

PUBLIC EMPLOYMENT RELATIONS BOARD[621]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 20.6(5), the Public Employment Relations Board hereby amends Chapter 1, “General Provisions,” Chapter 2, “General Practice and Hearing Procedures,” and Chapter 4, “Bargaining Unit and Bargaining Representative Determination”; rescinds Chapter 5, “Elections,” and adopts a new chapter with the same title; and amends Chapter 6, “Negotiations and Negotiability Disputes,” Chapter 7, “Impasse Procedures,” Chapter 8, “Internal Conduct of Employee Organizations,” Chapter 11, “State Employee Appeals of Grievance Decisions and Disciplinary Actions,” and Chapter 16, “Electronic Document Management System,” Iowa Administrative Code.

These amendments are in response to the sweeping changes in public sector collective bargaining under Iowa Code chapter 20 contained in 2017 Iowa Acts, House File 291, which became effective upon the bill’s enactment on February 17, 2017. House File 291 introduced many concepts and requirements which are completely new to the preexisting Iowa Code chapter 20 processes, including the requirement that the agency conduct “retention and recertification” elections among employees in represented bargaining units as early as June 1 but not later than November 1, 2017; the requirement that employee organizations pay fees to cover the cost of certification, decertification, and retention and recertification elections; the authority of the agency to contract with a vendor to conduct certification, decertification, and retention and recertification elections on behalf of the agency; the distinction between bargaining units in which 30 percent or more of the employees are “public safety employees” and other bargaining units; the limitation on the ability of Iowa Code section 20.22 arbitrators to award “base wage” increases in excess of amounts specified in House File 291; and the requirement that the agency appoint a certified shorthand reporter to report state employee grievance and discipline resolution proceedings and to tax to a party the cost of the reporter’s services and a transcript requested by the agency. House File 291 also altered many aspects of concepts and requirements which previously existed, including changes to the scope of bargaining applicable to both public safety and non-public safety bargaining units; changes concerning when petitions seeking the decertification of a certified employee organization may be filed and the timelines for the conduct of decertification elections, and changes to the criteria Iowa Code section 20.22 arbitrators must and cannot consider in resolving bargaining impasses involving non-public safety bargaining units.

The purpose of these amendments is to update the agency’s rules to reflect and implement the provisions of House File 291. A major portion of the amendments involve Chapter 5, “Elections.” Due to the breadth of the amendments to Iowa Code chapter 20, the agency determined that it was impracticable to amend Chapter 5 on a rule-by-rule basis and that a reorganization of the chapter was necessary in order to present the rules in a logical and understandable fashion. Accordingly, Item 13 rescinds existing Chapter 5 and replaces it with a reorganized chapter which reflects the changes responsive to House File 291, even though many of the rules contained in that chapter are identical, or nearly identical, to those contained in existing Chapter 5. As has been the case in other instances where significant statutory changes are implemented, many of the amendments constitute technical, conforming amendments to other rules which were necessitated by the reorganization of the chapter.

Pursuant to Iowa Code section 17A.4(3), the Public Employment Relations Board finds that notice and public participation are impracticable and contrary to the public interest because there are currently no processes in place through which the agency can, among other things, conduct the required retention and recertification elections, impose or collect election fees from the employee organizations involved, resolve disputes as to whether a given bargaining unit is a public safety unit or not, or tax the cost of certified shorthand reporters and transcripts in state employee grievance and disciplinary action proceedings. Because House File 291 potentially requires that retention and recertification elections for over 600 bargaining units be conducted between June 1, 2017, and November 1, 2017, insufficient time exists for rule making to be completed pursuant to the normal rule-making process prior to the date upon which retention and recertification election proceedings must be commenced and elections conducted.

In compliance with Iowa Code section 17A.4(3)“a,” the Administrative Rules Review Committee, at its August 4, 2017, meeting, reviewed the agency’s determination and this rule making and approved emergency adoption.

Pursuant to Iowa Code section 17A.5(2)“b”(1)(b), the agency also finds that the normal effective date of these amendments, 35 days after publication, should be waived and the amendments made effective August 10, 2017, because the rules confer a benefit to members of the public by establishing procedures which implement the requirements of 2017 Iowa Acts, House File 291, consistent with the time periods contemplated by that legislation.

Although a draft of these amendments was posted on the agency’s Web site and distributed by e-mail for the information of the regulated community, and a number of changes to that draft were made in response to comments received from representatives of both labor and management, these amendments are also published herein under Notice of Intended Action as **ARC 3277C** to allow for further public comment.

Although the implementation of 2017 Iowa Acts, House File 291, will cause an increase in the expenditure of funds by the agency and affected persons, due primarily to the need for the agency to contract with a vendor to conduct elections on the agency’s behalf and the requirement that these costs be paid by the employee organizations involved, the agency does not anticipate that these expenditures will exceed \$100,000 per year or \$500,000 within five years.

These rules do not provide for a waiver of their terms, but are instead subject to the agency’s general waiver provisions found at rule 621—1.9(17A,20).

The Public Employment Relations Board adopted these amendments on August 10, 2017.

After analysis and review of these amendments, and consideration of anecdotal information concerning the effects of the implementation of amendments to public sector collective bargaining in the State of Wisconsin which are similar in many respects to the amendments contained in 2017 Iowa Acts, House File 291, the agency anticipates that the amendments to Iowa Code chapter 20 may reduce the number of private sector jobs or potential job opportunities for individuals in the private sector who provide legal or support services to labor organizations or public employers in Iowa, although the extent of any such reduction cannot be reasonably determined.

These amendments are intended to implement Iowa Code chapter 20 as amended by 2017 Iowa Acts, House File 291.

These amendments became effective August 10, 2017.

The following amendments are adopted.

ITEM 1. Adopt the following **new** subrule 1.6(12):

1.6(12) “*Public safety employee*” means a public employee who is employed as one of the following:

- a. A sheriff’s regular deputy.
- b. A marshal or police officer of a city, township, or special-purpose district or authority who is a member of a paid police department.
- c. A member, except a non-peace officer member, of the division of state patrol, narcotics enforcement, state fire marshal, or criminal investigation, including but not limited to a gaming enforcement officer, who has been duly appointed by the department of public safety in accordance with Iowa Code section 80.15.
- d. A conservation officer or park ranger as authorized by Iowa Code section 456A.13.
- e. A permanent or full-time fire fighter of a city, township, or special-purpose district or authority who is a member of a paid fire department.
- f. A peace officer designated by the department of transportation under Iowa Code section 321.477 who is subject to mandated law enforcement training.

ITEM 2. Adopt the following **new** subrule 1.6(13):

1.6(13) “*Public safety unit*” means a bargaining unit with at least 30 percent of employees in the unit who are public safety employees or as required by 2017 Iowa Acts, House File 291, section 18, for certain transit employees.

ITEM 3. Adopt the following **new** subrule 1.6(14):

1.6(14) *“Supplemental pay”* means a payment of moneys or other thing of value that is in addition to compensation received pursuant to any other permitted subject of negotiation specified in Iowa Code section 20.9 as amended by 2017 Iowa Acts, House File 291, section 6, and is related to the employment relationship.

ITEM 4. Amend rule 621—2.4(20) as follows:

621—2.4(20) Intervention and additional parties. Any interested person may request intervention in any proceeding before the public employment relations board. An application for intervention shall be in writing, except that applications made during a hearing may be made orally to the hearing officer, and shall contain a statement of the reasons for such intervention. When an application for intervention is filed regarding a petition for bargaining representative determination, ~~the rules set forth in 621—subrules 4.3(2), 4.4(4) and 5.1(4),~~ 5.1(2), 5.5(2), and 5.5(3) shall apply.

