

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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5510.0100 [Repealed, 9 SR 735]

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

5510.0110 APPLICATION.

Parts 5510.0110 to 5510.2310 apply to proceedings before the commissioner involving matters of representation under the act.

Statutory Authority: *MS s 179.02; 179.82; 179A.04; 179A.16; 626.892*

History: *9 SR 735; L 1987 c 186 s 15; 46 SR 1387*

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5510.0210 POLICY AND WAIVER.

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

B. The commissioner must approve a waiver request under item A unless the commissioner determines that waiving the requirement would likely result in significant harm to the general public or to specific nonparties or is likely to substantially impair or frustrate the act's intent or purposes.

C. The waiver request must be made in writing to the commissioner in a timely fashion. The commissioner must set forth in writing the reasons for granting or denying the waiver.

Statutory Authority: *MS s 179.02; 179.82; 179A.04; 179A.16; 626.892*

History: *9 SR 735; L 1987 c 186 s 15; 46 SR 1387*

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5510.0310 DEFINITIONS.

Subpart 1. **Scope.** For the purpose of parts 5510.0110 to 5510.2310, the terms defined in this part have the meanings given them.

Subp. 1a. **Act.** "Act" means the Public Employment Labor Relations Act under Minnesota Statutes, sections 179A.01 to 179A.25.

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 that 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. 3a. **Appropriate unit or unit.** "Appropriate unit" or "unit" has the meaning given in Minnesota Statutes, section 179A.03, subdivision 2.

Subp. 4. [Repealed, 46 SR 1387]

Subp. 5. [Repealed, 23 SR 1564]

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 granting 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 wish to be represented by the petitioner.

Subp. 8a. **Commissioner.** "Commissioner" means the commissioner of the bureau or an authorized agent.

Subp. 9. **Decertification petition.** "Decertification petition" means a petition filed by an individual employee or group of employees stating that:

A. the exclusive representative no longer represents the majority of the employees in an appropriate unit; and

B. at least 30 percent of the employees no longer wish to be represented by the exclusive representative.

Subp. 10. **Determination of affiliation or affiliation.** "Determination of affiliation" or "affiliation" means determining the 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 commissioner-issued order, the day after issuance unless otherwise provided.

Subp. 12a. **Employee.** "Employee" has the meaning given in Minnesota Statutes, section 179A.03, subdivision 14.

Subp. 12b. **Employee organization.** "Employee organization" has the meaning given in Minnesota Statutes, section 179A.03, subdivision 6.

Subp. 12c. **Employer.** "Employer" has the meaning given in Minnesota Statutes, section 179A.03, subdivision 15.

Subp. 12d. **Exclusive representative.** "Exclusive representative" has the meaning given in Minnesota Statutes, section 179A.03, subdivision 8.

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 the dates designated under 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 before a labor contract expires:

- 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:

A. an exclusive representative, employee organization, or public employer recognized by the commissioner whose legal rights, duties, and privileges are directly determined in proceedings under parts 5510.0110 to 5510.3005; or

B. a public employee who has filed a 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:

A. the exclusive representative no longer represents the majority of employees in an appropriate unit; and

B. 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, unless another manner of service is required by law, delivering a document electronically, in person, by facsimile, or by United States mail, postage prepaid, addressed to the bureau or a party at its last known address.

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

Subp. 21. [Repealed, 46 SR 1387]

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

Subp. 23. **Unfair election practice.** "Unfair election practice" means a practice or action that affects the result of a certification, representation, or decertification election, specifically:

A. any prohibition defined in part 5510.2110 or a violation of a commissioner-issued election order; and

B. any unfair practice as defined under Minnesota Statutes, section 179A.13, committed by an:

- (1) employer or its agents;
- (2) employee organization or its agents; or
- (3) employee.

Subp. 24. **Unit clarification or clarification petition.** "Unit clarification" or "clarification petition" means the commissioner's determination 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 179.02; 179.82; 179A.04; 179A.16; 626.892*

History: *9 SR 735; L 1987 c 186 s 15; 23 SR 1564; 27 SR 637; 46 SR 1387*

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5510.0320 FILING AND SERVICE.

Subpart 1. **Effecting service.** Unless otherwise provided under parts 5510.0110 to 5510.2310, service on the commissioner or a party must comply with the filing requirements under this part.

Subp. 2. **Filing; when effective.**

A. Unless otherwise provided by law, a document filed under parts 5510.0110 to 5510.2310 is effective:

- (1) upon receipt; and
- (2) if it is received Monday through Friday before 4:30 p.m.

B. A document received Monday through Friday after 4:30 p.m. is effective the next working day that is not a legal holiday.

C. A document received on a Saturday, Sunday, or legal holiday is deemed to be filed on the next working day that is not a legal holiday.

Subp. 3. **Filing method.** Unless another manner of filing is required by law, a document may be filed:

- A. in person, but if filing at the bureau, between only 8:00 a.m. and 4:30 p.m.;
- B. by facsimile;
- C. by United States mail, postage prepaid, and addressed to the bureau or a party at its last known address; or
- D. electronically, with the express, prior written consent of the recipient that has provided an e-mail address for the filing purpose.

Subp. 4. **Electronic filing.**

A. Unless otherwise provided by law, a document filed electronically must contain an electronic signature.

B. For purposes of this subpart, "electronic signature" has the meaning given in Minnesota Statutes, section 325L.02, paragraph (h).

Statutory Authority: *MS s 179.02; 179.82; 179A.04; 179A.16; 626.892*

History: *46 SR 1387*

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5510.0330 COMPUTING TIME.

When computing a period prescribed or allowed under parts 5510.0110 to 5510.2310, the day, act, or event on which the designated period begins to run is not included. The last day of the period is included unless it is a Saturday, Sunday, or holiday.

Statutory Authority: *MS s 179.02; 179.82; 179A.04; 179A.16; 626.892*

History: *46 SR 1387*

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5510.0400 [Repealed, 9 SR 735]

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5510.0410 FILING PETITION.

Subpart 1. **Conditions.**

A. To file a petition, an employee organization or exclusive representative must have:

(1) a written constitution or bylaws that provide for:

(a) election of officers;

(b) filling of vacancies in elected offices; and

(c) a purpose, in whole or in part, of dealing with public employers concerning grievances and terms and conditions of employment; and

(2) the petition signed by an authorized representative of the employee organization.

B. To file a petition, an employer must have the petition signed by the employer's authorized representative.

C. To file a petition, a public employee must be included in an appropriate unit for which there is an exclusive representative.

Subp. 2. **Eligibility; single-party petition.**

A. An employee organization may file a petition for:

(1) certification of exclusive representative;

(2) challenge of affiliation; and

(3) representation.

B. An employer may file a petition for:

(1) certification of exclusive representative;

(2) unit clarification;

(3) amendment of certification; and

(4) challenge of affiliation.

C. An exclusive representative may file a petition 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 a petition for:

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

Subp. 3. Eligibility; joint-party petition.

A. As provided under Minnesota Statutes, section 179A.12, subdivision 2, 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 and amendment of certification.

C. Two or more employee organizations may jointly file a petition that a single employee organization is entitled to file.

Subp. 4. **Petition requirements.** A petition must include the name, address, e-mail address, and telephone 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 179.02; 179.82; 179A.04; 179A.16; 626.892*

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5510.0510 LIMITATION ON FILING PETITION.

Subpart 1. **Contract bar.** If there is an exclusive representative and an effective labor contract, the commissioner must only consider a petition for clarification, decertification, representation, or certification when the:

- A. petition is submitted during the open-window period or after the contract's expiration date;
- B. petition is submitted jointly by the employer and the exclusive representative; or
- C. commissioner determines that the interests of good labor relations warrant the commissioner to consider the petition during the life of the existing contract.

Subp. 2. **One-year election bar.** Unless otherwise provided under Minnesota Statutes, section 179A.12, subdivision 12, when a certification election, representation election, or decertification election has been held, a petition seeking an election must not be entertained for a one-year period from the date the commissioner has issued the order certifying the election results.

Subp. 3. **Transfer bar.** The commissioner may 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.**

A. A petition raising a question of certification, representation, or decertification must not be considered after an impasse has been certified if:

- (1) there is an exclusive representative and an effective labor contract; and
- (2) an impasse in negotiating a successor contract has been certified for arbitration under Minnesota Statutes, section 179A.16, subdivision 1 or 2.

B. A bar under item A continues until the arbitration award is issued and a contract is executed according to Minnesota Statutes, section 179A.20, subdivision 1.

Subp. 5. [Repealed, 46 SR 1387]

Subp. 6. **Constitution and bylaws.** Unless on file with the commissioner, a copy of the employee organization's constitution or bylaws in effect at the time of petition 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 served on commissioner.** All petitions concerning representation matters under parts 5510.0110 to 5510.2310 must be served on the commissioner.

Statutory Authority: *MS s 179.02; 179.82; 179A.04; 179A.16; 626.892*

History: *9 SR 735; L 1987 c 186 s 15; 23 SR 1564; 46 SR 1387*

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5510.0600 [Repealed, 9 SR 735]

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5510.0610 WITHDRAWAL.**Subpart 1. Generally.**

A. A certification, representation, or decertification petition or a showing of interest may be withdrawn by a party at any point before the fifth calendar day after the commissioner issues an appropriate unit determination.

B. A clarification, transfer of exclusive representative status, amendment of certification, or affiliation petition may be withdrawn at any time before the hearing on the petition closes.

C. A withdrawal must either be stated on the record at the hearing or be in writing and served on the commissioner as provided under parts 5510.0110 to 5510.2310.

