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PUBLIC EMPLOYMENT LABOR RELATIONS 5510.0210

CHAPTER 5510 BUREAU OF MEDIATION SERVICES PUBLIC EMPLOYMENT LABOR RELATIONS

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REPRESENTATION MATTERS AND FAIR SHARE FEE CHALLENGES; PROCEEDINGS BEFORE THE DIRECTOR

5510.0100 [Repealed, 9 SR 735]

5510.0110 APPLICATION.

Parts 5510.0110 to 5510.2310 apply to proceedings before the director involving matters of representation and fair share fee challenges under the Public Employment Labor Relations Act.

Statutory Authority: *MS s 179A.04 subd 3 cl (f)*

History: 9 SR 735

5510.0200 [Repealed, 9 SR 735]

5510.0210 POLICY.

Parts 5510.0110 to 5510.2310 shall be liberally construed to accomplish the purposes and provisions of the act. Any requirements of these parts may be waived by agreement of all parties and the approval of the director.

The director shall grant approval unless the director determines that waiving the particular requirements in question is likely to result in significant harm to the general public or to specific nonparties or is likely to result in substantial impairment or frustration of the intent or purposes of the act.

The joint request for waiver shall be made in writing to the director in a

timely fashion. The director shall set forth in writing the reasons for granting or denying the waiver.

Statutory Authority: *MS s 179A.04 subd 3 cl (f)*

History: 9 SR 735

5510.0300 [Repealed, 9 SR 735]

5510.0310 DEFINITIONS.

Subpart 1. General. For the purpose of parts 5510.0110 to 5510.2310 the words defined in this part have the meanings given them.

Subp. 2. Amendment of certification or amendment of exclusive representative. "Amendment of certification" or "amendment of exclusive representative" means a change in the certification by the director of a nature which the director deems does not raise a question of representation.

Subp. 3. Appearance status. "Appearance status" means the status of a nonparty having an interest in a matter before the director to participate in bureau proceedings.

Subp. 4. Act. "Act" means the Public Employment Labor Relations Act of 1971, as amended.

Subp. 5. Board. "Board" means the Public Employment Relations Board.

Subp. 6. Bureau. "Bureau" means the Bureau of Mediation Services.

Subp. 7. Certification of exclusive representative or certification. "Certification of exclusive representative" or "certification" means the granting of the status of exclusive representative to an employee organization by a written order of the director.

Subp. 8. Certification petition. "Certification petition" means a petition filed by an employee organization stating that at least 30 percent of the employees of a proposed appropriate unit, which is presently unrepresented, wish to be represented by the petitioner.

Subp. 9. Decertification petition. "Decertification petition" means a petition filed by an individual employee or group of employees stating that the current exclusive representative no longer represents the majority of the employees in an appropriate unit and that at least 30 percent of the employees no longer wish to be represented.

Subp. 10. Determination of affiliation or affiliation. "Determination of affiliation" or "affiliation" means the determination of affiliation of a supervisory or confidential employee organization under Minnesota Statutes, section 179A.06, subdivision 2.

Subp. 11. Director. "Director" means the director of the Bureau of Mediation Services or an authorized agent.

Subp. 12. Effective date of orders. "Effective date of orders" means, for any determination or decision issued by the director, the day following issuance unless otherwise provided.

Subp. 13. Hearing officer or mediator. "Hearing officer" or "mediator" means the director or an authorized agent.

Subp. 14. Holiday or legal holiday. "Holiday" or "legal holiday" means those dates designated by Minnesota Statutes, section 645.44, subdivision 5, as holidays for the state of Minnesota.

Subp. 15. Open-window period. "Open-window period" means the following period of time prior to the expiration of a labor contract:

- A. for the state executive branch, 270 to 210 days;
- B. for teachers, 180 to 120 days; and
- C. for all other public employees, 120 to 60 days.

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Subp. 16. **Party.** "Party" means any exclusive representative, employee organization, or public employer recognized by the director whose legal rights, duties, and privileges will be directly determined in the proceedings; or any public employee who has filed a fair share fee challenge or decertification petition.

Subp. 17. **Petition.** "Petition" means a written document containing information required by the director.

Subp. 18. **Representation petition.** "Representation petition" means a petition filed by an employee organization stating that the exclusive representative no longer represents the majority of employees in an appropriate unit; and at least 30 percent of the employees in the appropriate unit wish to be represented by the petitioner.

Subp. 19. **Service or serve.** "Service" or "serve" means service of a document required by parts 5510.0110 to 5510.2310, in person or by the United States Postal Service, postage prepaid and addressed to the bureau or a party at its last known address, unless some other manner of service is required by law. Unless otherwise provided by these parts, service upon the director or a party is effective upon receipt.

Subp. 20. **Showing of interest or interest.** "Showing of interest" or "interest" means the submission of authorization signatures in the form of individual authorization cards to show support for a petition filed with the director.

Subp. 21. **Time.** "Time" means, in computing any period of time prescribed or allowed by parts 5510.0110 to 5510.2310, that the day or any act or event on which the designated period of time begins to run shall not be included. The last day of the time period shall be included unless it is a Saturday, Sunday, or legal holiday.

Subp. 22. **Transfer of exclusive representative status.** "Transfer of exclusive representative status" means the transfer of the rights and obligations of an exclusive representative to another employee organization.

Subp. 23. **Unfair election practice.** "Unfair election practice" means any prohibition defined in part 5510.2110, or a violation of an election order issued by the director, and any unfair practice as defined by Minnesota Statutes, section 179A.13, committed by an employer or its agents or an employee organization or its agents, or an employee, which affects the result of a certification, representation, or decertification election.

Subp. 24. **Unit clarification or clarification petition.** "Unit clarification" or "clarification petition" means a determination of the director regarding an appropriate unit involving:

A. inclusions or exclusions of positions or job classifications in an appropriate unit;

B. the confidential, supervisory, or essential status of positions, classifications, or the unit itself;

C. modification of the unit description; or

D. modification of the unit structure.

Statutory Authority: *MS s 179A.04 subd 3 cl (f)*

History: 9 SR 735

5510.0400 [Repealed, 9 SR 735]

5510.0410 FILING PETITION.

Subpart 1. **Conditions.** To file a petition an employee organization or exclusive representative must:

A. have a written constitution or bylaws that provides for:

(1) election of officers;

(2) filling of vacancies in elected offices; and

(3) a purpose which, in whole or in part, must be to deal with public employers concerning grievances and terms and conditions of employment; and

B. have the petition signed by an authorized representative of the employee organization.

To file a petition an employer must have the petition signed by an authorized representative of the employer.

To file a petition a public employee must be included in an appropriate unit for which there is an exclusive representative, or be subject to a fair share fee assessment by the exclusive representative.

Subp. 2. Eligibility; single-party petition.

A. An employee organization may file petitions for:

- (1) certification of exclusive representative; and
- (2) challenge of affiliation.

B. An employer may file petitions for:

- (1) certification of exclusive representative;
- (2) unit clarification;
- (3) amendment of certification; and
- (4) challenge of affiliation.

C. An exclusive representative may file petitions for:

- (1) unit clarification;
- (2) amendment of certification;
- (3) transfer of exclusive representative status; and
- (4) abandonment of exclusive representative status.

D. A public employee may file petitions for:

- (1) decertification of exclusive representative;
- (2) challenge of fair share fee assessment; and
- (3) challenge of affiliation.

Subp. 3. Eligibility; joint-party petition.

A. One or more employee organizations and an employer may file a joint petition for certification of exclusive representative.

B. An exclusive representative and an employer may file a joint petition for unit clarification.

C. Two or more employee organizations may jointly file any petition which a single employee organization has the right to file.

Subp. 4. Petition requirements. A petition must be in writing on forms available from the bureau and shall contain the name, address, and phone number of:

- A. the petitioner;
- B. the petitioner's representative, if any;
- C. the other party; and
- D. the other party's representative, if any.

Statutory Authority: *MS s 179A.04 subd 3 cl (f)*

History: 9 SR 735

5510.0500 [Repealed, 9 SR 735]

5510.0510 LIMITATION ON FILING PETITION.

Subpart 1. Contract bar. If there is an exclusive representative and a labor contract in effect, the director shall consider a petition for clarification, decertification, or representation only:

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A. when it is submitted during the open-window period or after the expiration date in the contract;

B. when it is submitted jointly by the employer and the exclusive representative; or

C. when the director determines that the interests of good labor relations policy warrant consideration of the petition during the life of the existing contract.