Where necessary to achieve a more proper decision, the board or administrative law judge may, on its own motion or the motion of any party, order the bringing in of additional parties. When so ordered, the board shall serve upon such additional parties all relevant pleadings, and allow such parties a reasonable time to respond thereto where appropriate.

ITEM 5. Amend subrule 2.15(2) as follows:

2.15(2) Service—how made. Except as provided in ~~rules rule~~ rule 621—3.4(20) and 621—5.7(20) and subrule 2.12(3) and 621—subrule 4.2(2), whenever nonelectronic service of any document is permitted or required by these rules, the service shall be sufficient if made by ordinary mail. If the document served is an initial filing in a proceeding, the serving party shall also serve with the document an agency-approved information sheet regarding mandatory electronic filing.

ITEM 6. Amend subrule 4.1(3) as follows:

4.1(3) Withdrawal of petitions. Petitions may be withdrawn only with the consent of the board. ~~Petitions withdrawn after the commencement of a hearing, or withdrawn after direction of an election where no hearing was conducted, may not be refiled by the withdrawing party for a period of six months following the board order permitting withdrawal.~~

ITEM 7. Amend rule 621—4.2(20) as follows:

621—4.2(20) Unit determination.

4.2(1) Content of petition. A petition for bargaining unit determination shall be on a ~~form provided by the board~~ an agency-prescribed form and shall be filed by ~~delivery to~~ with the board agency. The petition shall contain an identification and description of the proposed unit.

4.2(2) Notice to parties. Upon ~~receipt~~ the filing of a proper petition, the ~~board agency~~ shall serve copies thereof upon other interested parties by certified mail, return receipt requested. ~~Upon the filing of a petition for unit determination, the board~~ The agency shall furnish to the employer file a notice to employees, giving notice that the petition has been filed and setting forth the rights of employees under the Act. ~~Notices shall be posted by the public employer in conspicuous places customarily used for the posting of notices to employees.~~ The employer shall promptly post the petition and notice to employees in the manner and locations customarily used for the posting of information to employees. If the public employer customarily distributes information to employees by additional means, such as by e-mail or hard copy, the public employer shall also promptly distribute the petition and notice to employees by those means.

4.2(3) Notice of hearing. The board or administrative law judge shall ~~issue~~ file a notice of hearing by ~~ordinary mail to all interested parties~~ setting forth the time, date and place of the hearing and any other relevant information. ~~The board or administrative law judge shall provide additional copies of the notice of hearing to the public employer, which shall be posted by the public employer in conspicuous places~~ promptly post the notice in the manner and locations customarily used for the posting of information to employees. If the public employer customarily distributes information to employees by

additional means, such as by e-mail or hard copy, the employer shall also promptly distribute the notice to employees by those means.

4.2(4) *Intervention.* See rule 621—2.4(20).

4.2(5) *Professional and nonprofessional elections.* ~~If the board should determine that professional employees and nonprofessional employees could be represented in a single bargaining unit, the board shall direct and supervise an election among such employees to determine whether they wish to be represented in a single or in separate bargaining units.~~ If ~~Should the agency determine,~~ in any case, ~~the board should determine~~ that professional employees and nonprofessional employees ~~could be represented in a single~~ are appropriately included in the same bargaining unit, the ~~board~~ agency shall file an order directing that an election be conducted to determine whether ~~they~~ the professional and nonprofessional employees wish to be represented in a single or in separate bargaining units. ~~The election shall be by secret ballot under conditions as the board may prescribe. Absentee ballots shall be as provided for in 5.2(5). The elections may, in the discretion of the board, be conducted in whole or in part by mail ballots provided for in 5.1(3). A majority affirmative vote of those voting in each category shall be necessary to include professional and nonprofessional employees within the same bargaining unit. The rules concerning voting lists, as set forth in 5.1(2), shall apply.~~ The election shall be conducted in accordance with rule 621—5.8(20).

4.2(6) *Informal settlement of bargaining unit determination.* Cases on bargaining unit determination may be informally settled in the following manner:

a. The petitioning party shall prepare a stipulation setting forth in detail the composition of the bargaining unit as agreed upon by all parties. The stipulation shall be signed by the authorized ~~representative~~ representatives of the parties involved and shall be ~~forwarded to~~ filed with the ~~board~~ agency for informal review and tentative approval. In the event the parties agree to a combined unit of professional and nonprofessional employees, the stipulation shall set forth both those job classifications included within the professional category and those job classifications included within the nonprofessional category. If the ~~board~~ agency fails to tentatively approve the stipulation, the ~~board~~ agency shall notify the parties and, unless the parties amend the stipulation in a manner to gain tentative approval of the ~~board~~ agency, the matter shall proceed to hearing. If the ~~board~~ agency tentatively approves the stipulation, the ~~board~~ agency shall ~~prepare~~ file a public notice of proposed decision ~~and shall deliver copies to the parties.~~ The public employer shall promptly post copies of the notice of the proposed decision, for a period of not less than one calendar week, in a prominent place in the main office of the public employer accessible to the general public and in conspicuous places customarily used for the posting of information to employees the manner and locations customarily used for the posting of information to employees. If the public employer customarily distributes information to employees by additional means, such as by e-mail or hard copy, the employer shall also promptly distribute such notice to employees by those means. The public employer shall also have copies of the ~~proposed decision notice~~ notice available for distribution to the public upon request.

b. Notice of the proposed decision shall ~~be on a form provided by the board which shall identify the parties; specify the terms of the proposed decision; list the names, addresses and telephone numbers of the parties or their authorized representatives to whom inquiries by the public should be directed; and, further, state the date by which written objection to the proposed decision must be filed with the board agency and the address to which such objections should be sent.~~

c. Objections to the proposed decision must be filed with the ~~board~~ agency, electronically, by ordinary mail or by personal delivery, by the date posted in the notice of proposed decision. Objections shall be in writing and shall set out the specific grounds of objection. The objecting party must identify itself and provide a mailing address and telephone number. The ~~board~~ agency shall promptly advise the parties of the objections and make any investigation deemed appropriate. If the ~~board~~ agency deems the objections to be of substance, the parties may, with ~~board~~ agency approval, amend their proposed decision to conform therewith, and the objecting party shall be notified by the ~~board~~ agency of the amendment. If the objections cannot be informally resolved, they may be dismissed or resolved at hearing.

d. and e. No change.

ITEM 8. Amend rule 621—4.3(20) as follows:

621—4.3(20) Bargaining representative determination (election petitions).

4.3(1) Form of petition. ~~A petition~~ Petitions for bargaining representative determination (election petition) shall be on ~~a form provided by the board~~ an agency-prescribed form and shall be filed by ~~delivery to~~ with the board agency. These petitions shall be of three types:

a. A certification petition, filed by an employee organization requesting that through an election it be certified as the exclusive bargaining representative ~~in~~ of an appropriate unit of public employees. The name of the employee organization which appears on the petition, or the petition as amended, shall be the name which appears on the election ballot.

b. A decertification petition, filed by an employee requesting an election to determine whether a ~~certified bargaining representative does, in fact, represent~~ a majority of the employees in the bargaining unit, ~~and wish to continue to be represented by a certified employee organization.~~

c. A representation petition, filed by a public employer requesting an election to determine the bargaining representative, if any, of the employees in the bargaining unit.

4.3(2) Showing of interest—certification—decertification—intervention. Whenever a petition for certification or decertification is filed, or whenever intervention is requested for the purpose of being placed on an election ballot, the petitioner or intervenor shall submit, ~~therewith~~ by ordinary mail or personal delivery, evidence that the petition or application for intervention is supported by ~~employees in the unit in the following percentages: Thirty percent for certification or decertification and 10 percent for intervention in election proceedings~~ 30 percent of the employees in the bargaining unit. In petitions for certification or applications for intervention, such interest showing shall be dated and signed not more than one year prior to its submission; shall contain the job classification of the signatory; and shall contain a statement that the signatory is a member of the employee organization or has authorized it to bargain collectively on the signatory's behalf. ~~In appropriate cases, an authenticated dues checkoff list may be used for this purpose.~~ In petitions for decertification, evidence of interest shall be as provided above ~~and shall further, except the evidence of interest shall instead~~ contain a statement that the signatory no longer wishes to be represented by the certified employee organization. When a representation petition is filed by an employer, no show of interest will be required.

