

PUBLIC EMPLOYMENT RELATIONS BOARD[621]

Notice of Intended Action

Proposing rule making related to bargaining unit determinations and representative certifications and providing an opportunity for public comment

The Public Employment Relations Board hereby proposes to amend Chapter 4, “Bargaining Unit and Bargaining Representative Determination,” and Chapter 5, “Elections,” and to adopt new Chapter 15, “Retention and Recertification Elections,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed 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 chapter 20.

Purpose and Summary

This Notice of Intended Action affects rules relating to bargaining unit determination and representative certifications. The proposed amendments establish a procedure for bargaining units to merge; transfer retention and recertification election procedures into their own chapter for ease of use to the reader; and update and clarify provisions related to electronic filing requirements. The agency proposes these amendments after feedback and internal review.

Items 1, 3, and 4 are conforming amendments due to the transfer of retention and recertification election procedures from Chapter 5 to Chapter 15.

Items 2 and 5 require electronic filing of objections to bargaining unit determination and representative certification case files. These amendments are proposed due to feedback and to provide consistency of filing requirements with the agency.

Items 6 and 7 establish a procedure for the merger of units. Item 6 relates to the merger of two bargaining units represented by the same certified employee organization. Item 7 relates to the merger of two bargaining units represented by affiliated certified employee organizations. Under current agency rules, merging two units requires the filing of two amendment of unit petitions and, in some cases, an amendment of certification petition. The proposed amendments would reach the same result and allow the agency to assess the appropriateness of the merger while streamlining the process.

Item 8 proposes an increase in the election fee assessed to certified employee organizations for certification and decertification elections. The fee would increase from \$1 per eligible voter with a \$10 minimum to \$1.50 per eligible voter with a \$15 minimum. Item 8 also removes language relating to retention and recertification election procedures as that language is transferred to new Chapter 15; specifies the electronic filing requirements; adds an explanation for the term “election period”; and contains conforming amendments.

Item 9 removes language relating to retention and recertification election procedures as that language is transferred to new Chapter 15. Item 9 also requires submission of voter eligibility challenges by electronic filing due to feedback and to provide consistent requirements for filing with the agency.

Item 10 rescinds the rule relating to retention and recertification election procedures as that language is transferred to new Chapter 15. Item 11 renumbers the remainder of the rules in the chapter due to the transfer of retention and recertification election procedures into a separate chapter.

Item 12 provides consistency with the statute in allowing the agency to dismiss a decertification election petition if the petition is not filed within a time frame that will allow the agency to complete the election by the statutory deadlines.

Items 13 and 14 clarify the method for certification of results of amendment of unit elections and professional/nonprofessional elections in accordance with the agency's practices and Iowa Code chapter 20.

Item 15 updates the implementation language of Chapter 5.

Item 16 proposes the addition of new Chapter 15, which relates exclusively to retention and recertification election procedures to provide for ease of use for the reader. The retention and recertification election procedures are currently contained in Chapter 5. This item, in effect, transfers the provisions to Chapter 15 with reorganization of some of the provisions and revisions to some provisions. In particular, the rules relating to voter eligibility challenges and postelection challenges were reorganized, but were not substantively revised. In addition to the transfer and reorganization, a new provision is proposed to require that employer and certified employee organization representatives have an agent for service or a representative, for purposes of the bargaining unit case files, listed on the agency's electronic document management system and keep the listing up to date.

Similar to the increase in election fees proposed for certification and decertification elections, new Chapter 15 contains increases in the election fee assessed to certified employee organizations for retention and recertification elections. The fee would increase from \$1 per eligible voter with a \$10 minimum to \$1.50 per eligible voter with a \$15 minimum. This fee increase is necessary due to a change in the election services vendor that provides election services for retention and recertification elections.

The provisions regarding the timing of election periods have been revised to reflect current agency policy and Iowa Code section 20.15(2). The proposed language also clarifies statutory requirements and election procedures to provide that the agency will not conduct a retention and recertification election if the agency does not receive the collective bargaining agreement in a timely manner. Existing provisions relating to notice to the agency when the agency has not initiated a retention and recertification election and an entity believes the election is required pursuant to statute are reorganized. The proposed language would change the notification deadline to seven days after the notice of the intent to conduct the election should have been filed.

