decertified, the board may receive
26 petitions under section 20.14, provided that no such petition
27 and no election conducted pursuant to such petition within one
28 year from decertification shall include as a party the
29 decertified employee organization.

30 Sec. 14. Section 20.17, subsection 3, Code 2005, is
31 amended to read as follows:

32 3. Negotiating sessions, strategy meetings of public
33 employers or-employee-organizations, mediation, and the
34 deliberative process of arbitrators shall be exempt from the
35 provisions of chapter 21. However, the employee organization

1 shall present its initial bargaining position to the public
2 employer at the first bargaining session. The public employer
3 shall present its initial bargaining position to the employee
4 organization at the second bargaining session, which shall be
5 held no later than two weeks following the first bargaining
6 session. Both sessions shall be open to the public and
7 subject to the provisions of chapter 21. Parties who by
8 agreement are utilizing a cooperative alternative bargaining
9 process may exchange their respective initial interest
10 statements in lieu of initial bargaining positions at these
11 open sessions. Hearings conducted by arbitrators shall be
12 open to the public.

13 Sec. 15. Section 20.17, subsection 6, Code 2005, is
14 amended to read as follows:

15 6. No A collective bargaining agreement or ~~arbitrators¹~~
16 decision arbitrator's award shall not be valid or enforceable
17 if its implementation would be inconsistent with any statutory
18 limitation on the public employer's funds, spending or budget,
19 or would substantially impair or limit the performance of any
20 statutory duty by the public employer. A collective
21 bargaining agreement or ~~arbitrators¹~~ arbitrator's award may
22 provide for benefits conditional upon specified funds to be
23 obtained by the public employer, but the agreement shall
24 provide either for automatic reduction of such conditional
25 benefits or for additional bargaining if the funds are not
26 obtained or if a lesser amount is obtained.

27 Sec. 16. Section 20.17, subsection 10, Code 2005, is
28 amended to read as follows:

29 10. The negotiation of a proposed collective bargaining
30 agreement by representatives of a state public employer and a
31 state employee organization shall be complete not later than
32 March 15 of the year when the agreement is to become
33 effective. The board shall provide, by rule, a date on which
34 any impasse item must be submitted to binding arbitration and
35 for such other procedures as deemed necessary to provide for

1 the completion of negotiations of proposed state collective
2 bargaining agreements not later than March 15. The date
3 selected for the mandatory submission of impasse items to
4 binding arbitration shall be sufficiently in advance of March
5 15 to ~~insure~~ ensure that the ~~arbitrators'-decision~~
6 arbitrator's award can be reasonably made before March 15.

7 Sec. 17. Section 20.17, subsection 11, Code 2005, is
8 amended to read as follows:

9 11. a. In the absence of an impasse agreement negotiated
10 pursuant to section 20.19 which provides for a different
11 completion date, public employees represented by a certified
12 employee organization who are teachers licensed under chapter
13 272 and who are employed by a public employer which is a
14 school district or area education agency shall complete the
15 negotiation of a proposed collective bargaining agreement not
16 later than May 31 of the year when the agreement is to become
17 effective. The board shall provide, by rule, a date on which
18 impasse items in such cases must be submitted to binding
19 arbitration and for such other procedures as deemed necessary
20 to provide for the completion of negotiations of proposed
21 collective bargaining agreements not later than May 31. The
22 date selected for the mandatory submission of impasse items to
23 binding arbitration in such cases shall be sufficiently in
24 advance of May 31 to ensure that the ~~arbitrators'-decision~~
25 arbitrator's award can be reasonably made before by May 31.

26 b. ~~If the public employer is a community college, the~~
27 ~~following apply:~~

28 ~~(1) The negotiation of a proposed collective bargaining~~
29 ~~agreement shall be complete not later than May 31 of the year~~
30 ~~when the agreement is to become effective, absent the~~
31 ~~existence~~ In the absence of an impasse agreement negotiated
32 pursuant to section 20.19 which provides for a different
33 completion date, public employees represented by a certified
34 employee organization who are employed by a public employer
35 which is a community college shall complete the negotiation of

1 a proposed collective bargaining agreement not later than May
2 31 of the year when the agreement is to become effective. The
3 board shall ~~adopt rules providing for~~ provide, by rule, a date
4 on which impasse items in such cases must be submitted to
5 binding arbitration and for such other procedures as deemed
6 necessary to provide for the completion of negotiations of
7 proposed collective bargaining agreements not later than May
8 31. The date selected for the mandatory submission of impasse
9 items to binding arbitration in such cases shall be
10 sufficiently in advance of May 31 to ensure that the
11 ~~arbitrators' decision~~ arbitrator's award can be reasonably
12 made by May 31.

