

ITEM 1. Adopt the following **new** 486—Chapter 11:

CHAPTER 11

ELECTIONS

486—11.1(20) General procedures.

11.1(1) Definitions. For purposes of this chapter, the following definitions apply:

“Date of election” means the date on which the ballots were tallied.

“Election” means an election conducted by the appeal board of the types that are listed in subrule 11.1(2).

“Election period” means the period of time from the time and date the board sets for when eligible voters may first cast a ballot until the time and date the appeal board sets for the tally of ballots.

“Void ballot” means a ballot that does not indicate the clear intent of the voter or that appears to identify the voter.

11.1(2) Election types. There are five types of elections the appeal board conducts:

- a.* Certification election.
- b.* Retention and recertification election.
- c.* Decertification election.
- d.* Professional and nonprofessional election.
- e.* Amendment of unit election.

11.1(3) Electronic filing mandatory.

a. The employer and employee organization(s) involved in an election are required to register for an account in the appeal board’s electronic document management system (EDMS) as described in 486—Chapter 18. All bargaining units will be assigned an adjudicatory case number for retention and recertification election-related notices.

Election-related notices will be filed in EDMS under the applicable case number. Employers and employee organizations must have a representative or agent for service listed in each applicable case number in EDMS. Employers and employee organizations have a continuing duty to update their representative or agent for service in EDMS.

b. The employer and employee organization(s) involved in an election must register for an account in Superb as described in ~~486—Chapter 18~~. The parties will be required to upload and approve voter lists for elections in Superb. Employers and employee organizations must have a representative or agent for service listed in the applicable bargaining unit number in Superb. Employers and employee organizations have a continuing duty to update the representative or agent for service in Superb.

11.1(4) *Method of voting.* The appeal board conducts all elections by secret ballot. The appeal board will conduct the fall recertification and retention election by telephonic/web-based means. The appeal board will conduct all other elections by mail ballot.

a. When conducting a telephonic/web-based election, the appeal board will file a notice of election in EDMS under the bargaining unit case number that includes the dates of the 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. The appeal board may use an election services vendor for the receipt of telephonic and web-based ballots and for the tabulation of those ballots. The appeal board may extend the period of the election due to inoperable voting systems.

b. When conducting an election by mail ballot, the appeal board will send an official voting package to each eligible voter by ordinary mail. Voting packages sent to eligible voters will consist of voting instructions that direct a date by which voted ballots must be

received by the appeal board in order to be counted, a ballot, a secret envelope in which the marked ballot is to be inserted, and a postage-paid, return-addressed outer envelope that identifies the voter for purposes of proposing the challenges to the voter's eligibility. In the event of a voter eligibility challenge, both envelopes must remain sealed until the challenge is resolved.

c. When a voter promptly informs the appeal board of the voter's inability to cast a ballot using the designated methods of voting, the appeal board will assist the voter in using an alternate method to cast a secret ballot.

11.1(5) *Eligible voters.*

a. Eligible voters are those employees who were employed and included in the bargaining unit on the date of the order directing an election and are employed in the bargaining unit on the date of the election.

b. Only parties may challenge the eligibility of a voter. A voter eligibility challenge must be made by filing a completed voter eligibility form prior to the end of the election period. Whenever challenged ballots are unresolved and determinative of the outcome of an election, the appeal board will schedule and conduct a hearing to determine the eligibility of the challenged voter(s) or transmit the matter to the administrative hearings division created by Iowa Code section 10A.801 for a hearing. After the conclusion of the hearing, the presiding officer may, if necessary, order a new election, and the cost of the court reporter may be taxed to the nonprevailing party.

11.1(6) *Election fees.* Where applicable, the election fee must be paid by check payable to the Employment Appeal Board. The fee is deemed paid upon receipt by the appeal board 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 fee for the fall recertification and retention election *and all elections other than the spring recertification election* will be the greater of

\$2 per voter or \$20 per bargaining unit. The fee for ~~all other~~ the spring recertification elections will be the greater of \$3 per voter or \$50 per bargaining unit. The election fee is not refundable. At any time on or before the date the election fee is due, the employee organization may request an extension of time to pay the election fee. The request must be in writing ~~and filed in EDMS~~. The appeal board will grant the extension of time to pay the election fee for good cause.