Fiscal Impact

Although the implementation of Iowa Code section 20.6(7) and the subsequent increase in the fee in these rules will cause an increase in the expenditure of funds by the agency and affected persons, due primarily to the contract with a new 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 these expenditures will exceed \$100,000 per year or \$500,000 within five years.

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).

Public Comment

Any interested person may submit written or oral comments concerning this proposed rule making. Written or oral comments in response to this rule making must be received by the Board no later than 4:30 p.m. on April 17, 2019. Comments should be directed to:

Amber DeSmet
Public Employment Relations Board
Jessie Parker Building, Suite 1B
510 East 12th Street
Des Moines, Iowa 50319
Phone: 515.281.4045
Email: amber.desmet@iowa.gov

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

April 17, 2019
10 a.m. to 12 noon

Public Employment Relations Board
Jessie Parker Building
510 East 12th Street
Des Moines, Iowa

Persons who wish to make oral comments at the public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rule making.

Any persons who intend to attend the public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Board and advise of specific needs.

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).

The following rule-making actions are proposed:

ITEM 1. Amend subrule 4.1(2) as follows:

4.1(2) Representation elections.

a. Initial certification, retention and recertification, and decertification elections. The initial certification, retention and recertification, and decertification of an employee organization require elections in accordance with ~~621—Chapter 5~~ [621—Chapters 5 and 15](#). The three types of elections affecting the bargaining representative determination or an employee organization's certification status are as follows:

- (1) A certification election, which is initiated by the filing of a petition by the employee organization or the public employer, for the initial certification of an employee organization to be the exclusive bargaining representative for a bargaining unit of public employees;
- (2) A retention and recertification election, which is initiated by the filing of notice by the agency, for the retention and recertification of a certified employee organization; and
- (3) A decertification election, which is initiated by a public employee of a bargaining unit, for the decertification of an existing certified employee organization that represents the unit.

b. Other elections—professional/nonprofessional unit and amendment of unit. When a bargaining unit is determined or amended, an election may be required as provided in ~~621—Chapter 5~~. The two types of other elections are as follows:

- (1) A professional and nonprofessional election occurs when the agency files an order directing the election after determining that professional and nonprofessional employees are appropriately included in the same bargaining unit.
- (2) An amendment of unit election occurs when the agency files an order directing the election after determining that a job classification or classifications are appropriately amended into a bargaining

unit, but a question of representation exists. A question of representation exists when the ~~amended classifications existed at the time the bargaining unit was originally determined and those classifications would separately constitute an appropriate unit~~ 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 2. Amend paragraph **4.2(6)“c”** as follows:

~~c. Objections to the proposed decision must be electronically filed with the 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, telephone number, and email address, if available. The agency shall promptly advise the parties of the objections and make any investigation deemed appropriate. If the agency deems the objections to be of substance, the parties may, with agency approval, amend their proposed decision to conform therewith, and the objecting party shall be notified by the agency of the amendment. If the objections cannot be informally resolved, they may be dismissed or resolved at hearing.~~

ITEM 3. Amend subrule 4.4(7) as follows:

4.4(7) Professional and nonprofessional elections. See subrule 4.2(5) and rule ~~621—5.8(20)~~ 621—5.7(20).

ITEM 4. Amend subrule 4.6(3) as follows:

4.6(3) Elections; when required. When a question of representation exists, the agency will conduct an amendment of unit election pursuant to rule ~~621—5.9(20)~~ 621—5.8(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 5. Amend paragraph **4.8(5)“b”** as follows:

~~b. Objections to the proposed decision must be electronically filed with the agency, electronically, by ordinary mail or by personal delivery, by the date specified in the notice. 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, telephone number and email address. The agency shall promptly advise the parties of the objections and make any investigation deemed appropriate. When an objection is raised, the agency may investigate and dismiss the objection or conduct a hearing pursuant to 621—Chapter 2.~~

ITEM 6. Adopt the following new rule 621—4.9(20):

621—4.9(20) Merger of units represented by the same certified employee organization. A certified employee organization may petition the agency to merge two of the bargaining units the organization represents into one successive unit. This proceeding does not apply to school districts’ and area education agencies’ reorganizations and mergers pursuant to Iowa Code chapter 273 or 275.

