

CHAPTER 5510
BUREAU OF MEDIATION SERVICES
PUBLIC EMPLOYMENT LABOR RELATIONS

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

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

5510.0100 [Repealed, 9 SR 735]

5510.0110 APPLICATION.

Parts 5510.0110 to 5510.2310 apply to proceedings before the commissioner 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; L 1987 c 186 s 15*

5510.0200 [Repealed, 9 SR 735]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 commissioner.

The commissioner shall grant approval unless the commissioner 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 commissioner in a timely fashion. The commissioner 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; L 1987 c 186 s 15*

5510.0300 [Repealed, 9 SR 735]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 commissioner of a nature which the commissioner 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 commissioner 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 commissioner.

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. 8a. **Commissioner.** "Commissioner" means the commissioner of the Bureau of Mediation Services or an authorized agent.

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. [Repealed by amendment, L 1987 c 186 s 15]

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

Subp. 13. **Hearing officer or mediator.** "Hearing officer" or "mediator" means the commissioner 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.

Subp. 16. **Party.** "Party" means any exclusive representative, employee organization, or public employer recognized by the commissioner 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 commissioner.

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 commissioner 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 commissioner.

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 commissioner, 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 commissioner 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; L 1987 c 186 s 15

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 employees 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 commissioner shall consider a petition for clarification, decertification, or representation only:

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 commissioner 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 commissioner has issued the certification of the results of the election.

Subp. 3. Transfer bar. The commissioner 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 commissioner 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 commissioner, 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 commissioner.** All petitions shall be filed with the commissioner in person or by mail.

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

History: *9 SR 735; L 1987 c 186 s 15*

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 commissioner. 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; L 1987 c 186 s 15*

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;
- 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 commissioner 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 commissioner.

Subp. 4. **Effect of invalid authorization card.** The commissioner 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; L 1987 c 186 s 15

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 commissioner 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 commissioner 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 commissioner's determination.

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

History: 9 SR 735; L 1987 c 186 s 15

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 by-laws unless on file with the commissioner;
- C. documentation substantiating that the requirements of the constitution or by-laws 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 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 commissioner.

Subp. 7. Order. Based on the record of hearing or an investigation, the commissioner 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; L 1987 c 186 s 15

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 commissioner 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; L 1987 c 186 s 15

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 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

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for collective bargaining and contract administration services that have been provided for bargaining unit employees without regard to membership status. This information shall include the most recent documentation of the preceding year's actual expenditures and of the current year's projected expenditures;

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 commissioner, 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 commissioner.

Subp. 3. Mailing notice. Unless an alternate method of fair share notice procedure has been requested and approved by the commissioner, 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 initial 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, subsequent assessments shall be promptly remitted to the exclusive representative.

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 commissioner.

Statutory Authority: *MS s 179.02; 179A.04. subd 3 cl (f)*

History: *9 SR 735; 11 SR 669; L 1987 c 186 s 15; 15 SR 1226*

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 amount of regular membership dues in the unit;
- E. the amount of the fair share fee assessment;
- F. the specific activities or expenditures of the exclusive representative which the petitioner believes are not in conformance with the statutory prerequisites of Minnesota Statutes, section 179A.06, subdivision 3; and
- G. the date on which the petitioner received notice of the fair share fee assessment.
- 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

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 commissioner.

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 "Bureau of Mediation Services." 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 commissioner shall provide the petitioner 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 commissioner.

Statutory Authority: *MS s 179.02; 179A.04 subd 3 cl (f)*

History: 9 SR 735; 11 SR 669; L 1987 c 186 s 15; 15 SR 1226

5510.1600 [Repealed, 9 SR 735]

5510.1610 INVESTIGATION OR HEARING.

Upon receipt of a valid and timely challenge petition, the commissioner 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; L 1987 c 186 s 15

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 commissioner.

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

Subp. 4. Procedures. Upon receipt of a petition, the commissioner shall hold hearings or conduct an investigation as required. Following receipt of a petition, the commissioner 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 the commissioner's own motion, the commissioner may, in his or her discretion, hold a prehearing conference prior to a hearing. The commissioner may require the parties to file a prehearing statement containing items the commissioner 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 commissioner.