Subp. 2. One-year election bar. When a certification election, representation election, or decertification election has been held, no petition seeking an election shall be entertained for a one-year period from the date the director has issued the certification of the results of the election.

Subp. 3. Transfer bar. The director shall not entertain a petition for transfer of exclusive representative status for a one-year period from the date of certification or from the date of transfer of exclusive representative status.

Subp. 4. Arbitration bar. If there is an exclusive representative and a labor contract, and impasse in the negotiation of a successor contract has been certified for arbitration under Minnesota Statutes, section 179A.16, subdivision 1 or 2, a petition raising a question of representation or decertification shall not be considered following certification of impasse to the board. This bar shall continue in effect until the arbitration award is issued and a contract is executed pursuant to Minnesota Statutes, section 179A.20, subdivision 1.

Subp. 5. Fair share fee challenge. A petition challenging the fair share fee assessment must be received by the director no later than 30 days after receipt of the written notice of assessment by the petitioner and must be accompanied by the proper filing fee.

Subp. 6. Constitution and bylaws. A current copy of the employee organization's constitution or bylaws, unless on file with the director, must accompany the following petitions:

A. certification election;

B. representation election;

C. amendment of certification; and

D. transfer of exclusive representative status.

Subp. 7. Petitions filed with director. All petitions shall be filed with the director in person or by mail.

Statutory Authority: *MS s 179A.04 subd 3 cl (f)*

History: 9 SR 735

5510.0600 [Repealed, 9 SR 735]

5510.0610 WITHDRAWAL.

Subpart 1. Generally. A certification, representation, or decertification petition or a showing of interest may be withdrawn by a party at any point prior to the fifth day following issuance of an appropriate unit determination by the director. A clarification, transfer of exclusive representative status, fair share challenge, amendment of certification, or affiliation petition may be withdrawn at any time prior to the close of the hearing on the petition. A withdrawal must either be stated on the record at the hearing or be in writing and served as provided by parts 5510.0110 to 5510.2310.

Subp. 2. Certification election. If the employee organization withdraws, and no other employee organizations have petitioned or intervened, the petition shall be dismissed. If another employee organization has also petitioned or has intervened, the matter shall proceed, but the withdrawing organization shall not be listed on the ballot.

Subp. 3. Representation election. If the incumbent exclusive representative

withdraws, the matter will be processed as though a certification petition had been filed by the challenging employee organization.

A challenging employee organization which withdraws in accordance with this chapter shall not be listed on the ballot. If all challengers have withdrawn, the petition shall be dismissed.

Subp. 4. Decertification election. If the petitioner withdraws and no other employee organization has petitioned or intervened, the petition shall be dismissed. If the petitioner withdraws, but another employee organization which has petitioned or intervened does not, the matter shall be processed as a representation petition.

Statutory Authority: *MS s 179A.04 subd 3 cl (f)*

History: 9 SR 735

5510.0700 [Repealed, 9 SR 735]

5510.0710 CERTIFICATION, REPRESENTATION, AND DECERTIFICATION PETITIONS.

Subpart 1. Filing of petition. A petition for certification, representation, or decertification must include:

A. the name, address, and phone number of all other employee organizations or exclusive representatives known to have an interest in or claiming to represent any of the employees involved;

B. a statement regarding whether there is a labor contract in effect and its expiration date;

C. the type of public employer involved;

D. the approximate number of employees included in the proposed or previously determined appropriate unit;

E. the proposed or previously determined appropriate unit description;

F. a statement indicating that at least 30 percent of the employees in the proposed or previously determined unit support the intent of the petition;

G. the date the petition is signed; and

H. the name and title of the person signing the petition.

Subp. 2. Showing of interest. Evidence of a showing of interest in the form of authorization signatures must accompany all petitions. An adequate showing of interest for the conduct of an investigation or hearing shall be authorization signatures from 30 percent or more of the estimated number of employees in the established or proposed appropriate unit. Evidence of a showing of interest may continue to be submitted up to the close of the hearing.

Statutory Authority: *MS s 179A.04 subd 3 cl (f)*

History: 9 SR 735

5510.0800 [Repealed, 9 SR 735]

5510.0810 AUTHORIZATION SIGNATURES.

Subpart 1. Confidentiality. Authorization signatures submitted in support of a petition shall be privileged and confidential information pursuant to Minnesota Statutes, section 179A.12, subdivision 6, and may only be withdrawn by the petitioner.

Subp. 2. Valid authorization signatures. Authorization signatures submitted in accordance with Minnesota Statutes, section 179A.12, must be in the form of individual authorization cards which include:

A. a statement clearly reflecting the employee's support for the purpose of the petition;

B. the clearly printed name of the employee making the authorization;

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- C. the signature of the employee; and
- D. the date the employee signed the card.

Authorization cards may contain the name, address, and phone number of an employee organization.

Subp. 3. **Invalid authorization card.** The director shall consider invalid any authorization card which:

- A. does not include the information and statements required by parts 5510.0110 to 5510.2310;
- B. contains statements of explanation, interpretation, or advice;
- C. is modified or altered in any way; or
- D. is dated more than six months prior to the receipt of the petition by the director.

Subp. 4. **Effect of invalid authorization card.** The director shall not include invalid authorization cards in determining whether a petition has the necessary showing of interest. If there is evidence that authorization cards submitted to establish a showing of interest were obtained or submitted in a fraudulent manner, the petition or intervention will be denied and a one-year election bar for that unit shall be applied to the party submitting fraudulent cards.

Statutory Authority: *MS s 179A.04 subd 3 cl (f)*

History: 9 SR 735

5510.0900 [Repealed, 9 SR 735]

5510.0910 UNIT CLARIFICATION PETITION.

A petition for unit clarification must include:

- A. a statement regarding whether there is a labor contract in effect and its expiration date;
- B. the type of public employer involved;
- C. the approximate number of employees affected by the proposed unit clarification;
- D. a specific statement of the unit clarification requested and the reasons for the request;
- E. the date the petition is signed; and
- F. the name and title of the person signing the petition.

Statutory Authority: *MS s 179A.04 subd 3 cl (f)*

History: 9 SR 735

5510.1000 [Repealed, 9 SR 735]

5510.1010 AMENDMENT OF CERTIFICATION PETITION.

A petition for amendment of certification must include:

- A. a statement of the amendment requested;
- B. the date the petition is signed; and
- C. the name and title of the person signing the petition.

Statutory Authority: *MS s 179A.04 subd 3 cl (f)*

History: 9 SR 735

5510.1100 [Repealed, 9 SR 735]

5510.1110 CHALLENGE TO AFFILIATION PETITION.

Subpart 1. **Filing petition.** A petition challenging affiliation under Minnesota Statutes, section 179A.06, subdivision 2 must include:

- A. a statement of the reasons the affiliation is improper;

- B. the name of the employee organization involved;
- C. the date the petition is signed; and
- D. the name and title of the person signing the petition.

Subp. 2. **Status of certification.** If the affiliation of an employee organization is determined to be improper, the director shall withdraw the certification of the involved employee organization as the exclusive representative for the unit for which the challenge was raised, and dismiss any matters pending before the bureau involving questions of representation or mediation.

If the affiliation of an employee organization is determined to be proper, the director shall affirm its standing as a proper employee organization and dismiss the challenge petition.

Subp. 3. **Status of contract.** Upon the withdrawal of the status of exclusive representative pursuant to a determination of improper affiliation, any labor contract within the meaning of Minnesota Statutes, section 179A.20, which covers employees of the unit for which withdrawal was ordered and to which the involved organization is a party is null and void as of the date of the director's determination.

Statutory Authority: *MS s 179A.04 subd 3 cl (f)*

History: 9 SR 735

5510.1200 [Repealed, 9 SR 735]

5510.1210 TRANSFER OF EXCLUSIVE REPRESENTATIVE STATUS.

Subpart 1. **Filing petition.** A petition transferring exclusive representative status must include:

A. documentation substantiating that the requirements of parts 5510.0110 to 5510.2310 have been met;

B. a copy of the incumbent exclusive representative's current constitution or bylaws unless on file with the director;

C. documentation substantiating that the requirements of the constitution or bylaws of the exclusive representative have been met;

D. a copy of the current constitution or bylaws of the employee organization which has agreed to accept the transfer of the exclusive representative's rights and obligations, unless on file with the bureau; and

E. a copy of the current labor contract and certification of the exclusive representative.

Subp. 2. **Right to transfer.** An exclusive representative may transfer its rights and obligations to another employee organization by complying with subparts 3 and 4.