4.9(1) Petition. A petition to amend a bargaining unit may be filed by a certified employee organization to reflect a merger of two agency-determined bargaining units which have the same public employer and are represented by the same certified employee organization. The petition shall contain:

a. The names, addresses, telephone numbers, and email addresses of the public employer and the employee organization or their respective representatives.

b. A listing of all PERB cases relevant to the first unit and its certification history followed by a current description of the unit.

c. A listing of all PERB cases relevant to the second unit and its certification history followed by a current description of the unit.

d. An identification and description of the proposed amended unit.

e. 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.

f. A statement identifying the current status of the units as either public safety units or non-public safety units and the change, if any, to the status of the unit, which would result from the requested merger.

g. A specific statement of the petitioner's reasons for seeking amendment of the unit and any other relevant factors.

4.9(2) *Accompanying documents.* The successive employee organization must file its petition with an affidavit(s) that establishes the following for each unit:

a. The act or occurrence (merger), 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.

4.9(3) *Notice.* Upon the filing of a petition, the agency shall file a notice to employees, giving notice that a petition for the merger of two units has been filed and setting forth the rights of employees under Iowa Code chapter 20. 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 email or hard copy, the employer shall also promptly distribute the notice to employees by those means.

4.9(4) *Procedure—decision.* Insofar as applicable, rule 621—4.2(20) shall apply.

ITEM 7. Adopt the following **new** rule 621—4.10(20):

621—4.10(20) Merger of two units represented by affiliated certified employee organizations. A certified employee organization may petition the agency to amend a bargaining unit the organization represents to merge another bargaining unit of employees into the successive unit. The unit of employees added must be represented by an affiliated certified employee organization. This proceeding does not apply to school districts' and area education agencies' reorganizations and mergers pursuant to Iowa Code chapter 273 or 275.

4.10(1) *Petition.* A combined petition to amend a bargaining unit and an employee organization's certification may be filed by a successive employee organization to reflect a merger of two agency-determined bargaining units that have the same public employer and are represented by affiliated certified employee organizations. The combined petition shall contain:

a. The names, addresses, telephone numbers, and email addresses of the public employer and the employee organization or their respective representatives.

b. A listing of all PERB cases relevant to the first unit and its certification history followed by a current description of the unit.

c. A listing of all PERB cases relevant to the second unit and its certification history followed by a current description of the unit.

d. An identification and description of the proposed amended unit.

e. 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.

f. A statement identifying the current status of the units as either public safety units or non-public safety units and the change, if any, to the status of the unit, which would result from the requested merger.

g. A specific statement of the petitioner's reasons for seeking amendment of the unit and any other relevant factors.

4.10(2) *Accompanying documents.* The successive employee organization must file its petition with the following:

a. An affidavit(s) that establishes the following:

(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. The certified employee organization may wait and submit its final agency reports following the board's tentative approval of the amendment of certification.

4.10(3) Notice. The agency shall file a notice to employees, giving notice that a petition to merge two units and amend the certification of the successive employee organization has been filed and setting forth the rights of employees under Iowa Code chapter 20. 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 email or hard copy, the employer shall also promptly distribute the notice to employees by those means.

4.10(4) Procedure—decision. Insofar as applicable, rules 621—4.2(20) and 621—4.8(20) shall apply.

4.10(5) Elections. Should the agency determine, in any case, it is appropriate to merge one unit into the successive unit, the agency shall file an order directing that an election be conducted to determine whether the employees of the unit getting merged into the successive unit wish to be represented by the successive certified employee organization. The election shall be conducted in accordance with rule 621—5.8(20).