Subp. 6. Subpoenas. Requests for subpoenas for the attendance of witnesses or the production of documents must be made in writing to the commissioner 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, the sheriff's 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 commissioner.

Upon motion made at or before the time specified in the subpoena, the commissioner may quash or modify the subpoena on finding that it is unreasonable or oppressive.

Subp. 7. Intervenor. The commissioner shall permit an employee organization which submits a 30 percent showing of interest to intervene on a certification, representation, or decertification petition. The commissioner 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 commissioner'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 commissioner 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 commissioner 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 commissioner 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 commissioner may seek additional evidence and examine witnesses to the extent the commissioner deems appropriate, but shall do so on the record and with the opportunity for any party to contest the evidence.

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

Subp. 10. The record. The commissioner 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 commissioner shall retain the audiomagnetic or stenographic recording of the hearing for a period not less than 60 calendar days after issuing the order.

Subp. 10a. Requests for transcripts. The audiomagnetic recording of a hearing before the bureau may be transcribed in whole or in part upon the written request of any party or person, provided that the party or person requesting the transcript makes a request within the 60-day retention period and agrees in writing to pay full costs of preparation of the transcript.

Subp. 10b. Preparation of case record on appeal to PERB. Any person or party appealing a determination of the commissioner to the board must agree in writing to pay for the cost of preparing the transcript of the hearing upon which the determination was based, as well as the costs of duplicating all relevant exhibits and other written case file material. If the appeal involves only a portion of the elements or factors decided by the commissioner, and only parts of the hearing are relevant to that element or factor, a partial transcript and record may be purchased. The extent of the transcript and record necessary to provide the board with the complete record upon which that portion of the commissioner's determination was based will be determined by the commissioner, based upon the scope of the issues under appeal. However, any party to an appeal may request that a portion of the entire record be added to the record submitted by the commissioner to PERB. The party making such a request must agree in writing to pay for the cost of preparing this additional record. Any partial transcript shall include all testimony and evidence relevant to the issues under appeal.

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 commissioner 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 commissioner determines that the request could not have been filed earlier and that the rights of a party will be substantially affected by denial.

The commissioner may, at the commissioner's 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 commissioner is sufficient.

Subp. 12. Conduct of hearing. Unless the commissioner 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 commissioner 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 commissioner.

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 commissioner.

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

F. When all parties and witnesses have been heard, final argument may, in the discretion of the commissioner, be permitted. The commissioner 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 commissioner 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 commissioner 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 commissioner 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 commissioner must be based upon the record.

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 179.02; 179A.04 subd 3 para (f)*

History: *9 SR 735; L 1987 c 186 s 15; 12 SR 2712; 15 SR 1226; 17 SR 1279*

5510.2000 [Repealed, 9 SR 735]

5510.2010 ELECTIONS.

Subpart 1. **Showing of interest.** The commissioner 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 commissioner 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 cutoff 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 cutoff date and are identified on a list established by the commissioner shall be eligible to vote in an election subject to this chapter.

Subp. 5. Correction of voter eligibility list.

A. The commissioner 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 cutoff 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 cutoff 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 commissioner 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 commissioner which must be received by the commissioner 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 commissioner shall mail a ballot, return envelope, and a letter of explanation to the voter.

Absentee ballots must be received by the commissioner 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 commissioner determines, unless the commissioner deter-

mines 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 commissioner 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 commissioner 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 commissioner.

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 commissioner 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 commissioner shall assist the voter privately in marking the ballot.

A voter who has been mailed an absentee ballot by the commissioner 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 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.

Subp. 12. Tabulation of ballots. All ballots cast by eligible voters shall be tabulated by the commissioner 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.

The commissioner 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 commissioner 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 commissioner shall retain all election ballots and materials for at least 60 calendar days.

Subp. 14. Runoff election. When a ballot contains more than two choices and none of the choices receives a majority of the valid votes cast, a runoff 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 runoff 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 para (f)*

History: 9 SR 735; L 1987 c 186 s 15; 12 SR 2712

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 commissioner. 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 commissioner 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 commissioner 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; L 1987 c 186 s 15

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 commissioner.

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 commissioner 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; L 1987 c 186 s 15

5510.2300 [Repealed, 9 SR 735]

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 represen-

tation 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.

