

Text of Proposed Rulemaking

ITEM 1. Adopt the following **new** 486—Chapter 10:

CHAPTER 10

BARGAINING UNIT AND BARGAINING
REPRESENTATIVE DETERMINATION

486—10.1(20) General.

10.1(1) General. A public employer, public employee, or employee organization may file a petition for bargaining unit determination with the appeal board. After a unit is initially determined, parties may file a petition to request certification of a bargaining representative for the unit, decertification of the bargaining representative of the unit, reconsideration of the unit, amendment of the unit, or clarification of the unit. Any petition filed under this chapter may only be withdrawn with approval from the appeal board.

10.1(2) Electronic filing mandatory. The petition and all subsequent documents in the case types referenced in this chapter must be filed in the appeal board's electronic document management system (EDMS) pursuant to 486—Chapter 18. The matter will be assigned a case number, and all subsequent documents in that proceeding before the appeal board must be filed under the same case number.

10.1(3) Intervention. Any interested person may request intervention in any proceedings before the appeal board. An application for intervention shall be in writing, except that applications made during a hearing may be made orally to the hearing officer, and shall contain a statement of the reasons for such intervention. When necessary to achieve a proper decision, the appeal board or administrative law judge may, on its own motion or the motion of any party, order the bringing in of additional parties. When so ordered, the appeal board

will serve all relevant pleadings on additional parties and allow the parties a reasonable time to respond.

486—10.2(20) Petition for unit determination.

10.2(1) *Petition.* A public employer, public employee, or employee organization may file a petition for bargaining unit determination with the appeal board.

10.2(2) *Contents of petition.* The petitioner may use a form available on the appeal board's website. The petition must be in writing, signed by the petitioner or designated representative, identify the public employer and its contact information, identify the employee organization and its contact information, identify and describe the proposed unit, and identify whether the proposed unit is a public safety or nonpublic safety unit.

10.2(3) *Service of petition.* Upon the filing of a proper petition, the appeal board will serve copies of the petition upon other interested parties by electronic means when possible or, where service by electronic means is not possible, by personal service as provided in the Iowa Rules of Civil Procedure; by certified mail, return receipt requested; by first-class mail; or by publication as provided in the Iowa Rules of Civil Procedure.

10.2(4) *Notice to employees.* The appeal board will create a notice to employees stating that the petition has been filed and setting forth the rights of employees under Iowa Code chapter 20. The appeal board will send the notice and a copy of the petition to the employer, which shall promptly distribute, electronically or by hard copy, the petition and notice to employees to the affected employees. The employer shall also promptly post the petition and notice to employees in the manner and locations customarily used for the posting of information to employees.

10.2(5) *Professional/nonprofessional unit elections.* If the appeal board determines that professional and nonprofessional employees are included in the same proposed bargaining

unit, the appeal board will 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 will be conducted in accordance with rule 486—11.5(20).

10.2(6) *Informal settlement of bargaining unit determination.*

a. The parties may file a stipulation agreeing on the composition of the unit. The parties may use a form available on the appeal board's website. The stipulation must set forth in detail the composition of the bargaining unit as agreed to by the parties and must be signed by the authorized representatives of the parties. In the event the parties agree to a combined unit of professional and nonprofessional employees, the stipulation must set forth both those job classifications included within the professional category and those job classifications included within the nonprofessional category.

b. The appeal board will review the stipulation for tentative approval. If the appeal board tentatively approves the stipulation, the appeal board will file a tentative approval and public notice of the proposed decision. The notice of the proposed decision will 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 appeal board. The appeal board will notify the parties if the appeal board decides not to tentatively approve the stipulation. Unless the parties amend the stipulation in a manner to gain tentative approval of the appeal board, the matter will proceed to a contested case hearing as set out in subrule 10.2(7).

c. After the appeal board files the tentative approval and 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. The employer shall promptly distribute, electronically or by hard copy, the notice of the proposed decision to the affected employees. The employer shall also promptly post the notice of the proposed decision in the manner and locations customarily used for the posting of information to employees.

d. Objections to the notice of proposed decision must be electronically filed with the appeal board by the date posted in the notice. Objections must 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.

e. The appeal board shall promptly advise the parties of the objections and may make any investigation deemed appropriate. If the objections cannot be informally resolved, they may be dismissed or resolved at hearing.

f. The appeal board may not make the final decision on informal settlement until the time for objection has expired. 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 appeal board, were found to be frivolous, the appeal board shall endorse the proposed decision as final.