Subp. 3. **Notice.** The exclusive representative must provide advance written notice of the proposed transfer to each member of the exclusive representative in the appropriate unit. The notice must state the time and location of the meeting or meetings to be held by the exclusive representative relating to the proposed transfer.

Subp. 4. **Meeting.** The exclusive representative must hold a meeting or meetings to permit discussion of the proposed transfer at a time and location which is reasonably convenient for the majority of the members of the exclusive representative in the appropriate unit.

Subp. 5. **Election.** The exclusive representative must conduct a secret ballot election among its members in the appropriate unit to determine approval or rejection of the proposed transfer in accordance with the constitutional requirements of the exclusive representative.

Subp. 6. **Petition.** If all employees in the appropriate unit have been afforded the opportunity to become members of the exclusive representative, and if a

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majority of the members of the exclusive representative voting in the election required by subpart 5 vote in favor of the transfer, a petition shall be filed by the exclusive representative with the director.

Subp. 7. Order. Based on the record of hearing or an investigation, the director may:

- A. issue an amended certification of exclusive representative;
- B. order a representation election; or
- C. dismiss the petition.

Subp. 8. Rights. The incoming exclusive representative shall have all rights and obligations established by the labor contract in effect and the act; and administer the existing labor contract until its expiration.

Statutory Authority: *MS s 179A.04 subd 3 cl (f)*

History: 9 SR 735; 11 SR 141

5510.1300 [Repealed, 9 SR 735]

5510.1310 ABANDONMENT OF EXCLUSIVE REPRESENTATIVE STATUS.

Subpart 1. Filing petition. A petition abandoning the status of exclusive representative must contain a statement that clearly indicates that the exclusive representative no longer wishes to represent the appropriate unit at the expiration of the contract or the one-year certification period.

Subp. 2. When effective. An exclusive representative may abandon its status effective on or after the expiration of the labor contract or effective on or after the expiration of a one-year period from the date of certification, whichever is later.

Subp. 3. Retention of rights and duties. An exclusive representative abandoning its status retains the rights and obligations under the act and under the labor contract until its expiration.

Subp. 4. Notice. A notice of abandonment must be served in writing upon the director and the employer.

Subp. 5. Contract bar. If abandonment occurs, there shall be no bar to the conduct of a certification election.

Statutory Authority: *MS s 179A.04 subd 3 cl (f)*

History: 9 SR 735

5510.1400 [Repealed, 9 SR 735]

5510.1410 FAIR SHARE FEE REQUIREMENTS.

Subpart 1. Advance notice of fair share fee assessment. The exclusive representative must provide written notice of the amount of the fair share fee assessment to the director, the employer, and each employee assessed: upon initial implementation of the fair share fee assessment; to employees hired after the original notice has been issued; and upon a change in the amount of the fair share fee assessment. The notice must contain:

- A. the name, address, and telephone number of the exclusive representative;
- B. the amount of the regular dues of the exclusive representative;
- C. the amount of the fair share fee assessment;
- D. sufficient information to identify expenditures for benefits available only to members of the exclusive representative and sufficient information to identify expenditures for collective bargaining and contract administration services that have been provided for bargaining unit employees without regard to membership status;
- E. the bureau's current mailing address; and

F. a statement as follows: "An employee may challenge this assessment by filing a challenge with the Bureau of Mediation Services within 30 calendar days after receipt of this notice. The challenge must specify those portions of the assessment being contested and the reasons therefor, and copies of the challenge must be sent to your employer and this organization. The Public Employment Labor Relations Act requires a fee for filing challenges. Forms for challenges and a copy of the rules governing them are available from the bureau without charge."

Subp. 2. **Employer provided information.** Unless an alternate method of fair share notice procedure has been requested and approved by the director, the employer shall provide to the exclusive representative the name, home mailing address, and social security number or other necessary payroll deduction information for all employees in the appropriate unit. Questions of necessary payroll deduction information shall be determined by the director.

Subp. 3. **Mailing notice.** Unless an alternate method of fair share notice procedure has been requested and approved by the director, the notice of the fair share fee assessment shall be mailed by the exclusive representative to the employee's last known home mailing address provided by the employer.

Subp. 4. **Assessment.** On the effective day of the fair share fee assessment and thereafter, the amount of the assessment shall be deducted by the employer from the pay of the employee. The amounts deducted must be held in escrow by the employer and not remitted to the exclusive representative for a period of 30 calendar days from the date notice is provided under subpart 1.

If at the end of the 30-day period an employee has not challenged the fair share fee assessment, assessments shall be remitted to the exclusive representative without the need for escrow by the employer.

If an employee challenges the fair share fee assessment, the assessment for that employee shall continue to be deducted, but must be held in escrow by the employer until otherwise ordered by the director.

Statutory Authority: *MS s 179A.04 subd 3 cl (f)*

History: 9 SR 735; 11 SR 669

5510.1500 [Repealed, 9 SR 735]

5510.1510 FAIR SHARE FEE CHALLENGE PETITION.

Subpart 1. **Filing petition.** A petition challenging a fair share fee assessment may be filed by individual employees and must include:

- A. the name, address, and phone number of the petitioner and agent, if any;
- B. the name, address, and phone number of the exclusive representative and agent, if any;
- C. the name, address, and phone number of the employer and agent, if any;
- D. the job classification of the petitioner;
- E. the amount of regular membership dues in the unit;
- F. the amount of the fair share fee assessment;
- G. the amount that represents 85 percent of the regular membership dues;
- H. the percent of regular membership dues which the fair share fee represents;
- I. the amount by which the fair share fee assessment should be adjusted to conform to the statutory prerequisites of Minnesota Statutes, section 179A.06, subdivision 3;
- J. the specific activities or expenditures of the exclusive representative which the challenger believes are not in conformance with the statutory prerequisites of Minnesota Statutes, section 179A.06, subdivision 3; and

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K. the date on which the petitioner received notice of the fair share fee assessment.

Subp. 2. Filing petition. A petition challenging the fair share fee assessment must be filed in person or by mail with the director.

Subp. 3. Filing fee. The challenge petition must be accompanied by a certified check or other guaranteed form of payment in the amount of \$10, made payable to "Treasurer, State of Minnesota." A challenge petition filed without the proper filing fee shall be returned to the individual filing the petition.

Subp. 4. Receipt of petition. Upon receipt of the challenge petition and fee, the director shall provide the challenger with an acknowledgment and receipt, along with a copy of the rules governing such challenge.

Subp. 5. Service on exclusive representative and employer. A copy of the challenge petition shall be served by the petitioner upon the exclusive representative and the employer, in person or by mail, within the 30-calendar-day challenge period. Failure to serve a copy of a challenge petition upon the exclusive representative or employer in a timely manner shall be grounds for dismissing the petition.

Subp. 6. Computing time. For purposes of computing time, a petition shall be considered filed on the day it is received by the director.

Statutory Authority: *MS s 179A.04 subd 3 cl (f)*

History: 9 SR 735; 11 SR 669

5510.1600 [Repealed, 9 SR 735]

5510.1610 INVESTIGATION OR HEARING.

Upon receipt of a valid and timely challenge petition, the director shall hear or investigate the matter and issue a determination. The exclusive representative shall have the burden of proof to establish the validity of the amount of the fair share fee. Failure of a party to appear, in person or through a representative, at a hearing may prejudice its rights.

Statutory Authority: *MS s 179A.04 subd 3 cl (f)*

History: 9 SR 735

5510.1700 [Repealed, 9 SR 735]

5510.1710 APPLICABILITY OF FAIR SHARE FEE CHALLENGE DETERMINATION.

The determination of the validity of the amount of the fair share fee assessment shall apply from the effective date of the assessment being challenged to all employees in an appropriate unit who have an employment relationship which is similar to the petitioner, and who were assessed the same fair share fee.

Fair share fee determinations based on lack of proper notice apply only to employees who have filed a challenge.

Statutory Authority: *MS s 179A.04 subd 3 cl (f)*

History: 9 SR 735; 11 SR 669

5510.1800 [Repealed, 9 SR 735]

5510.1810 JOINT-PARTY PETITION.

Subpart 1. Certification of exclusive representative. A joint petition for certification of an exclusive representative must include:

A. notarized signatures of the parties;

B. authorization signatures from more than 50 percent of the employees within the proposed appropriate unit; and

C. identification of the employees and job classifications included within

the proposed appropriate unit and those employees and job classifications excluded from the proposed appropriate unit.

Subp. 2. Unit clarification. In addition to complying with the other requirements of this chapter, a joint-party petition for unit clarification must include the name, title, and signature of the representative of both the exclusive representative and the employer.