13 ~~{2}--Notwithstanding the provisions of subparagraph (1),~~
14 ~~the May 31 deadline may be waived by mutual agreement of the~~
15 ~~parties to the collective bargaining agreement negotiations.~~

16 Sec. 18. Section 20.18, unnumbered paragraph 1, Code 2005,
17 is amended to read as follows:

18 An agreement with an employee organization which is the
19 exclusive representative of public employees in an appropriate
20 unit may provide procedures for the consideration of public
21 employee and employee organization grievances ~~and of disputes~~
22 over the interpretation and application of agreements.
23 Negotiated procedures may provide for binding arbitration of
24 public employee and employee organization grievances ~~and of~~
25 ~~disputes~~ over the interpretation and application of existing
26 agreements. An arbitrator's decision on a grievance may not
27 change or amend the terms, conditions or applications of the
28 collective bargaining agreement. Such procedures shall
29 provide for the invoking of arbitration only with the approval
30 of the employee organization, and in the case of an employee
31 grievance, only with the approval of the public employee. The
32 costs of arbitration shall be shared equally by the parties.

33 Sec. 19. Section 20.19, Code 2005, is amended by adding
34 the following new unnumbered paragraph:

35 NEW UNNUMBERED PARAGRAPH. Parties who by agreement are

1 utilizing a cooperative alternative bargaining process shall,
2 at the outset of such process, agree upon a method and
3 schedule for the completion of impasse procedures should they
4 fail to reach a collective bargaining agreement through the
5 use of such alternative process.

6 Sec. 20. Section 20.21, unnumbered paragraphs 1 and 2,
7 Code 2005, are amended to read as follows:

8 If the impasse persists ten days after the mediator has
9 been appointed, the board shall appoint a fact-finder
10 representative of the public, from a list of qualified persons
11 maintained by the board. The fact-finder shall conduct a
12 hearing, may administer oaths, and may ~~request-the-board-to~~
13 issue subpoenas to compel the attendance of witnesses and the
14 production of records. The fact-finder may petition the
15 district court at the seat of government or of the county in
16 which the hearing is held to enforce the subpoena. The fact-
17 finder shall make written findings of facts and
18 recommendations for resolution of the-dispute each impasse
19 item and, not later than fifteen days from the day-of
20 appointment date of the hearing, shall serve such findings and
21 recommendations on the public employer and the certified
22 employee organization.

23 The Upon receipt of the fact-finder's findings and
24 recommendations, the public employer and the certified
25 employee organization shall immediately accept the fact-
26 finder's recommendation recommendations in their entirety or
27 shall within five days submit the fact-finder's
28 recommendations to the governing body of the public employer
29 and members of the certified employee organization for such
30 acceptance or rejection. If the dispute is not resolved by
31 both parties' acceptance of the fact-finder's recommendations,
32 the parties may continue to negotiate and resolve any disputed
33 impasse items. If the dispute continues ten days after the
34 report-is-submitted fact-finder's findings and recommendations
35 are served, the report findings and recommendations shall be

1 made public by the board.

2 Sec. 21. Section 20.22, subsections 1, 2, and 3, Code
3 2005, are amended to read as follows:

4 1. If an impasse persists after the fact-finder's findings
5 of fact and recommendations are made public by the fact-
6 finder board, the parties may continue to negotiate or, the
7 board shall have the power, upon request of either party, to
8 arrange for arbitration, which shall be binding. The request
9 for arbitration shall be in writing and a copy of the request
10 shall be served upon the other party.

11 2. Each party shall submit to the board within four days
12 of request a final offer on the impasse items with proof of
13 service of a copy upon the other party. Each party shall also
14 submit a copy of a draft of the proposed collective bargaining
15 agreement to the extent to which agreement has been reached
16 ~~and the name of its selected arbitrator~~. The parties may
17 continue to negotiate all offers until an agreement is reached
18 or a decision an award is rendered by the ~~panel of arbitrators~~
19 arbitrator.

20 ~~As an alternative procedure, the two parties may agree to~~
21 ~~submit the dispute to a single arbitrator. If the parties~~
22 ~~cannot agree on the arbitrator within four days, the selection~~
23 ~~shall be made pursuant to subsection 5.~~ The full costs of
24 arbitration under this provision section shall be shared
25 equally by the parties to the dispute.

26 3. The submission of the impasse items to the arbitrators
27 arbitrator shall be limited to those issues that had been
28 considered by the fact-finder and upon which the parties have
29 not reached agreement. With respect to each such item, the
30 arbitration-board arbitrator's award shall be restricted to
31 the final offers on each impasse item submitted by the parties
32 to the arbitration-board arbitrator or to the recommendation
33 of the fact-finder on each impasse item.

34 Sec. 22. Section 20.22, subsection 4, Code 2005, is
35 amended by striking the subsection and inserting in lieu

1 thereof the following:

2 4. Upon the filing of the request for arbitration, a list
3 of five arbitrators shall be served upon the parties by the
4 board. Within five days of service of the list, the parties
5 shall determine by lot which party shall remove the first name
6 from the list and the parties shall then alternately remove
7 names from the list until the name of one person remains, who
8 shall become the arbitrator. The parties shall immediately
9 notify the board of their selection and the board shall notify
10 the arbitrator. After consultation with the parties, the
11 arbitrator shall set a time and place for an arbitration
12 hearing.

13 Sec. 23. Section 20.22, subsections 5 and 6, Code 2005,
14 are amended by striking the subsections.

15 Sec. 24. Section 20.22, subsections 7 and 8, Code 2005,
16 are amended to read as follows:

17 7. The ~~panel-of-arbitrators~~ arbitrator shall at no time
18 engage in an effort to mediate or otherwise settle the dispute
19 in any manner other than that prescribed in this section.