ITEM 8. Amend rule 621—5.1(20) as follows:

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. Parties shall electronically file all documents in the applicable adjudicatory case file in the agency's electronic document management system (EDMS) unless the rules specify otherwise.

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

a. Certification election.

b. Retention and recertification election. Specific rules addressing retention and recertification elections are contained in 621—Chapter 15.

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 file a written request with the agency for an extension of time in which to pay its election fees. The employee organization may file the request after the filing of a certification or decertification petition, but no later than 7 seven days after the agency's filing of an order directing an election. ~~For a retention and recertification election, a certified employee organization may file a request after the agency's filing of its intent to conduct an election, but shall file the request no later than the date the election fee is due as provided in the notice of intent to conduct an election.~~ 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 may be filed at any time, but must be filed no later than 7 seven 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. For retention and recertification elections, the applicable election fee is based upon the number of employees on the voter eligibility list submitted to the agency pursuant to subrule 5.2(2). For certification and decertification elections, the applicable election fee is based upon the list provided pursuant to 621—subrule 4.3(3) to verify the showing of interest.~~

(1) When the list contains ~~10~~ ten or fewer eligible voters, the election fee is ~~\$10~~ \$15. When the list contains more than ~~10~~ ten eligible voters, the election fee is ~~\$1~~ \$1.50 per eligible voter. When ~~the number of eligible voters on the list contains more than 50 eligible voters and subsequent for determining fees increases or decreases as contemplated by subparagraph 5.2(2)“a”(2) or 5.2(2)“b”(2) or due to successful challenges pursuant to subrule 5.2(3) and the increases or decreases alter the number of eligible voters by 5 percent~~ ten 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.

(2) ~~The agency will not request additional payment and will not reimburse the employee organization for an amount less than \$10. The agency will not refund the election fee in the event the election fee is paid and the agency has performed duties to conduct the election but the election does not occur.~~

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

5.1(4) Election period. For purposes of this chapter, an election period begins at the time and on the date the agency sets for when eligible voters may first cast a ballot and ends at the time and on the date the agency sets for the tally of ballots.

ITEM 9. Amend rule 621—5.2(20) as follows:

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

5.2(1) Eligible voters.

~~a. Certification, decertification, professional/nonprofessional, amendment of unit elections.~~ For certification, decertification, professional/nonprofessional, or amendment of unit elections, eligible voters are those employees who:

(1) ~~a.~~ Were employed and included in the bargaining unit on the date of the order directing an election unless another date is agreed upon by the parties and the agency, and

(2) ~~b.~~ Are employed in the bargaining unit on the date of the election.

~~b.—Retention and recertification elections.~~

(1) ~~For retention and recertification elections, eligible voters are those employees who were employed and included in the bargaining unit on the date of the order directing the election, or were employed on another date or dates agreed upon by the parties and the agency.~~

(2) ~~In addition to voter eligibility challenges made pursuant to subrule 5.2(3), employee organizations may make postelection challenges to the total number of bargaining unit employees for their respective retention and recertification elections.~~

1. ~~The certified employee organization may file a postelection challenge to the number of bargaining unit employees if an eligible voter has left employment and is no longer in the bargaining unit prior to the close of the election or election period. The employee organization shall file this postelection challenge within ten days of the filing of the tally of ballots. The agency shall attempt to resolve the dispute. Whenever postelection challenges are unresolved and determinative of the outcome of an election, a hearing to determine whether an eligible voter left employment and was no longer in the bargaining unit prior to the close of the election or election period shall be scheduled and conducted. The board may make appropriate adjustments to the tally or order a new election based on the board's findings and conclusions.~~

~~2. The employer is responsible for ensuring the accuracy of the list after its submission and throughout the election period. The employer shall promptly notify the certified employee organization whenever an eligible voter leaves employment and is no longer in the bargaining unit prior to the close of the election or election period.~~

~~5.2(2) Eligible Certification, decertification, professional/nonprofessional, and amendment of unit elections—eligible voter list.~~

