

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

Our File No. [illegible] ~~Withdrawn 10-10-83~~ New Submission ~~5-1-84~~

RULE REVIEW CHECKLIST

Withdrawn 11-15-83

DATE RULE RECEIVED ~~10-3~~ ~~11-1~~ 11-21 Adopted w/a hearing _____

DATE FOR REVIEW ~~10-12~~ ~~11-10~~ 11-30 Adopted w/o hearing ✓

DATE DUE ~~10-17~~ ~~11-15~~ 12/5 Temporary rule _____

Approved 11-30-83 mjc Disapproved _____ Returned to Agency _____

Resubmitted _____ Due _____

Approved _____ Disapproved _____ Returned to Agency 11/23/83

Date filed w/Secretary of State _____ Revisor approved ~~10.4.83~~ disapproved _____

✓ Rule as Adopted

✓ Rule as Proposed see SR

✓ Order Adopting 10.11.83 Date

N/A Notice of Intent to Solicit Outside Opinion

✓ Order for rulemaking
N/A date of Hearing

_____ Certificate of Board's Authorizing Resolution – copy of minutes submitted in lieu of

✓ Notice of rulemaking
✓ Sufficiency

✓ Affidavit of Mailing Notice or rulemaking
7.20.83 At least 30 days prior to ~~hearing~~/adoption

✓ Mailing list Certificate

✓ Publication in State Register
8.1.83 At least 30/~~20~~ days prior to ~~hearing~~/adoption

N/A Hearing Examiner's Report

_____ Chief Hearing Examiner's Report(s)
_____ Approving H.E.'s Report
_____ Approving agency action

✓ Agency's Findings of Fact

N/A LCRAR Report or agency Affidavit

✓ Certificate of Board's Resolution Adopting Rules

N/A Order Approving Incorporation by Reference

✓ Statement of Need and Reasonableness

N/A Petition for Adoption of a Rule

✓ Record (includes transcript or tape, exhibits, comments received by agency, requests for a hearing, and other relevant materials)

✓ Certificate of Compliance w/Rulemaking Procedures

N/A Affidavit of Mailing Notice of Submission to Attorney General

✓ Notice of Submission to the Attorney General

STATE OF MINNESOTA
OCCUPATIONAL SAFETY AND HEALTH REVIEW BOARD
444 LAFAYETTE ROAD • 5TH FLOOR
ST. PAUL, MINNESOTA 55101
(612) 296-8946

RECEIVED
NOV 21 1983
ATTORNEY GENERAL
ADMINISTRATIVE AGENCIES

November 21, 1983

Ms. Martha Casserly
Office of the Attorney General
204 Administration Building
St. Paul, Minnesota 55155

RE: Occupational Safety and Health Review Board Rules

Dear Ms. Casserly:

Enclosed herewith is a new submission of the Occupational Safety and Health Review Board Rules for your review.

Sincerely,

Cynthia D. Thompson
Review Board Clerk

CDT:slz

Enclosure

Modifications
SF-00006-02

STATE OF MINNESOTA

DEPARTMENT REVISOR OF STATUTES

Office Memorandum

TO : Cynthia Thompson
Office of the Commissioner

DATE: November 18, 1983

FROM : John C. Fuller
Assistant Deputy Revisor

PHONE: 296-0955

SUBJECT: AR0196 Occupational Safety and Health Review Board;
Rules of Procedure

Enclosed are four copies of your rule with the modifications you requested.

Please submit the rules to the Attorney General for final approval.

If you have any questions or need further modifications, please call.

HUBERT H. HUMPHREY, III
ATTORNEY GENERAL

STATE OF MINNESOTA

OFFICE OF THE ATTORNEY GENERAL

ST. PAUL 55155

ADDRESS REPLY TO:
515 TRANSPORTATION BLDG.
ST. PAUL, MN 55155
TELEPHONE: (612) 297-2040

November 16, 1983

RECEIVED
NOV 18 1983
ATTORNEY GENERAL
ADMINISTRATIVE AGENCIES

Martha Casserly
Special Assistant
Attorney General
204 Administration Building
St. Paul, MN 55155

Re: Rules of OSHA Review Board

Dear Ms. Casserly:

This letter is to confirm our telephone conversation of November 16, 1983. The Occupational Safety and Health Review Board withdraws its submission of November 1, 1983.

I expect that the Revisor's Office will make the necessary changes within the next few days and send you four copies of the revised rules.

Please give me a call if there are any problems after you receive the revised rules. Thanks for your help.

Sincerely,

Erica

ERICA JACOBSON
Special Assistant
Attorney General

515 Transportation Building
St. Paul, MN 55155
Telephone (612) 296-2638

EJ:bbl

cc: Cynthia Thompson

ADMIN. 1000A (REV. 8/76)

STATE OF MINNESOTA

DEPARTMENT LABOR & INDUSTRY

Office Memorandum

TO : Judith Wehrwein
Legal Assistant to the Attorney General

DATE: October 6, 1983

FROM : MN Occupational Safety and Health Review Board
Cynthia Thompson

PHONE: 296-8946

SUBJECT: SUBMITTED RULES

We hereby withdraw our submission of the proposed rules of procedure for the MOSHRB. We will enter a new submission when the file is completed.

Thank you.

