THE REFEREES SPEAK: UPDATE ON COLLECTIVE BARGAINING IN IOWA FROM PERB, THE NEUTRAL STATE AGENCY

IOWA STATE ASSOCIATION OF COUNTIES AUGUST 25, 2017

MIKE CORMACK, BOARD CHAIR

JASMINA SARAJLIJA, ADMINISTRATIVE LAW JUDGE

AMBER DESMET, ADMINISTRATIVE LAW JUDGE



HISTORY OF PERA

- Chapter 20, Public Employment Relations Act was enacted in 1974
- Permitted public employees and employers to organize and bargain collectively
- Prohibited and prevented all strikes by public employees

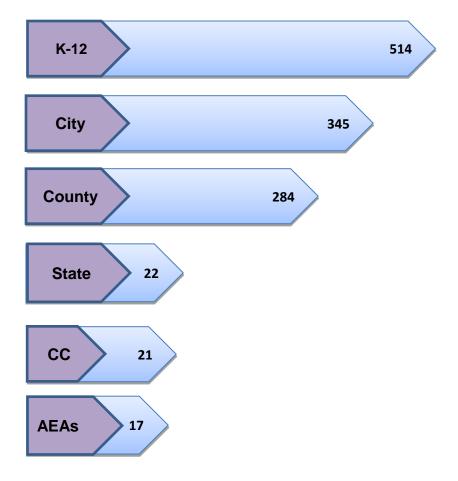


PERB'S DUTIES

- Determine appropriate bargaining units
- Conduct certification elections
- Adjudicate prohibited practice complaints
- Fashion appropriate remedies for violations
- Adjudicate state merit system discipline appeals and grievances
- Provide mediators and arbitrators to resolve impasses in negotiations



NUMBER OF BARGAINING UNITS BY EMPLOYER TYPE



H.F. 291 CHANGE

- Statutory amendments enacted by H.F. 291 created two categories of "public employees"
 - "Public Safety" employees
 - All other public employees
- If at least 30% of employees in unit are "public safety" then the entire unit is deemed "public safety" for the purpose of collective bargaining
- The category determines the scope of negotiations for the unit

SCOPE OF NEGOTIATIONS - PRE-H.F. 291

For all public employees

Mandatory

- 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
- Dues deductions

Prohibited

Retirement systems

Permissive

Everything else mutually agreed upon



SCOPE OF NEGOTIATIONS - POST-H.F. 291

For "Public Safety" Units

Mandatory

- 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
- Dues deductions

Prohibited

- •Retirement systems
 Dues deductions
- Any other payroll deductions for political activities

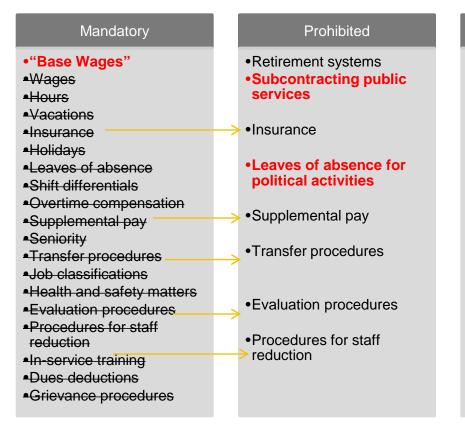
Permissive

•Everything else mutually agreed upon



SCOPE OF NEGOTIATIONS - POST-H.F. 291

For Non-Public Safety Units



Everything else mutually agreed upon that is not prohibited

Permissive

IMPASSE PROCEDURES

- Exchange of initial bargaining positions
 - Employee Organization goes first
 - County responds within 2 weeks
 - Meetings are open to the public-subject to Iowa Code chapter 21
- Bargaining and Mediation
 - Meetings closed to the public-not subject to Iowa Code chapter 21
- No change in Timeline

COMPLETION OF IMPASSE PROCESS

Reach a tentative agreement:

- Should be written and signed off
- Timelines may be modified by written agreement
- Employee organization ratification:
 - o 24 hours notice to members prior to ratification
 - Within 7 days of tentative agreement
 - May extend voting rights to nonmembers pursuant to internal union procedures
 - Notify employer of outcome within 24 hours of vote
- Public Employer ratification:
 - o If employee organization rejects, do not have to vote
 - Within 10 days of tentative agreement
 - Notify employee organization within 24 hours of vote

COMPLETION OF IMPASSE PROCESS, CONT.