20 8. From the time ~~of-appointment~~ the board notifies the
21 arbitrator of the selection of the arbitrator until such time
22 as the ~~panel-of-arbitrators-makes-its-final-determination~~
23 arbitrator's selection on each impasse item is made, there
24 shall be no discussion concerning recommendations for
25 settlement of the dispute by the ~~members-of-the-panel-of~~
26 ~~arbitrators~~ arbitrator with parties other than those who are
27 direct parties to the dispute. ~~The-panel-of-arbitrators-may~~
28 ~~conduct-formal-or-informal-hearings-to-discuss-offers~~
29 ~~submitted-by-both-parties-~~

30 Sec. 25. Section 20.22, subsection 9, unnumbered paragraph
31 1, Code 2005, is amended to read as follows:

32 The ~~panel-of-arbitrators~~ arbitrator shall consider, in
33 addition to any other relevant factors, the following factors:

34 Sec. 26. Section 20.22, subsections 10, 11, 12, and 13,
35 Code 2005, are amended to read as follows:

1 10. ~~The chairperson-of-the-panel-of-arbitrators~~ arbitrator
2 may ~~hold-hearings-and~~ administer oaths, examine witnesses and
3 documents, take testimony and receive evidence, and issue
4 subpoenas to compel the attendance of witnesses and the
5 production of records, ~~and-delegate-such-powers-to-other~~
6 ~~members-of-the-panel-of-arbitrators~~. The ~~chairperson-of-the~~
7 ~~panel-of-arbitrators~~ arbitrator may petition the district
8 court at the seat of government or of the county in which any
9 the hearing is held to enforce the order of the ~~chairperson~~
10 arbitrator compelling the attendance of witnesses and the
11 production of records.

12 11. ~~A-majority-of-the-panel-of-arbitrators~~ The arbitrator
13 shall select within fifteen days after ~~its-first-meeting~~ the
14 hearing the most reasonable offer, in ~~its~~ the arbitrator's
15 judgment, of the final offers on each impasse item submitted
16 by the parties, or the recommendations of the fact-finder on
17 each impasse item.

18 12. The selections by the ~~panel-of-arbitrators~~ arbitrator
19 and items agreed upon by the public employer and the employee
20 organization, shall be deemed to be the collective bargaining
21 agreement between the parties.

22 13. The determination of the ~~panel-of-arbitrators-shall-be~~
23 ~~by-majority-vote-and~~ arbitrator shall be final and binding
24 subject to the provisions of section 20.17, subsection 6. The
25 ~~panel-of-arbitrators~~ arbitrator shall give written explanation
26 for ~~its-selection~~ the arbitrator's selections and inform the
27 parties of ~~its~~ the decision.

28 Sec. 27. Section 20.24, Code 2005, is amended to read as
29 follows:

30 20.24 NOTICE AND SERVICE.

31 Any notice required under the provisions of this chapter
32 shall be in writing, but service thereof shall be sufficient
33 if mailed by restricted certified mail, return receipt
34 requested, addressed to the last known address of the parties
35 intended recipient, unless otherwise provided in this chapter.

1 Refusal of restricted certified mail by any party shall be
2 considered service. Prescribed Unless otherwise provided in
3 this chapter, prescribed time periods shall commence from the
4 date of the receipt of the notice. Any party may at any time
5 execute and deliver an acceptance of service in lieu of mailed
6 notice.

7 Sec. 28. Section 20.30, Code 2005, is repealed.

8 EXPLANATION

9 This bill makes changes to Code chapter 20 governing public
10 employee collective bargaining.

11 Code section 20.1, subsection 7, is amended to provide that
12 one of the powers and duties of the public employment
13 relations board (PERB) is to represent the board in court.

14 Code section 20.6 is amended to provide that PERB shall
15 establish the qualifications and procedures for appointing
16 fact-finders in the same manner as for arbitrators and
17 mediators.

18 Code section 20.10, subsection 4, is amended to
19 specifically provide that oral expression of views without
20 threat of reprisal or force shall not constitute or be
21 evidence of a prohibited practice.

22 Code section 20.11 is amended to allow a presiding officer
23 in a prohibited practice hearing to hear the case through the
24 use of technology from a location other than the county where
25 the alleged violation occurred. The bill also allows PERB to
26 designate one of its members or any other qualified person to
27 preside at a prohibited practice hearing.

28 The bill amends Code sections 20.11, 20.13, and 20.14 to
29 provide that Code chapter 17A, the Iowa administrative
30 procedure Act, governs hearing and appeal proceedings
31 described in those sections.

32 Code section 20.15, concerning certification elections for
33 exclusive bargaining representation, is amended to provide
34 that the current time limits for filing a petition for
35 certification of an exclusive bargaining representative shall

1 also apply to petitions for decertification of a certified
2 bargaining representative.

3 Code section 20.17, subsection 3, concerning bargaining
4 procedures, is amended to provide that parties utilizing a
5 cooperative alternative bargaining process may exchange their
6 initial interest statements in lieu of an initial bargaining
7 position during bargaining.