Subp. 2. Certification election.

A. For a certification election, if an employee organization withdraws, and no other employee organization has petitioned or intervened, the petition must be dismissed.

B. If another employee organization has also petitioned or has intervened, the matter must proceed under parts 5510.0110 to 5510.2310, but the withdrawing organization must not be listed on the ballot.

Subp. 3. Representation election.

A. For a representation election, if an incumbent exclusive representative withdraws, the matter must be processed as though a certification petition had been filed by the challenging employee organization.

B. A challenging employee organization that withdraws according to parts 5510.0110 to 5510.2310 must not be listed on the ballot. If all challengers have withdrawn, the petition must be dismissed.

Subp. 4. Decertification election.

A. For a decertification election, if a petitioner withdraws and no other employee organization has petitioned or intervened, the petition must be dismissed.

B. If the petitioner withdraws but another employee organization that has petitioned or intervened does not withdraw, the matter must be processed as a representation petition.

Statutory Authority: *MS s 179.02; 179.82; 179A.04; 179A.16; 626.892*

History: *9 SR 735; L 1987 c 186 s 15; 46 SR 1387*

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5510.0710 CERTIFICATION, REPRESENTATION, AND DECERTIFICATION PETITIONS.

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

A. the name, address, e-mail address, and telephone 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 on whether there is an effective labor contract and the contract's 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.**

A. Evidence of a showing of interest in the form of authorization signatures must accompany all petitions. An adequate showing of interest necessary to conduct an investigation or hearing is constituted by authorization signatures from 30 percent or more of the estimated number of employees in the established or proposed appropriate unit.

B. Evidence of a showing of interest may continue to be submitted until the hearing closes.

Subp. 3. **Employer-provided information.**

A. An employer must provide to the exclusive representative the name, home mailing address, and telephone number for all employees in the established appropriate unit if:

(1) the information is requested by the exclusive representative; or

(2) the commissioner orders the employer to release the information.

B. A request or order under this subpart must be consistent with Minnesota Statutes, section 13.43, subdivision 6.

Statutory Authority: *MS s 179.02; 179.82; 179A.04; 179A.16; 626.892*

History: *9 SR 735; 46 SR 1387*

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5510.0810 AUTHORIZATION SIGNATURES.

Subpart 1. **Confidentiality.** Authorization signatures submitted in support of a petition are privileged and confidential information and may only be withdrawn by the petitioner.

Subp. 2. **Valid authorization signatures.**

A. Authorization signatures must be in the form of individual authorization cards and include:

- (1) a statement reflecting the employee's support for the petition's purpose;
- (2) the legibly printed name of the employee making the authorization;
- (3) the employee's signature; and
- (4) the date the employee signed the card.

B. Authorization cards may contain the employee organization's name, address, e-mail address, and telephone number.

Subp. 3. **Invalid authorization card.** An authorization card is invalid if it:

- A. does not include the information and statements required under subpart 2;
- B. contains statements of explanation, interpretation, or advice;
- C. is modified or altered in any way; or
- D. is dated more than six months before the commissioner receives the petition.

Subp. 4. **Effect of invalid authorization card.**

A. The commissioner may not include invalid authorization cards when determining whether a petition has the necessary showing of interest.

B. If there is evidence that authorization cards submitted to establish a showing of interest were fraudulently obtained or submitted:

- (1) the petition or intervention must be denied; and
- (2) a one-year election bar for that unit must be applied to the party submitting fraudulent cards.

Statutory Authority: *MS s 179.02; 179.82; 179A.04; 179A.16; 626.892*

History: *9 SR 735; L 1987 c 186 s 15; 46 SR 1387*

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5510.0910 UNIT CLARIFICATION PETITION.

A petition for unit clarification must include:

- A. a statement on whether there is an effective labor contract and the contract's 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 179.02; 179.82; 179A.04; 179A.16; 626.892*

History: *9 SR 735; 46 SR 1387*

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5510.1000 [Repealed, 9 SR 735]

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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*

History: *9 SR 735*

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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. Certification status.

A. If the commissioner determines that the affiliation of an employee organization is improper according to Minnesota Statutes, section 179A.06, subdivision 2, the commissioner must:

(1) withdraw the certification of the involved employee organization as the exclusive representative for the unit for which the challenge was raised; and

(2) dismiss any matters pending before the commissioner involving questions of representation or mediation.

B. If the commissioner determines that the affiliation of an employee organization is proper according to Minnesota Statutes, section 179A.06, subdivision 2, the commissioner must affirm its standing as a proper employee organization and dismiss the challenge petition.

Subp. 3. Contract status. Upon the withdrawal of the status of exclusive representative after a commissioner determination of improper affiliation, a labor contract is void on the date of the determination if:

- A. the contract is within the meaning of Minnesota Statutes, section 179A.20;
- B. the contract covers employees of the unit for which withdrawal was ordered; and
- C. the involved organization is a party to the contract.

Statutory Authority: *MS s 179.02; 179.82; 179A.04; 179A.16; 626.892*

History: *9 SR 735; L 1987 c 186 s 15; 46 SR 1387*

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5510.1200 [Repealed, 9 SR 735]

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5510.1210 TRANSFERRING 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 effective constitution or bylaws, unless on file with the commissioner;

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

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

E. a copy of the effective 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 to 6.

Subp. 3. **Notice of transfer.**

A. The exclusive representative must provide advance written notice of the proposed transfer to each member of the exclusive representative in the appropriate unit.

B. The notice must state the time and location of the meeting to be held by the exclusive representative relating to the proposed transfer.

Subp. 4. **Meeting.** The exclusive representative must hold a meeting to permit members to discuss the proposed transfer at a time and location that 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 approve or reject the proposed transfer according to the exclusive representative's constitutional requirements or bylaws.

Subp. 6. **Petition.** The exclusive representative must file with the commissioner a petition if:

A. all employees in the appropriate unit have been afforded the opportunity to become members of the exclusive representative; and

B. a majority of the exclusive representative's members voting in the election under subpart 5 vote in favor of the transfer.

Subp. 7. **Order.** Based on the record of hearing or an investigation, the commissioner must:

A. issue a transfer of exclusive representative order;

B. order a representation election; or

C. dismiss the petition.

Subp. 8. **Rights of incoming exclusive representative.** The incoming exclusive representative has all rights and obligations established by the effective labor contract and the act and must administer the labor contract until it expires.

Statutory Authority: *MS s 179.02; 179.82; 179A.04; 179A.16; 626.892*

History: *9 SR 735; 11 SR 141; L 1987 c 186 s 15; 23 SR 1564; 46 SR 1387*

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5510.1300 [Repealed, 9 SR 735]

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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. **Retaining rights and duties.** An exclusive representative abandoning its status retains the rights and obligations under the act and under the labor contract until the labor contract expires.

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

Subp. 5. **Certification election allowed.** If abandonment occurs, there is no bar to conducting a certification election.

Statutory Authority: *MS s 179.02; 179.82; 179A.04; 179A.16; 626.892*

History: *9 SR 735; L 1987 c 186 s 15; 46 SR 1387*

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5510.1810 JOINT-PARTY PETITION.

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

- A. 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.** 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 179.02; 179.82; 179A.04; 179A.16; 626.892*

History: *9 SR 735; 23 SR 1564; 46 SR 1387*

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5510.1910 HEARINGS OR INVESTIGATIONS.

Subpart 1. **Policy.** The commissioner must accept stipulations or agreements that are consistent with bureau rules and the act.

Subp. 2. **Applicability and scope.**

A. This part applies to a hearing or investigation when provided under this chapter or chapter 5530.

B. For a hearing or investigation on a petition under this chapter, the hearing or investigation must address all issues raised by a valid petition that are within the commissioner's jurisdiction.

Subp. 2a. **Virtual hearing.** If all parties agree, the hearing may take place virtually through an online conferencing or videoconferencing tool.

Subp. 3. **Consolidating hearings.** The commissioner may consolidate one or more hearings or petitions if the commissioner determines that consolidation will serve the act's purposes.

Subp. 4. **Commissioner's duties.** Upon receiving a petition under parts 5510.0410 to 5510.1810, the commissioner must:

- A. hold a hearing or conduct an investigation as required under Minnesota Statutes, section 179A.12, subdivision 5; and

B. 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.

A. The purpose of a prehearing conference is to:

- (1) simplify the issues to be determined;
- (2) obtain stipulations regarding foundation for testimony or exhibits;
- (3) identify the proposed witnesses for each party;
- (4) consider other matters that may be necessary or advisable; and
- (5) if possible, reach a settlement, which if reached must be made a part of the record.

B. Upon the request of a party or the commissioner's motion, the commissioner may:

- (1) hold a prehearing conference; and
- (2) require the parties to file a prehearing statement containing items the commissioner deems necessary to fulfill the purposes of the prehearing conference.

C. A prehearing conference is informal. Agreements simplifying issues, amendments, stipulations, or other matters may be entered on the record or made the subject of a commissioner order.

Subp. 6. Subpoenas.

A. Requests for subpoenas for the attendance of witnesses or the production of documents must be made in writing to the commissioner and:

- (1) contain a brief statement demonstrating the relevance of the testimony or evidence sought;
- (2) identify all persons to be subpoenaed; and
- (3) identify with specificity any documents sought.

B. A subpoena must be served by the sheriff, the sheriff's deputy, or any other individual who is not a party in accordance with rule 45.02 of the Rules of Civil Procedure for the District Courts of Minnesota.

C. When a subpoena is served, the cost of service, fees, and expenses of any witness subpoenaed must be paid by the party at whose request the witness appears.