RECEIVED
OCT 10 1983
ATTORNEY GENERAL
ADMINISTRATIVE AGENCIES

SF-00006-03

STATE OF MINNESOTA

Office Memorandum

DEPARTMENT: MINNESOTA OCCUPATIONAL SAFETY AND HEALTH REVIEW BOARD

TO: Judith Wehrwein
Legal Assistant

DATE: October 3, 1983

FROM: Cynthia Thompson
Executive Secretary

PHONE: 296-8946

SUBJECT: Proposed Rules of Procedure for Practice Before the Minnesota Occupational Safety and Health Review Board

The Minnesota Occupational Safety and Health Review Board is submitting the enclosed proposed rules for the Attorney General's approval or disapproval pursuant to Minn. Stat. §14.26. Also enclosed is a copy of the proposed rules and notice as published in the State Register on August 1, 1983; a Statement of Need and Reasonableness; the written comments received by the Review Board; and a statement explaining the minor modifications incorporated in the final proposed rules based upon the comments received from the Office of Administrative Hearings.

We anxiously await your approval of these rules. If you have any questions, please give me a call.

cdt

Enclosures

SF-00006-02

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL

Office Memorandum

TO : K. L. Sovereign

DATE: 11/30/83

Attn: ERICA JACOBSON, Special Assistant Attorney General

FROM : MARTHA J. CASSERLY MJC
Special Assistant
Attorney General

PHONE: 296-4347

SUBJECT: In the Matter of the Proposed Adoption of Rules of the State of Minnesota Governing Rules of Procedure For Practice Before the Minnesota Occupational Safety and Health Review Board.

Enclosed herewith are the rules you have submitted for approval. These rules have been approved by this office and filed with the Secretary of State. Please note that they have not been filed with the State Register. This must be done promptly by your agency.

Upon receipt and before transmittal to your agency, however, it is important that you recheck these rules as to:

1. Affixation of stamps of the Attorney General and Secretary of State;

2. Coverage by these stamps of all rules submitted; and

3. Inclusion of all pages to the rules in the approved set.

If you have any questions in this regard, please contact me.

Encs.
MJC/ls
cc: Ms. Kathy Burek
Mr. Duane Harves

AG copy

Occupational Safety and Health Review Board

Adopted Rules of Procedure for Practice Before the Occupational Safety and Health Review Board

Rules as Adopted

8 MCAR S 1.7250 General provisions.

A. Definitions. For the purposes of 8 MCAR SS 1.7250-1.7255, the following terms have the meanings given them.

1. "Act" means the Minnesota Occupational Safety and Health Act of 1973, Minnesota Statutes, sections 182.65 to 182.674.

2. "Commissioner," "board," ~~"person,"~~ "employer," and "employee," have the meanings set forth in Minnesota Statutes, section 182.651.

3. "Chairperson" means the chairperson of the board as designated by the governor.

4. "Executive secretary" means the executive secretary of the Occupational Safety and Health Review Board.

5. "Hearing examiner" means a person assigned to hear a contested case by the Office of Administrative Hearings.

6. "Affected employee" means an employee of a cited employer who is exposed within the scope of his employment to the alleged hazard described in the citation.

7. "Authorized employee representative" means a labor organization that has a collective bargaining relationship with the cited employer and that represents affected employees. It also means a person authorized to act on behalf of affected employees.

8. "Representative" means any person, including an authorized employee representative or legal counsel for an authorized employee representative, authorized by a party or intervenor to represent him in a proceeding.

9. "Citation" means a written communication issued by the commissioner to an employer pursuant to Minnesota Statutes, section 182.66.

10. "Notification of proposed penalty" means a written communication issued by the commissioner to an employer pursuant to Minnesota Statutes, section 182.661, subdivision 1 or 2.

11. "Day" means a calendar day.

12. "Working day" means all days except Saturdays, Sundays, or holidays as defined in Minnesota Statutes, section 645.44.

13. "Proceeding" means any proceeding before the board or before a hearing examiner.

14. "Party" means each person named as a party by the board in the notice of and order for hearing, or persons granted permission to intervene pursuant to 9 MCAR S 2.210.

15. "Intervenor" means any person who has submitted a petition to intervene with the hearing examiner in accordance with 9 MCAR S 2.210.

16. "Person" means any individual, partnership, corporation, joint stock company, unincorporated association or society, municipal corporation, or any government or governmental subdivision unit or agency other than a court of law.

B. Scope of rules. Rules 8 MCAR SS 1.7250-1.7255 shall govern all proceedings before the board~~, except~~. Additionally, all contested case and rule hearing proceedings are governed by 9 MCAR SS 2.101-2.222.

In the absence of a specific provision, procedures shall be in accordance with the Minnesota Administrative Procedure Act.

C. Extensions of time. Requests for extensions of time for the filing of any pleading or document must be received by the board three days in advance of the date on which the pleading or document is due to be filed.

D. Record address. The initial pleading filed by a person must contain his name, address, and telephone number. Any change in the information must be communicated promptly in writing to the hearing examiner or the board, as the case may be, and to all other parties and intervenors. A party or intervenor who fails to furnish the information waives his right

to notice and service under E.

E. Service and notice.

1. At the time of filing pleadings or other documents, a copy shall be served by the filing party or intervenor on every other party or intervenor.

2. Service upon a party or intervenor who has appeared through a representative must be made only upon such representative.

3. Unless otherwise ordered, service may be made by postage prepaid first class mail, personal delivery, or by posting. Service is made at the time of mailing, personal delivery, or posting.

4. Service must be certified by a written statement that sets forth the date and manner of service. The statement must be signed by the person accomplishing service, and it must be filed with the pleading or document.

5. If service is made by posting, the posting must take place within two working days of receipt of the document posted. Certification of posting must be filed with the executive secretary within five working days of receipt of the document.

6. Where service is accomplished by first class mail or personal delivery, certification must be filed with the executive secretary within five working days of receipt of the document.