Failure to reach a tentative agreement

- 10 days after mediation date, either party may file a request for interest arbitration
 - Request in writing and served on other party
- Within 4 days of PERB's receipt of arbitration request, exchange of final offers
- PERB sends list of 5 arbitrators
- Within 5 days of PERB sending list, arbitrator selected

INTEREST ARBITRATION

- No change in arbitration hearing timeline or process
- Changes are in the item taken to impasse and the factors considered by arbitrator
- Only impasse item is base wages and permissive topics mutually agreed upon
 - Shall not exceed the lesser of 3% or the consumer price index for all urban consumers for the Midwest region.
- Factors considered by the arbitrator:
 - Other relevant factors
 - Comparison of base wages, hours, and conditions of employment. To extent adequate, applicable data is available, compare public and private sector employees during comparable work, giving consideration to the factors peculiar to the area and the classifications involved.
 - o Interests and welfare of the public.
 - Financial ability of the employer to met the cost of an offer in light of the current economic conditions of the pubic employer. Substantial weight given to evidence that the public employer 's authority to utilize funds is restrict to special purposes or circumstances by state or federal law, rules, regulations, or grant requirements.
 - Factors not considered by the arbitrator:
 - Past collective bargaining agreements between the parties or bargaining that led to such agreement.
 - Public employer's ability to fund an award through the increase or imposition of new taxes, fees, or charges or to develop other sources of revenue.

CONTRACTS TO PERB

The collective bargaining agreement between the parties shall be filed with PERB by the public employer within ten days of the date on which the agreement is entered into.

NEGOTIABILITY DISPUTES

If the parties disagree on the negotiability status of a proposal, a petition is filed with PERB to resolve the dispute

 The Board issues an expedited preliminary ruling that allows the parties to continue impasse services (mediation, binding arbitration)

The arbitrator then issues award on mandatory subjects or permissive topics mutually agreed upon

6 Negotiability Petitions and 1 Request for a Declaratory Order have been filed since H.F. 291

COLUMBUS CSD AND COLUMBUS EA, 17 PERB 100820

Filed 3/17/2017, Final Ruling issued 5/17/2017.

- "Base wages" defined as the minimum (bottom) pay for a job classification, category, or title, exclusive of additional pay such as bonuses, premium pay, performance pay, or longevity pay.
- Section 20.3(12) "supplemental pay" definition interpreted and applied. (Permissive subjects for non-public safety units which are listed mandatory subjects for public safety units are "permitted" subjects specified in section 20.9. Compensation which is within one of those subjects is thus not excluded as supplemental pay)

OSKALOOSA CSD AND OSKALOOSA EA, 17 PERB 823

Filed 3/31/2017, Final Ruling issued 5/17/2017.

- This case has been appealed to Polk County District Court
- Definition of "base wages" announced in Columbus applied to salary matrices for teachers and nurses.
- Starting point for the calculation of the size of base wage increase is the minimum wage of the employee's classification rather than the individual employee's total existing compensation

OSKALOOSA, CONT.

- Vertical Lanes- Longevity "steps" represent additional pay above the minimum for a classification and are therefore permissive "wage" proposals, not "base wages."
- Horizontal "lanes" are job classifications and are not themselves mandatory, but base (minimum) wage for each classification created or maintained by the employer is mandatorily negotiable.

