

**PUBLIC EMPLOYMENT RELATIONS BOARD[621]**

**Adopted and Filed**

**Rule making related to agency procedures, bargaining unit determination and representative certifications, and retention and recertification elections**

The Public Employment Relations Board hereby amends Chapter 1, “General Provisions,” Chapter 2, “General Practice and Hearing Procedures,” Chapter 4, “Bargaining Unit and Bargaining Representative Determination,” Chapter 5, “Elections,” Chapter 7, “Impasse Procedures,” and Chapter 15, “Retention and Recertification 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 chapter 20.

*Purpose and Summary*

The following amendments are adopted after feedback and internal review. The adopted amendments relate to general procedures of the agency, impasse procedures, bargaining unit determination and representative certifications, and retention and recertification elections. These amendments update language in the general procedures of the agency to provide additional guidance and clarity, and they update rules relating to impasse, bargaining unit determinations and bargaining representative certifications, and retention and recertification elections. These amendments also increase election fees.

Items 1 through 4 update the agency’s procedures regarding waiver of rules and petitions for rule making to reflect recent legislative changes enacted in 2020 Iowa Acts, House File 2389.

Items 5 through 7 update general rules on hearings and service of process. The amendment in Item 5 changes the method of service on notices of hearing from mail to electronic filing, which has been the agency’s practice since 2015. The amendment in Item 6 clarifies the default order of procedure in grievance appeals and disciplinary action appeals pursuant to Iowa Code section 8A.415, as well as whistleblower actions pursuant to Iowa Code section 70A.28. Finally, the amendments to Chapter 2 add persons to the list of those who are appropriate to receive service.

Items 8 through 12, 14 through 21, 26, and 28 through 30 relate to general procedures in bargaining unit and representation cases and retention and recertification election cases. These amendments seek to clarify the employer’s posting and distribution responsibilities in bargaining unit determination cases, representation certification cases, and elections. The current rules require employers to post and distribute, if customary, certain notices and other information during bargaining unit and representation cases and proceedings. These amendments clarify that employers shall distribute this information to employees and shall also post this information. These amendments also clarify that when an employer supplies the agency with a voter list for elections, the employer is only required to provide an eligible voter’s telephone number if the employer knows that person’s telephone number. These amendments are in response to questions that arose during previous election cycles, and they also provide consistency in the applicability of the agency’s rules.

Item 13 increases the election fee assessed to certified employee organizations for certification and decertification elections. The fee would increase from \$1.50 per eligible voter with a \$15 minimum to \$2 per eligible voter with a \$20 minimum.

Items 22 through 24 relate to the proper service method of mediation requests, arbitration requests, and last offers during impasse. Currently, parties may serve mediation requests, arbitration requests,

and last offers on the opposing party only by mail. These amendments allow both email and mail as appropriate methods of service.

Item 25 increases the election fee assessed to certified employee organizations for retention and recertification elections in a manner similar to the certification and decertification elections. The fee is being increased from \$1.50 per eligible voter with a \$15 minimum to \$2.00 per eligible voter with a \$20 minimum. This fee increase is necessary due to the decreasing number of eligible voters and the need to meet the fee charged by the election services vendor.

Item 25 also adds a time frame in which a certified employee organization can file a notice of nonpayment of the recertification election fee. This amendment provides that such notice may not be filed before the employer supplies the agency with the voter list for the election as the fee is not due until the agency has received such list.

Item 27 clarifies that when a certified employee organization files a successful pre-election challenge to a voter's eligibility to vote, the agency can order a new election as a remedy, but the agency also has other appropriate remedies available.

#### *Public Comment and Changes to Rule Making*

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on March 24, 2021, as **ARC 5534C**. The agency requested that comments be received by April 14, 2021. A public hearing was held via video conference on April 14, 2021, at 10 a.m. Persons attended the public meeting, but no one provided comments. The agency received informal comments concerning the fee. The agency received no formal comments.

As a result of feedback, informal comment, and internal review, in Items 13 and 25, the fee was changed from the proposed fee of \$1.90 per eligible voter to \$2 per eligible voter.

#### *Adoption of Rule Making*

This rule making was adopted by the Board on April 28, 2021.

