

CHAPTER 5 ELECTIONS

Chapter rescission date pursuant to Iowa Code section 17A.7: 1/1/28

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 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 seven days after the agency's filing of an order directing 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 election. The notice of nonpayment may be filed at any time, but must be filed no later than seven days after the agency's filing of an order for a decertification election. 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 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 \$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 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.

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.

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

5.2(1) Eligible voters. For certification, decertification, professional/nonprofessional, or amendment of unit elections, eligible voters are those employees who:

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

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.

5.2(3) Challenges.

a. *Voter eligibility challenge.* 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 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 prior to the end of the election period.

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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 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 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 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.

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621—5.4(20) Objections to an election.

5.4(1) *Objections.* Written objections to an election may be filed by any public employee, public employer, or employee organization involved in the election or by the board on its own motion. Objections must be filed with the agency within ten days of the filing of the tally of ballots, even when challenges to eligible voters may be determinative of the outcome of the election. The objection must identify the objecting party; provide the objecting party's mailing address, telephone number, and email address, if available; and contain a statement of facts upon which the objections are based. The agency shall promptly advise the parties of the objections and make any investigation deemed appropriate. If the objections cannot be informally resolved, they may be dismissed or resolved at hearing. Hearings on objections shall be conducted pursuant to 621—Chapter 2. The objecting party shall present its evidence first.

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

- a. Electioneering within 300 feet or within sound of the polling place established by the agency during the conduct of an in-person election;
- b. Misstatements of material facts by any party to the election or its representative without sufficient time for the adversely affected party to adequately respond;
- c. Any misuse of agency documents, including an indication that the agency endorses any particular choice appearing on the ballot;
- d. Campaign speeches by an employer to assembled groups of employees during working hours within the period beginning 24 hours before the opening of the polls in an in-person election, the mailing of ballots in a mail-ballot election, or the commencement of the telephonic/web-based election period and extending until the close of the in-person polls, the deadline for the agency's receipt of mail ballots, or the close of the election period in a telephonic/web-based election;
- e. Any polling of employees by a public employer which relates to the employees' preference for or against a bargaining representative;
- f. Commission of a prohibited practice;
- g. Any other misconduct or other circumstance which prevents employees from freely expressing their preferences in the election.

[ARC 3278C, IAB 8/30/17, effective 8/10/17; ARC 3803C, IAB 5/9/18, effective 6/13/18]

621—5.5(20) Certification elections.

5.5(1) *General procedures.* Upon the agency's determination that a certification petition is supported by an adequate showing of interest in accordance with rule 621—4.3(20), the agency shall file an order directing that an election be conducted in a specified manner and that the employer email a list of eligible voters to the agency pursuant to rule 621—5.2(20).

5.5(2) *Payment of election fee.* The election fee shall be based on the initial employee list provided by the employer to verify the showing of interest pursuant to 621—subrule 4.3(3). Upon the filing of a certification petition, but no later than seven days after the agency's filing of an order directing an election, an employee organization shall pay the applicable election fee to the agency, unless an extension of time, upon written request, is granted by the agency. The agency will not conduct an election prior to receiving the applicable election fee from the petitioner. An employee organization's failure to pay the applicable election fee in a timely manner will result in the agency's dismissal of the certification petition. 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.

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 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.

5.5(4) Intervention.

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

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

c. An intervening employee organization may, upon its filing of a written request, be removed from the ballot with the approval of the agency.

5.5(5) Ballots. The question in an election where only one employee organization appears on the ballot shall ask, "Do you wish to be represented for purposes of collective bargaining by [name of employee organization]?" followed by the choices "Yes" or "No." The question in an election where more than one employee organization appears on the ballot shall ask: "Do you wish to be represented for purposes of collective bargaining by:" and shall then list horizontally or vertically thereafter the choices available, including the name of each employee organization and the choice of "Neither" or "No Representative," as is applicable.

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

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

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

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

5.5(7) Bars to certification elections.

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

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

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

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

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

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621—5.6(20) Decertification elections.

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

5.6(2) Payment of election fee. The election fee shall be based on the initial employee list provided by the employer to verify the showing of interest pursuant to 621—subrule 4.3(3). After the filing of a decertification petition, but no later than seven days after the agency's filing of an order directing an election, the certified employee organization shall pay the applicable election fee to the agency, unless the organization's written request for an extension of time to pay the fee for good cause is granted by the agency. 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 will not conduct an election prior to receiving the applicable election fee. A certified employee organization's failure to pay the applicable election fee in a timely manner shall result in the revocation of the employee organization's certification.

5.6(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 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.

5.6(4) Ballots. Ballots shall contain the question "Do you want [name of certified employee organization] to be decertified by the Public Employment Relations Board and cease to be your exclusive bargaining representative?" followed by the choices "Yes, I no longer wish to be represented by [name of certified employee organization]" or "No, I want to continue to be represented by [name of certified employee organization]."

5.6(5) Certification of results.

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

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

5.6(6) Bars to decertification election.

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

b. The agency shall not consider a decertification petition during pendency of a retention and recertification proceeding.

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

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621—5.7(20) Professional and nonprofessional elections.

5.7(1) General procedure. Should the agency determine, in any case, that professional and nonprofessional employees are appropriately included in the same bargaining unit, the agency shall file an order directing that an election be conducted to determine whether those professional and nonprofessional employees agree to be represented in a single bargaining unit and that the employer email separate lists of eligible professional and nonprofessional voters pursuant to rule 621—5.2(20).

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.

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 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.

5.7(4) Election fee. No election fee is assessed for an election held pursuant to this rule.

5.7(5) Ballots. Ballots shall contain the following question, "Do you agree to the inclusion of professional and nonprofessional employees in the same bargaining unit?" followed by the choices "Yes" or "No."

5.7(6) Certification of results.

a. Upon completion of a valid professional/nonprofessional election in which separate majorities of 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 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.

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621—5.8(20) Amendment of unit elections.

5.8(1) General procedure. Should the agency determine that a job classification or classifications are appropriately amended into a bargaining unit, but that those classifications existed at the time the employee organization was certified and would separately constitute an appropriate unit, the agency shall file an order directing that an election be conducted. The election will determine whether a majority of the employees in those classifications wish to be represented by the existing certified employee organization. The order shall further require the employer to email a list of the employees in those classifications pursuant to rule 621—5.2(20).

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.

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 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.

5.8(4) *Election fee.* No election fee is assessed for an election held pursuant to this rule.

5.8(5) *Ballots.* Ballots shall contain the following question, "Do you wish to be represented for purposes of collective bargaining by [name of employee organization]?" followed by the choices "Yes" or "No."

5.8(6) *Certification of results.*

a. Upon completion of a valid amendment of unit election in which a majority of 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 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.

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621—5.9(20) Destruction of ballots. In the absence of litigation over the validity or outcome of an election and after a period of 60 days has elapsed from the date of the filing of an order of certification, noncertification, recertification, decertification or continued certification of an employee organization pursuant to the election, the agency will cause the ballots cast in the election to be destroyed.

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