~~a. Certification, decertification, professional/nonprofessional, and unit amendment elections—eligible voter list.~~

~~(1) a. List for determining fees. The agency will determine the election fee based on the initial employer-provided list of employees used to verify the showing of interest pursuant to 621—subrule 4.3(3).~~

~~(2) b. Voter eligibility list.~~

~~1. (1) When the agency files an order that an election, other than a retention and recertification election, be conducted, the employer shall, within seven days of the notice or order, email to the agency an alphabetical list of the names; addresses; email addresses, if known; telephone numbers; and job classifications of the employees eligible to vote. When 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.~~

~~2. (2) 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 containing the employees' contact information. The employer or employee organization shall email proposed additions or deletions of employees' names, changes in job classifications, addresses, contact information, or other eligible voter changes to the agency and to the other party. The parties may further amend the list by agreement.~~

~~b. Retention and recertification elections—eligible voter list.~~

~~(1) List for determining fees.~~

~~1. The agency will determine the election fee based on the following initial employer-provided list of employees. When the agency files a notice of intent to conduct a retention and recertification election, the employer shall, within seven days of the notice, email to the agency an alphabetical list of the names; addresses; email addresses, if known; telephone numbers; and job classifications of the employees in the bargaining unit. When 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. The employer shall separately email the certified employee organization to confirm that the employer provided the agency with the voter list and will provide the date the list was emailed to the agency and the number of employees on the list.~~

~~2. The agency shall file the list of eligible voters' names and job classifications. The agency shall provide to the employee organization the voter list with the employees' contact information.~~

~~(2) Voter eligibility list.~~

~~1. When the agency files an order that the retention and recertification election be conducted, the employer shall, within seven days of the order, email to the agency a second alphabetical list of the names; addresses; email addresses, if known; telephone numbers; and job classifications of the employees eligible to vote. If the original list the employer provided for determining fees is unchanged, the employer does not need to email this second list. The original list, if unchanged, or this second list will become the final list. The agency shall file the list of eligible voters' names and job classifications. This list shall become the official eligible voter list for the election to be conducted. The agency shall provide to the employee organization the voter list with the employees' contact information.~~

~~2. The employer shall not add to or delete from the list any employee name after the submission of the above-described voter eligibility list. By contacting the employer, the certified employee organization may propose additions to or deletions from the list of employees' names prior to the date of the election for in-person elections, prior to the date the ballots are mailed for mail ballot elections, or seven days prior to the commencement of the election period for telephonic/web-based elections. The parties may amend the list by agreement prior to the date of the election for in-person elections, prior to the date the~~

ballots are mailed for mail ballot elections, or seven days prior to the commencement of the election period for telephonic/web-based elections.

5.2(3) Challenges.

a. Types of challenges. Voter eligibility challenge.

(1) A party may challenge, for good cause, the eligibility of any voter. The agency shall attempt to resolve the challenge. Whenever challenged ballots are unresolved and determinative of the outcome of an election, a hearing to determine the eligibility of the challenged voter(s) shall be scheduled and conducted. After the conclusion of the hearing, the board may, if necessary, order a new election, and the cost may be taxed to the nonprevailing party.

~~(2) In addition to voter eligibility challenges made pursuant to this subrule, employee organizations may make postelection challenges to the total number of bargaining unit employees for the employee organizations' respective retention and recertification elections in accordance with paragraph 5.2(1) "b."~~

b. Methods and timing of voter eligibility challenges. A party may challenge the eligibility of a voter as follows by electronically filing a completed voter eligibility form in the case file and in accordance with the following:

(1) In-person elections. A party shall challenge a voter's eligibility 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.

(2) Mail-ballot elections. A party shall challenge a voter's eligibility 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.

(3) Telephonic/web-based elections. A party shall challenge a voter's eligibility ~~in writing to the agency with a copy to the other interested party. For retention and recertification elections, a party shall challenge that voter's eligibility at least seven days prior to the commencement of the election period for telephonic/web-based elections. For all other elections utilizing this method, a party shall challenge that voter's eligibility~~ prior to the end of the election period.