#### *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 to 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).

#### *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 June 23, 2021.

The following rule-making actions are adopted:

ITEM 1. Amend subrule 1.5(5) as follows:

**1.5(5)** The names and addresses of other persons, or a description of any class of persons, known by petitioner to be affected by or interested in the proposed action which is the subject of the petition. Within 60 days after the filing of a petition, the board shall either deny the petition, stating its reasons for the denial, or initiate rule-making proceedings in accordance with Iowa Code chapter 17A. The board shall submit the petition and the disposition of the petition to the administrative rules review committee.

ITEM 2. Amend rule 621—1.9(17A,20), catchwords, as follows:

**621—1.9(17A,20) Waiver ~~or variance~~ of rules.**

ITEM 3. Amend paragraph **1.9(1)“a”** as follows:

a. *“Waiver ~~or variance~~”* as used in this rule means action by the board which suspends, in whole or in part, the requirements or provisions of a rule as applied to an identified individual or entity on the basis of the particular circumstances of that individual or entity. ~~The term “waiver” as used herein shall include both a waiver and a variance.~~

ITEM 4. Amend subrule 1.9(23) as follows:

**1.9(23) Summary reports.** All orders granting or denying a waiver pursuant to this rule shall be ~~summarized in semiannual reports which comply with and are distributed pursuant to the requirements of Iowa Code section 17A.9A~~ submitted pursuant to Iowa Code section 17A.9A.

ITEM 5. Amend rule 621—2.2(20) as follows:

**621—2.2(20) Notice of hearing—contents.** Written notice of a contested case hearing shall be ~~delivered filed by the board to all parties by ordinary mail agency.~~ The notice shall include:

**2.2(1)** A statement of the date, time, place and nature of the hearing.

**2.2(2)** A statement of the legal authority and jurisdiction under which the hearing is to be held.

**2.2(3)** A reference to the particular sections of the statutes and rules involved.

**2.2(4)** A short and plain statement of the matters asserted.

ITEM 6. Amend rule 621—2.8(20) as follows:

**621—2.8(20) Order of procedure.**

**2.8(1) Order of procedure.** The following is the order of procedure for hearings before the agency:

a. The employer shall present its evidence first in unit determination hearings.

b. The complainant shall present its evidence first and shall have the burden of proof in prohibited practice hearings.

c. The appellant shall present the appellant’s evidence first and have the burden of proof in grievance appeals filed pursuant to Iowa Code section 8A.415(1).

d. The appellee shall present its evidence first and have the burden of proof in disciplinary action appeals filed pursuant to Iowa Code section 8A.415(2).

e. The petitioner shall present its evidence first and have the burden of proof in state employee whistleblower actions filed pursuant to Iowa Code section 70A.28.

f. The board or administrative law judge may, in its discretion, alter the order of procedure.

**2.8(2) Order of procedure for intervenors.** Intervenors shall follow the parties in whose behalf the intervention is made; if not made in support of a principal party, the administrative law judge shall designate at what stage such intervenors shall be heard.

**2.8(3) Order of other parties and general procedures.** The order of other parties shall be determined by the administrative law judge. All parties shall be allowed cross-examination and an opportunity for rebuttal. At any stage of the hearing or after the close of the hearing but prior to decision, the board or administrative law judge may call for further evidence to be presented by the party or parties concerned.

ITEM 7. Amend subrule 2.15(1) as follows:

**2.15(1) Service—upon whom made.** Whenever under these rules nonelectronic service is required or permitted to be made upon a person or party, such service shall be as follows:

*a.* Upon any city, or board, commission, council or agency thereof, by serving the mayor, ~~or~~ city clerk, city administrator, or city personnel officer.

*b.* Upon any county, or office, board, commission or agency thereof, by serving the county auditor, ~~or~~ the chairperson of the county board of supervisors, or the county personnel director.

*c.* Upon any school district, ~~school township,~~ or school corporation, by serving the presiding officer ~~or,~~ the secretary of its governing body, the superintendent, the school business official, or the human resources director.

*d.* Upon the state of Iowa, or board, commission, council, office or agency thereof, by serving the governor or the director of the department of administrative services.

*e.* Upon the state judicial department, by serving the state court administrator.

*f.* Upon any other governing body, by serving its presiding officer, clerk, ~~or~~ secretary, or personnel director.

*g.* Upon an employee organization, by serving the person designated by the employee organization to receive service pursuant to 621—subrule 8.4(2) or by service upon the president or secretary of the employee organization.