486—11.2(20) Certification elections.

11.2(1) General procedures. After a bargaining unit has been determined and an adequate show of interest has been made, the appeal board will file an order in EDMS directing that a certification election be conducted by mail ballot.

11.2(2) Voter list.

a. Within ten days of the appeal board filing an order directing a certification election, the employer must submit a voter list in Superb. The list must include each employee's first name and last name, home address, work or personal email address, work or personal telephone number, job classification, date of birth, and the last four digits of each employee's social security number.

b. At any time on or before the date the voter list is due, the employer may request an additional three days to submit a voter list. The request must be in writing ~~and filed in EDMS~~. The appeal board will grant a request for an extension for good cause. If the appeal board provides the employer a three-day extension to upload the voter list, it will automatically provide the employee organization an extension of three days to approve or deny the voter list ~~and pay the election fee~~.

c. Promptly after submission, the employer must send an email to the employee organization's representatives stating that it submitted the voter list in Superb.

d. The employee organization will have seven days from the date the employer submitted the voter list to challenge or approve the list. The employee organization may suggest modifications to the voter list. The suggested modifications must be made through Superb. The employee organization may request an extension of time of three days to approve or challenge the voter list at any time on or before the deadline to do so expires. The request must be in writing ~~and filed in EDMS~~. The appeal board will grant a request for an extension for good cause. If the employee organization does not challenge or approve the voter list by the deadline, the appeal board will use the voter list that was uploaded by the employer without modification.

e. The employer shall promptly review the suggested modifications the employee organization makes to the voter list. The employer should approve the suggested modifications in Superb when the parties agree on the change. When the parties do not agree on modifications, either party can file a voter eligibility challenge in EDMS as outlined in subrule 11.1(5). If neither party files a voter eligibility challenge prior to the deadline for the employee organization to challenge or approve the list, the appeal board will use the voter list uploaded by the employer without modification.

f. The employer must notify the appeal board and the employee organization of any employees on the voter list who become unemployed prior to the close of the election and after the deadline for changes to the list. If, after the tally of the ballot, the removal of the voter would be outcome determinative, the appeal board will re-tally the ballot as if the employee who is no longer employed were never on the list. Failing to notify the appeal board and the employee organization that an employee is no longer employed with the employer is grounds for an objection.

11.2(3) Election fee. The election fee will be based on the final voter list used by the appeal board to conduct the election. The appeal board will ~~issue a fee notice by filing it in EDMS under the election case number~~ **notify the employee organization of the election fee.** **No alterations to the employee list can be made after the notification is made.** The employee organization will have ~~seven~~ **ten** days from the date of notice to pay the fee. The appeal board will not conduct an election prior to receiving the applicable election fee from the employee organization. An employee organization's failure to pay the applicable election fee in a timely manner will result in the appeal board's dismissal of the certification petition. The employee organization may request an extension of time to pay the election fee as described in subrule 11.1(6).

11.2(4) ~~Notice of~~Order directing and 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 appeal board will file **an order directing and** 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 appeal board may deem appropriate. The employer must distribute, either electronically or by hard copy, the notice to the affected employees. The employer must also promptly post the notice in the manner and locations customarily used for the posting of information to employees.

11.2(5) Intervention.

a. No employee organization other than the petitioner can be placed on the ballot unless **an** application for intervention is filed with the appeal board within seven days after the filing of the appeal board's order directing the election in which intervention is sought. An employee organization seeking intervention must submit to the appeal board, by ordinary

mail or personal delivery, an adequate showing of interest as provided in ~~486—subrule 10.3(6)~~ within seven days after the appeal board's direction of an election.

b. The election fee will be based on the final voter list used by the appeal board to conduct the election. The appeal board will ~~issue a fee notice by filing it in EDMS under the election case number~~ **notify the employee organization of the election fee**. The employee organization will have ~~seven~~**ten** days from the date of notice to pay the fee. Failure to pay the applicable election fee in a timely manner will result in the intervenor's exclusion from the ballot. The employee organization may request an extension of time to pay the election fee as described in subrule 11.1(6).

c. Any time prior to the election period, the intervening employee organization may, upon its filing of a written request in EDMS, be removed from the ballot with the approval of the appeal board.