ITEM 10. Rescind rule ~~621—5.6(20)~~.

ITEM 11. Renumber rules ~~621—5.7(20)~~ to ~~621—5.10(20)~~ as ~~621—5.6(20)~~ to ~~621—5.9(20)~~.

ITEM 12. Amend renumbered subrule 5.6(1) as follows:

5.6(1) Eligible voter list. 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(6)~~ 5.6(6). The agency may dismiss a decertification petition if, in the agency's discretion, an election cannot be conducted at least 150 days before the expiration date of the bargaining unit's collective bargaining agreement.

ITEM 13. Amend renumbered subrule 5.7(6) as follows:

5.7(6) Certification of results.

a. Upon completion of a valid professional/nonprofessional election in which separate majorities ~~of the eligible voters~~ employees voting in both the professional and nonprofessional categories 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 the eligible voters~~ employees voting in one or both of the professional and nonprofessional categories did not vote in favor of employees' inclusion in the same bargaining unit, the agency shall not define a bargaining unit which includes both professional and nonprofessional employees.

ITEM 14. Amend renumbered subrule 5.8(6) as follows:

5.8(6) Certification of results.

a. Upon completion of a valid amendment of unit election in which a majority of ~~the eligible voters~~ employees voting 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~~ employees voting 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.

ITEM 15. Amend **621—Chapter 5**, implementation sentence, as follows:

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

ITEM 16. Adopt the following new 621—Chapter 15:

CHAPTER 15
RETENTION AND RECERTIFICATION ELECTIONS

621—15.1(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 a retention and recertification 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.

Each election will be assigned a “BU” case number in the agency’s electronic document management system (EDMS). A party shall electronically file all documents in its respective BU case file unless the rules specify otherwise.

Employers and certified employee organizations shall have a representative or agent for service listed in the applicable BU case file in EDMS. Employers and certified employee organizations have a continuing duty to update the representative or agent for service in the BU case file in EDMS.

15.1(1) Election fees.

a. The employee organization is responsible for and shall prepay the election fees in accordance with this chapter.

b. A certified employee organization may file a written request with the agency for an extension of time in which to pay its election fees. A certified employee organization may file a request after the agency’s filing of its intent to conduct an election, but shall file the request no later than the date the election fee is due as provided in the notice of intent to conduct an election. 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. The notice of nonpayment may be filed at any time, but must be filed no later than 30 days prior to the commencement of the 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 subrule 15.2(2).

(1) When the list contains ten or fewer eligible voters, the election fee is \$15. When the list contains more than ten eligible voters, the election fee is \$1.50 per eligible voter. When the number of eligible voters on the list for determining fees increases or decreases as contemplated by paragraph 15.2(2) “b” or due to successful challenges pursuant to subrule 15.2(3) and the increases or decreases alter the number of eligible voters by ten 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.

(2) The agency will not refund the election fee in the event the election fee is paid and the agency has performed duties to conduct the election but the election does not occur.

15.1(2) Date of election. For purposes of this chapter, the date of an election shall be the date on which the ballots were tallied.

15.1(3) Election period. For purposes of this chapter, an election period begins at the time and on the date the agency sets for when eligible voters may first cast a ballot and ends at the time and on the date the agency sets for the tally of ballots.

621—15.2(20) Eligibility—voter eligibility lists.

15.2(1) Eligible voters.

a. Eligible voters are those employees who were employed and included in the bargaining unit on the date of the order directing the election, or were employed on another date or dates agreed upon by the parties and the agency.

b. The employer is responsible for ensuring the accuracy of the list after its submission and throughout the election period. The employer shall promptly notify the certified employee organization whenever an eligible voter leaves employment and is no longer in the bargaining unit prior to the close of the election or election period.