7. If there are any affected employees who are not represented by an authorized employee representative, the employer shall, within two working days of receiving the acknowledgement of the notice of contest or petition for modification of abatement date, post, where the citation is required to be posted, a copy of the notice of contest and a notice informing affected employees of their right to party status and of the availability of all pleadings for inspection and copying at reasonable times. A notice in the following form complies with this paragraph:

(Name of employer)

Your employer has been cited by the Commissioner of Labor and Industry for violation of the Minnesota Occupational Safety and Health Act of 1973. The citation has been contested and will be the subject of a hearing. Affected employees are entitled to participate in this hearing as parties under the terms and conditions established by the Occupational Safety and Health Review Board in its rules of procedure. Notice of intent to participate should be sent to: Executive Secretary, Occupational Safety and Health Review Board, 444 Lafayette Road, St. Paul, MN 55101, or any other address that the review board has. The notice of intent to participate must contain the employees' names, addresses, representatives, if any, and a statement that they are affected employees of the cited employer.

All papers relevant to this matter may be inspected at:

(Place reasonably convenient to employees, preferably at or near workplace.)

Where appropriate, the second sentence of the above notice will be deleted and the following sentence will be substituted:

The reasonableness of the period prescribed by the Commissioner of Labor and Industry for abatement of the violations has been contested and will be the subject of a hearing.

8. Service and notice to affected employees not represented by an authorized employee representative are deemed accomplished by posting.

9. Certification of the posting required in 7. must be filed with the executive secretary of the board within five working days of receipt of the document. If the employer fails to certify the posting in the prescribed manner, the board shall dismiss the notice of contest.

10. If there are any affected employees who are represented by an authorized employee representative, the employer shall by first class mail or personal delivery serve upon the representative the notice set forth in 7. and a copy of the notice of contest.

11. Service and notice to employees represented by an

authorized employee representative are deemed accomplished by serving the representative by first class mail or personal delivery.

12. Certification of the service required in 10. must be filed with the executive secretary of the board within five working days of receipt of the document. If the employer fails to certify the service in the prescribed manner, the board shall dismiss the notice of contest.

13. A copy of the notice of hearing to be held before the hearing examiner must be served by the employer on affected employees who are not represented by an authorized employee representative by posting within two days of receipt a copy of the notice of hearing at or near the place where the citation is required to be posted.

14. Certification of the posting required in 13. must be filed with the hearing examiner and a copy sent to the executive secretary of the board within five working days of receipt of the notice of hearing. If the employer fails to certify the posting in the prescribed manner, the notice of contest shall be dismissed.

15. A copy of the notice of hearing to be held before the hearing examiner shall be served by the employer on the authorized employee representative of affected employees, if any, by mail or personal delivery, if the employer has not been informed that the authorized employee representative has entered an appearance as of the date the notice is received by the employer.

16. Certification of the service of the notice of hearing required in 15. must be filed with the hearing examiner and a copy sent to the executive secretary of the board within five working days of receipt of the document. If the employer fails to certify the service in the prescribed manner, the notice of contest shall be dismissed.

17. When a notice of contest is filed by an affected employee who is not represented by an authorized employee representative and there are other affected employees who are

represented by an authorized employee representative, the unrepresented employee shall, upon receiving acknowledgement by the board of his notice of contest, serve a copy on the authorized employee representative by mail or personal delivery and shall file certification of service with the executive secretary within five working days.

18. When a notice of contest is filed by an affected employee or an authorized employee representative, a copy of the notice of contest must be provided to the employer for posting in the manner prescribed in E.

19. An authorized employee representative who files a notice of contest is responsible for serving any other authorized employee representative whose members are affected employees.

20. Where posting is required by this section, posting must be maintained until commencement of the hearing or until earlier disposition.

21. If a settlement proposal is filed with the hearing examiner, it shall be served upon affected employees by the employer. For affected employees represented by an authorized employee representative, service shall be accomplished by personal delivery or first class mail to the representative. For affected employees not so represented, service shall be accomplished by posting. Proof of service of the settlement proposal on affected employees shall be filed with the hearing examiner.

F. Filing.

1. Before a case is assigned to a hearing examiner, all papers must be filed with the executive secretary. After the case has been assigned to a hearing examiner and before the issuance of his decision, all papers must be filed with the hearing examiner at the address given in the notice informing the parties of the assignment, with the exception of the certification of posting and service prescribed in E.14. and 16., which must be filed with the hearing examiner and the executive secretary. After issuance of the decision by the

hearing examiner, all papers must be filed with the executive secretary of the board.

2. Unless otherwise ordered, all filing may be accomplished by first class mail.

3. Filing is deemed effected at the time of mailing.

G. Consolidation. Cases may be consolidated on the motion of any party, on the hearing examiner's own motion, or on the board's own motion, where there exist common parties, common questions of law or fact, or both, or in other circumstances as justice and the administration of the act require.

H. Severance. Upon its own motion, or upon the motion of any party, the board or the hearing examiner may, for good cause, order any proceeding severed with respect to some or all issues or parties.

I. Protection of trade secrets and other confidential information. Upon application by any person in a proceeding where trade secrets or other matters may be divulged, the hearing examiner shall issue orders as may be appropriate to protect the confidentiality of these matters.

8 MCAR S 1.7251 Parties and representatives.

A. Party status.

1. Affected employees or an authorized representative may choose to participate as parties provided they file notice of intent to participate at least five days before the start of the hearing. The notice of intent to participate must contain the employees' names, addresses, representatives, if any, and a statement that they are affected employees of the cited employer. This notice shall be filed with the executive secretary if a hearing examiner has not yet been assigned. After a hearing examiner has been assigned, this notice shall be filed with the hearing examiner and served upon all other parties.

