

CHAPTER 5510
BUREAU OF MEDIATION SERVICES
PUBLIC EMPLOYMENT LABOR RELATIONS

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5510.1910 HEARINGS OR INVESTIGATIONS.

[For text of subps 1 to 14, see M.R. 1987]

Subp. 15. Order pending appeal. Any unit determination, unit clarification, or fair share fee challenge order appealed to the board shall continue in effect unless stayed by the commissioner upon request of one or more parties or the board.

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

History: *12 SR 2712*

5510.2010 ELECTIONS.

[For text of subps 1 to 10, see M.R. 1987]

Subp. 11. Status of scheduled election during appeal to board. In the event of an appeal to the board, the commissioner shall proceed with any pending election unless the commissioner determines that the nature of the appeal precludes a reasonable determination of the question of representation to be decided by the election. Any party wishing to stay an election pending resolution of an appeal to the board shall notify the commissioner in writing within five days of the appeal setting forth the reasons why the question of representation cannot be resolved during the pendency of the appeal. The commissioner shall respond to the notification in writing within ten days.

[For text of subps 12 to 15, see M.R. 1987]

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

History: *12 SR 2712*

5510.2310 CHANGE IN EXCLUSIVE REPRESENTATIVE STATUS.

Subpart 1. Change or transfer of exclusive representative. When an incumbent exclusive representative is replaced by a new exclusive representative as a result of a representation election or the transfer of status from one organization to another, the new exclusive representative assumes all rights and responsibilities as an exclusive representative effective the day following certification, except as otherwise provided by this part.

A. All rights and obligations of the collective bargaining agreement transfer to and are assumed by the new exclusive representative, including the processing of pending grievances made known to the new exclusive representative.

B. Except in the case of a transfer, the employer shall terminate all

payroll deduction of dues and fair share fees for the prior exclusive representative effective with the first payroll period following the certification of the new exclusive representative. Payroll deduction of dues for the new exclusive representative may begin with the first payroll period following certification, if the new exclusive representative has submitted signed authorizations for the deductions from affected employees. Payroll deduction of fair share fees for the new exclusive representative may begin once the requirements of part 5510.1410 have been satisfied. Where a new exclusive representative has been certified as the result of a transfer, the employer shall continue previous payroll deductions of dues and fair share fees and transmit such deductions to the person or place designated by the new exclusive representative.

[For text of subp 2, see M.R. 1987]

Subp. 3. [Repealed, 12 SR 2623]

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

History: 12 SR 2623

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.

[For text of subps 1 to 3, see M.R. 1987]

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 negotiations, 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. 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.

[For text of subps 4a to 6, see M.R. 1987]

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 date the right to strike matures will be established by the commissioner in conformance with this

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part. The notice must be served on the employer and the commissioner by the exclusive representative.

[For text of subp 7, items B to E, see M.R. 1987]

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 date the right to strike matures will be established by the commissioner in conformance with this part. The notice must be served on the employer and the commissioner by the exclusive representative.

[For text of subp 8, items B to F, see M.R. 1987]

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

History: *12 SR 2623; L 1987 c 186 s 15*

5510.3210 [Repealed, 12 SR 2712]

GRIEVANCE PROCEDURE

NOTE: Minnesota Rules, parts 5510 4600, 5510 4700, 5510 4800, 5510 4900, 5510 5000, and 5510 5100 are repealed, except as provided by part 5510 5190

5510.4600 [Repealed, 11 SR 2077]

5510.4700 [Repealed, 11 SR 2077]

5510.4800 [Repealed, 11 SR 2077]

5510.4900 [Repealed, 11 SR 2077]

5510.5000 [Repealed, 11 SR 2077]

5510.5100 [Repealed, 11 SR 2077]

5510.5110 POLICY.

Parts 5510.5110 to 5510.5190 are to be liberally construed so as to effectuate the purposes of Minnesota Statutes, chapter 179A, the Public Employment Labor Relations Act.

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

History: *11 SR 2077*

5510.5120 APPLICATION.

Parts 5510.5110 to 5510.5190 are applicable when a public employer and an exclusive representative of public employees have not reached agreement on or do not have access to a contract grievance procedure as required by Minnesota Statutes, section 179A.20, subdivision 4.