*h.* Upon any other person, by serving that person or that person's attorney of record.

ITEM 8. 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 an agency-prescribed form and filed with the agency. The petition shall identify and describe the proposed unit and indicate the unit's status as a public safety or non-public safety unit.

**4.2(2) Notice to parties.** Upon the filing of a proper petition, the agency shall serve copies thereof upon other interested parties by certified mail, return receipt requested. The agency shall file a notice to employees, giving notice that the petition has been filed and setting forth the rights of employees under Iowa Code chapter 20. ~~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 email or hard copy, the public employer shall also promptly distribute the petition and notice to employees by those means.~~ The employer shall promptly distribute, electronically or by hard copy, the petition and notice to the affected employees. The employer shall also promptly post the petition and notice in the manner and locations customarily used for the posting of information to employees.

**4.2(3) Notice of hearing.** The board or administrative law judge shall file a notice of hearing setting forth the time, date and place of the hearing and any other relevant information. ~~The public 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.~~ The employer shall promptly distribute, electronically or by hard copy, the notice to the affected employees. The employer shall also promptly post the notice in the manner and locations customarily used for the posting of information to employees.

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

**4.2(5) Professional/nonprofessional unit elections.** 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 the professional and nonprofessional employees wish to be represented in a single bargaining unit. The election shall be conducted in accordance with rule ~~621—5.8(20)~~ 621—5.7(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 parties may stipulate to the composition of the unit.

(1) 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 representatives of the parties involved and shall be filed with the 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.

(2) If the agency fails to tentatively approve the stipulation, the agency shall notify the parties and, unless the parties amend the stipulation in a manner to gain tentative approval of the agency, the matter shall proceed to hearing.

(3) If the agency tentatively approves the stipulation, the agency shall file a public notice of proposed decision. 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 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 such notice to employees by those means. The public employer shall also have copies of the notice available for distribution to the public upon request.~~ The employer shall promptly distribute, electronically or by hard copy, the notice to the affected employees. The employer shall also promptly post the notice in the manner and locations customarily used for the posting of information to employees.

*b.* Notice of the proposed decision shall identify the parties; specify the terms of the proposed decision; list the names, addresses, telephone numbers, and email addresses of the parties or their authorized representatives to whom inquiries by the public should be directed; and, further, state the date and method by which written objection to the proposed decision must be filed with the agency.

*c.* Objections to the proposed decision must be electronically filed with the agency by the date posted in the notice of proposed decision. Objections 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.

*d.* Final board decision on the informal settlement shall be reserved until expiration of the time for filing of objections. If no objections have been filed; or if filed objections have been resolved through amendment of the proposed decision; or if filed objections, after inquiry by the board, were found to be frivolous, the board shall endorse the proposed decision as final.

*e.* If interested parties are unable to informally settle a case on bargaining unit determination within 15 days of service of a petition, the board or administrative law judge may order any interested party to file its proposed unit description.

ITEM 9. Amend subrule 4.3(4) as follows:

**4.3(4) Notice.** Upon the filing of a petition for certification, decertification or representation, the agency shall file a notice to employees, giving notice that an election petition 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. The employer shall promptly distribute, electronically or by hard copy, the notice to the affected employees.~~ The employer shall promptly distribute, electronically or by hard copy, the notice to the affected employees. The employer shall also promptly post the notice in the manner and locations customarily used for the posting of information to employees.

ITEM 10. Amend subrule 4.8(5), introductory paragraph, as follows:

**4.8(5) Public employer posting, decisions and objection period.** When a petition for amendment of certification is filed which the agency deems sufficient to fulfill the requirements of this rule, the agency

shall 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 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 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.~~ The employer shall promptly distribute, electronically or by hard copy, the notice to the affected employees. The employer shall also promptly post the notice in the manner and locations customarily used for the posting of information to employees.

ITEM 11. Amend subrule 4.9(3) as follows:

**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.~~ The employer shall promptly distribute, electronically or by hard copy, the notice to the affected employees. The employer shall also promptly post the notice in the manner and locations customarily used for the posting of information to employees.

ITEM 12. Amend subrule 4.10(3) as follows:

**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.~~ The employer shall promptly distribute, electronically or by hard copy, the notice to the affected employees. The employer shall also promptly post the notice in the manner and locations customarily used for the posting of information to employees.