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. [Repealed, 12 SR 2623]

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

History: 9 SR 735; 12 SR 2623

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

Statutory Authority: *MS s 179A.04 subd 4 para (f)*

History: 9 SR 735; 13 SR 1275

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 commissioner.

The commissioner shall grant approval unless the commissioner 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 commissioner in a timely fashion. The commissioner 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; L 1987 c 186 s 15

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 5510.0310.

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 commissioner. The notice may be served on forms available from the commissioner 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 commissioner, and the commissioner 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 commissioner 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 commissioner upon request by a party adversely affected by the failure to provide timely notice or the commissioner's own motion. A request or motion to assess a penalty shall be made in writing and served upon the commissioner 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 commissioner'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 commissioner 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 commissioner's own motion to assess a penalty for late notice, the commissioner shall investigate the matter pursuant to part 5510.1910. If the commissioner finds that the late notice did not prejudice the commissioner or the other party, the commissioner 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; L 1987 c 186 s 15*

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. **Commissioner initiation of mediation.** When it is in the public interest, the commissioner 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 commissioner 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 commissioner. Mediation meetings are informal and must be limited by the commissioner to matters relevant to the settlement of the dispute. The parties must continue to participate in a mediation meeting until excused by the commissioner. 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 commissioner when, in the commissioner'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 commissioner. The commissioner may close a meeting to the public prior to its start or at any time during the meeting.

Subp. 5a. **Meetings of governing bodies.** When the commissioner determines that it is in the interest of resolution of a dispute, the commissioner 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 commissioner.

No closed meeting may be authorized when the commissioner or a representative of the commissioner 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 commissioner determines that a closed meeting is necessary, but the commissioner cannot be physically present at the meeting and a timely and valid notice of intent to strike has been received by the bureau, the commissioner 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. [Repealed, 13 SR 1275]

Statutory Authority: *MS s 179.02; 179A.04 subd 3 cl (f)*

History: *9 SR 735; 10 SR 997; L 1987 c 186 s 15; 15 SR 1226*

5510.2900 [Repealed, 9 SR 735]

5510.2905 CONFIDENTIAL INFORMATION.

Subpart 1. **Mediation information.** Information disclosed to the commissioner or an authorized agent by any party during mediation, and all files, records, reports, documents, or other papers received or prepared by the commissioner during the performance of duties and responsibilities related to mediation of a dispute are classified as protected nonpublic data with regard to data not on individuals and as confidential data on individuals, except to the extent the commissioner determines to unclassify such data in the referral of a dispute to interest arbitration or to identify the general nature of or parties to a labor dispute.

Subp. 2. **Final positions.** Final positions submitted by a party in conjunction with a dispute that has been referred to interest arbitration are regarded as protected nonpublic data with regard to data not on individuals and as confidential data on individuals until both parties have filed their final positions with the commissioner under part 5510.2930, subpart 4. The commissioner may release the information to the board, and the board may release the information to the arbitration panel, to fulfill procedural requirements of the act and parts 5510.2410 to 5510.3210, but the information shall remain nonpublic and confidential until the commissioner has affirmed that final positions have been filed by both parties or until an

interest arbitration hearing is commenced by the arbitration panel, at which time the final positions are classified as public data.

Statutory Authority: *MS s 179A.04 subd 4 para (f)*

History: *13 SR 1275*

5510.2910 [Repealed, 13 SR 1275]

5510.2915 MEDIATION PERIOD.

For all public employees except teachers, mediation periods referred to in the act commence on the day after a request for mediation is filed with the commissioner. For teachers, mediation periods commence on the day the first mediation conference is convened.

Statutory Authority: *MS s 179A.04 subd 4 para (f)*

History: *13 SR 1275*

5510.2930 REFERRAL TO ARBITRATION.

Subpart 1. Referral. The commissioner may refer a matter to the board for arbitration when the commissioner has determined that further mediation efforts would serve no purpose and:

A. in the case of essential employees, either or both parties have requested arbitration; or

B. in the case of nonessential employees, a request to arbitrate has been made by one party and has been agreed to by the other within 15 days of the request.

Requests for arbitration and agreements to arbitrate must be in writing and be served on the other party and the commissioner under part 5510.0310, subpart 19. The requests and agreements are binding on the parties except to the extent they otherwise agree in writing. An offer to arbitrate for nonessential employees that has not been accepted in writing within the 15-day period shall be considered rejected and withdrawn.