2. Where a notice of contest is filed by an employee or by an authorized employee representative with respect to the reasonableness of the date for abatement of a violation, the type of alleged violation, the proposed penalty, or notification

issued, the employer charged with the responsibility of the alleged violation may choose party status by filing a notice at least five days before the start of the hearing. The notice must contain the employer's name, address, and representative, if any. This notice shall be filed with the executive secretary if a hearing examiner has not yet been assigned. After a hearing examiner has been assigned, this notice shall be filed with the hearing examiner and served upon all other parties.

3. Intervention and appearance by nonparties may be granted pursuant to 9 MCAR S 2.210.

B. Representatives of parties and intervenors.

1. Any party or intervenor may appear in person or through a representative.

2. A representative of a party or intervenor shall be deemed to control all matters respecting the interest of such party or intervenor in the proceeding.

3. Affected employees who are represented by an authorized employee representative may appear only through the authorized employee representative.

4. Nothing contained herein requires any representative to be an attorney-at-law.

5. Withdrawal of appearance of any representative may be affected by filing a written notice of withdrawal and by serving a copy thereof on all parties and intervenors.

8 MCAR S 1.7252 Pleadings and motions.

A. Form.

1. Except as provided in 8 MCAR S 1.7252, there are no specific requirements on the form of any pleading. A pleading is simply required to contain a caption sufficient to identify the parties in accordance with B. It must include the board's and the hearing examiner's docket number, if any, and a clear and plain statement of the relief that is sought, together with the ground for the relief.

2. Pleadings and other documents, other than exhibits, must be typewritten or otherwise be legible on paper, approximately 8-1/2 inches by 11 inches.

3. Pleadings must be signed by the party filing or by his representative. Signing constitutes a representation by the signer that he has read the document or pleading, that to the best of his knowledge, information, and belief the statements made in it are true, and that it is not interposed for delay.

4. The board may refuse for filing any pleading or document that does not comply with the requirements of 1., 2., and 3.

B. Caption; titles of cases.

1. Cases initiated by a notice of contest shall be titled:

Commissioner of Labor and Industry,

Complainant

v.

(Name of contestant),

Respondent

2. Cases initiated by a petition for modification of abatement date shall be titled:

(Name of employer),

Petitioner

v.

Commissioner of Labor and Industry,

Respondent

3. Cases in which a third party interest has been exercised shall be entitled:

Commissioner of Labor and Industry,

Complainant

v.

(Name of employer),

Respondent

(Name of Authorized Employee Representative),

Authorized employee representative

4. The titles listed in 1., 2., and 3. must appear at the

left upper portion of the initial page of any pleading or document, other than exhibits, filed.

5. The initial page of any pleading or document, other than exhibits, must show, at the upper right of the page, opposite the title, the docket number, if known, assigned by the executive secretary of the board.

C. Notices of contest. The commissioner shall, within seven working days of receiving a notice of contest, transmit the original to the board, together with copies of all relevant documents.

D. Employer contests.

1. Complaint.

a. The commissioner shall file a complaint with the board no later than 40 days after receiving the notice of contest.

b. The complaint must set forth all alleged violations and proposed penalties that are contested, stating with particularity:

(1) the basis for jurisdiction;

(2) the time, location, place, and circumstances of each alleged violation; and

(3) the considerations upon which the date for abatement and the proposed penalty on each alleged violation are based.

c. If the commissioner seeks in his complaint to amend his citation or proposed penalty, he shall set forth the reasons for amendment and shall state with particularity the change sought.

d. At any time in the proceedings, an employer may withdraw his notice of contest.

2. Notice to respondent. The commissioner shall file and serve on the respondent no later than 40 days after receiving the notice of contest a notice stating the following:

a. that the basis for the board's authority to hold a hearing is to be found in Minnesota Statutes, section 182.664;

b. that the party has a right to be represented by

legal counsel in all proceedings;

c. that the rules of the board and the rules of the Office of Administrative Hearings apply to the proceedings;

d. the name of the agency official or member of the Attorney General's staff to be contacted to discuss informal disposition under 9 MCAR S 2.207 or discovery under 9 MCAR S 2.214 C.; ~~and~~

e. that ~~a failure to appear at the hearing may result in the allegations of the pleadings being taken as true~~ respondent has a right to a contested case hearing before an independent hearing examiner from the Office of Administrative Hearings pursuant to Minnesota Statutes, sections 14.48 to 14.62, and 182.664, subdivision 3;

f. that respondent may present evidence and argument with respect to the issues and cross-examine witnesses;

g. where the procedural rules may be obtained;

h. that parties may attempt to settle the matter without a hearing; and

i. that should respondent wish to initiate discovery pursuant to 9 MCAR S 2.214 C. prior to the setting of a hearing date, respondent must file a discovery motion with the review board and the case will be transferred to the Office of Administrative Hearings for a decision on the discovery motion.

3. Answer.

a. Within 15 days after service of the complaint, the party against whom the complaint was issued shall file an answer with the board.

b. The answer must contain a short and plain statement denying those allegations in the complaint which the party intends to contest. Any allegation not denied is deemed admitted.

c. If an answer is not filed with the executive secretary in a timely manner, the notice of contest shall be dismissed.

E. Petitions for modification of abatement date.

1. When a petition for modification of abatement date

filed under 8 MCAR S 1.7280 is objected to by the commissioner, affected employees, or an authorized employee representative, the petition must be processed as follows:

a. The petition, citation, and objections received by the Department of Labor and Industry must be forwarded to the board within three days after the expiration of the 15-day period set out in 8 MCAR S 1.7280 C.4.

b. The board shall docket and process the petition in the same manner as any other contested case, except that all hearings on the petitions must be handled on an expedited basis.

c. An employer petitioning for a modification of abatement date has the burden of proving that he has made a good faith effort to comply with the abatement requirements of the citation and that abatement has not been completed because of factors beyond his control.

d. Within ten days after receiving notice of the docketing by the board of any petition for modification of abatement date, each objecting party shall file a response setting forth the reasons for opposing the granting of a modification date different from that requested in the petition.