Statutory Authority: *MS s 179A.04 subd 3 cl (f)*

History: 9 SR 735

5510.1900 [Repealed, 9 SR 735]

5510.1910 HEARINGS OR INVESTIGATIONS.

Subpart 1. Policy. The bureau believes that stipulations or agreements reached by the parties are conducive to harmonious and stable labor and management relationships. The bureau will encourage the parties to enter into these agreements whenever possible and will accept stipulations which are consistent with bureau policies and the act.

Subp. 2. Scope. Hearings or investigations shall address all issues raised by a valid petition that are within the jurisdiction of the director.

Subp. 3. Consolidation of hearings. The director may consolidate one or more hearings or petitions to the extent the director determines the consolidation will serve the purposes of the act.

Subp. 4. Procedures. Upon receipt of a petition, the director shall hold hearings or conduct an investigation as required. Following receipt of a petition, the director may issue an order prohibiting negotiations and maintaining the status quo, in part or in whole, of the employees' terms and conditions of employment.

Subp. 5. Prehearing conference. The purpose of a prehearing conference is to simplify the issues to be determined, to obtain stipulations regarding foundation for testimony or exhibits, to identify the proposed witnesses for each party, to consider other matters that may be necessary or advisable and, if possible, to reach a settlement without the necessity for hearing. Any final settlement must be made a part of the record.

Upon the request of any party or upon his own motion, the director may, in his discretion, hold a prehearing conference prior to a hearing. The director may require the parties to file a prehearing statement containing items the director deems necessary. The prehearing conference shall be informal. Agreements regarding the simplification of issues, amendments, stipulations, or other matters may be entered on the record or may be made the subject of an order by the director.

Subp. 6. Subpoenas. Requests for subpoenas for the attendance of witnesses or the production of documents must be made in writing to the director and contain a brief statement demonstrating the relevance of the potential testimony or evidence sought, identify all persons to be subpoenaed, and identify with specificity any documents sought.

A subpoena must be served by the sheriff, his deputy, or any other person who is not a party in accordance with Rule 45.03 of the Rules of Civil Procedure for the District Courts of Minnesota.

The cost of service, fees, and expenses of any witness subpoenaed must be paid by the party at whose request the witness appears.

The person serving a subpoena shall make proof of service by filing the subpoena and an affidavit of service with the director.

Upon motion made at or before the time specified in the subpoena, the director may quash or modify the subpoena if he finds that it is unreasonable or oppressive.

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Subp. 7. Intervenor. The director shall permit an employee organization which submits a 30 percent showing of interest to intervene on a certification, representation, or decertification petition. The director shall permit a group of employees submitting a 30 percent showing of interest wishing to decertify an exclusive representative to intervene on a representation petition.

Subp. 8. Hearing. Parties shall have the right to present evidence, rebuttal testimony and argument on the issues, and to cross-examine witnesses. Individuals or organizations having an appearance status shall only be allowed to review exhibits and make statements for the record.

Any party may be a witness or may present witnesses at the hearing. All oral testimony must be under oath or affirmation. At the request of a party or upon the director's own motion, witnesses may be excluded from the hearing room so that they cannot hear the testimony of other witnesses.

Subp. 9. Rules of evidence. The director may admit all evidence which possesses probative value, including hearsay, if it is the type of evidence on which reasonable prudent persons are accustomed to rely in the conduct of their serious affairs. The director shall give effect to the rules of privilege recognized by law. Evidence which is incompetent, immaterial, or unduly repetitious may be excluded.

All evidence to be considered in the case, including all records and documents in the possession of the director or a true and accurate photocopy thereof must be made a part of the record. Matters not part of the record may not be considered in the determination of the case.

The director may seek additional evidence and examine witnesses to the extent the director deems appropriate, but shall do so on the record and with the opportunity for any party to contest the evidence.

The director may take judicial notice of facts not in dispute.

Subp. 10. The record. The director shall maintain the record in each case. The record shall contain:

- A. all pleadings, motions, and orders;
- B. evidence received;
- C. offers of proof, objections, and rulings on objections;
- D. all memoranda or data submitted by any party in connection with the case; and
- E. an audiomagnetic or stenographic recording of the hearing.

The director shall retain the audiomagnetic or stenographic recording of the hearing for a period not less than 60 calendar days after the issuance of his order. In the event that an appeal of the director's order is initiated by any party to the hearing on the matter, the record shall be transcribed, in whole or in part, at the request of any party, provided the request is timely and the party requesting the transcript pays a charge per page, as established by the director, for transcript production and for duplication of other requested or necessary parts of the record. In the event a party to a hearing before the director requests that all or part of the record be transcribed absent a pending appeal from or prior to the issuance of the director's order in such matter, the director shall require the party to pay the full costs associated with the production of the transcript. In all cases, the director shall maintain original documents as a part of bureau records and parties requesting copies of the record for any purpose shall be required to pay a charge per page, as established by the director.

Subp. 11. Continuances. The timely processing of petitions relating to questions of representation is in the public interest and of value to a constructive and stable labor relations environment. Accordingly, the director will grant continuances or postponements of hearings on these matters only upon a showing of substantial cause.

All requests for continuances or postponements of a hearing must be served

in accordance with parts 5510.0110 to 5510.2310. Requests served less than six calendar days prior to a hearing shall be denied unless the director determines that the request could not have been filed earlier and that the rights of a party will be substantially affected by denial.

The director may, at his discretion, continue a hearing which has already commenced whenever the action appears necessary for determination of the issues. In those instances, oral notice on the record by the director is sufficient.

Subp. 12. Conduct of hearing. Unless the director determines that the public interest will be otherwise served, the hearing must be conducted substantially in the following manner:

A. After opening the hearing, the director must state the procedural rules for the hearing including the following:

- (1) all parties may present evidence and cross-examine witnesses;
- (2) all parties have a right to be represented at the hearing;
- (3) any objection to the conduct of the hearing, including the introduction of evidence, must be stated orally, together with a statement of the grounds for the objection;
- (4) no objection to the conduct of the hearing, including the introduction of evidence, shall be waived by further participation in the hearing; and
- (5) failure to appear at the hearing in person or through an authorized representative may prejudice the rights of a party.

B. Any stipulations, settlement agreements, or consent orders entered into by any of the parties prior to the hearing shall be entered into the record.

C. The party with the burden of proof may make an opening statement. The other parties may make opening statements in a sequence determined by the director.

D. After any opening statements, the party with the burden of proof shall present its evidence. The other parties shall follow in a sequence determined by the director.

E. Cross-examination of witnesses is conducted in a sequence determined by the director.

F. When all parties and witnesses have been heard, final argument may, in the discretion of the director, be permitted. The director shall determine the timing and sequence of the argument, and whether the argument is presented in written or oral form, or both.

G. After final argument, the director shall close or continue the hearing.

H. The record of the proceeding shall be closed upon receipt of the final written memorandum, transcript, if any, or late-filed exhibits which the parties and the director have agreed should be received into the record, whichever occurs later.

Subp. 13. Disruption of hearing. No television, newsreel, motion picture, still or other camera, and no mechanical recording devices other than those provided by the director shall be operated in the hearing room during the course of the hearing.

No person shall interfere with the free, proper, and lawful access to or egress from the hearing room. No person shall interfere or threaten interference with the conduct of the hearing.

Subp. 14. Determinations. All determinations issued by the director must be based upon the record.

Subp. 15. Order pending appeal. Any order appealed to the board shall continue in effect unless ordered otherwise by the board or unless stayed by the director upon request of one or more parties.

Statutory Authority: *MS s 179A.04 subd 3 cl (f)*

History: 9 SR 735

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5510.2000 [Repealed, 9 SR 735]

5510.2010 ELECTIONS.

Subpart 1. Showing of interest. The director shall not order an election unless there is at least a 30 percent showing of interest for the unit determined appropriate.

Subp. 2. Location. If the director orders an election for any purpose, it shall be conducted by secret ballot either at a site of employment or by mail.

Subp. 3. Order. An election order shall be mailed to all parties at least ten calendar days prior to the date of the on-site election or the date of the tabulation for a mail ballot election. The election order shall:

- A. identify the appropriate unit;
- B. establish the cut-off date for voter eligibility;
- C. include a list of the eligible voters;
- D. include a sample ballot;
- E. establish campaign and election rules;
- F. provide for the parties to appoint observers;
- G. identify the date, time, and location of an on-site election and provide for absentee ballots;
- H. identify the date of mailing ballots in a mail ballot election;
- I. include any other conditions which are necessary for the conduct of a fair election; and
- J. provide for posting by the employer of the election order and attachments.