D. The individual serving a subpoena must make proof of service by filing the subpoena and an affidavit of service with the commissioner.

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

Subp. 7. Intervenor.

A. The commissioner must permit an employee organization that submits a 30 percent showing of interest to intervene on a certification, representation, or decertification petition.

B. The commissioner must 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. Evidence, witnesses, and testimony.

A. Parties may present evidence, rebuttal testimony, and argument on the issues and may cross-examine witnesses. Individuals or organizations having an appearance status may only review exhibits and make statements for the record.

B. A 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 motion, witnesses may be excluded from the hearing room so that they cannot hear other witness testimony.

Subp. 9. Rules of evidence.

A. The commissioner may admit all evidence that 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 must give effect to the rules of privilege recognized by law. Evidence that is incompetent, immaterial, or unduly repetitious may be excluded.

B. All evidence to be considered in the case, including all records and documents possessed by the commissioner or an accurate copy, must be made a part of the record. Matters not part of the record must not be considered when determining the case.

C. The commissioner may seek additional evidence and examine witnesses to the extent the commissioner deems appropriate but must do so on the record and with the opportunity for a party to contest the evidence.

D. The commissioner may take judicial notice of undisputed facts.

Subp. 10. Hearing record.

A. The commissioner must maintain the record for 90 calendar days in each case under this part. The record must contain:

- (1) all pleadings, motions, and orders;
- (2) evidence received;
- (3) offers of proof, objections, and rulings on objections;
- (4) all memoranda or data submitted by a party on the case; and
- (5) a hearing recording or transcript.

B. The commissioner must keep the hearing recording or transcript for not less than 90 calendar days after issuing a determination under subpart 14.

Subp. 10a. **Requests for transcripts.** A hearing recording may be transcribed in whole or in part upon the written request of a party or person if the party or person requesting the transcript:

- A. makes a request within the 90-day retention period under subpart 10, item B; and
- B. agrees to pay the full costs for preparing the transcript.

Subp. 10b. **Preparing case record on appeal.**

A. An individual or party appealing a determination under subpart 14 must agree in writing to pay for the:

(1) cost of preparing the transcript of the hearing upon which the determination was based; and

(2) costs of duplicating all relevant exhibits and other written case-file material.

B. An appealing individual or party may purchase a partial transcript and record if:

(1) the appeal involves only a portion of the elements or factors decided by the commissioner; and

(2) only parts of the hearing are relevant to that element or factor.

C. For a request under item B, the commissioner must determine, on the basis of the elements or factors under appeal, the extent of the transcript and record necessary to provide a complete record upon which that portion of the commissioner's determination was based.

D. A party to an appeal may request that a portion of the entire record be added to the record submitted by the commissioner. The party making a request under this item must agree in writing to pay for the cost of preparing the additional record. Any partial transcript must include all testimony and evidence relevant to the issues under appeal.

Subp. 11. **Continuances.**

A. The commissioner must grant a hearing continuance or postponement request only upon a showing of substantial cause.

B. All requests under item A must be served according to parts 5510.0110 to 5510.2310. Requests served less than six calendar days before a hearing must 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.

C. The commissioner must continue a hearing that has already started whenever the commissioner determines a continuance is needed to determine the issues. For a continuance under this item, the commissioner must give oral notice on the record.

Subp. 12. **Conducting hearing.** Unless the commissioner determines that the public interest will be otherwise served, a hearing under this part must be conducted according to this subpart.

A. After opening the hearing, the commissioner must state the procedural rules for the hearing, including that:

- (1) all parties may present evidence and cross-examine witnesses;
- (2) all parties have a right to be represented at the hearing;
- (3) an 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, is waived if the objecting party continues to participate 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 before the hearing must 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 presents its evidence. The other parties 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 be permitted. The commissioner must 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 must:

- (1) close or continue the hearing; and
- (2) order when the record of the proceedings closes.

Subp. 13. **Disrupting hearing.**

A. Recording devices, other than those provided by the commissioner or authorized by the commissioner with the consent of all parties, must not be operated in the hearing room during the hearing.

B. An individual may not:

- (1) interfere with the free, proper, and lawful access to or egress from the hearing room;
- or

(2) interfere or threaten to interfere with the hearing.

Subp. 14. **Commissioner determinations.** All determinations issued by the commissioner must be based on the record.

Subp. 15. **Order pending appeal.** A unit determination or unit clarification that is appealed continues in effect unless stayed by the commissioner upon request of one or more parties or as directed by an appellate court.

Statutory Authority: *MS s 179.02; 179.82; 179A.04; 179A.16; 626.892*

History: *9 SR 735; L 1987 c 186 s 15; 12 SR 2712; 15 SR 1226; 17 SR 1279; 23 SR 1564; 46 SR 1387*

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5510.2010 ELECTIONS.

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

Subp. 2. **Election method.** If the commissioner orders an election, it must be conducted by secret ballot either at a site of employment or by mail, as determined under Minnesota Statutes, section 179A.12, subdivision 7.

Subp. 3. **Election order.** An election order must be served on all parties at least ten calendar days before the date of the on-site election or the date for mailing ballots for a mail-ballot election. The election order must:

- 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. if applicable, identify the date for mailing ballots in a mail-ballot election;
- I. include any other conditions that are necessary for a fair election; and
- J. provide for an employer posting of the election order and attachments.

Subp. 4. **Voter eligibility.** All employees in the appropriate unit who are employed on the cutoff date and are identified on a list established by the commissioner are eligible to vote in an election under parts 5510.0110 to 5510.2310.

Subp. 5. **Correcting voter-eligibility list.**

A. The commissioner must determine questions on adding or deleting names on the voter-eligibility list.

B. Names must not be added to the voter-eligibility list after the hearing closes on the election petition unless:

- (1) names were inadvertently omitted; or
- (2) the cutoff date for voter eligibility is changed because of an appeal or a court order.

C. Names must be deleted from the voter-eligibility list if an:

(1) employee transfers, is promoted, or is demoted out of the unit and the action is not prohibited by the status quo order under part 5510.1910, subpart 4, item B;

(2) appeal or a court action delays the election or changes the cutoff date for voter eligibility; or

(3) eligible voter is voluntarily or involuntarily terminated and has not appealed the termination.

D. A deletion under item C must be made immediately before the polls open or ballots are tabulated.

E. 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 are permitted to vote during their work hours without loss of pay.

Subp. 7. **Election ballot.**

A. A certification election ballot must contain the following choices:

(1) the name of the employee organization that has submitted the required showing of interest; and

(2) no representation.

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

(1) the exclusive representative's name;

(2) the name of the employee organization that has submitted the required showing of interest; and

(3) no representation if the required showing of interest has been submitted according to part 5510.0710, subpart 2.

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

- (1) the exclusive representative's name;
- (2) the name of the employee organization that has submitted the required showing of interest; and
- (3) no representation.

Subp. 8. Absentee ballot.

A. An eligible voter unable to vote at an on-site election may secure an absentee ballot by submitting a written request to the commissioner. The request must be:

- (1) received by the commissioner no later than specified in the election order under subpart 3; and
- (2) dated and contain the voter's name and home mailing address, employer's name, voter's signature, bureau case number, and election date.

B. Upon receiving a timely request for an absentee ballot, the commissioner must mail to the voter a ballot, a return envelope, and a letter of explanation.

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

Subp. 9. Election procedures.

A. An election must be held on the premises where the voters are employed during hours the commissioner determines, unless the commissioner determines that the election must be held at another location, by mail ballot, or by a combination of on-site and mail balloting.

B. The parties to an on-site election may designate one observer to be present at each polling location while ballots are cast and tabulated. The commissioner may allow each party to have more than one observer.

C. The parties to a mail-ballot election may each designate one observer to be present while ballots are tabulated. The commissioner may allow each party to have more than one observer.

D. The role of an observer is to identify employees eligible to vote, and observers are subject to commissioner orders.

Subp. 10. Marking ballot.

A. A ballot must be marked according to the ballot instructions. A ballot that is defaced or identifies the voter is void. When a voter inadvertently spoils a ballot, the voter must immediately return the ballot to the commissioner, who then must destroy the spoiled ballot and provide another ballot to the voter.

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

C. A voter who has been mailed an absentee ballot by the commissioner may not vote at the on-site election.

Subp. 11. Status of scheduled election during appeal.

A. If there is an appeal, the commissioner must 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.

B. A party wishing to stay an election pending resolution of an appeal must notify the commissioner in writing within five calendar days of the appeal setting forth why the question of representation cannot be resolved while the appeal is pending.

C. The commissioner must respond to the notification under item B in writing within ten calendar days.

Subp. 12. Tabulating ballots.

A. All ballots cast by eligible voters must be tabulated by the commissioner in the presence of the election observers, if any, at the site designated in the election order under subpart 3.

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

C. The commissioner must immediately rule on each ballot as to whether it is valid, void, or blank, and the ballots must be separated accordingly.

D. Blank or void ballots must not be counted.

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

Subp. 13. Tabulating election results.

A. After tabulating the ballots, the commissioner must prepare and sign a tabulation of election results. A copy of the tabulation of election results must be furnished to each observer under subpart 9, item B or C.

B. After the tabulation, the commissioner must keep all election ballots and election materials for at least 90 calendar days.

Subp. 14. Runoff election.

A. When a ballot contains more than two choices and none of the choices receives a majority of the valid votes cast, a runoff election must be conducted between the choices receiving the greatest and second-greatest number of votes.