F. Employee contests.

1. An affected employee or authorized employee representative may file a notice of contest with respect to the time fixed for abatement, the citation, the type of alleged violation, the proposed penalty, or notification issued.

2. Employee contestations will be handled in accordance with C. and D.

3. At any time in the proceedings, an employee may withdraw his notice of contest.

G. Statement of position. At any time prior to the commencement of the hearing before the hearing examiner, any party may file a statement of position with respect to any or all issues to be heard.

H. Response to motions. Any party upon whom a motion is served has ten days from service of the motion to file a response.

I. Failure to file. Failure to file any pleading pursuant to 8 MCAR SS 1.7250-1.7255 when due, may, in the discretion of the board or the hearing examiner, constitute a waiver of the right to further participation in the proceedings.

J. Reinstatement. Request for reinstatement of a notice of contest which has been dismissed by the board for failure to comply with procedures must be made in writing and be filed with the executive secretary of the board within five days of receipt of the order of dismissal. This statement should contain reasons why the rules of procedure have not been complied with.

K. Notice of readiness for hearing.

1. Subsequent to the timely filing of an answer, a party that is prepared for hearing may file a notice of readiness for hearing with the board and serve a copy on all parties.

2. Upon receipt of the notice of readiness for hearing, the board shall schedule a hearing. The board shall serve a written notice of hearing and order on all parties at least 30 days prior to the hearing date. The employer shall serve a copy of the notice of hearing and order on affected employees and authorized employee representatives pursuant to 8 MCAR S 1.7250 E. The notice of hearing and order must state the following:

a. that if a party chooses to appear at the hearing, a notice of appearance must be filed by that party with the hearing examiner within 20 days of the date of service of the notice of hearing and order pusuant to 9 MCAR S 2.205; and

b. that a failure to appear at the hearing may result in the allegations of the pleadings being taken as true.

8 MCAR S 1.7253 Post hearing procedures.

A. Decisions of hearing examiners.

1. The decision of the hearing examiner must include findings of fact, conclusions of law, and an order.

2. The hearing examiner shall sign and date the decision. Upon service of the decision by the hearing examiner, jurisdiction rests solely in the board, and all subsequent motions, petitions, and other pleadings filed must be addressed to the board.

B. Notice of appeal.

1. Any party may file a notice of appeal of the findings and decision of a hearing examiner with the board.

2. A notice of appeal must contain a concise statement of each portion of the findings and decision to which exception is taken. It may be accomplished by a statement of reasons relied upon. The notice of appeal must include the legal or factual issues that are raised on appeal. The original and four copies shall be filed with the board.

3. The notice of appeal must be received by the board at its offices in St. Paul, Minnesota, on or before the 30th day following ~~publication~~ issuance of the hearing examiner's findings and decision.

4. Within ten days after the filing of a notice of appeal, any other party may file a notice of appeal of the hearing examiner's findings and decision regardless of the 30-day period stated in 3.

5. At the time of filing a notice of appeal, the party seeking appeal shall serve a copy of the notice of appeal on every other party of record.

C. Briefs. The board may order the parties to file any briefs or memoranda it deems necessary. Each brief or memorandum must state the legal or factual issues involved in the appeal and each party's stance on these issues.

D. Stay of order of hearing examiner. The timely filing by any party of a notice of appeal to the board stays the order of the hearing examiner.

E. Oral argument before board.

1. Oral argument before the board will be heard from each party or party's representative unless it is waived by that party.

2. At least ten days before the date set for oral argument, the executive secretary will advise all parties to the proceedings of the date, hour, place, time allotted, and scope of the argument.

3. The board is limited in its review of a hearing

examiner's findings and decision to the matters preserved in the record.

F. Decision of hearing examiner not appealed to board. If no party files a notice of appeal within the 30-day time limit provided in B.2., the decision of the hearing examiner becomes a final order of the board.

8 MCAR S 1.7254 Settlement.

A. Settlement is encouraged at any stage of the proceedings if the settlement is consistent with the provisions and objectives of the act.

B. Settlement agreements must be signed and dated by each party.

C. Settlement agreements must contain a provision stating ~~that~~ the date on which the employer has served the agreement upon affected employees in the manner prescribed by 8 MCAR S 1.7250 E.21.

D. Settlement agreements submitted by the parties must be accompanied by an appropriate proposed order.

E. Only contested items are subject to settlement.

F. Once a settlement has been reached, the contesting party must withdraw the notice of contest.

G. All settlement agreements and orders must be approved by a hearing examiner. A settlement agreement and order shall not be approved until at least ten days following service of the settlement proposal on affected employees.

H. The board may vacate any settlement agreement and order that is contrary to the act or board rules.

I. An affected employee may file with the hearing examiner an objection to a proposed settlement agreement within ten days of service of the proposed agreement upon the employee. The hearing examiner shall give consideration to the objection before approving or disapproving the settlement.

8 MCAR S 1.7255 Miscellaneous provisions.

A. Expedited proceeding.

1. Upon application of any party or intervenor, or upon

his own motion, any board member may order an expedited proceeding.

2. When an expedited proceeding is ordered, the executive secretary shall notify all parties and intervenors.

3. The hearing examiner assigned in an expedited proceeding shall make necessary rulings with respect to time for filing of pleadings and with respect to all other matters, without reference to times set forth in these rules, shall order daily transcripts of the hearing, and shall do all other things necessary to complete the proceeding in the minimum time consistent with fairness.