Subp. 4. Voter eligibility. All employees within the appropriate unit who are employed on the cut-off date and are identified on a list established by the director shall be eligible to vote in an election subject to this chapter.

Subp. 5. Correction of voter eligibility list.

A. The director shall determine questions concerning the addition or deletion of names on the voter eligibility list.

B. Names shall not be added to the voter eligibility list after the close of the hearing on the election petition unless names were inadvertently omitted or the cut-off date for voter eligibility is changed because of an appeal to the board or court order.

C. Names shall be deleted from the voter eligibility list based on:

- (1) transfer, promotion, or demotion of an employee out of the unit which is not prohibited by an order maintaining the status quo;
- (2) an appeal to the board or court action which delays the conduct of the election or changes the cut-off date for voter eligibility; or
- (3) voluntary or involuntary termination of an eligible voter who has not appealed the termination.

The deletion shall be made immediately prior to the opening of the polls or tabulation of the ballots.

D. A written request to correct the voter eligibility list must be received by the director within seven calendar days after the date of the election order.

Subp. 6. Right to vote. Eligible voters shall be permitted to vote during their work hours without loss of pay.

Subp. 7. Election ballot.

- A. A certification election ballot shall contain the following choices:
- (1) the name of employee organizations which have submitted the required showing of interest; and
 - (2) no representation.

B. A representation election ballot shall contain the following choices:

- (1) the name of the exclusive representative;
- (2) the name of employee organizations which have submitted the required showing of interest; and
- (3) no representation if the required showing of interest has been submitted in accordance with part 5510.0710, subpart 2.

C. A decertification election ballot shall contain the following choices:

- (1) the name of the exclusive representative;
- (2) the name of employee organizations which have submitted the required showing of interest; and
- (3) no representation.

Subp. 8. **Absentee ballot.** Any eligible voter unable to be present at an on-site election may secure an absentee ballot by submitting an individual written request to the director which must be received by the director no later than specified in the election order. The written request must be dated and contain the name and home mailing address of the eligible voter, identification of the employer, signature of the eligible voter, and date of the election.

Upon receipt of a timely request for an absentee ballot, the director shall mail a ballot, return envelope, and a letter of explanation to the voter.

Absentee ballots must be received by the director in the return envelope no later than specified in the election order.

Subp. 9. **Election procedures.** An election shall be held on the premises where the voters are employed during hours the director determines, unless the director determines that the election shall be held at another location, by mail ballot, or by a combination of on-site and mail balloting.

The parties to an on-site election may designate one observer who is permitted to be present at each polling location during the casting of the ballots and their tabulation. The director may allow attendance of more than one observer per party.

The parties to a mail ballot election may each designate one observer who is permitted to be present during the tabulation of the ballots. The director may allow attendance of more than one observer per party.

The role of the observer is to identify employees eligible to vote and the observers are subject to orders of the director.

Subp. 10. **Marking ballot.** The ballot shall be marked in accordance with the instructions on the ballot. A ballot which is defaced or identifies the voter shall be voided. When a voter inadvertently spoils a ballot, the voter shall immediately return the ballot to the director who shall destroy the spoiled ballot and provide another ballot to the voter.

When a voter states that, because of physical disability or inability to read or write, the voter cannot mark the ballot the director shall assist the voter privately in marking the ballot.

A voter who has been mailed an absentee ballot by the director shall not be permitted to vote at the on-site election under any circumstances.

Subp. 11. **Status of scheduled election during appeal to board.** In the event of an appeal to the board, the director shall conduct the scheduled election unless otherwise ordered by the board.

Subp. 12. **Tabulation of ballots.** All ballots cast by eligible voters shall be tabulated by the director in the presence of the election observers, if any, at the site designated in the election order.

Envelopes containing timely mail or absentee ballots shall be opened in the presence of the election observers, if any, and shall be placed in the ballot box and mixed with other ballots before they are tabulated.

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The director shall immediately rule on each ballot as to whether it is valid, void, or blank; and the ballots must be separated into those categories.

Blank or void ballots shall not be counted as votes cast for purposes of the election.

Mail ballots returned by employees whose names have been deleted from the eligibility list shall not be counted.

Subp. 13. Tabulation of election results. Upon the conclusion of the election, the director shall prepare and sign a tabulation of election results. A copy of the tabulation of election results shall be furnished to each observer present. Following the completion of the tabulation, the director shall retain all election ballots and materials for at least 60 calendar days.

Subp. 14. Run-off election. When a ballot contains more than two choices and none of the choices receives a majority of the valid votes cast, a run-off election shall be conducted between the choices receiving the greatest and second greatest number of votes. In a representation or decertification election, where the exclusive representative does not qualify for a run-off election, the election shall be considered a certification election for purposes of tie votes.

Subp. 15. Tie vote. A tie vote in an election containing no more than two choices shall result in the following:

A. Certification election; certification that no exclusive representative has been selected.

B. Representation election; certification that the exclusive representative remains certified.

C. Decertification election; certification that the exclusive representative remains certified.

Statutory Authority: *MS s 179A.04 subd 3 cl (f)*

History: 9 SR 735

5510.2100 [Repealed, 9 SR 735]

5510.2110 UNFAIR ELECTION PRACTICES.

Subpart 1. Definition of charges. The following acts are prohibited and constitute unfair election practices if committed by an employer or its agents, an employee organization or its agents, or an employee:

A. campaigning on the day of the on-site election;

B. congregating in or near the polling place during the time the polls are open;

C. coercing or intimidating or otherwise unlawfully attempting to influence any eligible voter;

D. committing an unfair practice as defined by Minnesota Statutes, section 179A.13; or

E. violating an election order.

Subp. 2. Filing charges. A party to an election may file a charge of an unfair election practice with the director. A copy of the charge shall be served by the charging party on all other parties to the election. A charge shall be filed within ten calendar days from the date of the certification of election results. The charge shall be in writing, be signed by the charging party, and state the name and address of the party against whom made. The charge shall specify the alleged unfair election practice and the facts supporting the charge. If a charge of an unfair election practice is filed, the director may:

A. stay the election results pending conduct of a hearing or investigation if the alleged unfair election practice appears to have materially affected the election results;

B. conduct a hearing or investigation; and

C. rescind the certification of exclusive representative or the certification of election results.

Subp. 3. **Determination.** Based on a hearing or investigation, the director shall issue an order. If an unfair election practice is established, the election may be voided and a new election may be ordered.

Statutory Authority: *MS s 179A.04 subd 3 cl (f)*

History: 9 SR 735

5510.2200 [Repealed, 9 SR 735]

5510.2210 REQUEST FOR RECONSIDERATION.

Subpart 1. **General.** A party may file a request for reconsideration of orders issued by the director.

Subp. 2. **Timeliness of request.** A request shall be filed within ten calendar days following the date of the order.

Subp. 3. **Form of request.** The request shall be filed in writing and contain a statement of the request and the grounds supporting the request. Unfair election practice charges shall not be a ground for reconsideration.

Subp. 4. **Staying of order.** If the director determines that the request raises substantial and material issues, the challenged order may be stayed until a hearing or investigation has been held and a decision is issued.

Statutory Authority: *MS s 179A.04 subd 3 cl (f)*

History: 9 SR 735

5510.2300 [Repealed, 9 SR 735]

5510.2310 STATUS OF EMPLOYEE ORGANIZATION.

Subpart 1. **Change in exclusive representative.** When there is a change in exclusive representative, the incumbent exclusive representative retains the rights and obligations established by the act and the labor contract through the contract's expiration including:

- A. fair share fee assessments;
- B. dues check-off; and
- C. time off for union officers.

The incoming exclusive representative, prior to the expiration of the labor contract, has all rights and obligations necessary to carry out its status as an exclusive representative including negotiation of the successor labor contract, and access to financial information for use in negotiations.

Subp. 2. **Decertification of exclusive representative.** When an exclusive representative is decertified, the labor contract remains in effect until its expiration. The decertified exclusive representative retains all its rights and obligations established by the act and the labor contract through the contract's expiration.

Subp. 3. **Transfer of exclusive representative status.** An exclusive representative certified as the result of a transfer of exclusive representative status assumes all its rights and obligations established by the act and the existing labor contract.