4.3(3) Determination of showing of interest. The public employer shall, within seven days of receipt of notice of a certification or decertification petition, submit to the ~~board~~ agency a list of the names and job classifications of the employees in the unit ~~which is the subject of the petition or, in the case of a combined petition, the employees in the unit~~ requested by the petitioner. The ~~board~~ agency shall administratively determine the sufficiency of the showing of interest upon receipt of the list. This determination, including the identification and number of signers of the showing of interest, shall be confidential and not subject to review, and parties other than the party submitting the interest showing shall not be entitled to a copy or examination of the showing of interest. If the employer fails to furnish the list of employees, the ~~board~~ agency shall determine the sufficiency of the showing of interest by whatever means it deems appropriate. ~~In election proceedings where the petitioner withdraws its petition pursuant to subrule 4.1(3), in the presence of an intervenor, the election shall not be conducted unless the intervenor produces a 30 percent showing of interest within a time period determined by the board.~~

4.3(4) Notice. Upon the filing of a petition for certification, decertification or representation, the ~~board~~ agency shall ~~furnish to the employer~~ file a notice to employees, giving notice ~~to employees~~ that an election petition has been filed and setting forth the rights of employees under the Act. ~~Such notices shall be posted by the public employer in conspicuous places customarily used for the posting of information to employees~~ The employer shall promptly post the notice in the manner and locations customarily used for the posting of information to employees. If the public employer customarily distributes information to employees by additional means, such as by e-mail or hard copy, the employer shall also promptly distribute the notice to employees by those means.

4.3(5) and 4.3(6) No change.

ITEM 9. Amend rule 621—4.5(20) as follows:

621—4.5(20) Unit reconsideration. A petition for reconsideration of a ~~board-established~~ an agency-established bargaining unit may be filed by an employee organization, public employer, or an employee of the public employer. This petition may be filed only in combination with ~~an election~~ a certification petition. ~~The rules set forth in Rules 621—4.1(20), 621—4.2(20), 621—4.3(20) and 621—4.4(20) shall apply, except that the board may investigate the petition and, if it determines that the petitioner has not established grounds that the previous board determination of the bargaining unit is inappropriate, the board may dismiss the petition.~~ A petition for reconsideration of a ~~board-established~~ an agency-established bargaining unit covering state employees may not be filed ~~until after~~ for at least one year of after the initial unit determination.

ITEM 10. Amend rule 621—4.6(20) as follows:

621—4.6(20) Amendment of unit.

4.6(1) Petition. A petition for amendment of a ~~board-determined~~ an agency-determined bargaining unit may be filed by the public employer or the certified employee organization. The petition shall contain:

- a. ~~Name and address~~ The names, addresses, telephone numbers and e-mail addresses of the public employer, and the employee organization, and their respective representatives.
- b. An identification and description of the proposed amended unit.
- c. The names and addresses of any other employee organizations which claim to represent any employees affected by the proposed amendment or a statement that the petitioner has no knowledge of any other such organization.
- d. Job classifications of the employees as to whom the issue is raised, ~~and~~ and the number of employees, if any, in each classification, and whether each job classification qualifies as a public safety employee.
- e. A statement identifying the current status of the unit as either a public safety or a non-public safety unit and the change, if any, to the status of the unit which would result from the requested amendment.

~~e. f.~~ A specific statement of the petitioner's reasons for seeking amendment of the unit and any other relevant facts.

4.6(2) Procedure—decision. Insofar as applicable, ~~the rules set forth in rule 621—4.2(20) shall apply, except that the board may conduct an investigation and issue a decision and order without hearing.~~

4.6(3) Elections; when required. ~~A~~ When a question of representation exists, ~~and the board~~ agency will conduct a ~~representation~~ an amendment of unit election, if pursuant to rule 621—5.9(20). A question of representation exists when the job classification(s) sought to be amended into a bargaining unit was in existence at the time the employee organization was certified to represent the bargaining unit and the job classification(s) separately constitutes an appropriate bargaining unit.

ITEM 11. Amend rule 621—4.7(20) as follows:

621—4.7(20) Unit clarification. A petition to clarify the inclusion or exclusion of job classifications or employees in a ~~board-determined~~ an agency-determined bargaining unit may be filed by the public employer, an affected public employee, or the certified employee organization. Such petition must be in the absence of a question of representation. Insofar as applicable, the procedures for such filing shall be as provided in ~~subrules~~ subrule 4.6(1) and 4.6(2).

ITEM 12. Amend rule 621—4.8(20) as follows:

621—4.8(20) Amendment of certification.

4.8(1) Petitions. A petition for the amendment of a certified employee organization's certification may be filed by the certified employee organization, the public employer or the agency to reflect an act

or occurrence affecting the organization or the public employer, such as a name change or merger, ~~must be accompanied by affidavit(s) establishing that:~~

~~a. The act or occurrence which the requested amendment would reflect was authorized by and accomplished in accordance with the certified employee organization's constitution and bylaws, which provided members with adequate due process, and~~

~~b. Substantial continuity of representation has been maintained.~~

4.8(2) Employee organization. The employee organization must file its petition with the following:

a. An affidavit(s) that establishes:

(1) The act or occurrence, which the requested amendment would reflect, was authorized by and accomplished in accordance with the certified employee organization's constitution and bylaws, which provided members with adequate due process; and

(2) Substantial continuity of representation has been maintained.

b. Updated agency reports if there is a change in the employee organization's name or if there is a change to the employee organization's governing body. The reports shall include the following:

(1) An updated PERB annual report that covers the time period from the last annual report to the time of the filing of the petition.

(2) An updated PERB registration report.

(3) An updated constitution and bylaws.

c. Final agency reports for dissolved organizations resulting from a merger. The final agency report shall include a PERB annual report that covers the time period from the last annual report to the time of the merger and shall reflect the closing of the books and accounts of the dissolved employee organization.

4.8(3) Public employer. The public employer must file its petition with an affidavit, affidavits or other documents, such as board minutes, establishing a change in the name of the public employer.

4.8(4) Agency. The agency may, at any time, file a petition with a document or documents establishing the basis for the amendment.

~~4.8(2) 4.8(5) Public employer posting, decisions and objection period.~~ When a petition for amendment of certification is filed ~~pursuant to~~ which the agency deems sufficient to fulfill the requirements of this rule, the ~~board~~ agency shall ~~mail copies of~~ file a public notice of its proposed decision to ~~amend the employee organization's certification upon the non-petitioning interested parties.~~ Upon receipt, the public employer shall promptly post the notice of proposed decision, for a period of not less than one calendar week, in a prominent place in the main office of the public employer accessible to the general public and in ~~conspicuous places customarily used for the posting of information to employees~~ the manner and locations customarily used for the posting of information to employees. If the public employer customarily distributes information to employees by additional means, such as by e-mail or hard copy, the employer shall also promptly distribute such notice to employees by those means. The public employer shall also have copies of the proposed decision available for distribution to the public upon request.