B. In a representation or decertification election when the exclusive representative does not qualify for a runoff election, the election must 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 results in the following:

- A. for a certification election: certification that no exclusive representative has been selected;
- B. for a representation election: certification that the exclusive representative remains certified; or
- C. for a decertification election: certification that the exclusive representative remains certified.

Subp. 16. **Certifying exclusive representative.** After an election, runoff election, or tie vote, the commissioner must certify the exclusive representative according to Minnesota Statutes, section 179A.12, subdivision 10.

Statutory Authority: *MS s 179.02; 179.82; 179A.04; 179A.16; 626.892*

History: *9 SR 735; L 1987 c 186 s 15; 12 SR 2712; 23 SR 1564; 46 SR 1387*

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5510.2110 UNFAIR ELECTION PRACTICES.

Subpart 1. **Defining unfair election practice.** 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 an on-site election;
- B. congregating in or near a polling place while the polls are open;
- C. coercing or intimidating or otherwise unlawfully attempting to influence an eligible voter; or
- D. violating an election order.

Subp. 2. Filing charges.

A. A party to an election may file with the commissioner a charge of an unfair election practice, and a copy of the charge must be served by the charging party on all other parties to the election. A charge must:

- (1) be filed within ten calendar days from the date the election results are certified;

(2) be in writing, be signed by the charging party, and state the name and address of the party against whom the charge is made; and

(3) specify the alleged unfair election practice and the facts supporting the charge.

B. If a charge of an unfair election practice is filed, the commissioner must:

(1) stay the election results pending a hearing or investigation according to part 5510.1910 if the commissioner finds that the alleged unfair election practice may have materially affected the election results;

(2) conduct a hearing or investigation on the charge according to part 5510.1910; and

(3) rescind:

(a) the certification of exclusive representative if the commissioner determines an unfair election practice occurred; or

(b) the certification of election results according to subpart 3.

Subp. 3. **Commissioner determination.** Based on a hearing or investigation under subpart 2, item B, the commissioner must issue an order on the charge. If the commissioner determines an unfair election practice occurred, the commissioner must void the election and order a new election according to Minnesota Statutes, section 179A.12, subdivision 11.

Statutory Authority: *MS s 179.02; 179.82; 179A.04; 179A.16; 626.892*

History: *9 SR 735; L 1987 c 186 s 15; 46 SR 1387*

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5510.2210 REQUESTING RECONSIDERATION.

Subpart 1. **Filing request.** Unless otherwise provided, a party may file a request for reconsideration of a commissioner order under parts 5510.0110 to 5510.2310.

Subp. 2. **Filing deadline.** A request must be filed within ten calendar days after the order date.

Subp. 3. **Required form and service.**

A. The request must:

(1) be filed in writing with the commissioner;

(2) be served on all other parties; and

(3) contain a statement of the request and the grounds supporting the request required under part 5510.5290, subpart 1, item A.

B. A charge of an unfair election practice is not grounds for reconsideration.

Subp. 4. **Staying commissioner order.** If the commissioner determines that the grounds supporting the request are raised under part 5510.5290, subpart 1, item A, the challenged order must be stayed until a hearing or investigation according to part 5510.1910 has been held and a decision is issued.

Statutory Authority: *MS s 179.02; 179.82; 179A.04; 179A.16; 626.892*

History: *9 SR 735; L 1987 c 186 s 15; 46 SR 1387*

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5510.2300 [Repealed, 9 SR 735]

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5510.2310 CHANGE IN EXCLUSIVE REPRESENTATIVE STATUS.

Subpart 1. **Change or transfer of exclusive representative.**

A. Except as otherwise provided under this part, a new exclusive representative assumes all rights and responsibilities as an exclusive representative the day after certification when an incumbent exclusive representative is replaced by the new exclusive representative as a result of:

- (1) a representation election; or
- (2) the transfer of status from one organization to another.

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

C. Except for a transfer, the employer must terminate all payroll deduction of dues for the prior exclusive representative effective with the first payroll period after the certification of the new exclusive representative. If the new exclusive representative has submitted signed authorizations from affected employees, the exclusive representative may begin deducting dues by payroll beginning with the first payroll period after certification.

D. When a new exclusive representative has been certified as the result of a transfer, the employer must continue previous payroll deductions of dues and send the 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 179.02; 179.82; 179A.04; 179A.16; 626.892*

History: *9 SR 735; 12 SR 2623; 46 SR 1387*

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

5510.2410 APPLICATION.

Parts 5510.2410 to 5510.3005 govern:

- A. negotiations between an exclusive representative and an employer;
- B. mediation;
- C. certifying unresolved items to arbitration;
- D. arbitrating unresolved items; and
- E. notifying an intent to strike.

Statutory Authority: *MS s 179.02; 179.82; 179A.04; 179A.16; 626.892*

History: *9 SR 735; 13 SR 1275; 23 SR 1564; 46 SR 1387*

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5510.2500 [Repealed, 9 SR 735]

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5510.2510 POLICY AND WAIVER.

A. Parts 5510.2410 to 5510.3005 are to be liberally construed to effectuate the act's purposes and provisions. Any requirements of parts 5510.2410 to 5510.3005 may be waived by agreement of all parties and commissioner approval.

B. The commissioner must approve a waiver under item A unless the commissioner determines that waiving the requirement would likely result in significant harm to the general public or to specific nonparties or would likely substantially impair or frustrate the act's intent or purposes.

C. The waiver request must be made in writing to the commissioner in a timely fashion. The commissioner must set forth in writing the reasons for granting or denying the waiver.

Statutory Authority: *MS s 179.02; 179.82; 179A.04; 179A.16; 626.892*

History: *9 SR 735; L 1987 c 186 s 15; 46 SR 1387*

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5510.2520 FILING AND SERVICE.

Part 5510.0320 applies to a document filed or served under parts 5510.2410 to 5510.3005.

Statutory Authority: *MS s 179.02; 179.82; 179A.04; 179A.16; 626.892*

History: 46 SR 1387

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5510.2610 DEFINITIONS.

The terms in parts 5510.2410 to 5510.3005 have the meanings given them in part 5510.0310.

Statutory Authority: *MS s 179.02; 179.82; 179A.04; 179A.16; 626.892*

History: 9 SR 735; 46 SR 1387

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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 must be served on forms available from the bureau and must include:

- A. the exclusive representative's name, address, e-mail address, and telephone number;
- B. the name, address, e-mail address, and telephone number of the exclusive representative's representative;
- C. the employer's name, address, e-mail address, and telephone number;
- D. the employer's representative's name, address, e-mail address, and telephone number;
- E. a description of the appropriate unit for which the notice is being given;
- F. the date that the effective labor contract expires, if a contract exists;
- 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. [Repealed, 46 SR 1387]

Subp. 3. [Repealed, 46 SR 1387]

Subp. 4. Late notice; fine.

A. Upon request by a party adversely affected by another party's failure to provide timely notice according to Minnesota Statutes, section 179A.14, subdivision 1, paragraph (b), or by the commissioner's motion, the party failing to give timely notice is subject to a fine according to Minnesota Statutes, section 179A.14, subdivision 1, paragraph (b).

B. A request or motion to assess a fine must be made in writing and served on the commissioner and the other party to the labor contract:

(1) within ten calendar days of the requesting party's first knowledge of the other party's desire to negotiate; or

(2) in the case of the commissioner's motion, within 15 calendar days of receiving a request for mediation assistance involving the parties and their contract.

C. A request from a party or motion by the commissioner must:

(1) specify the date of first knowledge of the desire to negotiate and the expiration date of the effective labor contract; and

(2) include a brief statement of the adverse results or impact of the late notice.

D. Upon receiving a written request or after the commissioner's motion to assess a fine for late notice, the commissioner must investigate the request or motion according to part 5510.1910. The commissioner may waive the fine according to Minnesota Statutes, section 179A.14, subdivision 1, paragraph (b).

E. The fine must be credited to the state's general fund. The fine amount or its waiver is not subject to appeal.

Statutory Authority: *MS s 179.02; 179.82; 179A.04; 179A.16; 626.892*

History: *9 SR 735; 10 SR 997; L 1987 c 186 s 15; 23 SR 1564; 46 SR 1387*

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5510.2810 PETITION FOR MEDIATION.

Subpart 1. **Petition.** A petition for mediation must be served in accordance with Minnesota Statutes, section 179A.15.

Subp. 2. **Commissioner-initiated mediation.** According to Minnesota Statutes, section 179A.15, the commissioner may initiate mediation without receiving a petition. Upon notice to the parties, mediation must proceed according to parts 5510.2410 to 5510.3005.

Subp. 3. **Serving mediation notice.** Upon receiving a petition for mediation and concluding that mediation would be useful, the commissioner must serve notice of the time and place for a mediation meeting to the exclusive representative and the employer.

Subp. 4. **Party obligation.**

A. It is the duty and obligation of the parties to comply with the notice under subpart 3.

B. 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 on the unresolved issues.

Subp. 5. **Mediation meetings.**

A. The commissioner must schedule joint or separate mediation meetings of the parties according to Minnesota Statutes, section 179A.15. Mediation meetings are informal and must be limited by the commissioner to matters relevant to settling the dispute. The parties must continue to participate in a mediation meeting until excused by the commissioner. Recording devices or methods are prohibited in mediation meetings.

B. In accordance with Minnesota Statutes, section 179A.14, subdivision 3, a mediation meeting is closed to the public unless the commissioner determines that closing the meeting will not facilitate a resolution. In all cases, a meeting is closed only after the commissioner receives a valid and timely petition for mediation or after the commissioner initiates mediation.