Statutory Authority: *MS s 179A.04 subd 3 cl (f)*

History: 9 SR 735

5510.2400 [Repealed, 9 SR 735]

**NEGOTIATION, MEDIATION, IMPASSE CERTIFICATION,
ARBITRATION, AND INTENT TO STRIKE NOTICE**

5510.2410 APPLICATION.

Parts 5510.2410 to 5510.3210 govern the conduct of negotiations between

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an exclusive representative and an employer, the conduct of mediation, the certification of impasse to the board, the arbitration of impasse, and the notification of intent to strike.

Statutory Authority: *MS s 179A.04 subd 3 cl (f)*

History: 9 SR 735

5510.2500 [Repealed, 9 SR 735]

5510.2510 POLICY.

Parts 5510.2410 to 5510.3210 must be liberally construed to effectuate the purposes and provisions of the act. Any requirements of parts 5510.2410 to 5510.3210 may be waived by agreement of all parties and the approval of the director.

The director shall grant approval unless the director determines that waiving the particular requirements in question is likely to result in significant harm to the general public or to specific nonparties or is likely to result in substantial impairment or frustration of the intent or purposes of the act.

The joint request for waiver shall be made in writing to the director in a timely fashion. The director shall set forth in writing the reasons for granting or denying the waiver.

Statutory Authority: *MS s 179A.04 subd 3 cl (f)*

History: 9 SR 735

5510.2600 [Repealed, 9 SR 735]

5510.2610 DEFINITIONS.

The words, terms, and phrases in parts 5510.2410 to 5510.3210 have the meaning and definitions contained in part 5510.0110.

Statutory Authority: *MS s 179A.04 subd 3 cl (f)*

History: 9 SR 735

5510.2700 [Repealed, 9 SR 735]

5510.2710 NEGOTIATION NOTICE.

Subpart 1. Content of notice. A written notification of the desire to meet and negotiate an original contract, renewal of a contract, or a reopener of a contract must be served on the other party and the director. The notice may be served on forms available from the director or in other written format which includes the following:

- A. the name, address, and phone number of the exclusive representative;
- B. the name, address, and phone number of the exclusive representative's representative;
- C. the name, address, and phone number of the employer;
- D. the name, address, and phone number of the employer's representative;
- E. a description of the appropriate unit for which such notice is being given;
- F. the date of expiration of the current labor contract, if any;
- G. the total number of employees employed by the employer;
- H. the number of employees in the appropriate unit covered by the notice;
- I. the date the notice is signed; and
- J. the name and title of the person signing the notice.

Subp. 2. Initial agreement. An employer shall have ten days following service

of a negotiation notice by an employee organization to object to the employee organization's status as exclusive representative, or to contest the appropriateness of the unit. An objection must be made in writing to the employee organization and the director, and the director must investigate the matter pursuant to parts 5510.0110 to 5510.2310.

Subp. 3. Subsequent agreement. If a party to an existing labor contract desires to meet and negotiate a subsequent labor contract, the party shall serve written notice of that desire upon the other party to the labor contract and the director at least 60 calendar days prior to the expiration date in the existing labor contract. If a party desires to negotiate a subsequent labor contract, but has failed to provide the required 60-day notice, the party may be compelled to pay a penalty of \$10 per day for each day the notice of intent is late.

Subp. 4. Late notice penalty. A \$10-per-day penalty shall be the only penalty for late notice of a desire to negotiate a subsequent labor contract and may be imposed by the director upon request by a party adversely affected by the failure to provide timely notice or the director's own motion. A request or motion to assess a penalty shall be made in writing and served upon the director and the other party to the labor contract within ten days of the requesting party's first knowledge of the other party's desire to negotiate or, in the case of the director's own motion, within 15 days of the receipt of a request for mediation assistance involving the same parties and contract. A request from a party or motion by the director shall specify the date of first knowledge of the desire to negotiate, the expiration date of the current labor contract, and a brief statement of the adverse results or impact of the late notice. Upon receipt of a written request or after the director's own motion to assess a penalty for late notice, the director shall investigate the matter pursuant to part 5510.1910. If the director finds that the late notice did not prejudice the director or the other party, the director may waive all or a part of the penalty. The penalty shall be payable to the state of Minnesota general fund. The amount of the penalty and its waiver is not subject to appeal to the board.

Statutory Authority: *MS s 179A.04 subd 3 cl (f)*

History: 9 SR 735; 10 SR 997

5510.2800 [Repealed, 9 SR 735]

5510.2810 PETITION FOR MEDIATION.

Subpart 1. Petition. A petition for mediation must be served on the bureau by an exclusive representative, an employer, or jointly. Petition forms may be obtained from the bureau.

Subp. 2. Director initiation of mediation. When it is in the public interest, the director may initiate mediation without receiving a petition. Upon notice to the parties, mediation shall proceed in accordance with parts 5510.2410 to 5510.3210.

Subp. 3. Notice. Upon receiving a petition for mediation and concluding that mediation would be useful, the director shall serve notice of the time and place for a mediation meeting of the exclusive representative and the employer.

Subp. 4. Obligation. It is the duty and obligation of the parties to comply with the notice of the mediation meeting. The parties must be represented by persons having the authority to negotiate in good faith and be prepared to identify unresolved issues and their positions regarding such issues.

Subp. 5. Mediation meetings. Joint or separate mediation meetings of the parties may be scheduled by the director. Mediation meetings are informal and must be limited by the director to matters relevant to the settlement of the dispute. The parties must continue to participate in a mediation meeting until excused by the director. Use of recording devices, stenographic records, or other recording methods is prohibited in mediation meetings.

A mediation meeting may be closed to the public by the director when, in

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the director's judgment, closing will facilitate resolution of the dispute. In all cases a meeting will be closed only after receipt by the bureau of a valid and timely petition for mediation or after initiation of mediation by the director. The director may close a meeting to the public prior to its start or at any time during the meeting.

When the director determines that it is in the interest of resolution of a dispute, the director may authorize a closed meeting of the public employer's governing body for the purpose of review and discussion of the status of negotiations and the employer's positions.

No closed meeting may be authorized unless the bureau has received a valid and timely petition for mediation or unless mediation has been initiated by the director.

No closed meeting may be authorized when the director or a representative of the director is not physically present at the meeting unless the bureau has received a timely and valid notice of intent to strike.

In the event the director determines that a closed meeting is necessary, but the director cannot be physically present at the meeting and a timely and valid notice of intent to strike has been received by the bureau, the director may authorize a closed meeting upon written notice to the governing body and exclusive representative at least 24 hours prior to the closed meeting. The written notice must include the date, time, and place of the closed meeting of the governing body and limit the purpose of the meeting to matters relevant to the dispute.

Subp. 6. Confidential information. Confidential information includes:

A. information disclosed by any party to the director in the performance of mediation functions; and

B. files, records, reports, documents, or other papers received or prepared by the director during the performance of duties and responsibilities related to mediation.

Confidential information shall not be divulged or produced by any bureau personnel. Bureau personnel may not testify in an adversary proceeding regarding confidential information.

Statutory Authority: *MS s 179A.04 subd 3 cl (f)*

History: 9 SR 735; 10 SR 997

5510.2900 [Repealed, 9 SR 735]

5510.2910 RENEWAL OF EXISTING CONTRACT; MEDIATION PERIOD, IMPASSE, ARBITRATION, AND STRIKE NOTICE FOR PUBLIC EMPLOYEES EXCEPT CONFIDENTIAL, ESSENTIAL, SUPERVISORY EMPLOYEES, AND PRINCIPALS AND ASSISTANT PRINCIPALS.

Subpart 1. Mediation period. Except for teachers, a 45-day mediation period commences on the day following receipt by the bureau of a petition for mediation or the day following issuance of notice that the director has initiated mediation. For teachers, a 30-day mediation period commences on the first day that a mediator first attends a mediation meeting with both parties in an effort to resolve the dispute.

Subp. 2. Request to determine impasse. During the mediation period, any party may request in writing that the director determine the negotiations to be at impasse. The request is considered an offer to arbitrate the dispute.

Subp. 3. Expiration of mediation period. Following the expiration of the mediation period and expiration date of the labor contract, negotiations are presumed to be at impasse and either party may request to arbitrate the dispute.

Subp. 4. Request for arbitration at impasse. A joint request by the parties to submit the impasse to arbitration may be served at any time during the negotia-

tions, mediation period, or thereafter. A joint request must be signed by the authorized representatives of both parties and must contain a list of the items in dispute and a statement agreeing to arbitrate the items.

A request by a single party to submit an impasse to arbitration may be served at any time after the expiration of the mediation period. In the case of teacher units the parties must have been at impasse for a 45-calendar-day period following the expiration of the mediation period. The request must be in writing, signed by an authorized representative, and contain a list of the items in dispute.