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

History: *11 SR 2077*

5510.5130 DEFINITIONS.

Subpart 1. Scope. For the purposes of parts 5510.5110 to 5510.5190 the words defined in this part have the meanings given them.

Subp. 2. Bureau. "Bureau" means the Bureau of Mediation Services.

Subp. 3. Days. "Days" means calendar days.

Subp. 4. Employee. "Employee" means any public employee who is employed in a position that is part of an appropriate unit for which an exclusive representative has been certified under Minnesota Statutes, section 179A.12.

Subp. 5. Grievance. "Grievance" means a dispute or disagreement regarding the application or interpretation of any term of a contract required under

Minnesota Statutes, section 179A.20, subdivision 1. If no contract exists between the exclusive representative and the employer, "grievance" means a dispute or disagreement regarding the existence of just cause in the discipline of any employee or the termination of nonprobationary employees.

Subp. 6. Nonprobationary. "Nonprobationary" means an employee who has completed an initial probationary period required as a part of the public employer's employment process.

Subp. 7. Party. "Party" means either the exclusive representative and its authorized agent or the employer and its authorized representative.

Subp. 8. Service. "Service" means personal delivery or service by the United States Postal Service, postage prepaid and addressed to the individual or organization at its last known mailing address. Service under parts 5510.5110 to 5510.5190 is effective upon deposit with the United States Postal Service, as evidenced by a postmark or dated receipt, or upon personal delivery.

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

History: *11 SR 2077*

5510.5131 COMPUTATION OF TIME.

In computing any period of time prescribed or allowed by parts 5510.5110 to 5510.5190, the day or act or event upon which a 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 holiday.

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

History: *11 SR 2077*

5510.5140 STEP ONE.

When an employee or group of employees represented by an exclusive representative has a grievance, the employee or an agent of the exclusive representative shall attempt to resolve the matter with the employee's immediate supervisor within 21 days after the employee, through the use of reasonable diligence, should have had knowledge of the event or act giving rise to the grievance. The supervisor shall then attempt to resolve the matter and shall respond in writing to the grievant and the agent of the exclusive representative within five days after the grievance is presented.

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

History: *11 SR 2077*

5510.5150 STEP TWO.

If the supervisor has not been able to resolve the grievance or has not responded in writing within the time period provided in part 5510.5140 (step one), a written grievance may be served on the next appropriate level of supervision by the exclusive representative. The written grievance shall provide a concise statement outlining the nature of the grievance, the provisions of the contract or the just cause situation in dispute, and a statement of the relief or remedy requested. The written grievance must be served on the employer's representative within 15 days after the immediate supervisor's response was due under part 5510.5140 (step one). The employer's representative shall meet with the agent of the exclusive representative within five days after service of the written grievance and both parties shall attempt to resolve the grievance. The employer's representative shall serve a written response to the grievance on the agent of the exclusive representative within five days of the meeting. The response shall contain a concise statement of the employer's position on the grievance and the remedy or relief the employer is willing to provide, if any.

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

History: *11 SR 2077*

5510.5160 STEP THREE.

If the grievance is not resolved under part 5510.5150 (step two), the exclusive representative may serve the written grievance upon the chief administrative agent of the employer or that person's designated representative within ten days after the written response required by part 5510.5150 (step two) was due. An agent of the exclusive representative shall meet with the chief administrative officer or designee within five days of service of the written grievance and they shall attempt to resolve the matter. The chief administrative officer or designee shall serve a written response to the grievance on the agent of the exclusive representative within five days of the meeting.

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

History: *11 SR 2077*

5510.5170 ARBITRATION.

Subpart 1. Referral to arbitration. If the response of the chief administrative officer or designee is not received within the period provided in part 5510.5160 (step three) or is not satisfactory, the exclusive representative may serve written notice on the employer of its intent to refer the case to arbitration within ten days after the response required by part 5510.5160 (step three) is due.