Subp. 5a. **Meetings of governing bodies.**

A. When the commissioner determines that it is in the interest of resolving a dispute, the commissioner must authorize a closed meeting of the public employer's governing body to review and discuss the status of negotiations and the employer's positions.

B. A closed meeting must not be authorized unless the commissioner has received a valid and timely petition for mediation or unless mediation has been initiated by the commissioner.

C. A closed meeting must not be authorized when the commissioner is not physically present at the meeting unless the commissioner has received a timely and valid notice of intent to strike.

D. The commissioner must authorize a closed meeting upon written notice to the employer's governing body and exclusive representative at least 24 hours before the closed meeting if the commissioner:

(1) determines that a closed meeting is necessary according to item A; and

(2) cannot be physically present at the meeting and the commissioner has received a timely and valid notice of intent to strike.

E. The notice under item D must:

(1) include the date, time, and place of the closed meeting of the governing body; and

(2) limit the purpose of the meeting to matters relevant to the dispute.

Subp. 6. [Repealed, 13 SR 1275]

Statutory Authority: *MS s 179.02; 179.82; 179A.04; 179A.16; 626.892*

History: *9 SR 735; 10 SR 997; L 1987 c 186 s 15; 15 SR 1226; 46 SR 1387*

Published Electronically: *July 27, 2022*

5510.2900 [Repealed, 9 SR 735]

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5510.2905 CONFIDENTIAL INFORMATION.

Subpart 1. Mediation information; data classification.

A. The following data are classified according to Minnesota Statutes, section 13.7908, subdivision 2:

- (1) information disclosed to the commissioner by a party during mediation; and
- (2) all files, records, reports, documents, or other papers received or prepared by the commissioner while performing duties and responsibilities related to mediating a dispute.

B. The commissioner may unclassify data under item A according to Minnesota Statutes, section 13.7908, subdivision 2.

Subp. 2. Final positions; data classifications.

A. Until both parties have filed their final positions with the commissioner under part 5510.2930, subpart 4, item A, final positions submitted by a party in conjunction with a dispute that has been referred to interest arbitration are regarded as:

- (1) protected nonpublic data regarding data not on individuals; and
- (2) confidential data on individuals.

B. The commissioner may release the information under item A to the arbitration panel or arbitrator to fulfill procedural requirements of the act and parts 5510.2410 to 5510.3005, but the information remains nonpublic and confidential until:

- (1) the commissioner has affirmed that final positions have been filed by both parties;
or
- (2) an interest arbitration hearing is started by the arbitration panel or arbitrator.

C. The final positions are public data after a condition occurs under item B, subitem (1) or (2).

Statutory Authority: *MS s 179.02; 179.82; 179A.04; 179A.16; 626.892*

History: *13 SR 1275; 23 SR 1564; 46 SR 1387*

Published Electronically: *July 27, 2022*

5510.2910 [Repealed, 13 SR 1275]

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5510.2915 MEDIATION PERIOD.

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

B. For teachers, mediation periods begin on the day that the first mediation meeting is convened.

Statutory Authority: *MS s 179.02; 179.82; 179A.04; 179A.16; 626.892*

History: *13 SR 1275; 46 SR 1387*

Published Electronically: *July 27, 2022*

5510.2930 CERTIFICATION TO INTEREST ARBITRATION.

Subpart 1. Certification, filing, and service.

A. The commissioner must certify a matter to arbitration:

(1) in the case of essential employees, according to Minnesota Statutes, section 179A.16, subdivision 2; or

(2) in the case of nonessential employees, according to Minnesota Statutes, section 179A.16, subdivision 1.

B. Requests for arbitration and agreements to arbitrate:

(1) must be in writing and served on the other party and filed with the commissioner according to part 5510.0320; and

(2) are binding on the parties except to the extent they otherwise agree in writing.

Subp. 2. Form of arbitration. All interest arbitration must 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 arbitration; or

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

Subp. 3. Unresolved issues. In requesting or agreeing to interest arbitration, each party must list all issues, items, or matters not previously agreed on. Based on the submissions of the parties and prior efforts to mediate the dispute, the commissioner must determine the unresolved items to be submitted to arbitration for essential employees according to Minnesota Statutes, section 179A.16, subdivision 2.

Subp. 4. Final positions.

A. When an agreement or requirement to arbitrate has been established and the commissioner has determined the items to be submitted to arbitration, the commissioner must certify the matters to arbitration and direct each party to submit its final position on the items certified by the commissioner. Final positions must be:

(1) presented in the form of the contract language desired by each party to resolve the matter in dispute; and

(2) filed with the commissioner within 15 calendar days of the certification date, but the filing deadline may be extended a reasonable period by the commissioner upon a party's adequate and timely showing of good cause.

B. If the arbitration form is a final offer, 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.

C. When final positions have been received from both parties, the commissioner must provide each party with a copy of the opposing party's final position. The commissioner may provide copies of final positions to the arbitrator, but part 5510.2905, subpart 2, governs the protected nature of the final positions.

Subp. 5. [Repealed, 23 SR 1564]

Subp. 6. **Effect of untimely final positions; final offer.** The failure of a party to submit timely final positions on an item that has been submitted to final-offer arbitration:

A. must be noted by the arbitration panel or arbitrator; and

B. results in a default award unless the delinquent party demonstrates good cause for the delinquency to the panel or arbitrator, in which case the panel or arbitrator may proceed as if the delinquency had not occurred.

Subp. 6a. **Effect of untimely final positions; conventional.** The failure of a party to submit timely final positions in conventional arbitration:

A. must be noted by the arbitration panel or arbitrator; and

B. may be considered by the panel or arbitrator in weighing the testimony, evidence, and party's overall good-faith behavior regarding the items before the panel or arbitrator.

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

Statutory Authority: *MS s 179.02; 179.82; 179A.04; 179A.16; 626.892*

History: *13 SR 1275; 23 SR 1564; 46 SR 1387*

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5510.3000 [Repealed, 9 SR 735]

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5510.3005 STRIKES.

Subpart 1. **Notice.** A notice of an intent to strike must be in writing and served on the employer and the commissioner under parts 5510.2410 to 5510.3005. The notice is timely when the requirements of Minnesota Statutes, section 179A.18, have been fulfilled.

Subp. 2. Dates that right to strike matures and terminates.

A. The dates that the right to strike matures and terminates must be determined by the commissioner according to Minnesota Statutes, section 179A.18, and the commissioner must provide written notice of the dates to the parties.

B. A strike must not begin during the first ten calendar days after the commissioner receives a notice of intent to strike.

Subp. 3. Renewing intent-to-strike notice.

A. 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 calendar days before a right to strike terminates. If the renewal is served, a new ten-calendar-day waiting period applies and the commissioner must reestablish the dates when the right to strike matures and terminates.

B. Teachers are limited to one intent-to-strike notice per contract negotiation period.

Statutory Authority: *MS s 179.02; 179.82; 179A.04; 179A.16; 626.892*

History: *13 SR 1275; 46 SR 1387*

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5510.3010 [Repealed, 13 SR 1275]

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5510.3100 [Repealed, 9 SR 735]

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5510.3110 [Repealed, 13 SR 1275]

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5510.3200 [Repealed, 9 SR 735]

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5510.3210 [Repealed, 12 SR 2712]

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5510.3300 [Repealed, 9 SR 735]

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5510.3400 [Repealed, 9 SR 735]

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- 5510.3800** [Repealed, 9 SR 735]
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- 5510.3900** [Repealed, 9 SR 735]
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- 5510.4000** [Repealed, 9 SR 735]
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- 5510.4700** [Repealed, 11 SR 2077]
Published Electronically: *June 11, 2008*
- 5510.4800** [Repealed, 11 SR 2077]
Published Electronically: *June 11, 2008*
- 5510.4900** [Repealed, 11 SR 2077]
Published Electronically: *June 11, 2008*
- 5510.5000** [Repealed, 11 SR 2077]
Published Electronically: *June 11, 2008*
- 5510.5100** [Repealed, 11 SR 2077]
Published Electronically: *June 11, 2008*

GRIEVANCE PROCEDURE**5510.5110 POLICY.**

Parts 5510.5110 to 5510.5180 are to be liberally construed to effectuate the purposes of Minnesota Statutes, chapter 179A, the Public Employment Labor Relations Act.

Statutory Authority: *MS s 179.02; 179.82; 179A.04; 179A.16; 626.892*

History: *11 SR 2077; 46 SR 1387*

Published Electronically: *July 27, 2022*

5510.5120 APPLICABILITY.

Parts 5510.5110 to 5510.5180 apply when a public employer and an exclusive representative have not reached agreement on or do not have access to a contract grievance procedure required under Minnesota Statutes, section 179A.20, subdivision 4, paragraph (a).

Statutory Authority: *MS s 179.02; 179.82; 179A.04; 179A.16; 626.892*

History: *11 SR 2077; 46 SR 1387*

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5510.5130 DEFINITIONS.

Subpart 1. **Scope.** For the purposes of parts 5510.5110 to 5510.5180, the terms defined in this part have the meanings given them.

Subp. 1a. **Appropriate unit.** "Appropriate unit" has the meaning given in Minnesota Statutes, section 179A.03, subdivision 2.

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

Subp. 2a. **Commissioner.** "Commissioner" means the commissioner of the bureau.

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

Subp. 3a. **Exclusive representative.** "Exclusive representative" has the meaning given in Minnesota Statutes, section 179A.03, subdivision 8.