A request to arbitrate is accepted by the other party only upon receipt by the bureau and the offering party of a written acceptance. A joint request satisfies this requirement.

A joint request or written acceptance of a request to arbitrate is binding upon the parties except to the extent they otherwise mutually agree in writing.

A single-party offer to arbitrate an impasse is rejected:

A. by serving written notice of rejection on the bureau and the other party;

B. by failing to accept the offer in writing within 15 calendar days following service of the request;

C. if the exclusive representative serves a notice of intent to strike following receipt by the bureau of an offer to arbitrate; or

D. if the exclusive representative does not withdraw a previously served notice of intent to strike by serving a written acceptance of the offer.

An offer to arbitrate an impasse is considered to be withdrawn if the offer is rejected by the other party in accordance with parts 5510.2410 to 5510.3210.

Subp. 4a. Final positions. Upon notice of an agreement to arbitrate, the director shall notify the parties and direct that each party submit its final position on each item determined by the director to remain in dispute. The final positions must be in the form of the contract language desired by that party to resolve each matter in dispute and must be received by the director on or before the date specified in the director's letter.

Subp. 5. Certification of impasse to board. Following receipt of a joint request to arbitrate or receipt of an acceptance of a single-party offer to arbitrate, the director shall notify the board of the existence of an impasse. The notice will include a list of the issues determined by the director to be at impasse, and the final positions submitted by the parties. The director shall advise the board whenever a party does not submit final positions within the format or time frames required by this chapter.

Subp. 6. Option of final offer arbitration. The parties may agree in writing to limit the arbitrator's authority to a final offer item-by-item or a final offer total-package award.

A. In the event of an agreement, the parties must file a written copy of the agreement with the bureau prior to the date upon which final positions are due, as set forth in the director's determination of impasse. If the parties do not agree to final offer arbitration, the impasse shall be decided by conventional arbitration.

B. If the final offer arbitration option is agreed to, the parties may not withdraw or amend the final positions filed with the director unless otherwise agreed to in writing by the parties. The agreement may include, but is not limited to an agreement:

(1) that an item certified to be at impasse has been dropped as an item in dispute;

(2) that an item certified to be at impasse has been settled by the parties; and

(3) to amend the submitted final positions on any or all items

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certified to be at impasse. Such agreement must specify the conditions and manner in which the final positions are to be amended.

C. All final positions submitted to the bureau shall be considered confidential.

Subp. 7. Notice of intent to strike, other than teachers.

A. A notice of intent to strike must be in writing and signed by an authorized representative of the exclusive representative. The notice must set forth the date upon which the exclusive representative believes the right to strike will mature. The date shall be subject to adjustment by the director to conform to parts 5510.2410 to 5510.3210. The notice must be served on the employer and the director by the exclusive representative.

B. The notice of intent to strike is timely when the requirements of Minnesota Statutes, section 179A.18, have been fulfilled.

C. The 30-calendar-day strike notice period commences the day following receipt by the director of the notice of intent to strike, provided:

(1) A strike shall not begin during the first ten calendar days of a strike notice period.

(2) The right to strike matures effective 12:01 a.m. of the 11th day and continues until 12:00 midnight of the 30th day of the strike notice period.

(3) If the bureau receives a notice of intent to strike not more than five calendar days prior to the expiration of the mediation period, the strike notice period begins the day following the expiration of the mediation period. Notices received prior to these periods are void and of no effect.

D. If the 30-calendar-day strike notice period expires without a strike, the right to strike expires, but may be renewed by serving a new notice of intent to strike not more than five calendar days prior to the 30th day of the preceding strike notice period. A renewed strike notice period shall commence the day following expiration of the preceding period. The rules applying to the initial strike notice period, including the ten-day waiting period, apply to any renewal period.

E. The director may notify the parties in writing of the date of any strike notice, the date upon which the right to strike matures, and the date upon which the right to strike expires, but the notice by the director shall not alter rights established under Minnesota Statutes, section 179A.18.

Subp. 8. Notice of intent to strike, teachers.

A. A notice of intent to strike must be in writing and signed by an authorized representative of the exclusive representative. The notice must set forth the date upon which the exclusive representative believes the right to strike will mature. The date shall be subject to adjustment by the director to conform to parts 5510.2410 to 5510.3210. The notice must be served on the employer and the director by the exclusive representative.

B. A notice of intent to strike is timely when the requirements of Minnesota Statutes, section 179A.18, subdivisions 2 and 3, have been fulfilled.

C. A 25-calendar-day strike notice period commences the day following receipt by the director of a properly-served notice of intent to strike, provided:

(1) a strike shall not begin during the first ten days of a strike notice period;

(2) the right to strike matures effective 12:01 a.m. of the 11th day and continues until 12:00 midnight of the 25th day of the strike notice period; and

(3) prior to the expiration of the 25-day period, the exclusive representative and the employer may agree to extend the period up to an additional five calendar days.

D. If the 25-day period, or any proper extension, expires without a

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strike, the right to strike shall be terminated with respect to the current contract negotiation, except that the strike notice shall be renewed for an additional ten days, the first five days of which shall be a notice period during which no strike may occur, if all of the following conditions are satisfied:

(1) an original notice of intent to strike was provided pursuant to this part;

(2) a tentative agreement was reached during the original strike notice period or extension thereof; and

(3) the tentative agreement was rejected by either party during or after the original strike notice period.

Satisfaction of subitems (1) to (3) shall automatically renew the strike notice period. The first day of the renewal period shall be the day following expiration of the previous strike notice period or the day following rejection of the tentative agreement, whichever is later.

E. No notice of intent to strike will be accepted prior to the expiration of the mediation period and the expiration of the agreement in effect.

F. The director may notify the parties in writing of the date of any strike notice, the date upon which the right to strike matures, and the date upon which the right to strike expires, but notice by the director shall not alter rights established under Minnesota Statutes, section 179A.18.

Statutory Authority: *MS s 179A.04 subd 3 cl (f)*

History: 9 SR 735; 10 SR 997

5510.3000 [Repealed, 9 SR 735]

5510.3010 MEDIATION, IMPASSE AND ARBITRATION FOR CONFIDENTIAL, ESSENTIAL, SUPERVISORY EMPLOYEES, AND FOR PRINCIPALS AND ASSISTANT PRINCIPALS.

Subpart 1. Mediation. Upon concluding that it would be useful, mediation shall be scheduled by the director.

Subp. 2. Impasse. During mediation of the dispute, the parties, individually or jointly, may request the director to declare the negotiations at impasse. If, as a result of an individual request or at the director's own initiative, the director determines that further mediation efforts are not likely to resolve the dispute, the director may declare the negotiations to be at an impasse and notify the parties in writing of that determination. The director shall regard a joint request as evidence of the impasse. The notice by the director shall include:

A. the date on which an impasse was declared;

B. a list of the matters or impasse items determined by the director to remain in dispute; and

C. the date upon which final positions of the parties with respect to the matters at impasse are to be received by the director.

Subp. 3. Final offer arbitration. Except for principals and assistant principals, the parties may agree to limit the arbitrator's authority to a final offer item-by-item or a final offer total package award. If the parties do not agree to final offer arbitration, the impasse shall be decided by conventional arbitration. For principals and assistant principals, the panel shall be restricted to selecting between the final offers of the parties on each impasse item.

Subp. 4. Final positions. Final positions submitted by each party shall be in the form of the contract language desired by that party to resolve each matter in dispute. The director shall review all final positions submitted by the parties and may make additional efforts to resolve the dispute. If the final offer arbitration option is agreed to, the parties may not withdraw or amend the final positions filed with the director unless otherwise agreed to in writing by the parties. The agreement to amend may include, but is not limited to, an agreement:

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A. that an item certified to be at impasse has been dropped as an item in dispute;

B. that an item certified to be at impasse has been settled by the parties; and

C. to amend the submitted final positions on any or all items certified to be at impasse. Such agreement must specify the conditions and manner in which the final positions are to be amended.

Subp. 5. Certification of impasse to board. Following the date established for submission of final positions of both parties, the director shall notify the board of the existence of an impasse. The notice of impasse shall contain a statement that the negotiations between the parties are at impasse, a list of the issues or impasse items determined by the director to be at impasse, and the final positions submitted by the parties. The director shall advise the board whenever a party does not submit final positions within the format or time frames required by this chapter.

Subp. 6. Confidentiality of final positions. All final positions submitted to the bureau are confidential, except as otherwise provided by this chapter.