UNITED ELECTRICAL WORKERS AND BOARD OF REGENTS, 17 PERB 100825

- Declaratory Order issued 6/29/2017.
- Proposal for an "annual" base wage is mandatory, as would be a proposal for an "hourly" base wage.
- Proposal that employees be paid on 1st and 15th days of each month is fundamental aspect of base wages and is mandatory
- Proposal specifying number of hours in day or week, number of holidays, amount of paid vacation and sick leave and wage rate for hours over 40 in a week are permissive.
 - When a proposal is premised upon assumptions about the quantity of work required of employees in exchange for their base wage, employer's duty to bargain in good faith requires employer to inform union of accuracy/inaccuracy of its assumptions so union can knowingly and rationally bargain base wages.

GREENE COUNTY CSD AND CONSTRUCTION PUBLIC EMPLOYEE LIUNA LOCAL 177

Final Negotiability issued 08/16/2017

PENDING NEGOTIABILITY CASE

 Muscatine CSD and AFSCME Iowa Council 61 and Local 1560

REPRESENTATION ELECTIONS PRE-H.F. 291

Certification Elections: After determination of appropriate unit, PERB conducts election to certify a representative

- Triggered by Petition filed by Public Employee Organization
- Requires show of interest for PERB to hold election
- Will result in Order of Certification of union or Order of Noncertification of Union

Decertification Elections: To determine whether employees still want union representation

- Triggered by Petition filed by Public Employee
- Requires show of interest for PERB to hold election
- Will result in Order of Decertification of union or Order of Continued Certification of Union

REPRESENTATION ELECTIONS CHANGES DUE TO H.F. 291

Certification Elections

- To become certified union must have a majority of the employees in the bargaining unit vote in favor of representation
- Employee organization must pay fee before PERB will conduct election. Failure to pay will result in Order of Noncertification.

Decertification Elections

- To decertify the union, a majority of employees in the bargaining unit must vote to decertify the union.
- Employee organization must pay fee before PERB will conduct election. Failure to do so will result in Order of Decertification.

RETENTION AND RECERTIFICATION ELECTIONS

Pre-H.F. 291

- Once a representative was certified, it remained the exclusive bargaining representative unless:
 - Failed to comply with annual reporting requirements
 - An employee in the unit filed a decertification petition and a majority of those voting voted in favor of decertification

Post-H.F.291

- Bargaining units will now vote to keep or remove their current certified bargaining representative by majority vote of all eligible employees in that unit.
- A retention election must be conducted by PERB prior to the expiration of the CBA. Employer must get PERB contracts otherwise PERB will not hold retention and recertification election.
- The representative bears the costs of the election

EFFECT OF RETENTION AND RECERTIFICATION ELECTIONS

• The employee organization will be retained and recertified if the employee organization receives a "yes" vote from a majority of eligible voters.

NOTE: An eligible voter's choice not to vote is the same as casting a "no" vote.

- If 50 percent or more of the eligible voters either do not vote or vote "no", the employee organization will be decertified.
 - No longer represent the unit.
 - PERB cannot consider a certification election petition for that bargaining unit from any employee organization for two years from the date of the election.

RETENTION AND RECERTIFICATION ELECTION PROCESS

- September 2017 elections: Voting by mail ballot (no counties are in the September elections)
- October 2017 elections: Voters cast ballots by calling in to toll-free number and voting or going online and voting.
- Voters will be asked "Do you want [Employee Organization] to be retained and recertified and continue to be your exclusive bargaining representative for purposes of collective bargaining?
 - Yes, I want [Employee Organization] to continue to represent me.
 - No, I do not want [Employee Organization] to continue to represent me.

ELECTION NOTIFICATIONS

- PERB will have general information on the website "Recertifications" (on red ribbon).
- All notices regarding the election will be done through PERB's Electronic Filing System.
 - Each bargaining unit has a "case file" under "All Recertification Elections"
- Agent for service receives the notices
 - Agent for service as listed on Annual Report form for Labor.
 - Agent for Service dictated by Administrative Rules for management (County Auditor)
- Additional representatives can file a "Notice of Appearance (without a document)" or you may want to add people you wish to receive the emails as an alternative email on the County Auditor's user account.