Subp. 2. Selection of arbitrator. Within ten days of the service of written notice of intent to arbitrate, the employer's chief administrative officer or designee shall consult with the agent of the exclusive representative and endeavor to mutually agree upon an arbitrator to hear and decide the grievance. If the parties do not agree upon the selection of an arbitrator, either party may request a list of impartial arbitrators from the bureau. The parties shall alternately strike names from a list of five names to be provided by the bureau until only one name remains, and the remaining name shall be the designated arbitrator. The determination of which party will commence the striking process shall be made by mutual agreement or a flip of a coin. If one party refuses to strike names from the list provided by the bureau, the other party may serve written notice of this fact upon the bureau, with a copy to the offending party. Unless it is confirmed that the parties have otherwise selected or agreed upon an arbitrator within three days of service of the notice of refusal or failure to strike names, the bureau shall designate one name from the list previously provided to the parties and the person so designated by the bureau shall have full power to act as the arbitrator of the grievance.

Subp. 3. Arbitrator's authority. The arbitrator shall have no authority to amend, modify, add to, or subtract from the terms of an existing contract. The decision and award of the arbitrator shall be final and binding upon both parties.

Subp. 4. Arbitration expenses. The employer and the exclusive representative shall share equally the arbitrator's fees and necessary expenses. Cancellation fees shall be paid by the party requesting the cancellation and any fees incurred as the result of a request for clarification shall be paid by the party requesting the clarification. Each party shall be responsible for compensating its own representatives and witnesses except to the extent provided by part 5510.5180, subpart 1.

Subp. 5. Transcripts and briefs. Because arbitration is intended to provide a simple, speedy alternative to litigation processes, the use of transcripts and briefs should be considered only in exceptional circumstances. If a verbatim record is required, it may be prepared providing the party desiring the record pays the cost and makes a copy available to the other party and the arbitrator without charge. The arbitrator may maintain written notes of the hearing and may use an electronic recording device to supplement the note taking. These notes shall be considered the arbitrator's private and personal property and shall not be made available to the parties or another third party. If a recording device is used by the arbitrator to supplement the arbitrator's notes, the arbitrator shall retain the recording for a period of 90 days following the issuance of the award.

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

History: *11 SR 2077*

5510.5180 PROCESSING OF GRIEVANCES.

Subpart 1. Release time. To the fullest extent feasible, the processing of grievances under parts 5510.5110 to 5510.5190 shall be conducted during the normal business hours of the employer. Employees designated by the exclusive representative shall be released from work without loss of regular nonovertime earnings as a result of their necessary participation in meetings or hearings held pursuant to parts 5510.5110 to 5510.5190, whenever such release is consistent with the ability of the employer to conduct safe and reasonable operations. No more than three employees shall be entitled to compensation for participation in a single meeting or hearing with respect to any one grievance.

Subp. 2. Waiver of steps. The parties may by written mutual agreement waive participation in the grievance steps in parts 5510.5140 to 5510.5160 and may similarly agree to extend the time limits established by parts 5510.5140 to 5510.5170.

Subp. 3. Time limits. A failure to raise a grievance within the time limits specified in part 5510.5140, or to initiate action at the next step of the procedure in parts 5510.5140 to 5510.5170 within the time limits in these parts shall result in forfeiture by the exclusive representative of the right to pursue the grievance. A failure of an employer representative to comply with the time periods and procedures in parts 5510.5140 to 5510.5170 shall require mandatory alleviation of the grievance as requested in the last statement by the exclusive representative.

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

History: *11 SR 2077*

5510.5190 EFFECTIVE DATE.

Subpart 1. No existing agreement. In cases where there is no current collective bargaining agreement between an exclusive representative and a public employer, parts 5510.5110 to 5510.5190 are effective May 18, 1987.

Subp. 2. Existing agreement. If an exclusive representative and a public employer have executed a collective bargaining agreement before parts 5510.5110 to 5510.5190 become effective, and the agreement relies upon the grievance procedure adopted by the commissioner to satisfy Minnesota Statutes, section 179A.20, subdivision 4, parts 5510.5110 to 5510.5190 shall become effective only upon the termination of the agreement. During the term of any agreement executed before parts 5510.5110 to 5510.5190 become effective, the provisions of the grievance procedure contained in parts 5510.4600, 5510.4700, 5510.4800, 5510.4900, 5510.5000, and 5510.5100 shall prevail.

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

History: *11 SR 2077; L 1987 c 186 s 15*