B. Standards of conduct. All persons appearing in any proceeding shall conform to the standards of ethical conduct required in the courts of the state of Minnesota.

C. Ex parte communication.

1. With respect to the merits of any case not concluded, there shall be no ex parte communication between the board, including any member, officer, employee, or agent of the board who is employed in the decisional process, and any of the parties or intervenors.

2. If ex parte communication occurs, the board may make orders or take whatever action fairness requires. Upon notice and hearing, the board may take any disciplinary action appropriate in the circumstances against any person who knowingly and willfully makes or solicits the making of a prohibited ex parte communication.

D. Restrictions on participation by investigative or prosecuting officers. In any proceeding noticed pursuant to the rules in this part, the Commissioner of Labor and Industry shall not participate or advise with respect to the report of the hearing examiner or the board decision.

E. Inspection and reproduction of documents. Subject to the provisions of law restricting public disclosure of information, any person may, at the offices of the board, inspect and copy any document filed in any proceeding. Costs are borne by the person.

F. Restrictions with respect to former employee or member.

1. No former employee or member of the board or the Department of Labor and Industry may appear before the board as an attorney or other representative for any party in any proceeding or other matter, formal or informal, in which he participated personally and substantially during the period of his employment or tenure.

2. No former employee or member of the board or the Department of Labor and Industry may appear before the board as an attorney or other representative for any party in any proceeding or other matter, formal or informal, in which he was involved during the period of his employment or tenure, unless one year has elapsed since the termination of the employment or tenure.

G. Special circumstances; waiver of rules. In special circumstances not contemplated by 8 MCAR SS 1.7250-1.7255, or for good cause shown, the board may, upon application by any party or intervenor, or on its own motion, after three days notice to all parties and intervenors, waive any rule or make any orders as justice or the administration of the act requires.

H. Penalties.

1. All penalties assessed by the board are civil.

2. The board has no jurisdiction under Minnesota Statutes, section 182.667 and must conduct no proceeding under it.

Repealer. Rules MOSHC 253 and 254 of the Department of Labor and Industry are repealed.

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
NOV 30 1983 4:04 P.M.
Joan Anderson Growe
Secretary of State

APPROVED AS TO FORM AND EXECUTION
November 30 19 83
HUBERT H. HUMPHREY, III
ATTORNEY GENERAL
BY Martha J Cassedy
SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
MINNESOTA OCCUPATIONAL SAFETY AND HEALTH REVIEW BOARD

In the Matter of the Proposed Adoption of Rules of the State of Minnesota Governing Procedure for Practice Before the Board.

ORDER ADOPTING RULES

Notice of the Board's intent to adopt the above-entitled rules without a public hearing was published in the State Register on August 1, 1983, and was sent by United States mail to all persons on the list maintained by the agency pursuant to Minnesota Statutes 14.14, Subdivision 1, on July 20, 1983. After affording interested and affected persons an opportunity to submit comments for 30 days after Notice, receiving fewer than seven written requests for a public hearing within the 30-day comment period, reviewing and considering the comments, and determining the need for and reasonableness of the above-captioned rules,

NOW, THEREFORE, IT IS ORDERED that these rules identified as Rules of Procedure For Practice Before the Minnesota Occupational Safety and Health Review Board are adopted this 11th day of October, 1983 pursuant to authority vested in the Board by Minnesota Statutes section 14.06.

STATE OF MINNESOTA

K. L. SOVEREIGN

STATE OF MINNESOTA

OCCUPATIONAL SAFETY AND HEALTH REVIEW BOARD

In the Matter of the Proposed Adoption of Rules of the State of Minnesota Governing Rules of Procedure For Practice Before the Minnesota Occupational Safety and Health Review Board

ORDER FOR NOTICE OF INTENT TO ADOPT RULES WITHOUT PUBLIC HEARING

IT IS ORDERED this 22nd day of April, 1983, that a Notice of Intent to Adopt Rules Without Public Hearing in the above-entitled matter by given to all persons who have registered their names with the State of Minnesota, Department of Labor and Industry for that purpose and be published in the State Register.

STATE OF MINNESOTA

K. L. SOVEREIGN
CHAIRPERSON

DAN W. GUSTAFSON
BOARD MEMBER

In the Matter of the Proposed Adoption of Rules of the State of Minnesota Governing Rules of Procedure for Practice Before the Minnesota Occupational Safety and Health Review Board

AFFIDAVIT OF MAILING

STATE OF MINNESOTA)
)ss.
COUNTY OF RAMSEY)

Cynthia D. Thompson being first duly sworn deposes and says

That on the 20th day of July, 1983, at the City of St. Paul, County of Ramsey, State of Minnesota, she served the attached Notice of Intent to Adopt Rules Without Public Hearing by depositing in the United States mail at said City of St. Paul, a copy thereof, properly enveloped, with postage prepaid, on all persons and associations who have requested that their names be placed on file with the State of Minnesota Department of Labor and Industry for the purpose of receiving notice of the proposed adoption of rules by this Minnesota Occupational Safety and Health Review Board.

Cynthia D. Thompson
CYNTHIA D. THOMPSON
REVIEW BOARD CLERK

Subscribed and sworn to before me this 10th day of October, 1983.

Patricia Lorentz

Patricia Lorentz
NOTARY PUBLIC — MINNESOTA
DAKOTA COUNTY
My commission expires Mar. 25, 1989

STATE OF MINNESOTA

COUNTY OF RAMSEY

CERTIFICATE

In the Matter of the Proposed Adoption
of Rules of the State of Minnesota
Governing Rules of Procedure For Practice
Before the Minnesota Occupational Safety
and Health Review Board

I hereby certify that the list of persons, associations, and other interested groups who have requested, pursuant to Minn. Stat. §14.14, Subdivision 1, that their names be placed on file with and maintained by the State of Minnesota, Department of Labor and Industry, for the purpose of receiving notice of the proposed adoption of rules by this Minnesota Occupational Safety and Health Review Board is accurate and complete as of 4:00:00 P.M., this 19 day of July, 1983.