Subp. 4. **Employee.** "Employee" means a 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. a dispute or disagreement on applying or interpreting a contract term required under Minnesota Statutes, section 179A.20, subdivision 1; or

B. if no contract exists between the exclusive representative and the employer, a dispute or disagreement on the existence of just cause in the discipline of an 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" has the meaning given in part 5510.0310, subpart 19, and part 5510.0320 applies.

Statutory Authority: *MS s 179.02; 179.82; 179A.04; 179A.16; 626.892*

History: *11 SR 2077; 46 SR 1387*

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5510.5131 COMPUTING TIME.

When computing time prescribed or allowed under parts 5510.5110 to 5510.5180, the day or act or event upon which a period begins to run is not included. The last day of the period is included unless it is a Saturday, Sunday, or holiday.

Statutory Authority: *MS s 179.02; 179.82; 179A.04; 179A.16; 626.892*

History: *11 SR 2077; 46 SR 1387*

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5510.5140 STEP ONE.

When an employee or group of employees represented by an exclusive representative has a grievance, the employee or exclusive representative's agent must attempt to resolve the grievance 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 must then attempt to resolve the grievance and must respond in writing to the grievant and the exclusive representative's agent within five days after the grievance is presented to the supervisor.

Statutory Authority: *MS s 179.02; 179.82; 179A.04; 179A.16; 626.892*

History: *11 SR 2077; 46 SR 1387*

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5510.5150 STEP TWO.

Subpart 1. **Grievance not resolved.** If the immediate supervisor is unable to resolve the grievance or has not responded in writing within the period under part 5510.5140 (step one), the exclusive representative may serve a written grievance on the next appropriate level of supervision.

Subp. 2. **Serving grievance.** The written grievance must:

A. concisely state 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; and

B. be served on the employer's representative within 15 days after the immediate supervisor's response was due under part 5510.5140 (step one).

Subp. 3. **Attempt to resolve grievance.**

A. The employer's representative must meet with the exclusive representative's agent within five days after the written grievance is served, and both parties must attempt to resolve the grievance.

B. The employer's representative must serve a written response to the grievance on the exclusive representative's agent within five days of the meeting.

C. The response must concisely state:

(1) the employer's position on the grievance; and

(2) the remedy or relief the employer is willing to provide, if any.

Statutory Authority: *MS s 179.02; 179.82; 179A.04; 179A.16; 626.892*

History: *11 SR 2077; 46 SR 1387*

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5510.5160 STEP THREE.

Subpart 1. **Serving grievance on chief administrative agent.** If the grievance is not resolved under part 5510.5150 (step two), the exclusive representative may serve the written grievance on the chief administrative agent of the employer or the agent's designated representative within ten days after the written response required by part 5510.5150 (step two) was due.

Subp. 2. **Meeting with chief administrative officer.**

A. An exclusive representative's agent must meet with the chief administrative officer or designee within five days of the written grievance's service, and the agent and the chief administrative officer or designee must attempt to resolve the grievance.

B. The chief administrative officer or designee must serve a written response to the grievance on the exclusive representative's agent within five days of the meeting.

Statutory Authority: *MS s 179.02; 179.82; 179A.04; 179A.16; 626.892*

History: *11 SR 2077; 46 SR 1387*

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5510.5170 ARBITRATION.

Subpart 1. **Referral to arbitration.** If the response of the chief administrative officer or designee is not received within the period under part 5510.5160 (step three) or does not satisfy the

exclusive representative, 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. Selecting arbitrator.

A. Within ten days of the service of written notice of intent to arbitrate, the employer's chief administrative officer or designee must consult with the exclusive representative's agent and attempt to mutually agree on an arbitrator to hear and decide the grievance.

B. If the parties do not agree on an arbitrator, either party may request a list of impartial arbitrators from the commissioner under chapter 5530. The parties must alternately strike names from a list of seven names to be provided by the commissioner until only one name remains, and the remaining name is the selected arbitrator. Which party begins the striking process must be made by mutual agreement or a coin flip. If one party refuses to strike names from the arbitration list, the other party may serve written notice of this refusal on the commissioner, with a copy to the offending party.

C. Unless it is confirmed that the parties have otherwise selected or agreed on an arbitrator within three days of the notice's service under item B, the commissioner must assign one name from the list previously provided to the parties, and the arbitrator assigned by the commissioner has full power to act as the arbitrator.

Subp. 3. Arbitrator's authority; award.

A. An arbitrator has no authority to amend, modify, add to, or subtract from the terms of an existing contract.

B. The arbitrator's decision and award is final and binding on both parties.

Subp. 4. Arbitration expenses.

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

B. For purposes of this subpart, "request for clarification" means a party's request to an arbitrator to clarify the arbitrator's decision and award under subpart 3.

Subp. 5. Briefs and transcripts.

A. Briefs are as provided under part 5510.5260.

B. If a party requests a transcript be made, the arbitrator must allow a transcript to be made if the party requesting the transcript:

- (1) arranges for the transcript;

- (2) pays for all transcript-related costs; and
- (3) provides:
 - (a) a free copy to the arbitrator; and
 - (b) a copy to the other party upon request, with the other party paying the full cost of the copy.

Subp. 6. **Hearing recording and arbitrator notes.** An arbitrator may maintain written notes of the hearing and may use an electronic recording device. The arbitrator's notes are the arbitrator's private and personal property and must not be made available to the parties or another party.

Statutory Authority: *MS s 179.02; 179.82; 179A.04; 179A.16; 626.892*

History: *11 SR 2077; 23 SR 1564; 46 SR 1387*

Published Electronically: *July 27, 2022*

5510.5180 PROCESSING GRIEVANCES.

Subpart 1. Release time for employees.

A. To the fullest extent feasible, grievances processed under parts 5510.5110 to 5510.5180 must be conducted during the employer's normal business hours. Employees designated by the exclusive representative must be released from work without loss of regular nonovertime earnings as a result of their necessary participation in meetings or hearings held according to parts 5510.5110 to 5510.5180, whenever such release is consistent with the ability of the employer to conduct safe and reasonable operations.

B. No more than three employees are entitled to compensation for participating in a single meeting or hearing on a grievance.

Subp. 2. **Waiving grievance.** 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 to pursue grievance.

A. An exclusive representative forfeits its right to pursue the grievance if it fails to:

- (1) raise a grievance within the time limits specified in part 5510.5140 (step one); or
- (2) initiate action at the next step of the procedure in parts 5510.5140 to 5510.5170 within the time limits.

B. If an employer fails to comply with the time limits and procedures in parts 5510.5140 to 5510.5170, the employer must resolve the grievance as requested in the exclusive representative's last filing under part 5510.5160 (step three).

Statutory Authority: *MS s 179.02; 179.82; 179A.04; 179A.16; 626.892*

History: *11 SR 2077; 46 SR 1387*

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5510.5190 [Repealed, 46 SR 1387]

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ARBITRATION PROCEEDINGS

5510.5200 APPLICABILITY.

A. Parts 5510.5200 to 5510.5295 apply to:

(1) all arbitration proceedings under bureau rules as provided under Minnesota Statutes, subject to all applicable provisions of the law; and

(2) other proceedings before an arbitrator as provided under statute.

B. Unless the context indicates otherwise, a panel of arbitrators includes a panel consisting of only a single arbitrator.

Statutory Authority: *MS s 179.02; 179.71; 179.82; 179A.04; 179A.16; 626.892*

History: *46 SR 1387*

Published Electronically: *July 27, 2022*

5510.5210 DEFINITIONS.

Subpart 1. **Scope.** For purposes of parts 5510.5200 to 5510.5295, the terms defined in this part have the meanings given them.

Subp. 2. **Arbitrator.** "Arbitrator" means an arbitrator from the arbitration roster under:

A. part 5530.0700;

B. Minnesota Statutes, section 179A.04, subdivision 3, paragraph (b); and

C. Minnesota Statutes, section 626.892, subdivision 4.

Subp. 3. **Award.** "Award" means an opinion or decision, including any damages, relief, and remedies, rendered by an arbitrator in a dispute among two or more parties.

Subp. 4. **Commissioner.** "Commissioner" means the commissioner of the Bureau of Mediation Services.

Subp. 5. **Party.** "Party" means a person subject to arbitration or other proceedings under bureau rules as provided under Minnesota Statutes.

Subp. 6. **Serve.** "Serve" has the meaning given in part 5510.0310, subpart 19, and part 5510.0320 applies.

Statutory Authority: *MS s 179.02; 179.82; 179A.04; 179A.16; 626.892*

History: 46 SR 1387

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5510.5220 ARBITRATOR'S RESPONSIBILITY.

Subpart 1. **Ensuring fair hearing.** An arbitrator must ensure that a fair hearing is conducted in a manner that minimizes cost and expense to the parties and complies with:

- A. parts 5510.5200 to 5510.5295; and
- B. chapter 5530.

Subp. 2. **Recording hearing.** An arbitrator may record a hearing, and the recording is the arbitrator's personal property.

Statutory Authority: *MS s 179.02; 179.82; 179A.04; 179A.16; 626.892*

History: 46 SR 1387

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5510.5230 ARRANGING HEARING.

Subpart 1. **Scheduling hearing.**

A. When a panel of arbitrators has been selected, assigned, or appointed, the panel must schedule a hearing according to part 5530.0900, subpart 6, or as otherwise provided under statute. At least five calendar days before the hearing, the panel chair must serve on each party a notice of hearing.

B. The hearing notice may be waived, or the time for the notice may be shortened by agreement of the parties.

Subp. 2. **Virtual hearing.** If all parties agree, the hearing may take place virtually through an online conferencing or videoconferencing tool.