Subp. 2. Form of arbitration. All interest arbitration shall be conventional arbitration except:

A. if the parties agree in writing to limit the arbitrator's authority to final offer item-by-item or final offer total-package; or

B. if the case involves a unit of principals and assistant principals, the panel must use final offer item-by-item arbitration.

Subp. 3. Unresolved issues. In requesting or agreeing to interest arbitration, each party shall list all issues, items, or matters not previously agreed upon. Based upon the submissions of the parties and prior efforts to mediate the dispute, the commissioner shall determine the unresolved items that will be submitted to arbitration.

Subp. 4. Final positions. When an agreement or requirement to arbitrate has been established, and the commissioner has determined the items to be submitted to arbitration, the commissioner shall certify the matters to the board and direct each party to submit their final position on the items certified by the commissioner. Final positions shall be presented in the form of the contract language desired by each party to resolve the matter in dispute. Final positions must be submitted to the commissioner within 15 days of the date when the commissioner certifies the matter to the board. The deadline for submitting final positions may be extended a reasonable period of time by the commissioner upon an adequate and timely showing of good cause by a party.

If the arbitration form is a final offer variety, the final positions of the parties may not be withdrawn or amended except by mutual written consent or to correct nonsubstantive errors of a clerical-technical nature or matters solely of form.

Subp. 5. Forwarding to the board. After the date for the filing of final positions has passed, the commissioner shall forward the matter and any final positions that have been received to the board. When final positions have been received from both parties, the commissioner shall provide each party with a copy of the opposing party's final positions. The board may provide copies of final positions to the arbitration panel, but part 5510.2905, subpart 2, shall govern the protected nature of the final positions.

Subp. 6. Effect of untimely final positions. The failure of a party to submit timely final positions on an item that has been submitted to final-offer arbitration shall be noted by the

arbitration panel and shall result in a default award unless the delinquent party, in the sole discretion of the panel, can demonstrate good cause for the delinquency, in which case the panel may proceed as if the delinquency had not occurred. The failure of a party to submit timely final positions in a conventional arbitration matter shall be noted by the arbitration panel and may be considered by the panel in weighing the testimony, evidence, and overall good faith behavior of that party with respect to the items before the panel.

Subp. 7. **Continued mediation.** The commissioner may continue efforts to aid the parties in resolving issues after a matter has been certified for arbitration.

Statutory Authority: *MS s 179A.04 subd 4 para (f)*

History: *13 SR 1275*

5510.3000 [Repealed, 9 SR 735]

5510.3005 STRIKES.

Subpart 1. **Notice.** A notice of an intent to strike must be in writing and served upon the employer and the commissioner under parts 5510.2410 to 5510.3210. The notice is timely when the requirements of Minnesota Statutes, section 179A.18, have been fulfilled.

Subp. 2. **Dates right to strike matures and terminates.** The dates the right to strike matures and terminates shall be determined by the commissioner in accordance with Minnesota Statutes, section 179A.18, and the commissioner shall provide written notice of the dates to the parties. No strike shall commence during the first ten days after receipt of a notice of intent to strike.

Subp. 3. **Renewal of intent to strike notice.** Except for teachers, a notice of intent to strike may be renewed by serving a written notice on the employer and the commissioner not sooner than five days before the termination of a right to strike. In the event the renewal is served, a new ten-day waiting period shall apply and the commissioner shall reestablish the dates when the right to strike matures and terminates. Teachers are limited to one intent to strike notice per contract negotiation period.

Statutory Authority: *MS s 179A.04 subd 4 para (f)*

History: *13 SR 1275*

5510.3010 [Repealed, 13 SR 1275]

5510.3100 [Repealed, 9 SR 735]

5510.3110 [Repealed, 13 SR 1275]

5510.3200 [Repealed, 9 SR 735]

5510.3210 [Repealed, 12 SR 2712]

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]

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]

GRIEVANCE PROCEDURE

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 alter-

nately 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.

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Subp. 2. **Existing agreement.** If an exclusive representative and a public employer have executed a collective bargaining agreement before May 18, 1987, 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 May 18, 1987, the provisions of the grievance procedure contained in Minnesota Rules 1987, 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*