10.2(7) *Transmission of contested case hearing.*

a. If the parties do not agree to the composition of the bargaining unit, the appeal board may transmit the matter to the administrative hearings division created by Iowa Code section 10A.801. The appeal board will file a transmittal form with a copy of the petition attached. After the matter is transmitted, future filings must be made in the administrative hearings division's administrative electronic document management system.

b. After the case is transmitted to the administrative hearings division, it will be assigned a case number. The administrative hearings division will assign the proceeding to an administrative law judge to serve as a presiding officer. The administrative law judge will issue a notice for a prehearing conference or a notice of hearing.

c. The contested case proceeding will be conducted pursuant to ~~481—Chapter 10~~ and any other administrative rule applicable to the specific type of proceeding.

d. The proposed decision of the presiding officer may be reviewed by the appeal board in accordance with rules ~~7—2506.27~~(17A) and ~~7—2506.28~~(17A).

486—10.3(20) Petition for certification.

10.3(1) *Petition.* A public employer or employee organization may file a petition for bargaining representative certification with the appeal board. A combined petition for both bargaining unit determination and bargaining representative certification must be filed whenever the bargaining unit has not been previously determined and a representative has not been certified by the agency.

10.3(2) *Contents of petition.* The petitioner may use a form available on the appeal board's website. The petition must be in writing, signed by the petitioner or designated representative, identify the public employer and its contact information, identify the employee organization and its contact information, and identify and describe the proposed or existing bargaining unit. The petition shall further make the allegations described in Iowa Code section 20.14.

10.3(3) *Service of petition.* Upon the filing of a proper petition, the appeal board will serve copies of the petition as described in subrule 10.2(3).

10.3(4) *Notice to employees.* The appeal board will notify employees of the petition in the manner described in subrule 10.2(4).

10.3(5) *Showing of interest.* When a petition for certification is filed, the petitioner shall submit, by ordinary mail or personal delivery, evidence that the petition is supported by 30 percent of the employees in the bargaining unit. In petitions for certification for intervention, such showing of interest shall be dated and signed not more than one year prior to its submission; shall contain the job classification of the signatory; and shall contain a statement that the signatory is a member of the employee organization or has authorized the employee organization to bargain collectively on the signatory's behalf.

10.3(6) *Determination of showing of interest.*

a. The public employer shall, within seven days of the bargaining unit being established, file in the appeal board's EDMS a list of the names and job classifications of the employees in the unit which is the subject of the petition or, in the case of a combined petition, the employees in the bargaining unit that has been established. If the employer fails to furnish the list of employees, the appeal board will determine the sufficiency of the showing of interest by whatever means it deems appropriate.

b. The appeal board will determine the sufficiency of the showing of interest upon receipt of the list. This determination, including the identification and number of signers of the showing of interest, shall be confidential and not subject to review, and persons other than the party submitting the showing of interest are not entitled to a copy or examination of the showing of interest.

c. If the appeal board determines a sufficient show of interest has not been established, it will issue an order providing the parties with an additional 30 days to alter the employee list or submit additional show of interest cards. If after the 30 days expire the appeal board determines that a sufficient show of interest has not been made, the petition will be dismissed.

d. If the appeal board determines a sufficient show of interest has been established, it will issue an order for an election to be conducted in accordance with the provisions of 486—Chapter 11.

10.3(7) *Intervention.*

a. No employee organization other than the petitioner can be placed on the ballot unless an employee organization files an application for intervention 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 also submit to the appeal board, by ordinary mail or personal delivery, an adequate showing of interest as provided in subrule 10.3(2) within seven days after the appeal board's direction of an election.

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

486—10.4(20) Petitions for decertification.

10.4(1) *Petition.* A bargaining unit employee can file a petition to request an election to determine whether a majority of the employees in the bargaining unit wish to continue to be presented by a certified employee organization.