11.2(6) Ballots. The question in an election where only one employee organization appears on the ballot will 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 will ask: "Do you wish to be represented for purposes of collective bargaining by:" and will 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.

11.2(7) Ballot tally.

a. The appeal board will tally the ballots by manual count. The appeal board will set a time and place for the tally of ballots. Observers designated by the parties to the election are entitled to be present.

b. The appeal board will file the tally after the count is complete. The tally will identify the number of votes for each choice presented and the number of void ballots.

c. The employer must promptly distribute, either electronically or by hard copy, copies of the tally of ballots to the affected employees. The employer must also promptly post copies of the tally of ballots in the manner and locations customarily used for the posting of information to employees.

d. In the absence of litigation over the validity or outcome of an election, after a period of 60 days has elapsed from the date of filing of an order regarding the certification of the unit, the appeal board will destroy the mail ballots.

11.2(8) *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 appeal board will 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 appeal board will file an order of noncertification.

c. If an employee organization that 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 appeal board will file an order of noncertification. Upon good cause shown, the appeal board may grant an extension of the 90-day period.

486—11.3(20) Decertification elections.

11.3(1) General procedures. After a decertification petition meeting the requirements of Iowa Code section 20.15(3) has been filed and an adequate show of interest has been made, the appeal board will file an order directing that a decertification election be conducted by mail ballot.

11.3(2) Voter list. Upon the appeal board filing an order directing a decertification election, the parties shall complete the actions as described in subrule 11.2(2).

11.3(3) Election fee. The election fee will be based on the final voter list used by the appeal board to conduct the election. The appeal board will ~~assess the fee by filing a fee notice in EDMS under the election case number~~ **notify the employee organization of the election fee**. The employee organization will have ~~seven~~ **ten** days from the date of notice to pay the fee. The appeal board will not conduct an election prior to receiving the applicable election fee from the employee organization. An employee organization's failure to pay the applicable election fee in a timely manner will result in the decertification of the employee organization. The employee organization may request an extension of time to pay the election fee as described in subrule 11.1(6).

11.3(4) ~~Notice~~ **Order directing and 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 appeal board will file **an order directing and** notice of election as described in subrule 11.2(4). The employer shall meet the requirements set out in subrule 11.2(4).

11.3(5) Ballots. Ballots will contain the question "Do you want [name of certified employee organization] to be decertified by the Employment Appeal 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]”.

11.3(6) *Ballot tally.* The ballots will be tallied as described in subrule 11.2(7).

11.3(7) *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 appeal board will 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 fewer than a majority of the employees in the bargaining unit voted to decertify the employee organization, the appeal board will file an order continuing the certification of the employee organization as the exclusive bargaining representative of the employees in the bargaining unit.

486—11.4(20) Retention and recertification elections.

11.4(1) *General procedures.*

a. ~~—a.—~~Fall election calendar. On July 1 ~~the~~ the appeal board will issue the calendar containing specific dates for the retention and recertification election to be held in the fall ~~on July 1~~ of each year. The calendar will specify that on August 15 the appeal board will file a notice of intent to conduct an election. Any contract extension requests must be filed in Superb by August 18. The employer must upload a voter list by August 25. The employee organization must approve or deny the voter list by September 1. On September 9 the appeal board will notify employee organizations of the election fee. The election fee must be paid by September 19. On September 20 the appeal board will issue an order directing the election. The voting period will commence on the second Tuesday in October at 8:00 a.m. and will end on the fourth

Tuesday of October at 9:00 a.m. If any event designated by this subrule occurs on a Saturday or Sunday or any day on which the appeal board's office is closed, the time will be extended to include the next business day.