~~a. Notice~~ The notice of the proposed decision shall identify the parties; specify the terms of the proposed decision; list the names, addresses and telephone numbers of the parties or their authorized representatives to whom inquiries by the public should be directed; and state the date by which written objection to the proposed decision must be filed ~~with the board and the address to which the objections should be sent.~~

~~b. Objections to the proposed decision must be filed with the board~~ agency, electronically, by ordinary mail or by personal delivery, by the date ~~posted~~ specified in the notice of proposed decision. Objections shall be in writing and shall set out the specific grounds of objection. The objecting party must identify itself and provide a mailing address, and telephone number and e-mail address. The ~~board~~ agency shall promptly advise the parties of the objections and make any investigation deemed appropriate. When an objection is raised, the ~~board~~ agency may investigate and dismiss the objection or conduct a hearing pursuant to 621—Chapter 2.

c. ~~Final board~~ A final agency decision shall be reserved until the expiration of the time for filing objections. If no objections have been filed, the ~~board~~ agency may endorse the proposed decision as final.

ITEM 13. Rescind 621—Chapter 5 and adopt the following new chapter in lieu thereof:

CHAPTER 5
ELECTIONS

621—5.1(20) General procedures. The agency shall determine the date of the election or election period, and the place, method, and other procedural aspects of conducting an election held pursuant to Iowa Code chapter 20. Elections shall be conducted under the direction and supervision of the agency or its election agent and shall be by secret ballot.

5.1(1) Election types. There are five types of elections:

- a. Certification election.
- b. Retention and recertification election.
- c. Decertification election.
- d. Professional and nonprofessional election.
- e. Amendment of unit election.

5.1(2) Election fees.

a. For certification, retention and recertification, and decertification elections, the employee organization is responsible for and shall prepay the election fees in accordance with this chapter and rules relevant to the specific election. Employee organizations intervening in a certification election shall pay a proportionate share of the election fees.

b. A certified employee organization may make written request to the agency for an extension of time in which to pay its election fees. The employee organization may make the request after the filing of a certification or decertification petition, but no later than 7 days after the agency's filing of an order of election. For a retention and recertification election, a certified employee organization may make a request after the agency's filing of its intent to conduct an election, but no later than 30 days prior to the commencement of the election period. In no event will the agency conduct an election prior to an employee organization's payment of election fees.

c. A certified employee organization may file notice of nonpayment to indicate that it will not pay the election fees for a decertification or retention and recertification election. The notice of nonpayment must be filed no later than 7 days after the agency's filing of an order for a decertification election or no later than 30 days prior to the commencement of a retention and recertification election period. The notice shall be signed by an authorized representative of the organization, state that the organization will not pay the election fees, and acknowledge that the agency will not conduct the applicable election and the employee organization's certification will be revoked.

d. The applicable election fee is based upon the number of employees on the voter eligibility list submitted to the agency pursuant to paragraph 5.2(2) "a." When the list contains 10 or fewer eligible voters, the election fee is \$10.00. When the list contains more than 10 eligible voters, the election fee is \$1.00 per eligible voter. When the list contains more than 50 eligible voters and subsequent increases or decreases as contemplated by paragraph 5.2(2) "b" or successful challenges pursuant to subrule 5.2(3) alter the number of eligible voters by 5 percent or more, the employee organization shall make an additional payment to reflect the increased number of eligible voters or, in the case of a decrease, the agency shall reimburse the employee organization for its overpayment.

5.1(3) Date of elections. For purposes of this chapter, the date of an election shall be the date on which the ballots were counted.

621—5.2(20) Eligibility—voter eligibility list.

5.2(1) Eligible voters. Eligible voters are those employees who:

a. Were employed in the bargaining unit during the payroll period immediately preceding the direction of election unless another date is agreed upon by the parties and the agency, and

b. Are employed in the bargaining unit on the date of the election.

5.2(2) Eligible voter list.

a. When the agency files a notice of intent to conduct a retention and recertification election or an order that an election be conducted, the employer shall, within seven days of the notice or order, e-mail to the agency an alphabetical list of the names, addresses, e-mail addresses, and job classifications of the employees eligible to vote, except as provided in subrule 5.6(8). Where a telephonic/Web-based election is ordered, the list of eligible voters shall also include the employee's date of birth, the last four digits of the employee's social security number and any other information required by the agency.

b. The agency shall file the list of eligible voters' names and job classifications. This list shall become the official voting list for the election to be conducted. The agency shall provide to the employee organization the voter list with the employees' contact information. The employer shall e-mail additions or deletions of employees' names, changes in job classifications or addresses to the agency to reflect the current status of eligible voters. The parties may further amend the list by agreement.

5.2(3) Challenges. A party may challenge, for good cause, the eligibility of any voter in accordance with subrule 5.3(2), 5.3(3) or 5.3(4), whichever is applicable to the election being conducted. Whenever challenged ballots are determinative of the outcome of an election, a hearing shall be scheduled.

621—5.3(20) Method of voting.

5.3(1) Types of elections. The agency may conduct an election, in whole or in part, in person, by mail balloting, or through a telephonic/Web-based system.

5.3(2) In-person election. An eligible voter shall cast the voter's ballot by marking the voter's choice on the ballot and depositing it in the ballot box. If a voter inadvertently spoils a ballot, the ballot may be returned to the agent who shall void and retain it and provide another ballot to the voter. An absentee ballot shall be delivered to an eligible voter upon the voter's written notice to the agency of the voter's inability to be present at the election for good cause. The voted ballot must be in the possession of the election agent prior to the close of the in-person election in order to be counted and shall be contained in the official envelopes provided for this purpose.

a. *Observers.* Each party to an election may designate an equal number of representatives, not to exceed one per voting site, to act as the party's observers during the election and tally of ballots. Unless agreed to by the parties, observers shall not be supervisory employees of the public employer.

b. *Ballot box.* Upon examination by the observers and prior to the opening of the polls, the election agent shall seal the ballot box so that entry thereto is limited to one slot. In the event that the election is continued for more than one polling period or at more than one polling place, the ballot box shall be sealed in its entirety and shall remain in the custody of the election agent until immediately prior to the next polling period or the counting of the ballots.

c. *Challenges and tally.* A challenge to a voter's eligibility shall be made with good cause prior to the time the voter deposits the voter's ballot in the ballot box. In the event of a challenge, the challenged voter may mark the ballot in secret and the election agent shall segregate the ballot by causing it to be placed in a challenged ballot envelope with appropriate markings and depositing it in the ballot box. The agency shall file the tally of ballots after the close of the election.

5.3(3) Mail ballot election. When conducting a mail ballot election, the agency shall send an official voting package to each eligible voter by ordinary mail and direct a date by which voted ballots must be received by the agency in order to be counted.

a. *Contents of official voting packages.* Voting packages sent to eligible voters shall consist of voting instructions, a ballot, a secret envelope in which said ballot is to be inserted, and a postage-paid return-addressed outer envelope which identifies the voter for purposes of proposing challenges to the voter's eligibility. In the event of a challenge, both envelopes shall remain sealed until such time as the challenge is resolved.

b. *Tally of ballots—observers—challenges.* The agency shall set a time and place for the tally of ballots, at which time representatives of the parties to the election shall be entitled to be present and challenge for good cause the eligibility of any voter. Challenges must be made prior to the time the outer envelope containing the voter's secret envelope and ballot is opened. In the event of a challenge, both

the secret envelope and the outer envelope shall remain sealed until the challenge is resolved. In the absence of a challenge, the voter's outer envelope shall be opened and the secret envelope containing the voter's ballot shall be deposited in the ballot box. The agency shall file the tally of ballots after the close of the election.

5.3(4) Telephonic/Web-based election. The agency may utilize an election services vendor for the receipt of telephonic and Web-based ballots and for the tallying of those ballots.

a. Notice of election. When conducting a telephonic/Web-based election, whether in whole or in part, the agency shall include in the notice of election the telephone number the voter is to call to cast a ballot and the Web-site address for Web-based voting, as well as the script of the ballot.

b. Tally and challenges. The agency shall file the tally of ballots after the close of the election period. A party wishing to challenge for good cause the eligibility of any voter shall do so at least two hours prior to the close of the election period. In the event of a challenge, the tally of ballots will not include such vote until the challenge is resolved.