15.2(2) Initial eligible voter list.

a. *List for determining fees.*

(1) The agency will determine the election fee based on the following initial employer-provided list of employees. When the agency files a notice of intent to conduct a retention and recertification election, the employer shall, within seven days of the notice, email to the agency an alphabetical list of the names; addresses; email addresses, if known; telephone numbers; and job classifications of the employees in the bargaining unit. When 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. The employer shall separately email the certified employee organization to confirm that the employer provided the agency with the voter list and will provide the date the list was emailed to the agency and the number of employees on the list.

(2) The agency shall file the list of eligible voters' names and job classifications. The agency shall provide to the employee organization the voter list containing the employees' contact information.

b. *Final voter eligibility list.*

(1) When the agency files an order that the retention and recertification election be conducted, the employer shall, within seven days of the order, email to the agency a second alphabetical list of the names; addresses; email addresses, if known; telephone numbers; and job classifications of the employees eligible to vote. If the original list the employer provided for determining fees is unchanged, the employer does not need to email this second list. The original list, if unchanged, or this second list will become the final list. The agency shall file the list of eligible voters' names and job classifications. This list shall become the official eligible voter list for the election to be conducted. The agency shall provide to the employee organization the voter list containing the employees' contact information.

(2) The employer shall not add to or delete from the list any employee name after the submission of the above-described voter eligibility list. By contacting the employer, the certified employee organization may propose additions to or deletions from the list of employees' names prior to the date of the election for in-person elections, prior to the date the ballots are mailed for mail-ballot elections, or seven days prior to the commencement of the election period for telephonic/web-based elections. The parties may amend the list by agreement prior to the date of the election for in-person elections, prior to the date the ballots are mailed for mail-ballot elections, or seven days prior to the commencement of the election period for telephonic/web-based elections.

15.2(3) Voter eligibility challenges.

a. *General.* A party may challenge, for good cause, the eligibility of any voter. The agency shall attempt to resolve the challenge. Whenever challenged ballots are unresolved and determinative of the outcome of an election, a hearing to determine the eligibility of the challenged voter(s) shall be scheduled and conducted. After the conclusion of the hearing, the board may, if necessary, order a new election, and the cost may be taxed to the nonprevailing party.

b. *Methods and timing of voter eligibility challenges.* A party may challenge the eligibility of a voter by electronically filing a completed voter eligibility form in the "BU" case file and in accordance with the following:

(1) In-person elections. A party shall challenge a voter's eligibility 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.

(2) Mail-ballot elections. A party shall challenge a voter's eligibility 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.

(3) Telephonic/web-based elections. A party shall challenge a voter's eligibility at least seven days prior to the commencement of the election period for telephonic/web-based elections.

15.2(4) Postelection challenges. A certified employee organization may make postelection challenges to the total number of bargaining unit employees for their respective retention and recertification elections. The certified employee organization may file a postelection challenge to the number of bargaining unit employees if an eligible voter has left employment and is no longer in the bargaining unit prior to the close of the election or election period. The employee organization shall file this postelection challenge within ten days of the filing of the tally of ballots. The agency shall attempt to resolve the dispute. Whenever postelection challenges are unresolved and determinative of the outcome of an election, a hearing to determine whether an eligible voter left employment and was no longer in the bargaining unit prior to the close of the election or election period shall be scheduled and conducted. The board may make appropriate adjustments to the tally or order a new election based on the board's findings and conclusions.

621—15.3(20) Methods of voting—general procedures. See rule 621—5.3(20).

621—15.4(20) Objections to an election. See rule 621—5.4(20).

621—15.5(20) Retention and recertification election process.

15.5(1) Timing of election periods.

a. 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.

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 15.5(9).

d. If the certified employee organization has paid the applicable election fee in a timely manner as provided in subrule 15.5(5), the organization's status shall not be adversely affected if the election is not concluded in compliance with this rule.

e. The public employer shall email to the agency a collective bargaining agreement within ten days of the date on which the agreement was entered into, as required by Iowa Code section 20.29. However, for purposes of scheduling retention and recertification elections, all collective bargaining agreements must be submitted to the agency at least 50 days prior to the commencement of the retention and recertification election period. The agency shall not conduct an election if the employer and certified employee organization are not parties to a collective bargaining agreement or if the collective bargaining agreement is submitted to the agency fewer than 50 days before the commencement of the retention and recertification election period.

