

PUBLIC EMPLOYMENT RELATIONS BOARD[621]

Adopted and Filed

Rule making related to retention and recertification elections

The Public Employment Relations Board hereby amends Chapter 5, “Elections,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code section 20.6(5).

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 20.15(2).

Purpose and Summary

The agency adopted emergency rules effective August 10, 2017, to implement provisions of 2017 Iowa Acts, House File 291. The agency subsequently adopted amendments to clarify the emergency rules, and those amendments became effective June 13, 2018.

The amendment adopted herein provides additional clarification to the rules regarding retention and recertification elections based on feedback and internal review. This amendment clarifies that the agency will only conduct an election if the employer and the certified employee organization are parties to a collective bargaining agreement. The adopted amendment conforms subrule 5.6(1) to Iowa Code section 20.15(2)“a.”

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on June 6, 2018, as **ARC 3825C**. The agency requested that comments be submitted by June 26, 2018. The agency received no formal comments but did respond to clarifying questions. The agency received questions regarding the number of units that do not have collective bargaining agreements. Out of the nearly 1,200 certified bargaining units, only a handful of units have consistently gone without a collective bargaining agreement even before Iowa Code chapter 20 was amended in February of 2017. For units that do not have collective bargaining agreements, Iowa Code sections 20.15(2) and 20.15(3) do not authorize the agency to conduct either a retention and recertification election or a decertification election for those units, because both elections are predicated on the existence of a current collective bargaining agreement. No changes from the Notice have been made.

Adoption of Rule Making

This rule making was adopted by the Board on July 12, 2018.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rule making, no impact on jobs has been found.

Waivers

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).

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

Effective Date

This rule making will become effective on September 5, 2018.

The following rule-making action is adopted:

Amend subrule 5.6(1) as follows:

5.6(1) *Timing of election periods.*

a. ~~The~~ When an employer and certified employee organization are parties to a collective bargaining agreement, 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, except as provided in subrule 5.6(10).

d. If the certified employee organization has paid the applicable election fee in a timely manner as provided in subrule 5.6(5), the organization's status shall not be adversely affected if the election is not concluded 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 effective dates.

f. Should an employer fail to file a collective bargaining agreement with the agency as required by Iowa Code section 20.29, ~~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 or two years pursuant to Iowa Code section 20.15, 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). The agency shall not conduct an election if the employer and certified employee organization are not parties to a collective bargaining agreement.

g. An extension of a collective bargaining agreement will alter the timing of the retention and recertification election only if the parties have reached agreement on the extension and have notified the agency in writing prior to the date the fee is due as set forth in the notice of intent to conduct the election. 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 or two years pursuant to Iowa Code section 20.15, whichever is applicable.

h. At least 30 days prior to the commencement of the retention and recertification election period, 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. The agency shall conduct an investigation to determine whether the election is required by statute and rule.

[Filed 7/13/18, effective 9/5/18]

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 8/1/18.