Statutory Authority: *MS s 179A.04 subd 3 cl (f)*

History: 9 SR 735; 10 SR 997

5510.3100 [Repealed, 9 SR 735]

5510.3110 NEW OR DIFFERENT EXCLUSIVE REPRESENTATIVE; MEDIATION, IMPASSE, ARBITRATION, AND STRIKE NOTICE FOR PUBLIC EMPLOYEES.

Subpart 1. Procedures. Except as otherwise provided by this part, parts 5510.2810 and 5510.2910 shall apply.

Subp. 2. Negotiations. Following certification of a new or different exclusive representative or resolution of a question of representation by the director, the parties shall commence negotiations.

Subp. 3. Mediation period. For all public employees except essential employees and teachers, the 60-day or 45-day mediation period provided under part 5510.2910 commences on the day following receipt by the bureau of a petition for mediation or the day following issuance of notice that the director has initiated mediation. For teachers, the 30-day mediation period commences on the first day that a mediator first attends a mediation meeting with the parties in an effort to resolve the dispute.

Statutory Authority: *MS s 179A.04 subd 3 cl (f)*

History: 9 SR 735; 10 SR 997

5510.3200 [Repealed, 9 SR 735]

5510.3210 CONTRACT TRANSMITTAL.

Upon the execution of a written labor contract or memorandum of contract, the employer shall submit one copy of the contract to the bureau.

Statutory Authority: *MS s 179A.04 subd 3 cl (f)*

History: 9 SR 735

5510.3300 [Repealed, 9 SR 735]

5510.3400 [Repealed, 9 SR 735]

5510.3500 [Repealed, 9 SR 735]

5510.3600 [Repealed, 9 SR 735]

5510.3700 [Repealed, 9 SR 735]

5510.3800 [Repealed, 9 SR 735]

5510.3900 [Repealed, 9 SR 735]

5510.4000 [Repealed, 9 SR 735]

5510.4100 [Repealed, 9 SR 735]

5510.4200 [Repealed, 9 SR 735]

5510.4300 [Repealed, 9 SR 735]

5510.4400 [Repealed, 9 SR 735]

5510.4500 [Repealed, 9 SR 735]

GRIEVANCE PROCEDURE

5510.4600 DEFINITIONS.

Subpart 1. **Answer.** "Answer" means a concise response outlining the employer's position on the grievance.

Subp. 2. **Days.** "Days" mean calendar days excluding Saturday, Sunday, and legal holidays as defined by Minnesota Statutes.

Subp. 3. **Grievance.** "Grievance" means a dispute or disagreement as to the interpretation or application of any term or terms of any contract required under Minnesota Statutes, section 179A.21.

Subp. 4. **Reduced to writing.** "Reduced to writing" means a concise statement outlining the nature of the grievance, the provision(s) of the contract in dispute, and the relief requested.

Subp. 5. **Service.** "Service" means personal service or by certified mail.

Subp. 6. **Small group of employees.** "Small group of employees" means a group of employees consisting of five or less.

Statutory Authority: *MS s 179A.04 subd 3*

5510.4700 APPLICATION.

This grievance procedure shall be applicable whenever a public employer and the exclusive representative of public employees cannot reach agreement on a grievance procedure as required by Minnesota Statutes, section 179A.21.

Statutory Authority: *MS s 179A.04 subd 3*

5510.4800 STEP I. INFORMAL MEETING AND REDUCTION TO WRITING.

Whenever any employee or small group of employees have a grievance, he or they shall meet on an informal basis with the employee's or employees' immediate supervisor in an attempt to resolve the grievance within 20 days after the grievance occurred or 20 days after the employee(s), through the use of reasonable diligence, should have had knowledge of the occurrence that gave rise to the grievance. If the grievance is not resolved within 15 days of the first informal meeting, the grievance may be reduced to writing by the exclusive representative and served upon the public employer's designate (see Step II, part 5510.4900). Service must be made within 15 days of the last informal meeting. The employer shall, within five days of receipt of the written grievance, serve his answer upon the exclusive representative. In the event the exclusive representative refuses to process the grievance, the employee(s) may proceed with the grievance and if he so chooses, may select a designee to represent him.

If the grievance involves and affects more than five employees, the grievance may be reduced to writing by the exclusive representative (or the employees or their designated representative in the event the exclusive representative has declined to proceed with the grievance) and must be served upon the employer

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within 20 days after the grievance occurred or 20 days after the grievants, through the use of reasonable diligence, should have had knowledge of the occurrence that gave rise to the grievance. The employer shall within five days serve his answer upon the exclusive representative (or in the appropriate case, employee(s) or their designee).

Statutory Authority: *MS s 179A.04 subd 3*

5510.4900 STEP II. RESOLUTION OR PROCEEDING WITH GRIEVANCE.

The employer's representative shall meet with the exclusive representative (or in the appropriate case, employee(s) or their designee) within seven days after receipt of the written grievance. The parties shall endeavor to mutually resolve the grievance. If a resolution of the grievance results, the terms of that resolution shall be written on or attached to the grievance and shall be signed by all parties. If no agreement is reached within 15 days of the first Step II meeting, the exclusive representative (or in the appropriate case, employee(s) or their designee), if he elects to proceed with the grievance, must proceed with Step III by serving a proper notification on the appropriate Step III official(s). The notification shall contain a concise statement indicating the intention of the party to proceed with the grievance, an outline of the grievance, the provision(s) of the contract in dispute, and the relief requested.

Statutory Authority: *MS s 179A.04 subd 3*

5510.5000 STEP III. FURTHER PROCEDURES.

The employer, its chief administrator, or its special representative shall meet with the designated official of the exclusive representative (or in the appropriate case, employee(s) or their designee) within ten days after receiving notice of intention to proceed with the grievance pursuant to Step II. If resolution of the grievance results, the parties shall reduce the resolution to writing and sign the memorandum as provided in Step II. If the parties are unable to reach agreement within ten days after the first Step III meeting, either party may request arbitration by serving a written notice on the other party of their intention to proceed with arbitration.

If a grievance procedure is provided by a system of civil service or other such body, the exclusive representative or employee(s) must elect either to process the grievance through this procedure or the civil service's or other such body's procedure, and in no event may a grievant avail himself of both procedures.

Statutory Authority: *MS s 179A.04 subd 3*

5510.5100 STEP IV. ARBITRATION.

Subpart 1. Arbitrator. The employer and the employee representative shall endeavor to select a mutually acceptable arbitrator to hear and decide the grievance. If the employer and the employee representative are unable to agree on an arbitrator, they may request from the director of the Bureau of Mediation Services, state of Minnesota, a list of five names. The list maintained by the Director of the Bureau of Mediation Services shall be made up of qualified arbitrators who have submitted an application to the bureau. The parties shall alternately strike names from the list of five arbitrators until only one name remains. The remaining arbitrator shall hear and decide the grievance. If the parties are unable to agree on who shall strike the first name, the question shall be decided by a flip of the coin. Each party shall be responsible for equally compensating the arbitrator for his fee and necessary expenses. The arbitrator shall not have the power to add, to subtract from, or to modify in any way the terms of the existing contract. The decision of the arbitrator shall be final and binding on all parties to the dispute unless the decision violates any provision of the laws of Minnesota or rules promulgated thereunder, or municipal charters or ordinances or resolutions enacted pursuant thereto, or which causes a penalty to

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be incurred thereunder. The decision shall be issued to the parties by the arbitrator, and a copy shall be filed with the Bureau of Mediation Services, state of Minnesota.

Subp. 2. Wages. Processing of all grievances shall be during the normal workday whenever possible, and employees shall not lose wages due to their necessary participation. For purposes of this paragraph, employees entitled to wages during their necessary participation in a grievance proceeding are as follows: the number of employees equal to the number of persons participating in the grievance proceeding on behalf of the public employer; or if the number of persons participating on behalf of the public employer is less than three, three employees may still participate in the proceedings without loss of wages.

Subp. 3. Waiver. The parties, by mutual written agreement, may waive any step and extend any time limits in a grievance procedure. However, failure to adhere to the time limits may result in a forfeit of the grievance, or, in the case of the employer, require mandatory alleviation of the grievance as outlined in the last statement by the exclusive representative or employee.

Subp. 4. Severability. The provisions of this grievance procedure shall be severable, and if any provision or paragraph thereof or application of any such provision or paragraph under any circumstance is held invalid, it shall not affect any other provision or paragraph of this grievance procedure or the application of any provision or paragraph thereof under different circumstances.

Statutory Authority: *MS s 179A.04 subd 3*