Subp. 3. **Adjourning hearing.** An arbitrator may adjourn the hearing to a later time without further notice. If no time is fixed to continue the hearing upon adjournment, the arbitrator must give notice according to subpart 1 of the time the hearing is to be continued.

Subp. 4. **Requesting transcript or recording.** If a party requests a transcript be made and a transcript request is not addressed in the contract or grievance procedure, the arbitrator must allow a transcript to be made if the party requesting the transcript:

- A. arranges for the transcript;
- B. pays for all transcript-related costs; and
- C. provides:
 - (1) a free copy to the arbitrator; and

(2) a copy to the other party upon request, with the other party paying the full cost of the copy.

Statutory Authority: *MS s 179.02; 179.71; 179.82; 179A.04; 179A.16; 626.892*

History: *17 SR 1279; 46 SR 1387*

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5510.5240 PROCEEDINGS DURING HEARING.

Subpart 1. Representation.

A. A party may be represented by a representative or an attorney.

B. A panel may not conduct a hearing unless all parties or their designated representatives are present in person or virtually. This item does not apply if:

- (1) an absent party consents; or
- (2) a party fails to appear after due notice of the hearing or leaves the hearing without the panel's permission.

Subp. 2. Order of proceedings.

A. The order of the proceedings is as follows:

(1) the party with the burden of proof outlines the party's case, calls witnesses, and presents evidence; and

(2) after the party under subitem (1) presents its case, the responding party outlines the party's case, calls witnesses, and presents evidence.

B. Each party may cross-examine the other party's witnesses, and each party may call witnesses in rebuttal.

C. Any party may offer exhibits, and offered exhibits accepted as evidence are part of the record.

D. After the parties have presented their evidence, they may make arguments in the same order as described under item A for submitting evidence. The hearing closes after arguments end.

E. The panel may not present the case nor examine any party's witnesses except as needed to amplify the testimony disclosed under this subpart.

Subp. 3. Hearing record. All proceedings and the hearing record are confidential unless both parties agree in writing to release the hearing record.

Statutory Authority: *MS s 179.02; 179.71; 179.82; 179A.04; 179A.16; 626.892*

History: *17 SR 1279; 46 SR 1387*

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5510.5250 EVIDENCE.

A. A panel must hear all evidence that is competent, relevant, and material to the dispute.

B. The panel may independently investigate the dispute or obtain information not presented at the hearing as the panel deems necessary for adjudicating the dispute. Unless waived by the party in writing, a party must be afforded an opportunity to examine any panel evidence and to introduce evidence rebutting panel evidence.

C. A party must provide evidence requested under item B if the evidence is available to the party. A party's failure to produce evidence under item B is a factor when the panel makes its award.

Statutory Authority: *MS s 179.02; 179.71; 179.82; 179A.04; 179A.16; 626.892*

History: *46 SR 1387*

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5510.5260 BRIEFS.

A. The parties may submit briefs to the panel after the hearing closes. Before briefs are submitted, the parties must agree on:

- (1) the filing deadlines; and
- (2) how to file the briefs with the panel and serve them on each party.

B. The panel must resolve any disputes or disagreements on filing deadlines or service.

Statutory Authority: *MS s 179.02; 179.82; 179A.04; 179A.16; 626.892*

History: *46 SR 1387*

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5510.5270 AMENDING STATEMENT OF DISPUTE.

The original statement of the dispute may be amended by a supplemental written agreement signed by all parties and filed with the panel at any time before the record closes. The panel must only consider a dispute as specified in the original statement or a supplemental agreement under this part.

Statutory Authority: *MS s 179.02; 179.71; 179.82; 179A.04; 179A.16; 626.892*

History: *46 SR 1387*

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5510.5280 PANEL'S AWARD.

Subpart 1. **Making award.** After concluding the hearing and investigation, the panel must make an award that is in writing, is signed by a majority of the panel, and details the panel's findings on the dispute and the panel's decision.

Subp. 2. **Filing award.** The panel must simultaneously file with the commissioner and the parties the original findings and award. The findings and award must be filed according to part 5530.0800, subpart 9.

Subp. 3. **Resolving dispute before award is filed.** If the parties make a written agreement resolving the dispute before the panel files an award, they must notify the panel. After being notified, the panel may not make an award.

Statutory Authority: *MS s 179.02; 179.71; 179.82; 179A.04; 179A.16; 626.892*

History: *L 1987 c 186 s 15; 46 SR 1387*

Published Electronically: *July 27, 2022*

5510.5290 RECONSIDERING AWARD.

Subpart 1. Requesting reconsideration.

A. A party may request the panel to reconsider the award on any or all of the following grounds:

- (1) there is newly discovered material evidence that with reasonable diligence could not have been found and produced at the hearing;
- (2) the award is not justified by the evidence or is contrary to law; or
- (3) an adverse party has been guilty of misconduct that materially affected the result.

B. A request under item A must be in writing and set forth the facts upon which the request is based. Within ten calendar days after the award is filed under part 5510.5280, subpart 2, a copy of the request must be served on all other parties, the panel chair, and the commissioner.

Subp. 2. Determining request.

A. The panel must:

- (1) consider the request under subpart 1 if the panel deems the grounds stated sufficient according to subpart 1, item A; or
- (2) reject the request if the panel deems the grounds insufficient according to subpart 1, item A.

B. After considering a request according to item A, the panel must make its order granting or denying the request. If granting the request, the panel must reconsider the award and:

- (1) if the parties agree, receive briefs according to part 5510.5260; or
- (2) fix a time and place for a hearing and give notice according to part 5510.5230, subpart 1, item A.

C. The panel may by order limit the matters upon which it will receive new or additional evidence and must conduct the hearing, if held, according to parts 5510.5240 to 5510.5260.

D. After briefs are submitted under item B or C, the panel must:

(1) affirm the original award filed under part 5510.5280, subpart 2; or

(2) make and simultaneously file with the parties and the commissioner an amended award according to part 5510.5280, subpart 2, that supersedes the original award.

Statutory Authority: *MS s 179.02; 179.71; 179.82; 179A.04; 179A.16; 626.892*

History: *L 1987 c 186 s 15; 17 SR 1279; 46 SR 1387*

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5510.5295 ARBITRATOR FEES AND COSTS.

Subpart 1. Paying arbitrator fees and costs.

A. Except as otherwise provided by statute or the express terms of the arbitration agreement, the parties must equally pay the arbitrator's fees and costs.

B. If there is a dispute between one or both parties and the arbitrator over the arbitrator's fees or costs, the party or parties contesting the fee may request arbitration of the fee dispute according to subpart 2.

Subp. 2. Resolving dispute over fees or costs.

A. If a party believes that the arbitrator's fees or expenses are inappropriate or incorrect and cannot resolve the issue with the arbitrator, the party may submit a written statement of protest to the commissioner within 30 calendar days of receiving the arbitrator's invoice of fees and expenses. The statement of protest must provide the basis for the objection, and the party must provide a copy of the statement to the arbitrator and the other party.

B. The commissioner must investigate and respond to the statement of protest. If the commissioner determines that the disputed fee or expense is inappropriate or incorrect, the commissioner must refer the statement of protest to a panel of the advisory committee under chapter 5530. The panel must:

(1) investigate the statement of protest;

(2) provide all interested parties an opportunity to be fairly heard; and

(3) issue a written decision that is final and binding on the parties and the arbitrator.

Statutory Authority: *MS s 179.02; 179.82; 179A.04; 179A.16; 626.892*

History: *46 SR 1387*

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INDEPENDENT REVIEW**5510.5300 SCOPE.**

Parts 5510.5300 to 5510.5490 apply to procedures governing independent review under Minnesota Statutes, section 179A.25.

Statutory Authority: *MS s 14.06; 179.02; 179.82; 179A.04; 179A.05; 179A.16; 179A.25; 626.892*

History: *8 SR 293; 15 SR 2107; 46 SR 1387*

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5510.5310 POLICY.

Parts 5510.5300 to 5510.5490 are to be liberally construed to effectuate the purposes and provisions of the Public Employment Labor Relations Act.

Statutory Authority: *MS s 179.02; 179.82; 179A.04; 179A.16; 179A.25; 626.892*

History: *46 SR 1387*

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5510.5320 DEFINITIONS.

Subpart 1. **Other words, terms, and phrases.** Except as otherwise provided under subpart 2, the terms in parts 5510.5300 to 5510.5490 have the same meanings given in part 5510.0310.

Subp. 2. **Party.** "Party" means any public employee, public employer, exclusive representative of public employees, public employee organization, or public employer organization whose legal rights, duties, or privileges are directly determined in an independent review.

Statutory Authority: *MS s 14.06; 179.02; 179.82; 179A.04; 179A.05; 179A.16; 179A.25; 626.892*

History: *8 SR 293; 15 SR 2107; 46 SR 1387*

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5510.5330 FILING AND SERVICE.

Part 5510.0320 applies to a document filed or served under parts 5510.5300 to 5510.5490.

Statutory Authority: *MS s 179.02; 179.82; 179A.04; 179A.16; 626.892*

History: *46 SR 1387*

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5510.5340 PETITION FOR INDEPENDENT REVIEW.**Subpart 1. Filing and serving petition.**

A. As provided under Minnesota Statutes, section 179A.25, an employee may petition the commissioner in writing for independent review of a grievance when another procedure does not exist to hear the grievance.

B. The petitioner must file the petition with the commissioner and serve on all parties a copy of the petition when it is filed.