8 Code section 20.17, subsection 11, concerning the deadlines
9 for community college employee bargaining, is amended to match
10 the provisions of the subsection applicable to other
11 educational bargaining units.

12 Code section 20.18, concerning grievance procedures, is
13 amended to provide that an agreement with an employee
14 organization may include procedures for the consideration of
15 employee organization grievances in addition to public
16 employee grievances.

17 Code section 20.19, concerning impasse procedures, is
18 amended to provide that parties using a cooperative
19 alternative bargaining process shall establish impasse
20 procedures at the outset of the process.

21 Code section 20.21, concerning fact-finding procedures, is
22 amended to provide that the fact-finder is to make
23 recommendations on each impasse item between the parties and
24 that the parties are required to accept or reject the fact-
25 finder's recommendations in their entirety.

26 Code section 20.22, concerning binding arbitration, is
27 amended to provide that arbitration will be conducted by a
28 single arbitrator and not a panel of arbitrators. The bill
29 also provides for the method of selecting the arbitrator. The
30 bill provides that PERB will submit a list of five arbitrators
31 to the parties upon the filing of a request for arbitration
32 and then each party, in an order determined by lot, shall
33 alternatively remove names from the list until one name
34 remains.

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HORBACH
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T. TAYLOR
WISE

SF 0707

HSB 233
COMMERCE, REGULATION & LABOR

SENATE/HOUSE FILE _____
BY (PROPOSED PUBLIC EMPLOYMENT
RELATIONS BOARD BILL)

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act concerning public employee collective bargaining.
2 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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6 supreme court in cases affecting the board.

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8 to read as follows:

9 4. "Employee organization" means an organization of any
10 kind in which public employees participate and which exists
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16 threat of reprisal or force or promise of benefit.

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20 section 20.10, shall be commenced by filing a complaint with
21 the board within ninety days of the alleged violation, causing
22 a copy of the complaint to be served upon the accused party in
23 ~~the-manner-of-an-original-notice-as-provided-in-this-chapter.~~
24 The accused party shall have ten days within which to file a
25 written answer to the complaint. However, the board may
26 conduct a preliminary investigation of the alleged violation,
27 and if the board determines that the complaint has no basis in
28 fact, the board may dismiss the complaint. The board shall
29 promptly thereafter set a time and place for hearing in the
30 county where the alleged violation occurred, provided,
31 however, that the presiding officer may conduct the hearing
32 through the use of technology from a remote location. The
33 parties shall be permitted to be represented by counsel,
34 summon witnesses, and request the board to subpoena witnesses
35 on the requester's behalf. Compliance with the technical

1 rules of pleading and evidence shall not be required.

2 2. The board may designate one of its members, an
3 administrative law judge, or any other qualified person
4 employed by the board to conduct serve as the presiding
5 officer at the hearing. The ~~administrative-law-judge~~
6 presiding officer has the powers as may be exercised by the
7 board for conducting the hearing and shall follow the
8 procedures adopted by the board for conducting the hearing.
9 The proposed decision of the administrative-law-judge
10 presiding officer may be appealed to the board ~~and-the-board~~
11 ~~may-hear-the-case-de-novo-or-upon-the-record-as-submitted~~
12 ~~before-the-administrative-law-judge,-utilizing-procedures~~
13 ~~governing-appeals-to-the-district-court-in-this-section-so-far~~
14 as-applicable, or reviewed on motion of the board, in
15 accordance with the provisions of chapter 17A.

16 3. The board shall appoint a certified shorthand reporter
17 to report the proceedings and the board shall fix the
18 reasonable amount of compensation for such service, and for
19 any transcript requested by the board, which amount amounts
20 shall be taxed as other costs.

21 Sec. 10. Section 20.13, subsections 2 and 3, Code 2005,
22 are amended to read as follows:

23 2. Within thirty days of receipt of a petition ~~or-notice~~
24 ~~to-all-interested-parties-if-on-its-own-initiative~~, the board
25 shall conduct a public hearing, receive written or oral
26 testimony, and promptly thereafter file an order defining the
27 appropriate bargaining unit. In defining the unit, the board
28 shall take into consideration, along with other relevant
29 factors, the principles of efficient administration of
30 government, the existence of a community of interest among
31 public employees, the history and extent of public employee
32 organization, geographical location, and the recommendations
33 of the parties involved.

34 3. Appeals from such order shall be governed by ~~appeal~~
35 ~~provisions-provided-in-section-20-11~~ the provisions of chapter

1 17A.

2 Sec. 11. Section 20.14, subsection 2, paragraph a, Code
3 2005, is amended to read as follows:

4 a. The employee organization has submitted a request to a
5 public employer to bargain collectively with on behalf of a
6 designated group of public employees.

7 Sec. 12. Section 20.14, subsection 6, Code 2005, is
8 amended by striking the subsection.

9 Sec. 13. Section 20.15, subsections 1, 2, and 6, Code
10 2005, are amended to read as follows:

11 1. Upon the filing of a petition for certification of an
12 employee organization, the board shall submit a question to
13 the public employees at an election in ~~an~~ the appropriate
14 bargaining unit. The question on the ballot shall permit the
15 public employees to vote for no bargaining representation or
16 for any employee organization which has petitioned for
17 certification or which has presented proof satisfactory to the
18 board of support of ten percent or more of the public
19 employees in the appropriate unit.