10.4(2) *Contents of petition.* The petitioner may use a form available on the appeal board's website. The petition must be in writing, signed by the petitioner or designated representative, identify the public employer and its contact information, identify employee organization and its contact information, and identify and describe the unit. The petition shall further make the allegations described in Iowa Code section 20.14.

10.4(3) *Service of petition.* Upon the filing of a proper petition, the appeal board will serve copies of the petition as described in subrule 10.2(3).

10.4(4) *Notice to employees.* The appeal board will notify employees of the petition in the manner described in subrule 10.2(4).

10.4(5) *Showing of interest.* Upon the filing of a petition for decertification, the petitioner shall submit evidence of ~~support-interest~~ as described in subrule 10.3(5), **except the evidence of interest must instead contain a statement that the signatory no longer wishes to be represented by the certified employee organization.**

10.4(6) *Determination of showing of interest.* The appeal board will determine the show of interest as described in subrule 10.3(6).

486—10.5(20) Petition for unit reconsideration. A petition for reconsideration of a previously established bargaining unit may be filed by an employee organization, public employer, or an employee of the public employer. This petition may be filed only in combination with a certification petition. Rule 486—10.3(20) shall apply. A petition for reconsideration of a previously established bargaining unit covering state employees may not be filed for at least one year after the initial unit determination. The appeal board may dismiss the petition for unit reconsideration if the petitioner fails to establish that the previously determined bargaining unit is inappropriate.

486—10.6(20) Petition for amendment of unit.

10.6(1) *Petition.* A public employer or the certified employee organization may file a petition to amend a bargaining unit previously approved by the appeal board.

10.6(2) *Contents of petition.* The petitioner may use a form available on the appeal board's website. The petition must be in writing, signed by the petitioner or designated representative, identify the public employer and its contact information, identify the

employee organization and its contact information, identify and describe the current bargaining unit and the proposed unit, and identify the names and addresses of any other employee organization that claims to represent any employees affected by the proposed amendment, if any. The petition should identify whether the unit is a public safety or nonpublic safety unit and whether the proposed amendment would change that status.

10.6(3) *Service of petition.* Upon the filing of a proper petition, the appeal board will serve copies of the petition as described in subrule 10.2(3).

10.6(4) *Notice to employees.* The appeal board will notify employees of the petition in the manner described in subrule 10.2(4).

10.6(5) *Informal settlement.* Insofar as appropriate, subrule 10.2(6) shall apply.

10.6(6) *Contested case hearing.* Insofar as appropriate, subrule 10.2(7) shall apply.

10.6(7) *Election.* When a question of representation exists, the appeal board will conduct an amendment of unit election pursuant to rule 486—11.6(20). A question of representation exists when the job classification(s) sought to be amended into a bargaining unit was in existence at the time the employee organization was certified to represent the bargaining unit and the job classification(s) separately constitutes an appropriate bargaining unit.

486—10.7(20) Unit clarification.

10.7(1) *Petition.* A petition to clarify the inclusion or exclusion of job classifications or employees in a previously determined bargaining unit may be filed by the public employer, an affected public employee, or the certified employee organization. Such petition may be filed only if the bargaining unit is represented by a certified bargaining representative.

10.7(2) *Contents of petition.* The petitioner may use a form available on the appeal board's website. The petition must be in writing, signed by the petitioner or designated

representative, identify the public employer and its contact information, identify the employee organization and its contact information, and identify and describe the current bargaining unit. The petition should identify whether the unit is a public safety or nonpublic safety unit and whether the proposed clarification would change that status.

10.7(3) *Service of petition.* Upon the filing of a proper petition, the appeal board will serve copies of the petition as described in subrule 10.2(3).

10.7(4) *Notice to employees.* The appeal board will notify employees of the petition in the manner described in subrule 10.2(4).

10.7(5) *Informal settlement.* Insofar as appropriate, subrule 10.2(6) shall apply.

10.7(6) *Contested case hearing.* Insofar as applicable, subrule 10.2(7) shall apply.

486—10.8(20) Amendment of certification.

10.8(1) *Petitions.* The certified employee organization, public employer, or the appeal board may file a petition to amend the certified employee organization's certification to reflect an act or occurrence affecting the organization or the public employer.