b. *b.* Spring election calendar. On December 1 ~~the~~ the appeal board will issue the calendar containing specific dates for the retention and recertification election to be held in the spring ~~on December 1~~ of each year. The calendar will specify that on January 15 the appeal board will file a notice of intent to conduct an election. Any contract extension requests must be filed in Superb by January 18. The employer must upload a voter list by January 25. The employee organization must approve or deny the voter list by February 1. On February 9 the appeal board will notify employee organizations of the election fee. The election fee must be paid by February 19. On February 20 the appeal board will issue an order directing the election. The voting period will commence on the first Tuesday in March and will end on the fourth Friday in March. If any event designated by this subrule occurs on a Saturday or Sunday or any day on which the appeal board's office is closed, the time will be extended to include the next business day.¶

cb. The appeal board will determine which bargaining units are subject to a retention and recertification election pursuant to Iowa Code section 20.15 by examining the collective bargaining agreements stored in Superb. The employer is responsible for submitting the collective bargaining agreement to the appeal board in accordance with Iowa Code section 20.29.

de. Upon determining that a retention and recertification election is required, the appeal board will file a notice of intent to conduct an election in the applicable bargaining unit case number in EDMS. The notice of intent to conduct an election will include the dates of the

election calendar, including the election period, the date the voter list is due, and the deadline to pay the election fee.

de. An extension of a collective bargaining agreement will alter the timing of the retention and recertification election only if the parties have uploaded a written agreement in Superb prior to the deadline as set forth in the election calendar. 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 appeal board will presume the collective bargaining agreement is for a term of one year commencing July 1 and ending June 30. Should the parties' collective bargaining agreement inclusive of any extensions exceed five years, the appeal board 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.

ef. The certified employee organization or employer may file an objection asserting that the election should not be conducted for reasons set forth in the objection. The objection must be in writing and electronically filed no later than ~~seven~~^{three} days following the date of the notice of intent to conduct an election. The appeal board may conduct a preliminary investigation of the objection and determine if the objection has merit. The appeal board may informally resolve objections and will dismiss objections without merit. The appeal board may transmit an objection to the administrative hearings division created by Iowa Code section 10A.801 for a hearing.

fg. If a writ of mandamus is sustained pursuant to Iowa Code section 20.15, the petitioner must notify the appeal board. The appeal board will ~~either issue a new notice of intent to conduct an election and conduct an election by mail ballot or include the bargaining unit in the next web-based election.~~

11.4(2) Voter list. Upon the appeal board filing a notice of intent to conduct an election, the process and deadlines described in subrule 11.2(2) are applicable to the employer and the employee organization. If the employer does not provide the voter list by the deadline, the appeal board will issue an order automatically recertifying the employee organization as the representative of the bargaining unit.

11.4(3) Election fee. The election fee will be based on the final list used by the appeal board to conduct the election. ~~The appeal board will issue a fee notice by filing it in EDMS under the bargaining unit adjudicatory case number.~~ **The appeal board will notify the employee organization of the election fee.** The employee organization will have ~~seven~~**ten** days from the date of notice to pay the fee. The appeal board will not conduct an election prior to receiving the applicable election fee from the employee organization. An employee organization's failure to pay the applicable election fee in a timely manner will result in decertification. The employee organization may request an extension of time to pay the election fee as described in subrule 11.1(6).

11.4(4) ~~Notice~~ Order directing and 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 appeal board will file **an order directing and** notice of election as described in subrule 11.2(4). The employer shall meet the distribution and posting requirements set out in subrule 11.2(4).

11.4(5) Ballots. The question on the ballot for a retention and recertification election will be as stated in Iowa Code section 20.15.

11.4(6) Ballot tally. For a spring election, the appeal board will tally the ballots by manual count as described in subrule 11.2(7). For a fall election, the ballots may be tabulated by an election services vendor.

11.4(7) *Certification of results.*

a. Upon completion of a valid recertification and retention election in which an employee organization received the votes of a majority of the employees in the bargaining unit, the appeal board will file an order recertifying that employee organization as the exclusive bargaining representative of the employees in the bargaining unit.

b. Upon completion of a valid recertification and retention election in which an employee organization did not receive the votes of a majority of the employees in the bargaining unit, the appeal board will file an order decertifying that employee organization as the exclusive bargaining representative of the employees in the bargaining unit.

11.4(8) *Transit units.* Units recognized as transit units under Iowa Code section 20.32 will not be served a notice of intent to conduct an election. If a transit unit does receive a notice in error, the unit or the employer may petition the appeal board to be removed from the election. The appeal board may informally determine the unit's transit status and remove the unit from the recertification election. Once a transit determination has been made, the unit will be considered transit by default until designated otherwise.