20 2. If a majority of the votes cast on the question is for
21 no bargaining representation, the public employees in the
22 bargaining unit shall not be represented by an employee
23 organization. If a majority of the votes cast on the question
24 is for a listed employee organization, then ~~the~~ that employee
25 organization shall represent the public employees in an
26 appropriate the bargaining unit.

27 6. A petition for certification as an exclusive bargaining
28 representative, or a petition for decertification of a
29 certified bargaining representative, shall not be considered
30 by the board for a period of one year from the date of the
31 certification or noncertification of an employee organization
32 as an exclusive bargaining representative or. The board shall
33 also not consider a petition for decertification of an
34 exclusive bargaining representative during the duration of a
35 collective bargaining agreement which, for purposes of this

1 section, shall be deemed not to exceed two years. A
2 collective bargaining agreement with the state, its boards,
3 commissions, departments, and agencies shall be for two years
4 and the provisions of a collective bargaining agreement ~~except~~
5 ~~agreements-agreed-to-or-tentatively-agreed-to-prior-to-July-17~~
6 ~~1977~~, or ~~arbitrators~~ arbitrator's award affecting state
7 employees shall not provide for renegotiations which would
8 require the refinancing of salary and fringe benefits for the
9 second year of the term of the agreement, except as provided
10 in section 20.17, subsection 6, and the effective date of any
11 such agreement shall be July 1 of odd-numbered years, provided
12 that if an exclusive bargaining representative is certified on
13 a date which will prevent the negotiation of a collective
14 bargaining agreement prior to July 1 of odd-numbered years for
15 a period of two years, the certified collective bargaining
16 representative may negotiate a one-year contract with a the
17 public employer which shall be effective from July 1 of the
18 even-numbered year to July 1 of the succeeding odd-numbered
19 year when new contracts shall become effective. However, if a
20 petition for decertification is filed during the duration of a
21 collective bargaining agreement, the board shall award an
22 election under this section not more than one hundred eighty
23 days nor less than one hundred fifty days prior to the
24 expiration of the collective bargaining agreement. If an
25 employee organization is decertified, the board may receive
26 petitions under section 20.14, provided that no such petition
27 and no election conducted pursuant to such petition within one
28 year from decertification shall include as a party the
29 decertified employee organization.

30 Sec. 14. Section 20.17, subsection 3, Code 2005, is
31 amended to read as follows:

32 3. Negotiating sessions, strategy meetings of public
33 employers ~~or-employee-organizations~~, mediation, and the
34 deliberative process of arbitrators shall be exempt from the
35 provisions of chapter 21. However, the employee organization

1 shall present its initial bargaining position to the public
2 employer at the first bargaining session. The public employer
3 shall present its initial bargaining position to the employee
4 organization at the second bargaining session, which shall be
5 held no later than two weeks following the first bargaining
6 session. Both sessions shall be open to the public and
7 subject to the provisions of chapter 21. Parties who by
8 agreement are utilizing a cooperative alternative bargaining
9 process may exchange their respective initial interest
10 statements in lieu of initial bargaining positions at these
11 open sessions. Hearings conducted by arbitrators shall be
12 open to the public.

13 Sec. 15. Section 20.17, subsection 6, Code 2005, is
14 amended to read as follows:

15 6. No A collective bargaining agreement or ~~arbitrators'~~
16 ~~decision~~ arbitrator's award shall not be valid or enforceable
17 if its implementation would be inconsistent with any statutory
18 limitation on the public employer's funds, spending or budget,
19 or would substantially impair or limit the performance of any
20 statutory duty by the public employer. A collective
21 bargaining agreement or ~~arbitrators'~~ arbitrator's award may
22 provide for benefits conditional upon specified funds to be
23 obtained by the public employer, but the agreement shall
24 provide either for automatic reduction of such conditional
25 benefits or for additional bargaining if the funds are not
26 obtained or if a lesser amount is obtained.

27 Sec. 16. Section 20.17, subsection 10, Code 2005, is
28 amended to read as follows:

29 10. The negotiation of a proposed collective bargaining
30 agreement by representatives of a state public employer and a
31 state employee organization shall be complete not later than
32 March 15 of the year when the agreement is to become
33 effective. The board shall provide, by rule, a date on which
34 any impasse item must be submitted to binding arbitration and
35 for such other procedures as deemed necessary to provide for

1 the completion of negotiations of proposed state collective
2 bargaining agreements not later than March 15. The date
3 selected for the mandatory submission of impasse items to
4 binding arbitration shall be sufficiently in advance of March
5 15 to ~~insure~~ ensure that the ~~arbitrators'-decision~~
6 arbitrator's award can be reasonably made before March 15.