10.8(2) *Employee organization.* The employee organization must file its petition with the following:

a. An affidavit(s) that establishes:

(1) The act or occurrence, which the requested amendment would reflect, was authorized by and accomplished in accordance with the certified employee organization's constitution and bylaws, which provided members with adequate due process; and

(2) Substantial continuity of representation has been maintained.

b. Updated reports if there is a change in the employee organization's name or if there is a change to the employee organization's governing body. The reports must include the following:

(1) An updated annual report that covers the time period from the last annual report to the time of the filing of the petition.

(2) An updated registration report.

(3) An updated constitution and bylaws.

c. Final agency reports for dissolved organizations resulting from a merger. The final agency report must include an annual report that covers the time period from the last annual report to the time of the merger and must reflect the closing of the books and accounts of the dissolved employee organization. The certified employee organization may wait and submit its final reports following the appeal board's tentative approval of the amendment of certification.

10.8(3) *Public employer.* The public employer must file its petition with an affidavit, affidavits or other documents, such as the public employer's board minutes, establishing a change in the name of the public employer.

10.8(4) *Appeal board.* The appeal board may, at any time, file a petition with a document or documents establishing the basis for the amendment.

10.8(5) *Service of petition.* Upon the filing of a proper petition, the appeal board will serve copies of the petition as described in subrule 10.2(3).

~~**10.8(6)** *Notice to employees.* The appeal board will notify employees of the petition in the manner described in subrule 10.2(4).~~

10.8(67) *Procedure—decision.* When a petition for amendment of certification is filed which the appeal board deems sufficient to fulfill the requirements of this rule, the appeal board will 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 must 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. 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.

a. The notice of the proposed decision will 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 state the date and method by which written objection to the proposed decision must be filed.

b. Objections to the proposed decision must be electronically filed with the appeal board by the date specified in the notice. 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. The appeal board shall promptly advise the parties of the objections and make any investigation deemed appropriate. When an objection is raised, the appeal board may investigate and dismiss the objection or transmit the matter to the administrative hearings division created by Iowa Code section 10A.801.

c. A final decision shall be reserved until the expiration of the time for filing objections. If no objections have been filed, the appeal board may endorse the proposed decision as final.

~~Insofar as appropriate, subrules 10.3(6) and 10.3(7) shall apply.~~

~~**10.8(8)** *Elections; when required.* When a question of representation exists, the appeal board will conduct an amendment of unit election pursuant to rule ~~486—11.6(20)~~.¶~~

486—10.9(20) Merger of units represented by the same certified employee organization. A certified employee organization may petition the agency to merge two of the bargaining units the organization represents into one successive unit. This proceeding does not apply to school districts' and area education agencies' reorganizations and mergers pursuant to Iowa Code chapter 273 or 275.

10.9(1) *Petition.* A certified employee organization may file a petition to amend a bargaining unit to reflect a merger of two previously determined bargaining units that have the same public employer and are represented by the same certified employee organization.

10.9(2) *Contents of petition.* The petitioner may use a form available on the appeal board's website. The petition must be in writing, signed by the petitioner or designated representative, and identify:

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

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

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

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

e. The names and addresses of any other employee organizations that claim to represent any employees affected by the proposed amendment or a statement that the petitioner has no knowledge of any other such organization.

f. The current status of the units as either public safety units or nonpublic safety units and the change, if any, to the status of the unit, which would result from the requested merger.

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

10.9(3) *Accompanying documents.* The successive employee organization must file its petition with an affidavit(s) that establishes the following for each unit:

a. That the act or occurrence (merger), which the requested amendment would reflect, was authorized by and accomplished in accordance with the certified employee organization's constitution and bylaws, which provided members with adequate due process; and

b. That substantial continuity of representation has been maintained.

10.9(4) *Service of petition.* Upon the filing of a proper petition, the appeal board will serve copies of the petition as described in subrule 10.2(3).

10.9(5) *Notice to employees.* The appeal board will notify employees of the petition in the manner described in subrule 10.2(4).

10.9(6) *Procedure—decision.* Insofar as appropriate, the provisions in rule 10.2 and subrules 10.38(6) and 10.3(7) shall apply.

486—10.10(20) Merger of two units represented by affiliated certified employee organizations.

