

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 and in the agency’s secure upload filing system. Employers and certified employee organizations have a continuing duty to update the representative or agent for service in the BU case file in EDMS and in the agency’s secure upload filing system.

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. If the certified employee organization chooses to file a notice of nonpayment, that notice shall be filed 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 \$20. When the list contains more than ten eligible voters, the election fee is \$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.

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.

[ARC 4458C, IAB 5/22/19, effective 6/26/19; ARC 5631C, IAB 5/19/21, effective 6/23/21; ARC 6520C, IAB 9/21/22, effective 8/22/22]

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 voter eligibility 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, submit to the agency through the agency's secure upload filing system 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 submitted to the agency and the number of employees on the list. The employer shall format the list as prescribed by the agency and securely upload the list to the agency's secure upload filing system in a manner determined by the agency.

(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, securely upload to the agency's secure upload filing system an updated 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. If the previous list the employer provided is unchanged, the employer does not need to upload this additional list. The agency shall file the list of eligible voters' names and job classifications. This list shall become the official voter eligibility list for the election to be conducted except as provided in subparagraph 15.2(2) "b"(2). 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 voter list. The employer shall securely upload any mutually agreed upon amended list to the agency's secure upload filing system 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, 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.

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.

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

[ARC 4458C, IAB 5/22/19, effective 6/26/19]

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

[ARC 4458C, IAB 5/22/19, effective 6/26/19]

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. 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.

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) Voter eligibility list for determining election fee.

a. The public employer shall submit to the agency through the agency's secure upload filing system 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 submitted to the agency and the number of employees on the list. The employer shall format the list as prescribed by the agency and securely upload the list to the agency's secure upload filing

system in a manner determined by the agency. 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, submit to the agency through the agency's secure upload filing system an updated 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. If the previous list the employer provided is unchanged, the employer does not need to upload this additional list. The agency shall file the list of eligible voters' names and job classifications. This list shall become the official voter eligibility list for the election to be conducted except as provided in subparagraph 15.2(2) "b"(2). 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.

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These rules are intended to implement Iowa Code chapter 20.

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