5.3(5) Alternate voting method. When a voter promptly informs the agency of the voter's inability to cast a ballot using the designated method of voting, the agency shall assist the voter in using an alternate method to cast a secret ballot.

621—5.4(20) Objections to an election.

5.4(1) Objections. Whenever a party, or the board on its motion, files a timely objection, a hearing shall be scheduled. Objections to an election must be filed within ten days of the filing of the tally of ballots, even when challenged ballots are determinative of the outcome of the election, and must contain a statement of facts upon which the objections are based. The objections shall be electronically filed with the agency.

5.4(2) Objectionable conduct during election campaigns. The following types of activity, if conducted during the period beginning with the filing of an election petition with the agency or the agency's notice of intent to conduct a retention and recertification election and ending at the conclusion of the election, if determined by the agency that such activity could have affected the results of the election, shall be considered to be objectionable conduct sufficient to invalidate the results of an election:

a. Electioneering within 300 feet or within sound of the polling place established by the agency during the conduct of an in-person election;

b. Misstatements of material facts by any party to the election or its representative without sufficient time for the adversely affected party to adequately respond;

c. Any misuse of agency documents, including an indication that the agency endorses any particular choice appearing on the ballot;

d. Campaign speeches to assembled groups of employees during working hours within the 24-hour period before the opening of the polls, mailing of ballots, or commencement of the telephonic/Web-based election period;

e. Any polling of employees by a public employer which relates to the employees' preference for or against a bargaining representative;

f. Commission of a prohibited practice;

g. Any other misconduct or other circumstance which prevents employees from freely expressing their preferences in the election.

621—5.5(20) Certification elections.

5.5(1) General procedures—notice of election.

a. Upon the agency's determination that a certification petition is supported by an adequate showing of interest in accordance with rule 621—4.3(20), the agency shall file an order directing that an election be conducted in a specified manner and that the employer submit a list of eligible voters pursuant to rule 621—5.2(20).

b. Following the employer's submission of the list of eligible voters, the agency shall file a notice of election containing a sample ballot and setting forth the date, time, place, method, and purpose of

the election, and such additional information as the agency may deem appropriate. The employer shall promptly post the notice in the manner and locations customarily used for the posting of information to employees. If a public employer customarily distributes information to employees by additional means, such as by e-mail or hard copy, the public employer shall also promptly distribute such notice to employees by those means.

5.5(2) *Payment of election fee.*

a. Upon the filing of a certification petition, but no later than seven days after the agency's filing of an order directing an election, an employee organization shall pay the applicable election fee to the agency, unless an extension of time, upon written request, is granted by the agency. The agency will not conduct an election prior to receiving the applicable election fee from the petitioner. An employee organization's failure to pay the applicable election fee in a timely manner will result in the agency's dismissal of the certification petition.

b. An intervening employee organization shall pay the applicable election fee to the agency within seven days after the agency's grant of its application to intervene. Failure to pay the applicable election fee in a timely manner will result in the intervenor's exclusion from the ballot.

5.5(3) *Time for intervention.* No employee organization other than the petitioner shall be placed on the ballot unless application for intervention, as provided in rule 621—2.4(20), is filed with the agency within seven days after the filing of the agency's order directing the election in which intervention is sought. An employee organization seeking intervention shall submit to the agency, by ordinary mail or personal delivery, an adequate showing of interest as provided in 621—subrule 4.3(2) within seven days after the agency's direction of an election.

5.5(4) *Withdrawal from ballot.* An intervening employee organization may, upon its request, be removed from the ballot with the approval of the agency.

5.5(5) *Ballots.* Ballots shall contain the question required by Iowa Code section 20.15 as amended by 2017 Iowa Acts, House File 291, section 9. The question in an election where only one employee organization appears on the ballot shall ask, "Do you wish to be represented for purposes of collective bargaining by [name of employee organization]?" followed by the choices "Yes, I wish to be represented by [name of employee organization]" or "No, I do not wish to be represented"; the question in an election where more than one employee organization appears on the ballot shall ask: "Do you wish to be represented for purposes of collective bargaining by:" and shall then list horizontally or vertically thereafter the choices available, including the name of each employee organization and the choice of "Neither" or "No Representative," as is applicable.

5.5(6) *Certification of results and compliance with Iowa Code section 20.25.*

a. Upon completion of a valid certification election in which an employee organization received the votes of a majority of the employees in the bargaining unit and the employee organization complies with the provisions of Iowa Code section 20.25, the agency shall file an order certifying that employee organization as the exclusive bargaining representative of the employees in the bargaining unit.

b. Upon completion of a valid certification election in which none of the employee organizations on the ballot received the votes of a majority of the employees in the bargaining unit, the agency shall file an order of noncertification.

c. If an employee organization fails to comply with the provisions of Iowa Code section 20.25 within 90 days of the completion of a valid election, the agency shall file an order of noncertification; provided, however, that extensions of time to comply may be granted by the board upon good cause shown.

5.5(7) *Bars to certification elections.*

a. The agency shall not consider a petition for certification of an employee organization as the exclusive representative of a bargaining unit unless a period of two years has elapsed from the date of any of the following:

(1) The last certification election in which an employee organization was not certified as the exclusive representative of that bargaining unit.

(2) The last retention and recertification election in which an employee organization was not retained and recertified as the exclusive representative of that bargaining unit.

(3) The last decertification election in which an employee organization was decertified as the exclusive representative of that bargaining unit.

b. The agency shall not consider a petition for certification of an employee organization as the exclusive bargaining representative of a bargaining unit if the bargaining unit is already represented by a certified bargaining representative.

621—5.6(20) Retention and recertification elections.

5.6(1) *Timing of election periods.*

a. The agency shall conduct an election, prior to the expiration of a collective bargaining agreement between an employer and a certified employee organization, to determine if the employees in a represented bargaining unit wish to retain and recertify the unit's certified representative. Elections will be conducted not less than once every five years.

b. For a certified employee organization that is a party to a collective bargaining agreement with a June 30 expiration date, the organization's retention and recertification election shall occur not earlier than June 1 nor later than November 1 in the year prior to the expiration of the agreement.

c. For a certified employee organization that is a party to a collective bargaining agreement with an expiration date other than June 30, the organization's retention and recertification election shall occur not earlier than 365 days nor later than 270 days prior to the expiration of the agreement.

d. If the certified employee organization has paid the applicable election fee in a timely manner as provided in subrule 5.6(4), the organization's status shall not be adversely affected if the election is not concluded or the results of the election are not certified in compliance with this rule.

e. When scheduling a retention and recertification election, the agency will presume the collective bargaining agreement is for a term of one year commencing July 1 and ending June 30 unless the agreement clearly states an alternate term and dates.

f. Should an employer fail to file a collective bargaining agreement with the agency as required by Iowa Code section 20.29 as amended by 2017 Iowa Acts, House File 291, section 15, or if the parties have no agreement, the agency will, for purposes of scheduling the election, presume a maximum expiration date of five years pursuant to Iowa Code section 20.9 as amended by 2017 Iowa Acts, House File 291, section 6, or two years pursuant to Iowa Code section 20.15 as amended by 2017 Iowa Acts, House File 291, section 9, whichever is applicable, unless the employer subsequently submits a collective bargaining agreement that allows the agency to conduct an earlier election in accordance with subrule 5.6(1).

g. Should the parties' collective bargaining agreement inclusive of any extensions exceed five years, the agency will, for purposes of scheduling the election, presume a maximum duration of five years pursuant to Iowa Code section 20.9 as amended by 2017 Iowa Acts, House File 291, section 6, or two years pursuant to Iowa Code section 20.15 as amended by 2017 Iowa Acts, House File 291, section 9, whichever is applicable.

h. A public employer shall notify the agency if the certified employee organization has not been correctly identified as one which requires an upcoming election. The public employer shall submit to the agency all relevant information requested.