Contact PERB with questions.

METHOD OF VOTING-OCTOBER 2017

- Elections based on the expiration date of contract.
- If contract ends June 30, 2018, election will be in October 2017
 - Approximately 600 bargaining units total
- Eligible voters will need to call toll-free number or go online to cast a ballot. An election service (Everyone Counts, Inc.) will be receiving the ballots.
 - Questions about how to cast a ballot go to Everyone Counts, the vendor providing election services.
 - Questions of voter eligibility come to PERB.
- Two-week election period to cast ballots.

DRAFT SCHEDULE OF ELECTIONS

CBA Expiration Date	Election Period	PERB e- files and e- serves notice of intent to conduct election	Employer must send Employee list	CEO Fee Payment/ Request for Extension of payment Due	PERB files Direction of Election and Notice of Election
June 30, 2018	October 10- October 24, 2017	August 22, 2017	August 29, 2017	September 11, 2017	After receipt of fee

NOTICE OF INTENT TO CONDUCT ELECTION

- First notice the parties will receive from PERB through PERB's efiling system.
- If PERB has incorrectly determined the expiration of the collective bargaining agreement, this is when parties should inform PERB.
- Notice will provide:
 - Unit Description
 - Timeline of election
 - Method of election (mail, phone, internet
 - Date by which employer must email the voter list and the contends that need to be included
 - Date by which certified bargaining representative needs to pay the fee.

Filed Simultaneously is a Notice to Employees that needs to be posted and distributed by the Employer

VOTER LIST: DUE AUGUST 29, 2017

- Employer emails voter list to PERB with requested information.
 - October: Names, job classifications, addresses, known email addresses, last 4 digits of social security number, and date of birth
- PERB emails voter lists with contact information to certified employee organization.
- PERB efiles the voter lists with names and job classifications only.
- Employer has a duty to supplement the list if any of the requested information changes during the election process.
- If PERB does not receive this list, PERB cannot hold the retention and recertification election and Employer may need to reimburse PERB and/or certified bargaining representative for any costs incurred.

SAMPLE VOTER LIST

The Voter Eligibility List shall be organized in alphabetical order by the employees' last names.

The Employer needs to provide the following for all employees in the bargaining unit:

- 1. Name.
- 2. Job classification.
- 3. Birth Date (8 digits, DD/MM/YYYY).
- 4. Last 4 digits of social security number.
- 5. Address.
- 6. Work e-mail address.
- 7. Personal e-mail addresses, if known.

**THE EMPLOYER MUST PROVIDE THE VOTER ELIGIBILITY LIST IN EXCEL FORMAT BY E-MAIL TO NANCY.LAWRENCE@IOWA.GOV

E-mail Subject Line: BU-XXXX – [EMPLOYER]/[EMPLOYEE ORGANIZATION]

Voter Eligibility List

SAMPLE VOTER LIST

Employer	
Employee Organization	
BU#	

Voter Name	Job Classification s	Birth Date	Last 4 Digits of Social Security #	Address	Work E-mail Address	Other E-mail Address
Anderson, James	Worker 1	01/01/1950	1111	111 Ash Street, Des Moines, IA 50317	janderson@city.go <u>V</u>	Unknown
Miller, Tina	Worker 1	02/02/1960	2222	222 Birch Street, Adair, IA 50002	tmiller@county.go V	Unknown
Olson, Donna	Worker 3	03/03/1970	3333	333 Cedar Ave., Winterset, IA 50273	dolson@city.gov	dolson@homeemail.co m
Peterson, Kelly	Worker 1	04/04/1980	4444	444 Dogwood Blvd., Newton, IA 50208	kpeters@school.e du	kpeters@homeemail.co m

ELIGIBILITY OF VOTERS

- This eligibility requirement has not changed.
- Eligible voters are: Employees who were employed in the bargaining unit during the payroll period immediately preceding direction of election and are employed in the bargaining unit on the date of the election.
- Parties may alter eligible voter list by mutual agreement.
- Certified bargaining representatives can challenge the eligibility of an employee. Normally, this can be worked out by the parties.