Jane Brice

2. Because of the limited appropriation for the child day care sliding fee program and the requirement that the services of this program be provided to all persons entitled to them, first priority in allocating the appropriation will be given those counties with entitled families. Entitled families are those families which were receiving child care services under Minnesota Statutes, section 245.84, subdivision 2 on July 1, 1983. Remaining money will be allocated to the counties based upon the number of persons estimated to use the child day care sliding fee program services and the cost of the services as reported by the counties.

a. The allocation to each county for the state fiscal years 1984 and 1985 will be based on the estimated program costs as established by each county report and each county's program expenditures for state fiscal years 1982 and 1983.

b. In the event that the total estimated cost exceeds the appropriation, the percent the appropriation is to the estimated cost will be determined, and allocations made to the counties will be reduced according to that percentage.

c. In the event that the total estimated cost for those counties with entitled families is less than the total appropriation, the excess funds will be allocated to additional counties based upon the number of persons estimated to use the program and the expected cost.

d. Neither Region Eleven, nor Region One through Region Ten combined receive more than 55 percent of the appropriation.

3. All counties participating in the program for the first time shall provide a local match equal to five percent of the program cost. All other participating counties shall provide a local match equal to 15 percent of the program cost. For purposes of determining the local match, administrative costs must be considered to be the provider charge times seven percent. The local match does not include the amount of minimum fee payments made by families but may include in-kind materials and services, furnished by the county, required for the administration of the program.

C. Family eligibility for assistance.

1. Within the limits of the allocation and the required local match, each county must provide the services of this program to those persons entitled to the services under Minnesota Statutes, section 245.84, subdivision 2.

2. Entitled persons lose their eligibility when their income exceeds or falls below the income range used by the county at the time of entitlement.

3. Expansion of child day care sliding fee program services to other recipients will depend on additional county funding or state appropriation.

D. Alternative fee schedules. A county may propose an alternative fee schedule of it meets the following criteria:

1. Use of the state sliding fee schedule would impose a hardship such as substantially increased child care fees on families already participating in a sliding fee program;

2. The county can demonstrate how the use of their proposed fee schedule would reduce the incidence of lower income families remaining or becoming welfare recipients, increase the incentive for economic independence, and provide other benefits;

3. The county program serves a large enough population to demonstrate the impact of the program; and

4. The fee charged does not exceed the fee allowed in the state fee schedule. Participating counties shall only use one fee schedule for all eligible fee paying income groups receiving child day care services.

E. Applicability. Rule 12 MCAR § 2.164 [Temporary] governing the authority for establishing sliding fee schedules for child day care, the allocation of appropriations of child day care money to local social service agencies, and family eligibility for funding assistance will be in effect until it is superseded by a permanent rule, or for a maximum of 36 days.

Repealer. 12 MCAR § 2.163 A.1, B., C., and F., are repealed.

Occupational Safety and Health Review Board

Proposed Rules of Procedure for Practice Before the Occupational Safety and Health Review Board

Notice of Intent to Adopt Rules without a Public Hearing

Notice is hereby given that the Minnesota Occupational Safety and Health Review Board intends to adopt amendments and additions to the rules relating to the board without a public hearing. The board has determined that its proposed amendments

and additions to the rules will be noncontroversial in nature and has elected to follow the procedures set forth in Minn. Stat. § 14.21 to § 14.28 "Rulemaking: Procedure Applicable to Non-Controversial Rules." The statutory authority for promulgating these procedural rules is Minn. Stat. § 14.06 (1983).

Persons interested in these rules shall have 30 days from the date this notice is published in the *State Register* to submit, in writing, comments on the proposed rules. The proposed amendments and additions may be modified if the modifications are supported by the data and views submitted to the board and do not result in a substantial change.

Unless seven or more persons submit written requests for a public hearing on the proposed rules within the 30-day comment period, a public hearing will not be held. In the event a public hearing is required, the agency will proceed according to the provisions of Minn. Stat. § 14.13 to § 14.20. The board suggests that requests for a public hearing also specify the particular objection, suggest modifications to the proposed language, and state the reasons for the suggested modifications.

All correspondence, including written requests for a hearing and written comments on the proposed changes to the rules, should be addressed to:

Cynthia D. Thompson, Clerk
Minnesota Occupational Safety and Health Review Board
444 Lafayette Road
St. Paul, Minnesota 55101
(612) 296-8946

Persons may also receive notice when the proposed rules are submitted to the Attorney General by writing to Ms. Cynthia Thompson at the address listed above.

Copies of the proposed amended rules and copies of the Statement of Need and Reasonableness are now available, and one free copy of each may be obtained by writing to Ms. Cynthia Thompson at the adddress listed above. The Statement of Need and Reasonableness includes a summary of all of the board's evidence justifying both the need for, and the reasonableness of, the proposed amendments and additions to the rules. The board strongly recommends that both of the above-mentioned documents be carefully examined before a hearing is requested or comments are made on the proposed changes.

The proposed amended rules, if adopted, would make the rules consistent with statutory amendments which affect the Occupational Safety and Health Review Board. Generally, the changes in the rules are proposed in order to accomplish the following goals: (1) to bring the rules into compliance with statutory amendments; (2) to clarify and simplify procedures; and (3) to make the procedures more fair.

Rules as Proposed

~~MOSHC 250~~ 8 MCAR § 1.7250 General provisions.