5.6(2) *General procedure.*

a. Upon determining that a retention and recertification election is required, the agency shall file a notice of intent to conduct an election which shall contain the dates of the election period; the place, method, and purpose of the election; and the date upon which the employee organization shall pay the applicable election fee. The agency shall order the public employer's submission of the voter eligibility list in accordance with rule 621—5.2(20) and subrule 5.6(4).

b. Following the agency's receipt of the applicable election fee from the certified employee organization, the agency will file an order directing a retention and recertification election.

c. The agency will file a notice of election, copies of which shall be promptly posted by the employer in the manner and locations customarily used for the posting of information to employees. If a public employer customarily distributes information to employees by additional means, such as by e-mail or hard copy, the public employer shall also promptly distribute such notice to employees by those means. Such notices shall contain a sample ballot or script and shall set forth the dates of the election

period; time, place, method, and purpose of the election; and such additional information as the board may deem appropriate.

5.6(3) *Objection to notice of intent to conduct an election.*

a. The employee organization or public employer may file an objection asserting that the election should not be conducted for reasons set forth in the objection. The objection shall be in writing and electronically filed no later than seven days following the date of the notice of intent to conduct an election.

b. The agency may conduct a preliminary investigation of the objection and determine if the objection has merit. The agency will dismiss objections without merit and schedule hearings for all other objections. Hearings on objections shall be conducted pursuant to 621—Chapter 2. The objecting party shall present its evidence first.

5.6(4) *Eligible voter list.*

a. The public employer shall submit to the agency by e-mail a list of the employees in the bargaining unit in question within seven days of the filing of the notice of intent to conduct an election, except as provided in subrule 5.6(8). This list shall be organized alphabetically and contain the names, addresses, e-mail addresses, job classifications, dates of birth, the last four digits of the employees' social security numbers, and any other information required by the agency. The agency shall file the list following its redaction of employee dates of birth and partial social security numbers. This list shall become the official voting list for the election to be conducted. The employer shall e-mail additions or deletions of employees' names or any other changes in the list to the agency. The parties may further amend the list by agreement.

b. If the public employer fails to submit the list of eligible voters to the agency in a timely fashion, the agency will refrain from conducting the election, will file an order recertifying the employee organization, and may require the employer to reimburse the agency or the employee organization for the cost of the election.

5.6(5) *Payment of fee.* A certified employee organization shall pay the applicable election fee at least 30 days prior to the commencement of the election period as set forth in the notice of intent to conduct the election, except as otherwise authorized by this subrule or provided in subrule 5.6(8). The agency may grant a certified employee organization's written request for an extension of time to pay the fee if the request is filed at least 30 days prior to the commencement of the election period. The agency will not conduct an election prior to receiving the applicable election fee. The certified employee organization's failure to pay the applicable election fee in a timely manner shall result in revocation of the organization's certification.

5.6(6) *Ballots.* Ballots shall contain the question required by Iowa Code section 20.15 as amended by 2017 Iowa Acts, House File 291, section 9, asking "Do you want [name of certified employee organization] to be retained and recertified and continue to be your exclusive bargaining representative?" followed by the choices "Yes, I want [name of certified employee organization] to continue to represent me" or "No, I do not want [name of certified employee organization] to continue to represent me."

5.6(7) *Certification of results.*

a. Upon completion of a valid retention and recertification election in which an employee organization received the votes of a majority of employees in the bargaining unit, the agency shall file an order recertifying the employee organization as the exclusive bargaining representative of the employees in the bargaining unit.

b. Upon completion of a valid retention and recertification election in which an employee organization did not receive the votes of a majority of employees in the bargaining unit, the agency shall file an order decertifying the employee organization as the exclusive bargaining representative of the employees in the bargaining unit.

5.6(8) *Elections for school districts, area education agencies and community colleges.*

a. If a certified employee organization representing employees of a school district, area education agency, or community college is scheduled for a retention and recertification election to be held in September of any given year, the following timeline applies:

The employer shall submit to the agency an employee list as described in subrule 5.6(4) at least 15 days prior to the commencement date of the election period. The certified employee organization shall pay the applicable election fee at least 10 days prior to the commencement of the election period.

b. If certified employee organizations representing employees of a school district, area education agency, or community college would otherwise be scheduled for a retention and recertification election to be held between May 1 and August 31, the agency will postpone those elections until October of that calendar year and the timelines of subrules 5.6(2), 5.6(4), and 5.6(5) will apply.

621—5.7(20) Decertification election.

5.7(1) General procedure—eligibility list—notice of election.

a. Upon the agency's determination that a decertification petition is supported by an adequate showing of interest in accordance with rule 621—4.3(20), the agency shall file an order directing that an election be conducted in a specified manner not less than 150 days before the expiration date of the bargaining unit's collective bargaining agreement and that the employer submit a list of eligible voters pursuant to rule 621—5.2(20), unless the election is barred by subrule 5.7(5).

b. Following the employer's submission of the list of eligible voters, the agency shall file a notice of election containing a sample ballot and setting forth the date, time, place, method, and purpose of the election, and such additional information as the board may deem appropriate. The employer shall promptly post the notice in the manner and locations customarily used for the posting of information to employees. If a public employer customarily distributes information to employees by additional means, such as by e-mail or hard copy, the public employer shall also promptly distribute such notice to employees by those means.

5.7(2) Payment of fee. After the filing of a decertification petition, but no later than seven days after the agency's filing of an order directing an election, a certified employee organization shall pay the applicable election fee to the agency, unless an extension of time, upon written request, is granted by the agency. The agency will not conduct an election prior to receiving the applicable election fee. A certified employee organization's failure to pay the applicable election fee in a timely manner shall result in the revocation of the employee organization's certification.

5.7(3) Ballots. Ballots shall contain the question required by Iowa Code section 20.15 as amended by 2017 Iowa Acts, House File 291, section 9, asking "Do you want [name of certified employee organization] to be decertified by the Public Employment Relations Board and cease to be your exclusive bargaining representative?" followed by the choices "Yes, I no longer wish to be represented by [name of certified employee organization]" or "No, I want to continue to be represented by [name of certified employee organization]."

5.7(4) Certification of results.

a. Upon completion of a valid decertification election in which a majority of the employees in the bargaining unit voted to decertify the employee organization, the agency shall file an order decertifying the employee organization as the exclusive bargaining representative of the employees in the bargaining unit.

b. Upon completion of a valid decertification election in which a majority of the employees in the bargaining unit did not vote to decertify the employee organization, the agency shall file an order continuing the certification of the employee organization as the exclusive bargaining representative of the employees in the bargaining unit.

5.7(5) Bars to decertification election.

a. The agency shall not consider a petition for decertification of an employee organization unless the collective bargaining agreement exceeds two years in duration. The agency shall not consider a decertification petition during the pendency of a retention and recertification proceeding.

b. The agency shall not schedule a decertification election within one year of a prior certification, retention and recertification, or decertification election involving the bargaining unit.

621—5.8(20) Professional and nonprofessional election.