7 Sec. 17. Section 20.17, subsection 11, Code 2005, is
8 amended to read as follows:

9 11. a. In the absence of an impasse agreement negotiated
10 pursuant to section 20.19 which provides for a different
11 completion date, public employees represented by a certified
12 employee organization who are teachers licensed under chapter
13 272 and who are employed by a public employer which is a
14 school district or area education agency shall complete the
15 negotiation of a proposed collective bargaining agreement not
16 later than May 31 of the year when the agreement is to become
17 effective. The board shall provide, by rule, a date on which
18 impasse items in such cases must be submitted to binding
19 arbitration and for such other procedures as deemed necessary
20 to provide for the completion of negotiations of proposed
21 collective bargaining agreements not later than May 31. The
22 date selected for the mandatory submission of impasse items to
23 binding arbitration in such cases shall be sufficiently in
24 advance of May 31 to ensure that the ~~arbitrators'-decision~~
25 arbitrator's award can be reasonably made before by May 31.

26 ~~b. If the public employer is a community college, the~~
27 ~~following apply:~~

28 ~~(1) The negotiation of a proposed collective bargaining~~
29 ~~agreement shall be complete not later than May 31 of the year~~
30 ~~when the agreement is to become effective, absent the~~
31 existence In the absence of an impasse agreement negotiated
32 pursuant to section 20.19 which provides for a different
33 completion date, public employees represented by a certified
34 employee organization who are employed by a public employer
35 which is a community college shall complete the negotiation of

1 a proposed collective bargaining agreement not later than May
2 31 of the year when the agreement is to become effective. The
3 board shall ~~adopt rules providing for~~ provide, by rule, a date
4 on which impasse items in such cases must be submitted to
5 binding arbitration and for such other procedures as deemed
6 necessary to provide for the completion of negotiations of
7 proposed collective bargaining agreements not later than May
8 31. The date selected for the mandatory submission of impasse
9 items to binding arbitration in such cases shall be
10 sufficiently in advance of May 31 to ensure that the
11 ~~arbitrators' decision~~ arbitrator's award can be reasonably
12 made by May 31.

13 ~~(2)--Notwithstanding the provisions of subparagraph (1),~~
14 ~~the May 31 deadline may be waived by mutual agreement of the~~
15 ~~parties to the collective bargaining agreement negotiations.~~

16 Sec. 18. Section 20.18, unnumbered paragraph 1, Code 2005,
17 is amended to read as follows:

18 An agreement with an employee organization which is the
19 exclusive representative of public employees in an appropriate
20 unit may provide procedures for the consideration of public
21 employee and employee organization ~~grievances and of disputes~~
22 over the interpretation and application of agreements.

23 Negotiated procedures may provide for binding arbitration of
24 public employee and employee organization ~~grievances and of~~
25 ~~disputes~~ over the interpretation and application of existing
26 agreements. An arbitrator's decision on a grievance may not
27 change or amend the terms, conditions or applications of the
28 collective bargaining agreement. Such procedures shall
29 provide for the invoking of arbitration only with the approval
30 of the employee organization, and in the case of an employee
31 grievance, only with the approval of the public employee. The
32 costs of arbitration shall be shared equally by the parties.

33 Sec. 19. Section 20.19, Code 2005, is amended by adding
34 the following new unnumbered paragraph:

35 NEW UNNUMBERED PARAGRAPH. Parties who by agreement are

1 utilizing a cooperative alternative bargaining process shall,
2 at the outset of such process, agree upon a method and
3 schedule for the completion of impasse procedures should they
4 fail to reach a collective bargaining agreement through the
5 use of such alternative process.

6 Sec. 20. Section 20.21, unnumbered paragraphs 1 and 2,
7 Code 2005, are amended to read as follows:

8 If the impasse persists ten days after the mediator has
9 been appointed, the board shall appoint a fact-finder
10 representative of the public, from a list of qualified persons
11 maintained by the board. The fact-finder shall conduct a
12 hearing, may administer oaths, and may ~~request-the-board-to~~
13 issue subpoenas to compel the attendance of witnesses and the
14 production of records. The fact-finder may petition the
15 district court at the seat of government or of the county in
16 which the hearing is held to enforce the subpoena. The fact-
17 finder shall make written findings of facts and
18 recommendations for resolution of ~~the-dispute~~ each impasse
19 item and, not later than fifteen days from the ~~day-of~~
20 appointment date of the hearing, shall serve such findings and
21 recommendations on the public employer and the certified
22 employee organization.

23 The Upon receipt of the fact-finder's findings and
24 recommendations, the public employer and the certified
25 employee organization shall immediately accept the fact-
26 finder's ~~recommendation~~ recommendations in their entirety or
27 shall within five days submit the fact-finder's
28 recommendations to the governing body of the public employer
29 and members of the certified employee organization for such
30 acceptance or rejection. If the dispute is not resolved by
31 both parties' acceptance of the fact-finder's recommendations,
32 the parties may continue to negotiate and resolve any disputed
33 impasse items. If the dispute continues ten days after the
34 ~~report-is-submitted~~ fact-finder's findings and recommendations
35 are served, the ~~report~~ findings and recommendations shall be

1 made public by the board.

2 Sec. 21. Section 20.22, subsections 1, 2, and 3, Code
3 2005, are amended to read as follows:

4 1. If an impasse persists after the fact-finder's findings
5 of fact and recommendations are made public by the fact-
6 finder board, the parties may continue to negotiate or, the
7 board shall have the power, upon request of either party, to
8 arrange for arbitration, which shall be binding. The request
9 for arbitration shall be in writing and a copy of the request
10 shall be served upon the other party.