UNION'S PAYMENT OF ELECTION FEES

- Certified bargaining representative must pay the applicable election fee 30 days before the election period begins.
- October: Fees due September 11
- Proposed Fee Schedule is roughly \$1/eligible voter
- If the fee is not paid, PERB will not hold the election. This will lead to the certified bargaining representative's revocation of certification.

DIRECTION OF ELECTION

- After certified bargaining representative has paid election fee, PERB will efile the Direction of Election.
- This will contain the Notice to Employees and the Sample Ballot that the Employer must promptly post AND distribute.
- EMPLOYER'S RESPONSIBILITY: The posting and distribution of the Notice to Employees and Sample Ballot needs to be in the way the Employer customarily distributes information to the employees. If you communicate via email, the notice must be emailed.
- This document will contain the voting information for the employees including the telephone number and internet address to cast ballot in the October election, as well as a sample ballot and voting instructions.

ELECTION RESULTS

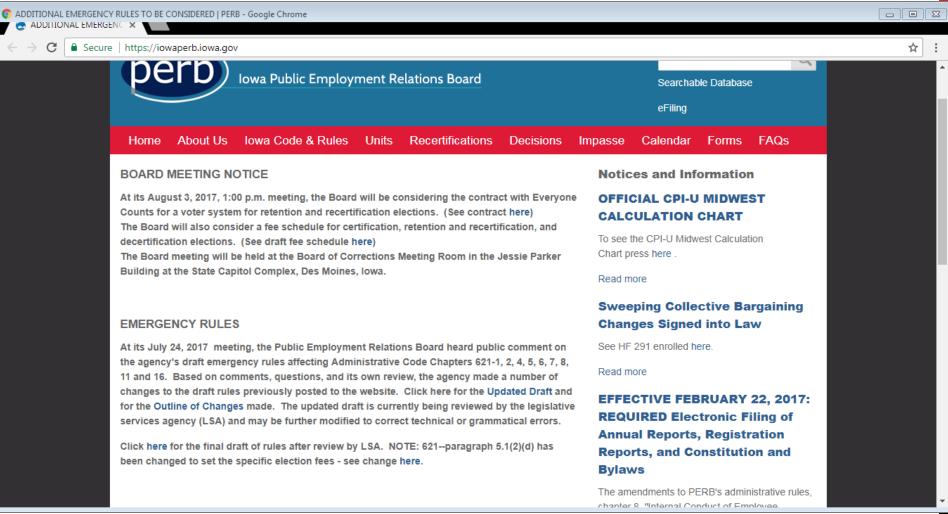
- If the majority of the bargaining unit employees Vote Yes:
 - The collective bargaining agreement remains intact and the certified representative continues to represent the employees in the unit.
- If 50 percent or more of the eligible voters DO NOT VOTE YES:
 - PERB will issue an order of decertification immediately after objection period to the election has run and the certified representative no longer represents the unit.
- PERB will efile the Tally of Ballots.
- PERB will also have more general information available on its website, but the Tally of Ballots will be a more detailed description of the voting breakdown.