5.8(1) General procedure—eligibility list—notice of election.

a. Should the agency determine, in any case, that professional and nonprofessional employees are appropriately included in the same bargaining unit, the agency shall file an order directing that an election be conducted to determine whether those professional and nonprofessional employees agree to be represented in a single bargaining unit and that the employer submit by e-mail separate lists of eligible professional and nonprofessional voters pursuant to rule 621—5.2(20).

b. The public employer shall e-mail the lists of employees in the professional and nonprofessional categories to the agency within seven days of the agency's order. The lists shall be organized alphabetically and contain the names, addresses, e-mail addresses, and job classifications of the employees eligible to vote, and any other information required by the agency. The lists submitted by the employer shall be filed by the agency and shall become the official voting lists for the election to be conducted. The employer shall e-mail additions or deletions of employees' names or any other changes in the list to the agency. The lists may be further amended by agreement of the parties.

c. Following the employer's submission of the lists of eligible voters, the agency shall file a notice of election containing a sample ballot for each category of employee and setting forth the date, time, place, method, and purpose of the election, and such additional information as the agency may deem appropriate. The employer shall promptly post the notice in the manner and locations customarily used for the posting of information to employees. If a public employer customarily distributes information to employees by additional means, such as by e-mail or hard copy, the public employer shall also promptly distribute such notice to employees by those means.

d. No election fee is assessed for an election held pursuant to this rule.

5.8(2) Ballots. Ballots shall contain the following question, "Do you agree to the inclusion of professional and nonprofessional employees in the same bargaining unit?" followed by the choices "Yes" or "No."

5.8(3) Certification of results.

a. Upon completion of a valid professional/nonprofessional election in which separate majorities of both the professional and nonprofessional employees in the proposed unit voted in favor of their inclusion in the same bargaining unit, the agency shall define a bargaining unit which includes both professional and nonprofessional employees.

b. Upon completion of a valid professional/nonprofessional election in which separate majorities of both the professional and nonprofessional employees in the proposed unit did not vote in favor of their inclusion in the same bargaining unit, the agency shall not define a bargaining unit which includes both professional and nonprofessional employees.

621—5.9(20) Amendment of unit elections.

5.9(1) General procedure—eligibility list—notice of election. Should the agency determine that a job classification or classifications are appropriately amended into a bargaining unit, but that those classifications existed at the time the employee organization was certified and would separately constitute an appropriate unit, the agency shall file an order directing that an election be conducted. The election will determine whether a majority of the employees in those classifications wish to be represented by the existing certified employee organization. The employer shall submit by e-mail a list of the employees in those classifications pursuant to rule 621—5.2(20).

a. The public employer shall e-mail the list of employees to the agency within seven days of the agency's order. The list shall be organized alphabetically and contain the names, addresses, e-mail addresses, and job classifications of the employees eligible to vote. The agency shall file the list, which shall become the official voting list for the election to be conducted. The employer shall e-mail additions or deletions of employees' names or any other changes in the list to the agency. The parties may further amend the list by agreement.

b. Following the employer's submission of the list of eligible voters, the agency shall file a notice of election containing a sample ballot and setting forth the date, time, place, method, and purpose of the election, and such additional information as the board may deem appropriate. The employer shall promptly post the notice in the manner and locations customarily used for the posting of information to employees. If a public employer customarily distributes information to employees by additional

means, such as by e-mail or hard copy, the public employer shall also promptly distribute such notice to employees by those means.

c. No election fee is assessed for an election held pursuant to this rule.

5.9(2) Ballots. Ballots shall contain the following question, “Do you wish to be represented for purposes of collective bargaining by [name of employee organization]?” followed by the choices “Yes, I wish to be represented by [name of employee organization]” or “No, I do not wish to be represented.”

5.9(3) Certification of results.

a. Upon completion of a valid amendment of unit election in which a majority of the eligible voters cast ballots in favor of representation by the certified employee organization, the agency shall file an order amending the unit as previously determined to be appropriate by the agency.

b. Upon completion of a valid amendment of unit election in which a majority of the eligible voters did not cast ballots in favor of representation by the certified employee organization, the agency shall file an order dismissing the amendment of unit petition.

621—5.10(20) Destruction of ballots. In the absence of litigation over the validity or outcome of an election and after a period of 60 days has elapsed from the date of the filing of an order of certification, noncertification, retention and recertification, decertification or continued certification of an employee organization pursuant to the election, the agency will cause the ballots cast in the election to be destroyed.

These rules are intended to implement Iowa Code chapter 20 as amended by 2017 Iowa Acts, House File 291.

ITEM 14. Renumber rules **621—6.4(20)** and **621—6.5(20)** as **621—6.5(20)** and **621—6.6(20)**.

ITEM 15. Adopt the following new rule 621—6.4(20):

621—6.4(20) Public safety unit determination.

6.4(1) Applicability. This rule applies only to bargaining units which include at least one public safety employee, as defined in 621—subrule 1.6(12) or as required by 2017 Iowa Acts, House File 291, section 18, concerning certain transit employees.

6.4(2) Defined. A public safety unit is a bargaining unit in which at least 30 percent of the employees are public safety employees.

6.4(3) Determination of public safety unit status. A bargaining unit will constitute a public safety unit if at least 30 percent of the employees in the unit were public safety employees at any one time in the six months preceding the applicable date identified in subrule 6.4(7).

6.4(4) Identification of public safety or non-public safety unit. Parties engaging in negotiations for a collective bargaining agreement shall endeavor to agree upon and stipulate to the public safety or non-public safety status of the unit at issue.

6.4(5) Agreement and stipulation. If the parties are in agreement, the parties shall complete a stipulation form prescribed by the agency. The stipulation shall be signed by the authorized representatives of the parties, and the certified employee organization shall submit it to the agency by e-mail, ordinary mail, or personal delivery.

6.4(6) Petition, response and hearing for determination of public safety or non-public safety unit status.

a. If the parties fail to reach agreement, the party asserting public safety unit status shall file a petition for determination of the unit status on or before the applicable date identified in subrule 6.4(7). The petition shall be on an agency-prescribed form and electronically filed. The petitioning party shall promptly serve the other party with a copy of the petition and file proof thereof with the agency in accordance with 621—subrules 2.15(3) and 16.10(1).

b. The non-petitioning party shall, within ten days following the filing of the petition with the agency, file a response asserting its basis for identifying the unit as a non-public safety unit.

c. Hearings on the petition shall be conducted pursuant to 621—Chapter 2. The public employer shall present its evidence first.

6.4(7) Deadlines. The stipulation shall be submitted or a petition filed on or before the dates indicated:

- a. July 1 for contracts that expire January 1 to March 31 of the subsequent year.
- b. October 1 for contracts that expire April 1 to June 30 of the subsequent year.
- c. January 1 for contracts that expire July 1 to September 30 of the same year.
- d. April 1 for contracts that expire October 1 to December 31 of the same year.

ITEM 16. Amend renumbered rule 621—6.6(20) as follows:

621—6.6(20) Filing of agreement. ~~Not later than 60 days after ratification and acceptance of a tentative agreement or the issuance of an interest arbitration award, the public employer shall submit the collective bargaining agreement to the agency. A copy of the collective bargaining agreement entered into between a public employer and a certified employee organization and made final under Iowa Code chapter 20 shall be filed with the agency by the public employer within ten days of the date on which the agreement is entered into.~~

ITEM 17. Amend subrule 7.3(1) as follows:

7.3(1) Request for mediation. Either party to an impasse may request the board in writing to appoint a mediator to the impasse.

An original and one copy of the request for mediation shall be filed with the board and shall, in addition to the request for mediation, contain:

a. The name, address, and telephone number of the requesting party, and the name, address, ~~and telephone number,~~ and e-mail address of its bargaining representative or of the chairperson of its bargaining team.

b. The name, address, and telephone number of the opposing party to the impasse, and the name, address, ~~and telephone number,~~ and e-mail address of its bargaining representative or of the chairperson of its bargaining team.

c. A description of the collective bargaining unit involved and the approximate number of employees in the unit.

d. A statement indicating whether the public employer of the unit involved is subject to the budget certification requirements of Iowa Code section 24.17 and, if the public employer is not subject to those requirements, a statement of the date upon which the public employer's next fiscal or budget year commences.

e. A statement indicating whether the bargaining unit is a public safety or non-public safety unit as specified by Iowa Code section 20.3 as amended by 2017 Iowa Acts, House File 291, section 1, and rule 621—6.4(20).