ITEM 13. Amend paragraph 5.1(2)“d” as follows:

*d.* 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 ten or fewer eligible voters, the election fee is ~~\$15~~ \$20. When the list contains more than ten eligible voters, the election fee is ~~\$1.50~~ \$2 per eligible voter. When the number of eligible voters on the list for determining fees increases or decreases as contemplated by subparagraph 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 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.

ITEM 14. Amend subrule 5.2(2) as follows:

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

*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).

*b.* Voter eligibility list.

(1) When the agency files an order that an 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, if known; 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) 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 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.

ITEM 15. Amend rule 621—5.3(20) as follows:

**621—5.3(20) Methods of voting—general procedures.** The agency may conduct an election, in whole or in part, in person, by mail ballot, or through a telephonic/web-based system.

**5.3(1) 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 or inserting it in a voting machine, whichever is applicable. 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. Eligible voters may be asked to cast their votes via a nondocument ballot when there is a voting machine present that accommodates this technology.

*a. Absentee ballot.* 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. The marked absentee ballot shall be in the possession of the election agent prior to the close of the in-person election in order to be counted. The marked absentee ballot shall be contained in the secret envelope provided to the voter, and the postage-paid, return-addressed outer envelope provided for the return of the ballot to the agency shall be signed by the voter in order for the ballot to be counted.

*b. Observers.* Each party to an election may designate an equal number of representatives 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.

*c. 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.

*d. Voting machines.* The agency may utilize voting machines to assist with the casting or tabulation of votes.

*e. Tally.* The agency shall tally the ballots by manual count or electronic count and file the tally after the close of the election. Void ballots are those which do not indicate a preference or the clear intent of the voter or which appear to identify the voter. ~~The employer shall promptly post copies of the tally of ballots 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.~~ The employer shall promptly distribute, electronically or by hard copy, copies of the tally of ballots to the affected employees. The employer shall also promptly post copies of the tally of ballots in the manner and locations customarily used for the posting of information to employees.

**5.3(2) 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 the marked 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.* The agency shall set a time and place for the tally of ballots, at which time observers designated by the parties to the election shall be entitled to be present. The voter's outer envelope shall be opened, and the secret envelope containing the voter's ballot shall be commingled with the other secret envelopes. The agency shall tally the ballots and file the tally after the close of the election. Void ballots are those which do not indicate a preference or the clear intent of the voter, which appear to identify the voter, which are not enclosed in the secret envelope provided to the voter, or which are returned in an outer envelope which does not bear the voter's signature. ~~The employer shall promptly post copies of the tally of ballots 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.~~ The employer shall promptly distribute, electronically or by hard copy, copies of the tally of ballots to the affected employees. The employer shall also promptly post copies of the tally of ballots in the manner and locations customarily used for the posting of information to employees.

**5.3(3) Telephonic/web-based election.** The agency may utilize an election services vendor for the receipt of telephonic and web-based ballots and for the tabulation 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, the website address for web-based voting and a sample ballot or script.

*b. Tally.* Following the close of the election period and the agency's receipt of the ballot tabulation from the election services vendor, the agency shall tally the ballots and file the tally. Void or blank ballots are those which do not indicate a preference or clear choice by the voter in favor of one of the voting options presented by the ballot. ~~The employer shall promptly post copies of the tally of ballots 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.~~ The employer shall promptly distribute, electronically or by hard copy, copies of the tally of ballots to the affected employees. The employer shall also promptly post copies of the tally of ballots in the manner and locations customarily used for the posting of information to employees.

*c. Inoperable voting system.* The board may extend the period of the election due to inoperable voting systems.

**5.3(4) Alternate voting method.** When a voter promptly informs the agency of the voter's inability to cast a ballot using the designated methods of voting, the agency shall assist the voter in using an alternate method to cast a secret ballot.

ITEM 16. Amend subrule 5.5(3) as follows:

**5.5(3) Notice of election.** Following the employer's submission of the list of eligible voters, the employee organization's payment of the applicable election fee and the expiration of the time for intervention as provided in subrule 5.5(4), the agency shall file a notice of election containing a sample ballot or script 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 copies of 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 email or hard copy, the public employer shall also promptly distribute such notice to employees by those means.~~ The employer shall distribute, electronically or by hard copy, the notice to the affected employees. The employer shall also promptly post the notice in the manner and locations customarily used for the posting of information to employees.