11 2. Each party shall submit to the board within four days
12 of request a final offer on the impasse items with proof of
13 service of a copy upon the other party. Each party shall also
14 submit a copy of a draft of the proposed collective bargaining
15 agreement to the extent to which agreement has been reached
16 ~~and-the-name-of-its-selected-arbitrator~~. The parties may
17 continue to negotiate all offers until an agreement is reached
18 or ~~a-decision~~ an award is rendered by the ~~panel-of-arbitrators~~
19 arbitrator.

20 ~~As-an-alternative-procedure, the two parties may agree to~~
21 ~~submit the dispute to a single arbitrator. If the parties~~
22 ~~cannot agree on the arbitrator within four days, the selection~~
23 ~~shall be made pursuant to subsection 5.~~ The full costs of
24 arbitration under this provision section shall be shared
25 equally by the parties to the dispute.

26 3. The submission of the impasse items to the ~~arbitrators~~
27 arbitrator shall be limited to those issues that had been
28 considered by the fact-finder and upon which the parties have
29 not reached agreement. With respect to each such item, the
30 ~~arbitration-board~~ arbitrator's award shall be restricted to
31 the final offers on each impasse item submitted by the parties
32 to the ~~arbitration-board~~ arbitrator or to the recommendation
33 of the fact-finder on each impasse item.

34 Sec. 22. Section 20.22, subsection 4, Code 2005, is
35 amended by striking the subsection and inserting in lieu

1 thereof the following:

2 4. Upon the filing of the request for arbitration, a list
3 of five arbitrators shall be served upon the parties by the
4 board. Within five days of service of the list, the parties
5 shall determine by lot which party shall remove the first name
6 from the list and the parties shall then alternately remove
7 names from the list until the name of one person remains, who
8 shall become the arbitrator. The parties shall immediately
9 notify the board of their selection and the board shall notify
10 the arbitrator. After consultation with the parties, the
11 arbitrator shall set a time and place for an arbitration
12 hearing.

13 Sec. 23. Section 20.22, subsections 5 and 6, Code 2005,
14 are amended by striking the subsections.

15 Sec. 24. Section 20.22, subsections 7 and 8, Code 2005,
16 are amended to read as follows:

17 7. The ~~panel-of-arbitrators~~ arbitrator shall at no time
18 engage in an effort to mediate or otherwise settle the dispute
19 in any manner other than that prescribed in this section.

20 8. From the time ~~of-appointment~~ the board notifies the
21 arbitrator of the selection of the arbitrator until such time
22 as the ~~panel-of-arbitrators-makes-its-final-determination~~
23 arbitrator's selection on each impasse item is made, there
24 shall be no discussion concerning recommendations for
25 settlement of the dispute by the ~~members-of-the-panel-of~~
26 ~~arbitrators~~ arbitrator with parties other than those who are
27 direct parties to the dispute. ~~The-panel-of-arbitrators-may~~
28 ~~conduct-formal-or-informal-hearings-to-discuss-offers~~
29 ~~submitted-by-both-parties-~~

30 Sec. 25. Section 20.22, subsection 9, unnumbered paragraph
31 1, Code 2005, is amended to read as follows:

32 The ~~panel-of-arbitrators~~ arbitrator shall consider, in
33 addition to any other relevant factors, the following factors:

34 Sec. 26. Section 20.22, subsections 10, 11, 12, and 13,
35 Code 2005, are amended to read as follows:

1 10. ~~The chairperson-of-the-panel-of-arbitrators~~ arbitrator
2 may ~~hold-hearings-and~~ administer oaths, examine witnesses and
3 documents, take testimony and receive evidence, and issue
4 subpoenas to compel the attendance of witnesses and the
5 production of records, ~~and-delegate-such-powers-to-other~~
6 ~~members-of-the-panel-of-arbitrators~~. The ~~chairperson-of-the~~
7 ~~panel-of-arbitrators~~ arbitrator may petition the district
8 court at the seat of government or of the county in which any
9 the hearing is held to enforce the order of the ~~chairperson~~
10 arbitrator compelling the attendance of witnesses and the
11 production of records.

12 11. ~~A-majority-of-the-panel-of-arbitrators~~ The arbitrator
13 shall select within fifteen days after ~~its-first-meeting~~ the
14 hearing the most reasonable offer, in ~~its~~ the arbitrator's
15 judgment, of the final offers on each impasse item submitted
16 by the parties, or the recommendations of the fact-finder on
17 each impasse item.

18 12. The selections by the ~~panel-of-arbitrators~~ arbitrator
19 and items agreed upon by the public employer and the employee
20 organization, shall be deemed to be the collective bargaining
21 agreement between the parties.

22 13. The determination of the ~~panel-of-arbitrators-shall-be~~
23 ~~by-majority-vote-and~~ arbitrator shall be final and binding
24 subject to the provisions of section 20.17, subsection 6. The
25 ~~panel-of-arbitrators~~ arbitrator shall give written explanation
26 for ~~its-selection~~ the arbitrator's selections and inform the
27 parties of ~~its~~ the decision.