When scheduling a retention and recertification election, if a collective bargaining agreement indicates the agreement is for a term of one year but does not clearly specify the effective commencement and termination dates, 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. 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.

15.5(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; the date the voter list for determining fees is due; 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—15.2(20) and subrule 15.5(4).

b. Following the public employer's submission of the list of eligible voters as provided in subrule 15.5(4) and 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 and 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 email 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; the time, place, method, and purpose of the election; and such additional information as the agency may deem appropriate.

15.5(3) Objection and notice regarding notice of intent to conduct an election.

a. The certified 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. The agency may conduct a preliminary investigation of the objection and determine if the objection has merit. The agency may informally resolve objections and will dismiss objections without merit. The agency will 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.

b. If the agency fails to file a notice of intent to conduct an election, the public employer or certified employee organization may file with the agency a notice asserting the election should be conducted for reasons set forth in the notice. The notice shall be in writing and electronically filed no later than seven days following the date the notice of intent to conduct an election should have been filed pursuant to the retention and recertification election schedule as set forth by the agency. The parties 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.

15.5(4) Eligible voter list for determining election fee.

a. The public employer shall email to the agency 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. This list shall be organized alphabetically and contain the names; addresses; email addresses, if known; telephone numbers; and job classifications of the employees in the bargaining unit. When 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. The employer shall separately email the certified employee organization to confirm that the employer provided the agency with the voter list and will provide the date the list was emailed to the agency and the number of employees on the list. The agency shall file the list of eligible voters' names and job classifications. The agency shall provide to the certified employee organization the list with the employees' contact information. The certified employee organization shall use this list to determine the election fee as provided in subrule 15.5(5).

b. If the public employer fails to submit the list of eligible voters to the agency by the deadline set in the notice, the agency will not conduct the election and will file an order recertifying the employee organization.

15.5(5) *Payment of election fee.* A certified employee organization shall pay the applicable election fee as set forth in the notice of intent to conduct the election, except as otherwise authorized by this subrule. The election fee shall be paid by check payable to the agency and is deemed paid upon receipt by the agency or, if submitted by mail, on the date of the U.S. Postal Service postmark affixed to the envelope in which the payment was mailed. The agency may grant a certified employee organization's written request for an extension of time to pay the fee for good cause if the request is filed as set forth in the notice of intent to conduct the election. 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 by the deadline set in the notice shall result in revocation of the organization's certification.

15.5(6) *Final voter eligibility list.*

a. When the agency files an order directing that the retention and recertification election be conducted, the employer shall, within seven days of the order, email to the agency a second alphabetical list of the names; addresses; email addresses, if known; telephone numbers; and job classifications of the employees eligible to vote. If the list the employer previously provided pursuant to subrule 15.5(4) is unchanged, the employer does not need to email a subsequent list. The agency shall file the list of eligible voters' names and job classifications. This list shall become the official eligible voting list for the election to be conducted. The agency shall provide to the certified employee organization the voter list containing the employees' contact information.

b. The employer shall not add to or delete from the list any employee name after the submission of the above-described voter eligibility list. By contacting the employer, the certified employee organization may propose additions to or deletions from the list of employees' names prior to the date of the election for in-person elections, prior to the date the ballots are mailed for mail-ballot elections, or seven days prior to the commencement of the election period for telephonic/web-based elections. The parties may amend the list by agreement prior to the date of the election for in-person elections, prior to the date the ballots are mailed for mail-ballot elections, or seven days prior to the commencement of the election period for telephonic/web-based elections.

15.5(7) *Ballots.* Ballots shall contain the question "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" or "No."

15.5(8) *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.

15.5(9) *Elections for employee organizations that represent employees of school districts, area education agencies, and community colleges.* 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 September 30, the agency will postpone those elections until October of that calendar year and the timelines of subrules 15.5(2), 15.5(4), and 15.5(5) will apply.

These rules are intended to implement Iowa Code chapter 20.