~~e. f.~~ A concise and specific listing of the negotiated items upon which the parties have reached impasse.

ITEM 18. Amend subrule 7.5(6) as follows:

7.5(6) Date and conduct of hearings.

a. Impasse items are deemed submitted to binding arbitration on the date of the commencement of the arbitration hearing, regardless of its duration. In disputes where the public employer is a community college, or where all or a portion of the public employees in the bargaining unit are teachers licensed under Iowa Code chapter 272 and the public employer is a school district or area education agency, the submission of impasse items to binding arbitration shall occur not later than May 13 of the year when the resulting collective bargaining agreement is to become effective.

b. Arbitration hearings shall be open to the public and shall be recorded either by mechanized means or by a certified shorthand reporter.

c. The arbitration hearing shall be limited to those factors listed in Iowa Code ~~section 20.22(9)~~ section 20.22 as amended by 2017 Iowa Acts, House File 291, sections 12 and 13, and subrules 7.5(7) and 7.5(8), and such other relevant factors as may enable the arbitrator to select the most reasonable offer,

in the arbitrator's judgment, of the final offers submitted by the parties on each impasse item. Arbitrators appointed pursuant to impasse procedures agreed upon by the parties shall likewise consider ~~the factors listed in Iowa Code section 20.22(9)~~ these same factors.

During the hearing, the parties shall not introduce, and the arbitrator shall not accept or consider, any direct or indirect evidence regarding any subject excluded from negotiations pursuant to Iowa Code section 20.9 as amended by 2017 Iowa Acts, House File 291, section 6, except as required for purposes of the consideration of the factors specified in subrule 7.5(7) and paragraph 7.5(8) "a."

ITEM 19. Renumber subrules **7.5(7)** to **7.5(10)** as **7.5(9)** to **7.5(12)**.

ITEM 20. Adopt the following **new** subrules 7.5(7) and 7.5(8):

7.5(7) *Arbitration involving a bargaining unit that has at least 30 percent of members who are public safety employees.* The arbitrator shall consider and specifically address in the arbitrator's determination, in addition to any other relevant factors, the following factors:

a. Past collective bargaining contracts between the parties including the bargaining that led up to such contracts.

b. Comparison of wages, hours and conditions of employment of the involved public employees with those of other public employees doing comparable work, giving consideration to factors peculiar to the area and the classifications involved.

c. The interests and welfare of the public, the ability of the public employer to finance economic adjustments and the effect of such adjustments on the normal standard of services.

7.5(8) *Arbitration involving a bargaining unit that does not have at least 30 percent of members who are public safety employees.*

a. The arbitrator shall consider and specifically address in the arbitrator's determination, in addition to any other relevant factors, the following factors:

(1) Comparison of base wages, hours, and conditions of employment of the involved public employees with those of other public employees doing comparable work, giving consideration to factors peculiar to the area and the classifications involved. To the extent adequate, applicable data is available, the arbitrator shall also compare base wages, hours, and conditions of employment of the involved public employees with those of private sector employees doing comparable work, giving consideration to factors peculiar to the area and the classifications involved.

(2) The interests and welfare of the public.

(3) The financial ability of the employer to meet the cost of an offer in light of the current economic conditions of the public employer. The arbitrator shall give substantial weight to evidence that the public employer's authority to utilize funds is restricted to special purposes or circumstances by state or federal law, rules, regulations, or grant requirements.

b. The arbitrator shall not consider the following factors:

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

(2) The 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.

c. The arbitrator's award on the impasse item of base wages shall not exceed the lesser of the following percentages in any one-year period in the duration of the bargaining agreement:

(1) Three percent.

(2) A percentage equal to the increase in the consumer price index for all urban consumers for the Midwest region, if any, as provided by the agency.

d. Should the final offers of both parties on the impasse item of base wages exceed the lesser of the percentages specified in paragraph 7.5(8) "c," the arbitrator shall select neither of the parties' offers, but shall instead award the lesser of the amounts listed in that paragraph.

ITEM 21. Amend renumbered subrule 7.5(10) as follows:

7.5(10) *Report of the arbitrator.* With respect to each impasse item, the arbitrator's award shall be restricted to the final offers on each impasse item submitted by the parties to the arbitrator, except as provided in paragraph 7.5(8) "c." Within 15 days after the arbitration hearing, the arbitrator shall issue

a written award specifying and explaining the arbitrator's selections and serve each party and the board with a copy by ordinary mail or by e-mail.

ITEM 22. Amend renumbered subrule 7.5(11) as follows:

7.5(11) Dismissal of arbitrator. In the event of a failure of the arbitrator to issue an award within 15 days after the arbitration hearing, the arbitrator shall notify the board and the parties of this failure. Either party may thereafter request a new arbitrator. Unless the parties agree otherwise, the procedures in ~~subrules 7.5(1) to 7.5(5)~~ this rule shall apply; provided, however, that the parties may submit new final offers. No arbitrator shall issue a partial award except by mutual consent of the parties.

ITEM 23. Rescind rules ~~621—7.8(20)~~ to ~~621—7.10(20)~~.

ITEM 24. Amend subrule 8.4(1) as follows:

8.4(1) Time of filing. An employee organization shall file a complete annual report:

a. Before the employee organization may be certified as the exclusive representative of a bargaining unit ~~in which case the report may be filed concurrently with an election petition;~~ and

b. Once the employee organization is certified, within 90 days following the certified employee organization's fiscal year end; and

c. When the certified employee organization files a petition to amend its certification.

ITEM 25. Amend subrule 8.7(1) as follows:

8.7(1) Upon completion of a valid certification election. If an employee organization fails to file a registration report, constitution and bylaws, or annual report or otherwise comply with these rules or Iowa Code section 20.25 within 90 days following the completion of a valid certification election, the agency will not certify the employee organization and will serve notice of noncertification. The agency may grant extensions of time for good cause.

ITEM 26. Renumber rule ~~621—11.9(8A,20)~~ as ~~621—11.10(8A,20)~~.

ITEM 27. Adopt the following new rule 621—11.9(8A,20):

621—11.9(8A,20) Costs of certified shorthand reporters and transcripts.

11.9(1) Initial payment. The agency will arrange for a certified shorthand reporter to report the contested case hearing and request that an original transcript of the hearing be prepared by the reporter for the agency's use. The agency initially shall pay the reporter's reasonable compensation for reporting the hearing and producing the agency-requested transcript.

11.9(2) Taxation as costs. The cost of reporting and of the agency-requested transcript shall be taxed as costs against the nonprevailing party or parties although the presiding officer, or the board on appeal or review of a proposed decision and order, may apportion such costs in another manner if appropriate under the circumstances.

11.9(3) Payment of taxed costs. Following final agency action in a case, the agency will prepare and serve a bill of costs upon the party or parties against whom the costs have been taxed. Those parties shall, within 30 days of such service, remit to the agency the amount specified in the bill of costs. Sums remitted to the agency shall be considered repayment receipts as defined in Iowa Code section 8.2.

ITEM 28. Amend subrule 16.4(2) as follows:

16.4(2) Exceptions.

a. A show of interest submitted in a representative certification, combined bargaining unit determination or reconsideration/representative certification, or decertification proceeding shall not be filed electronically.

b. Any item that is not capable of being filed in an electronic format shall be filed in a nonelectronic format.

c. Upon a showing of exceptional circumstances that it is not feasible for an individual to file documents by electronic means, the board may excuse the individual from electronic filing in a particular proceeding.

d. A voter eligibility list submitted by an employer shall be e-mailed to the agency as provided in 621—subrule 5.2(2).

~~*e.*~~ All filings in proceedings initially filed prior to January 1, 2015, unless converted to an electronic proceeding by board order, shall not be filed electronically.

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