10.10(1) *Petition.* A successive employee organization may file a combined petition to amend a bargaining unit and an employee organization's certification to reflect a merger of two previously determined bargaining units that have the same public employer and are represented by affiliated certified employee organizations. This proceeding does not apply to school districts' and area education agencies' reorganizations and mergers pursuant to Iowa Code chapter 273 or 275.

10.10(2) *Contents of petition.* The petitioner may use a form available on the appeal board's website.

The combined petition shall contain:

- a.* The names, addresses, telephone numbers, and email addresses of the public employer and the employee organization or their respective representatives.
- b.* A listing of all cases relevant to the first unit and its certification history followed by a current description of the unit.
- c.* A listing of all cases relevant to the second unit and its certification history followed by a current description of the unit.
- d.* An identification and description of the proposed amended unit.

e. The names and addresses of any other employee organizations that claim to represent any employees affected by the proposed amendment or a statement that the petitioner has no knowledge of any other such organization.

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

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

10.10(3) *Accompanying documents.* The successive employee organization must file its petition with the following:

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

(1) That the act or occurrence, which the requested amendment would reflect, was authorized by and accomplished in accordance with the certified employee organization's constitution and bylaws, which provided members with adequate due process; and

(2) That substantial continuity of representation has been maintained.

b. Updated reports if there is a change in the employee organization's name or if there is a change to the employee organization's governing body. The reports must include the following:

(1) An updated annual report that covers the time period from the last annual report to the time of the filing of the petition.

(2) An updated registration report.

(3) An updated constitution and bylaws.

c. Final reports for dissolved organizations resulting from a merger. The agency report shall include an annual report that covers the time period from the last annual report to the

time of the merger and shall reflect the closing of the books and accounts of the dissolved employee organization. The certified employee organization may wait and submit its final reports following the appeal board's tentative approval of the amendment of certification.

10.10(4) *Service of petition.* Upon the filing of a proper petition, the appeal board will serve copies of the petition as described in subrule 10.2(3).

10.10(5) *Notice to employees.* The appeal board will notify employees of the petition in the manner described in subrule 10.2(4).

10.10(6) *Procedure—decision.* Insofar as appropriate, the provisions in rule 10.2 and subrules 10.38(6) and 10.3(7) shall apply.

~~**10.10(7) *Elections.*** Should the appeal board determine that it is appropriate to merge one unit into the successive unit, the appeal board will file an order directing that an election be conducted to determine whether the employees of the unit getting merged into the successive unit wish to be represented by the successive certified employee organization. The election will be conducted in accordance with rule 486 — 11.6(20).¶~~

~~486 — **10.11(20) Disclaimer of interest.** ¶~~

~~**10.11(1) *Contents of request.*** In order for a certified employee organization to disclaim interest in representing a bargaining unit, the certified employee organization must file a written request in EDMS under the bargaining unit case number. The request must include an assertion by the certified employee organization that no collective bargaining agreement covering bargaining unit members is in effect and that the certified employee organization has no outstanding financial obligations related to election costs; the grievance process, including arbitration; or impasse resolution proceedings.¶~~

~~**10.11(2) *Posting of notice of disclaimer.*** If there is no collective bargaining agreement in effect and the certified employee organization asserts that there are no outstanding~~

~~financial obligations, the appeal board will prepare a notice of disclaimer for posting by the employer or for distribution directly to the affected employees. The appeal board may require the employer or the certified employee organization to provide the appeal board with the mailing addresses of all unit members to enable the appeal board to distribute notices of the petition for disclaimer.¶¶~~

~~10.11(3) *Objection to disclaimer.* The petition to disclaim may be denied upon the objection of any interested party. An objection must be filed in EDMS under the bargaining unit case number within 15 calendar days of the issuance of the notice.¶¶~~

~~10.11(4) *Consideration of objection.* After receipt of an objection to a petition to disclaim, the appeal board shall consider the nature of the objection and take appropriate action. This action may include formal or informal mechanisms to resolve the dispute, including but not limited to granting or denying the petition to disclaim.¶¶~~

~~10.11(5) *Effect of disclaimer.* Upon approval of a request to disclaim interest, the appeal board shall revoke certification or recognition. ¶¶~~

These rules are intended to implement Iowa Code chapter 20.