486—11.5(20) Professional and nonprofessional elections.

11.5(1) *General procedure.* Should the appeal board determine that professional and nonprofessional employees are appropriately included in the same bargaining unit, the appeal board will 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.

11.5(2) *Voter eligibility list.* Upon the appeal board filing a notice of intent to conduct an election, the employer and employee organization shall complete the actions as described in subrule 11.2(2).

11.5(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 appeal board will file a notice of election as described in subrule 11.2(4). The employer shall meet the distribution and posting requirements set out in subrule 11.2(4).

11.5(4) *Election fee.* No election fee is assessed for an election held pursuant to this rule.

11.5(5) *Ballots.* Ballots will 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”.

11.5(6) *Ballot tally.* The appeal board will tally the ballots by manual count as described in subrule 11.2(7).

11.5(7) *Certification of results.*

a. Upon completion of a valid professional and 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 appeal board will define a bargaining unit that includes both professional and nonprofessional employees.

b. Upon completion of a valid professional and nonprofessional election if the vote in favor of inclusion failed to obtain a majority either of voters in the professional category of employees or voters in the nonprofessional category of employees, then the appeal board will not define a bargaining unit that includes both professional and nonprofessional employees.

486—11.6(20) Amendment of unit elections.

11.6(1) *General procedure.* Should the appeal board determine that a job classification is appropriately amended into a bargaining unit but that the classification existed at the time

the employee organization was certified and would separately constitute an appropriate unit, the appeal board will file an order directing that an election be conducted. The election will determine whether a majority of the employees in the classification wish to be represented by the existing certified employee organization.

11.6(2) *Voter eligibility list.* Upon the appeal board filing a notice of intent to conduct an election, the employer and employee organization shall complete the actions described in subrule 11.2(2).

11.6(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 appeal board will file a notice of election as described in subrule 11.2(4). The employer shall meet the distribution and posting requirements set out in subrule 11.2(4).

11.6(4) *Election fee.* No election fee is assessed for an election held pursuant to this rule.

11.6(5) *Ballots.* Ballots will 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".

11.6(6) *Ballot tally.* The appeal board will tally the ballots by manual count as described in subrule 11.2(7).

11.6(7) *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 appeal board will file an order amending the unit as previously determined to be appropriate by the appeal board.

b. Upon completion of a valid amendment of unit election in which less than a majority of employees voting cast ballots in favor of representation by the certified employee organization, the appeal board will file an order dismissing the amendment of unit petition.

486—11.7(20) Objections to an election.

11.7(1) *Objections.* The appeal board or any public employee, public employer, or employee organization involved in an election may file an objection to the election. Objections must be filed in EDMS 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 person or organization filing the objection may use a form available on the appeal board's website. 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 appeal board can conduct any investigation deemed appropriate. The appeal board may sustain or overrule an objection. If a factual or legal dispute exists, the appeal board may transmit the matter to the administrative hearings division created by Iowa Code section 10A.801 for a hearing.

11.7(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 appeal board or the appeal board's filing of a notice of intent to conduct a retention and recertification election and ending at the conclusion of the election, will be considered to be objectionable conduct sufficient to invalidate the results of an election if the appeal board determines such activity could have affected the results of the election:

a. Misstatements of material facts by any party to the election or its representative without sufficient time for the adversely affected party to adequately respond;

b. Any misuse of appeal board documents, including an indication that the appeal board endorses any particular choice appearing on the ballot;

c. Campaign speeches by an employer to assembled groups of employees during working hours within the period beginning 24 hours before the mailing of ballots in an election to be conducted by mail ballot or the commencement of the telephonic/web-based election period and extending until the deadline for the appeal board's receipt of mail ballots or the close of the election period in a telephonic/web-based election;

d. Any polling of employees by a public employer that relates to the employees' preference for or against a bargaining representative;

e. Commission of a prohibited practice;

f. Any other misconduct or other circumstance that prevents employees from freely expressing their preferences in the election.

These rules are intended to implement Iowa Code chapter 20.