Subp. 2. Petition contents. The petition must:

A. include the petitioner's name, address, e-mail address, and telephone number;

B. include the names, addresses, e-mail addresses, and telephone numbers of the other parties; and

C. state:

(1) the terms and conditions of employment claimed to be violated;

(2) how the terms and conditions of employment claimed to be violated are established by law, contract, or policy;

(3) the law, contract provision, or policy claimed to be violated;

(4) the conduct that is claimed to violate the law, contract, or policy;

(5) the relief requested; and

(6) why independent review of the grievance is unavailable under any other procedure.

Statutory Authority: *MS s 14.06; 179.02; 179.82; 179A.04; 179A.05; 179A.16; 179A.25; 626.892*

History: *8 SR 293; 15 SR 2107; 46 SR 1387*

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5510.5350 ANSWER TO PETITION.

Within 15 calendar days after receiving a petition, all other parties must serve on the commissioner and the other parties an answer to the petition. The answer must state:

A. whether the terms and conditions of employment claimed to be violated are established by law, contract, or policy;

B. whether the law, contract provision, or policy has been violated by the respondent;

C. if a violation is found, what relief is appropriate; and

D. whether independent review of the grievance is available under another procedure.

Statutory Authority: *MS s 14.06; 179.02; 179.82; 179A.04; 179A.05; 179A.16; 179A.25; 626.892*

History: *8 SR 293; 15 SR 2107; 46 SR 1387*

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5510.5360 COMMISSIONER JURISDICTION.

The commissioner, on the commissioner's motion or a party's motion, must dismiss a petition if the commissioner lacks jurisdiction. The commissioner must dismiss a petition:

A. by granting summary judgment after reviewing the parties' written briefs without a hearing; or

B. after conducting a hearing according to part 5510.5470.

Statutory Authority: *MS s 179.02; 179.82; 179A.04; 179A.16; 179A.25; 626.892*

History: *8 SR 293; 46 SR 1387*

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5510.5370 GRIEVANCE HEARING.

Subpart 1. **Procedure to hear grievance.** The commissioner must either:

A. conduct a hearing on the grievance according to part 5510.5470; or

B. follow the requirements for selecting an arbitrator under Minnesota Statutes, section 179A.16, subdivision 4.

Subp. 2. **Arbitrator duties.** An arbitrator selected under subpart 1, item B:

A. has the same authority and duties as the commissioner under parts 5510.5380 to 5510.5490; and

B. must have the arbitrator's fees and expenses paid equally by the parties.

Statutory Authority: *MS s 14.06; 179.02; 179.82; 179A.04; 179A.05; 179A.16; 179A.25; 626.892*

History: *8 SR 293; 15 SR 2107; 46 SR 1387*

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5510.5380 BRIEFS.

A. The commissioner may request the parties to submit a written brief if the brief will help the commissioner make the determination under part 5510.5480. If briefs are requested, the commissioner must notify the parties of the dates for submitting the briefs.

B. All briefs must be served on the other parties, and proof of service must be filed with the commissioner.

Statutory Authority: *MS s 14.06; 179.02; 179.82; 179A.04; 179A.05; 179A.16; 179A.25; 626.892*

History: *8 SR 293; 15 SR 2107; 46 SR 1387*

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5510.5390 HEARING; NOTICE AND FORMAT.

Subpart 1. **Hearing notice.** At least 15 calendar days before the hearing date, the commissioner must serve on all parties a notice of hearing providing:

- A. the hearing's date, time, and place;
- B. a statement of the grievance to be determined;
- C. the rights of the parties to representation; and
- D. that failing to appear may prejudice a party's rights.

Subp. 2. **Virtual hearing.** If all parties agree, the hearing may take place virtually through an online conferencing or videoconferencing tool.

Statutory Authority: *MS s 14.06; 179.02; 179.82; 179A.04; 179A.05; 179A.16; 179A.25; 626.892*

History: *8 SR 293; 15 SR 2107; 46 SR 1387*

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5510.5400 CONTINUING HEARING.

A request to continue a hearing must be served on the commissioner and all parties at least six calendar days before a hearing. The commissioner must grant or deny a request according to part 5510.1910, subpart 11.

Statutory Authority: *MS s 14.06; 179.02; 179.82; 179A.04; 179A.05; 179A.16; 179A.25; 626.892*

History: *8 SR 293; 15 SR 2107; 46 SR 1387*

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5510.5410 RIGHT TO REPRESENTATION.

Any party may be represented by a designated agent.

Statutory Authority: *MS s 179.02; 179.82; 179A.04; 179A.16; 179A.25; 626.892*

History: *8 SR 293; 46 SR 1387*

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5510.5420 INFORMAL DISPOSITION.

A. At any time after a petition is filed and before the determination under part 5510.5480 is made, the parties may enter into a stipulation or settlement agreement.

B. A stipulation or settlement agreement made under this part must be entered into the record.

Statutory Authority: *MS s 179.02; 179.82; 179A.04; 179A.16; 179A.25; 626.892*

History: *8 SR 293; 46 SR 1387*

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5510.5430 DEFAULT.

The commissioner may decide a grievance adversely to a party who fails to appear after receiving due notice and an opportunity for hearing.

Statutory Authority: *MS s 179.02; 179.82; 179A.04; 179A.16; 179A.25; 626.892*

History: *8 SR 293; 46 SR 1387*

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5510.5440 INTERVENTION.

The commissioner must allow a person to intervene in an independent review proceeding if:

A. the person files a request with the commissioner before a hearing under part 5510.5470 begins; and

B. the commissioner determines that the person's legal rights, duties, or privileges will be directly determined in the proceeding.

Statutory Authority: *MS s 179.02; 179.82; 179A.04; 179A.16; 179A.25; 626.892*

History: *8 SR 293; 46 SR 1387*

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5510.5450 SUBSTITUTING PARTY'S REPRESENTATIVE.

Until a hearing under part 5510.5470 begins, a party may substitute its representative if the party serves notice of the substitution on all other parties and the commissioner.

Statutory Authority: *MS s 14.06; 179.02; 179.82; 179A.04; 179A.05; 179A.16; 179A.25; 626.892*

History: *8 SR 293; 15 SR 2107; 46 SR 1387*

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5510.5460 CONSOLIDATION.

Subpart 1. **Basis for consolidation.** The commissioner may consolidate cases if the commissioner determines that:

- A. separate grievances present the same issues;
- B. a decision in one case would affect the rights of a party in another case; and
- C. consolidation would not prejudice any party.

Subp. 2. **Stipulating to consolidation.** Notwithstanding subpart 1, the parties may stipulate and agree to consolidation. A stipulation under this subpart must be in writing and filed with the commissioner and is subject to commissioner approval according to subpart 1.

Subp. 3. **Order of consolidation.** The commissioner must serve on all parties any order of consolidation under subpart 1 or 2.

Subp. 4. **Severance from consolidation.**

A. Within seven calendar days of receiving an order of consolidation, a party may file with the commissioner a written petition for severance from consolidation. The petition must explain why the requirements of subpart 1 were not met.

B. Upon receiving a petition under item A, the commissioner must approve or disapprove the petition after determining whether the requirements of subpart 1 were met.

C. The commissioner must serve on all parties the commissioner's determination under item B.

Statutory Authority: *MS s 14.06; 179.02; 179.82; 179A.04; 179A.05; 179A.16; 179A.25; 626.892*

History: *8 SR 293; 15 SR 2107; 46 SR 1387*

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5510.5470 HEARING.

Subpart 1. **Conducting hearing.** A hearing must be conducted according to part 5510.1910, subparts 6, 8, 9, 12, and 13.

Subp. 2. **Hearing record; request for transcript.**

A. The hearing record must be maintained according to part 5510.1910, subpart 10, and it must be kept for 90 calendar days after the commissioner issues the determination under part 5510.5480.

B. A party may request to have the hearing recording transcribed by submitting a written request to the commissioner and by:

(1) making the request within 90 calendar days after the commissioner issues the determination under part 5510.5480; and

(2) agreeing to pay the full costs for transcribing and preparing the transcript.

Statutory Authority: *MS s 14.06; 179.02; 179.82; 179A.04; 179A.05; 179A.16; 179A.25; 626.892*

History: *8 SR 293; 15 SR 2107; 46 SR 1387*

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5510.5480 COMMISSIONER'S DETERMINATION AND OTHER ORDERS.

A. After the hearing closes, the commissioner must issue a determination on the petition under part 5510.5340 in writing. The determination must be based on the record and served on all parties.

B. The commissioner's determination and other orders under parts 5510.5300 to 5510.5490 are binding on all parties.

Statutory Authority: *MS s 14.06; 179.02; 179.82; 179A.04; 179A.05; 179A.16; 179A.25; 626.892*

History: *8 SR 293; 15 SR 2107; 46 SR 1387*

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5510.5490 REQUESTING RECONSIDERATION.

Subpart 1. Requesting reconsideration.

A. A party may request that the commissioner reconsider the determination under part 5510.5480 by filing a request in writing that details the required grounds for reconsideration and why the request should be reconsidered.

B. The party must serve a copy of the request on the commissioner and all other parties. To be considered under subpart 2, a request must be served within ten calendar days of the commissioner's determination.

C. The required grounds for requesting reconsideration are as provided under part 5510.5290, subpart 1, item A.

Subp. 2. Considering, granting, and determining reconsideration request.

A. The commissioner must consider, grant, and make a determination on a request according to part 5510.5290, subpart 2.

B. If the commissioner grants a request, the hearing and briefs are according to parts 5510.5300 to this part.

Statutory Authority: *MS s 14.06; 179.02; 179.82; 179A.04; 179A.05; 179A.16; 179A.25; 626.892*

History: *15 SR 2107; 46 SR 1387*

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