OBJECTIONS

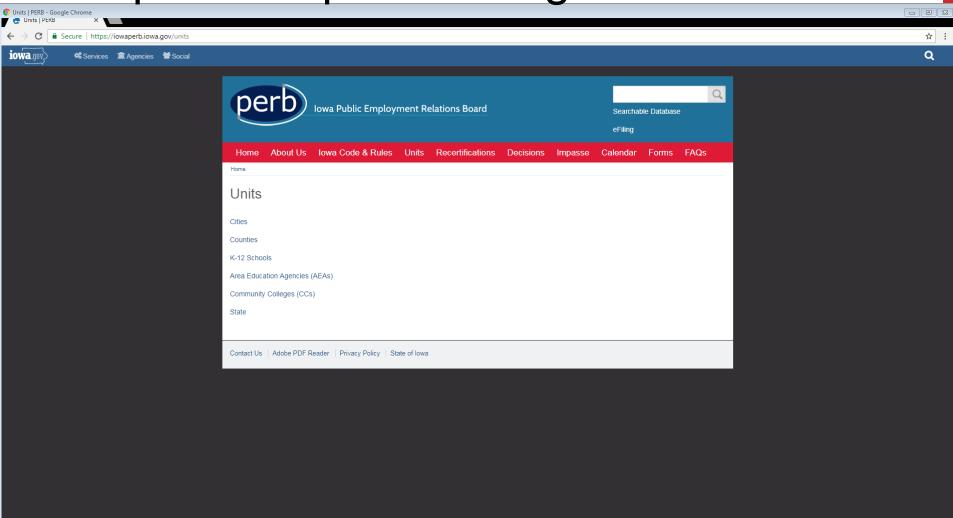
- This process has not changed
- 10 Day Objection Period after Ballots Counted
- PERB can invalidate an election if an objectionable activity took place during an election and it could have affected the results of the election.
- Invalidation of an Election may be Ordered due to Reasons Listed in PERB rule 5.4. Generally, any misconduct or circumstances that prevents employees from freely expressing their preferences in an election could lead to invalidation of election.

REMINDER: EMPLOYER RESPONSIBILITIES

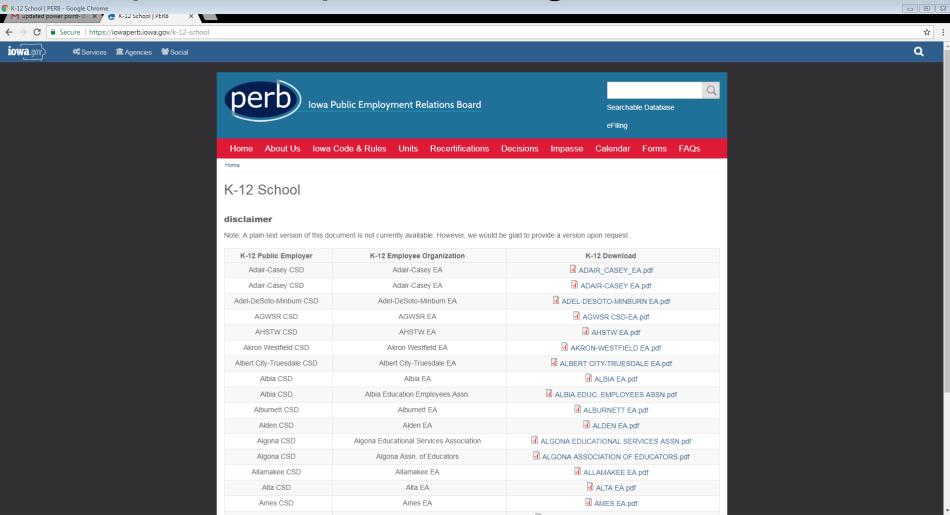
- Provide collective bargaining agreement (10 days after approval/ratification)
- Provide the voter list within one week (August 29, 2017, for October election) of the PERB's initial notice and supplement the list as needed
- Post and distribute information to employees as directed by PERB