ITEM 17. Amend subrule 5.6(3) as follows:

**5.6(3) Notice of election.** Following the employer's submission of the list of eligible voters and the employee organization's payment of the applicable election fee, the agency shall file a notice of election



containing a sample ballot or script 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 email or hard copy, the public employer shall also promptly distribute such notice to employees by those means.~~ The employer shall promptly distribute, electronically or by hard copy, the notice to the affected employees. The employer shall also promptly post the notice in the manner and locations customarily used for the posting of information to employees.

ITEM 18. Amend subrule 5.7(2) as follows:

**5.7(2) Voter eligibility list.**

a. The public employer shall email 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; email addresses, if known; telephone numbers, if known; and job classifications of the employees eligible to vote; and any other information required by the agency. The agency shall file the lists of eligible voters' names and job classifications. These lists shall become the official voting lists for the election to be conducted. The agency shall provide to the employee organization the voter lists with the employees' contact information.

b. 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 other party. The parties may amend the lists by agreement.

ITEM 19. Amend subrule 5.7(3) as follows:

**5.7(3) Notice of election.** Following the employer's submission of the lists of eligible voters, the agency shall file a notice of election containing a sample ballot or script 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 email or hard copy, the public employer shall also promptly distribute such notice to employees by those means.~~ The employer shall promptly distribute, electronically or by hard copy, the notice to the affected employees. The employer shall also promptly post the notice in the manner and locations customarily used for the posting of information to employees.

ITEM 20. Amend subrule 5.8(2) as follows:

**5.8(2) Voter eligibility list.** The public employer shall email 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; email addresses, if known; telephone numbers, if known; and job classifications of the employees eligible to vote; and any other information required by the agency. The agency shall file the list of eligible voters' names and job classifications, which shall become the official voting list for the election to be conducted. 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 other party. The parties may further amend the list by agreement.

ITEM 21. Amend subrule 5.8(3) as follows:

**5.8(3) Notice of election.** Following the employer's submission of the list of eligible voters, the agency shall file a notice of election containing a sample ballot or script 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 email or hard copy, the public employer shall also promptly distribute such notice to employees by those means.~~ The employer shall promptly distribute, electronically or by hard copy, the notice to the affected employees. The employer shall also post the notice in the manner and locations customarily used for the posting of information to employees.

ITEM 22. Amend subrule 7.3(2) as follows:

**7.3(2) *Date, signature and notice.*** The request for mediation shall be dated and signed by an authorized representative of the requesting party. The requesting party shall also serve mail or email a copy of the request ~~upon~~ to the other parties to the negotiations ~~either by personal delivery or by ordinary mail.~~

ITEM 23. Amend subrule 7.5(3) as follows:

**7.5(3) *Service of request.*** The requesting party shall serve mail or email a copy of the request for arbitration ~~upon~~ to the opposing party ~~by ordinary mail.~~

ITEM 24. Amend subrule 7.5(4) as follows:

**7.5(4) *Exchange of final offers.*** Within four days of the board's receipt of the request for arbitration, each party shall serve mail or email its final offer on each of the impasse items to the other party to the impasse. Final offers shall not be amended. A party shall not submit a final offer for arbitration which has not been offered to the other party in the course of negotiations.

ITEM 25. Amend subrule 15.1(1) as follows:

**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~~ If the certified employee organization chooses to file a notice of nonpayment, that notice of nonpayment may shall be filed at any time, but must be filed no later than 30 days prior to the commencement of the election period after the employer has submitted the voter list pursuant to paragraph 15.2(2) "a," but no later than the date the election fee is due. 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~~ \$20. When the list contains more than ten eligible voters, the election fee is ~~\$1.50~~ \$2 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.

ITEM 26. Amend subrule 15.2(2) as follows:

**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, if known; 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, if known; 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.

ITEM 27. Amend subrule 15.2(3) as follows:

**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,~~ determine the appropriate remedy, which may include ordering a new election, and the cost of the new election 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.

ITEM 28. Amend subrule 15.5(2) as follows:

**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. The employer shall promptly distribute, electronically or by hard copy, the notice to the affected employees. The employer shall also promptly post the notice in the manner and locations customarily used for the posting of information to employees. 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.

ITEM 29. Amend subrule 15.5(4) as follows:

**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, if known; 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.

ITEM 30. Amend subrule 15.5(6) as follows:

**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, if known; 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.

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