28 Sec. 27. Section 20.24, Code 2005, is amended to read as
29 follows:

30 20.24 NOTICE AND SERVICE.

31 Any notice required under the provisions of this chapter
32 shall be in writing, but service thereof shall be sufficient
33 if mailed by restricted certified mail, return receipt
34 requested, addressed to the last known address of the parties
35 intended recipient, unless otherwise provided in this chapter.

1 Refusal of restricted certified mail by any party shall be
2 considered service. Prescribed Unless otherwise provided in
3 this chapter, prescribed time periods shall commence from the
4 date of the receipt of the notice. Any party may at any time
5 execute and deliver an acceptance of service in lieu of mailed
6 notice.

7 Sec. 28. Section 20.30, Code 2005, is repealed.

8 EXPLANATION

9 This bill makes changes to Code chapter 20 governing public
10 employee collective bargaining.

11 Code section 20.1, subsection 7, is amended to provide that
12 one of the powers and duties of the public employment
13 relations board (PERB) is to represent the board in court.

14 Code section 20.6 is amended to provide that PERB shall
15 establish the qualifications and procedures for appointing
16 fact-finders in the same manner as for arbitrators and
17 mediators.

18 Code section 20.10, subsection 4, is amended to
19 specifically provide that oral expression of views without
20 threat of reprisal or force shall not constitute or be
21 evidence of a prohibited practice.

22 Code section 20.11 is amended to allow a presiding officer
23 in a prohibited practice hearing to hear the case through the
24 use of technology from a location other than the county where
25 the alleged violation occurred. The bill also allows PERB to
26 designate one of its members or any other qualified person to
27 preside at a prohibited practice hearing.

28 The bill amends Code sections 20.11, 20.13, and 20.14 to
29 provide that Code chapter 17A, the Iowa administrative
30 procedure Act, governs hearing and appeal proceedings
31 described in those sections.

32 Code section 20.15, concerning certification elections for
33 exclusive bargaining representation, is amended to provide
34 that the current time limits for filing a petition for
35 certification of an exclusive bargaining representative shall

1 also apply to petitions for decertification of a certified
2 bargaining representative.

3 Code section 20.17, subsection 3, concerning bargaining
4 procedures, is amended to provide that parties utilizing a
5 cooperative alternative bargaining process may exchange their
6 initial interest statements in lieu of an initial bargaining
7 position during bargaining.

8 Code section 20.17, subsection 11, concerning the deadlines
9 for community college employee bargaining, is amended to match
10 the provisions of the subsection applicable to other
11 educational bargaining units.

12 Code section 20.18, concerning grievance procedures, is
13 amended to provide that an agreement with an employee
14 organization may include procedures for the consideration of
15 employee organization grievances in addition to public
16 employee grievances.

17 Code section 20.19, concerning impasse procedures, is
18 amended to provide that parties using a cooperative
19 alternative bargaining process shall establish impasse
20 procedures at the outset of the process.

21 Code section 20.21, concerning fact-finding procedures, is
22 amended to provide that the fact-finder is to make
23 recommendations on each impasse item between the parties and
24 that the parties are required to accept or reject the fact-
25 finder's recommendations in their entirety.

26 Code section 20.22, concerning binding arbitration, is
27 amended to provide that arbitration will be conducted by a
28 single arbitrator and not a panel of arbitrators. The bill
29 also provides for the method of selecting the arbitrator. The
30 bill provides that PERB will submit a list of five arbitrators
31 to the parties upon the filing of a request for arbitration
32 and then each party, in an order determined by lot, shall
33 alternatively remove names from the list until one name
34 remains.

35



STATE OF IOWA

THOMAS J. VILSACK
GOVERNOR

PUBLIC EMPLOYMENT RELATIONS BOARD
JAMES R. RIORDAN, CHAIR

SALLY J. PEDERSON
LT. GOVERNOR

Memorandum

To: Members of the 2005 General Assembly

From:  James R. Riordan, Chair
Public Employment Relations Board

Date: January 10, 2005

Subject: Proposed Technical/Corrective Changes to
Iowa Code Chapter 20

On behalf of the entire Public Employment Relations Board, I respectfully submit the Board's agency bill for technical and corrective amendments to the Public Employment Relations Act, Iowa Code Chapter 20. The amendments contained in this bill have been circulated among and discussed with key members of both the labor and management communities, without adverse comment, and should not be controversial in any way.

The purpose and intent of the bill is to:

1. correct apparent errors and omissions in the Chapter's existing language;
2. clarify existing provisions and remove inconsistencies;
3. modernize the Act by, for example:
 - eliminating outdated provisions which were originally enacted to facilitate the Act's initial implementation in the 1970's, and
 - including provisions recognizing and facilitating the parties' increasing use of alternative bargaining processes, and facilitating the parties' transition back to "traditional" bargaining and impasse procedures should those processes fail to produce an agreement.
4. simplify the Act and its administration by altering difficult-to-administer provisions concerning arbitration to reflect the almost-universal practice of utilizing a single arbitrator rather than a three-member panel, while still allowing the parties to utilize a panel if they so choose.