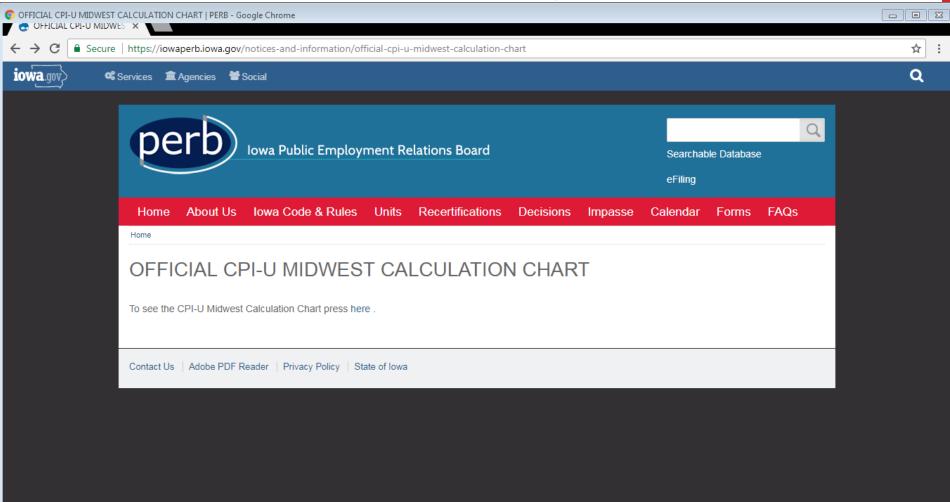




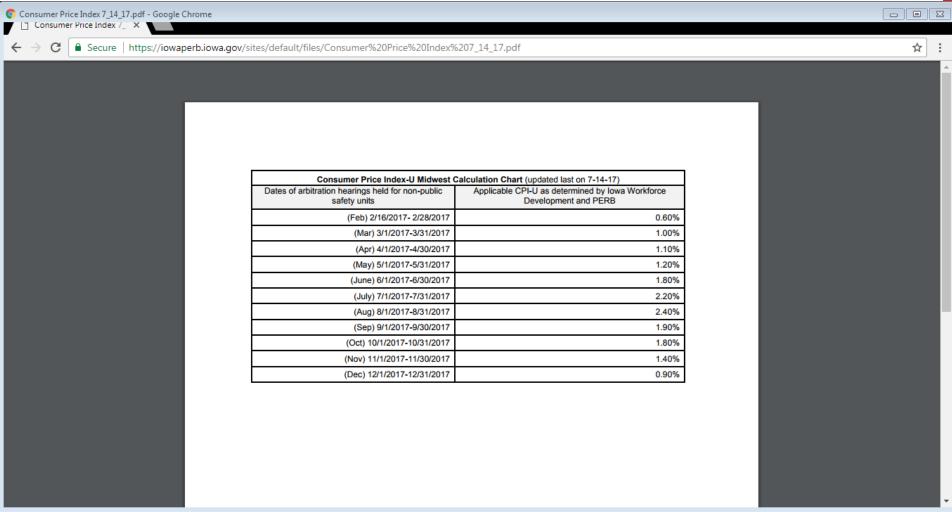




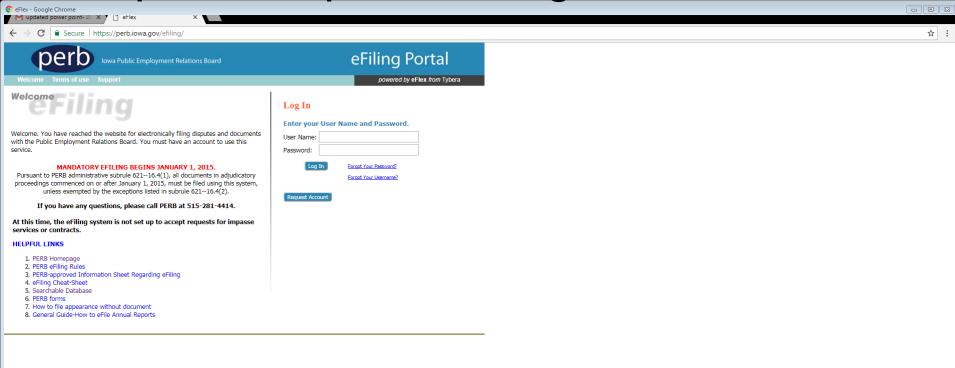




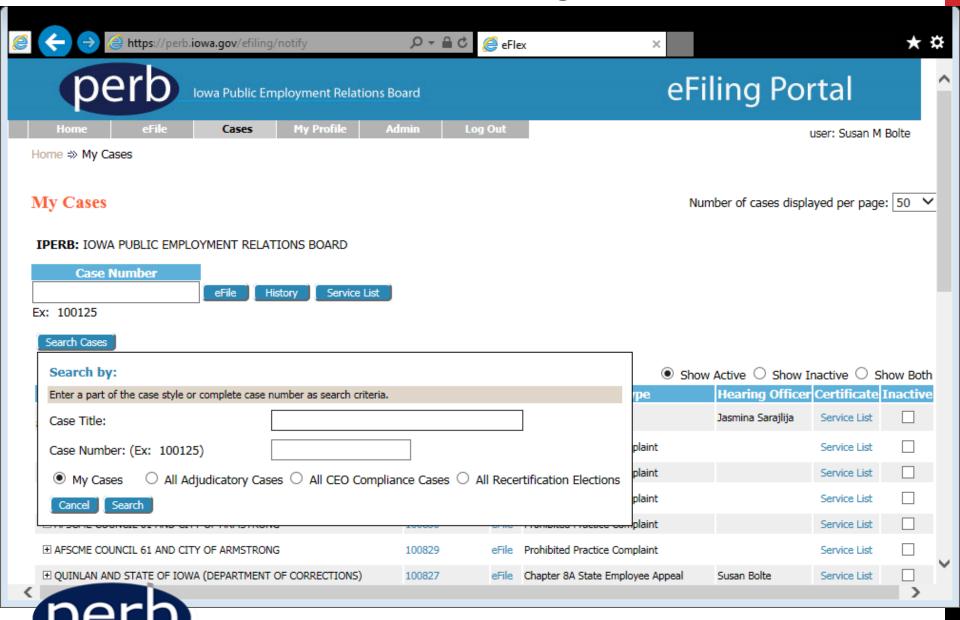


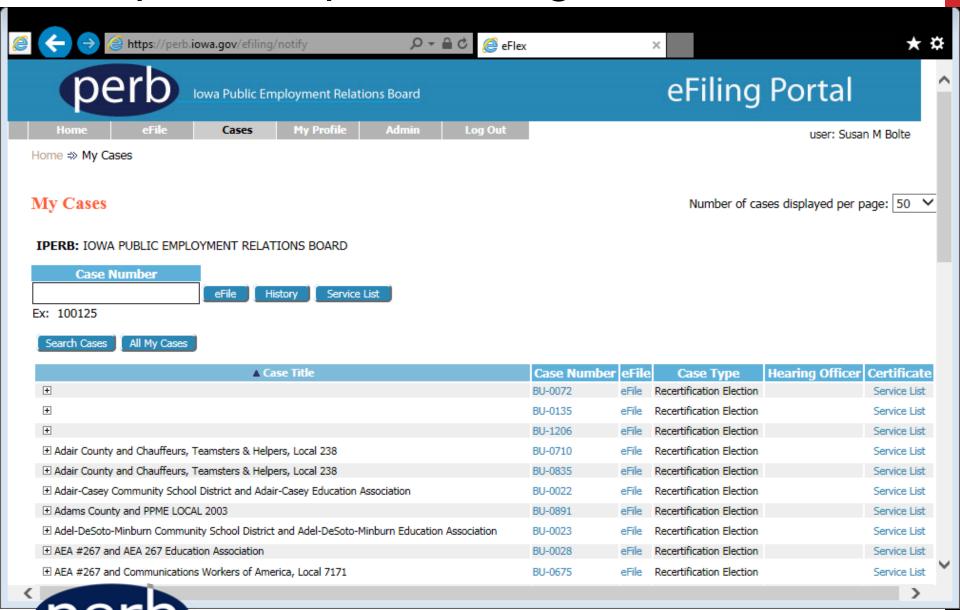












ADDITIONAL INFO

PERB's Website

- https://iowaperb.iowa.gov/
- Searchable database of all PERB decisions
- A list of all bargaining units by employer type

Contact us

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