~~(a)~~ A. Definitions. For the purposes of 8 MCAR §§ 1.7250-1.7255, the following terms have the meanings given them.

~~(1)~~ 1. "Act" means the Minnesota Occupational Safety and Health Act of 1973, ~~Minn. Laws 1973, Chapter 732~~ Minnesota Statutes, sections 182.65 to 182.674.

~~(2)~~ 2. "Commissioner," "~~commission~~ board," "person," "employer," and "employee," have the meanings set forth in ~~Section 2 of the Act~~ Minnesota Statutes, section 182.651.

~~(3)~~ 3. "~~Chairman~~ Chairperson" means the ~~Chairman~~ chairperson of the ~~Commission~~ board as designated by the governor.

~~(4) "Affected employee" means an employee of a cited employer who is exposed to the alleged hazard described in the citation, as a result of his assigned duties.~~

4. "Executive secretary" means the executive secretary of the Occupational Safety and Health Review Board.

~~(5)~~ 5. "Hearing examiner" means a ~~Hearing Examiner appointed by the Chairman of the Commission pursuant to Section 15, Subd. 3 of the Act~~ person assigned to hear a contested case by the Office of Administrative Hearings.

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." ADOPTED RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

6. "Affected employee" means an employee of a cited employer who is exposed within the scope of his employment to the alleged hazard described in the citation.

~~(6)~~ 7. "Authorized employee representative" means a labor organization ~~which~~ that has a collective bargaining relationship with the cited employer and ~~which~~ that represents affected employees. It also means a person authorized to act on behalf of affected employees.

~~(7)~~ 8. "Representative" means any person, including an authorized employee representative or legal counsel for an authorized employee representative, authorized by a party or intervenor to represent him in a proceeding.

~~(8)~~ 9. "Citation" means a written communication issued by the commissioner to an employer pursuant to ~~Section 11 of the Act~~ Minnesota Statutes, section 182.66.

~~(9)~~ 10. "Notification of proposed penalty" means a written communication issued by the commissioner to an employer pursuant to ~~Section 12, subd. 1 or 2 of the Act~~ Minnesota Statutes, section 182.661, subdivision 1 or 2.

~~(10)~~ 11. "Day" means a calendar day.

~~(11)~~ 12. "Working day" means all days except Saturdays, Sundays, or holidays as defined in Minnesota Statutes, section 645.44.

~~(12)~~ 13. "Proceeding" means any proceeding before the ~~Commission~~ board or before a hearing examiner.

14. "Party" means each person named as a party by the board in the notice of and order for hearing, or persons granted permission to intervene pursuant to 9 MCAR § 2.210.

15. "Intervenor" means any person who has submitted a petition to intervene with the hearing examiner in accordance with 9 MCAR § 2.210.

16. "Person" means any individual, partnership, corporation, joint stock company, unincorporated association or society, municipal corporation, or any government or governmental subdivision unit or agency other than a court of law.

~~(b)~~ B. Scope of rules.

~~(1)~~ ~~These~~ Rules 8 MCAR §§ 1.7250-1.7255 shall govern all proceedings before the ~~Commission and its Hearing Examiners~~ board, except all contested case and rule hearing proceedings are governed by 9 MCAR §§ 2.101-2.222.

~~(2)~~ In the absence of a specific provision, procedures shall be in accordance with the Minnesota Administrative Procedure Act.

~~(c) Construction of terms~~

~~Particular words and phrases shall be construed according to the provisions of Minn. Stat., Chapter 645.~~

~~(d) Computation of time~~

~~In computing any period of time prescribed or allowed in these rules, the provisions of Minn. Stat., Chapter 645, shall be complied with.~~

~~(e)~~ C. Extensions of time. Requests for extensions of time for the filing of any pleading or document must be received by the board three days in advance of the date on which the pleading or document is due to be filed.

~~(f)~~ D. Record address. The initial pleading filed by ~~any~~ a person ~~shall~~ must contain his name, address, and telephone number. Any change in ~~such~~ the information must be communicated promptly in writing to the hearing examiner or the ~~Commission~~ board, as the case may be, and to all other parties and intervenors. A party or intervenor who fails to furnish ~~such~~ the information ~~shall be deemed to have waived~~ waives his right to notice and service under ~~these rules~~ E.

~~(g)~~ E. Service and notice.

~~(1)~~ 1. At the time of filing pleadings or other documents, a copy ~~thereof~~ shall be served by the filing party or intervenor on every other party or intervenor.

~~(2)~~ 2. Service upon a party or intervenor who has appeared through a representative ~~shall~~ must be made only upon such representative.

~~(3) Unless otherwise ordered, service may be accomplished by postage prepaid first class mail or by personal delivery. Service is deemed effected at the time of mailing (if by mail) or at the time of personal delivery (if by personal delivery).~~

(4) Proof of service shall be accomplished by a written statement of the same which sets forth the date and manner of service. Such statement shall be filed with the pleading or document.

(5) Where service is accomplished by posting, proof of such posting shall be filed not later than the first working day following the posting.

(6) Service and notice to employees represented by an authorized employee representative shall be deemed accomplished by serving the representative in the manner prescribed in paragraph (3) of this section.

(7) In the event that there are any affected employees who are not represented by an authorized employee representative, the employer shall, immediately upon receipt of the notice of contest or petition for modification of the abatement period, post, where the citation is required to be posted, a copy of the notice of contest and a notice informing such affected employees of their right to party status and of the availability of all pleadings for inspection and copying at reasonable times. A notice in the following form shall be deemed to comply with this paragraph:

(Name of Employer)

Your employer has been cited by the Commissioner of Labor for violation of the Minnesota Occupational Safety and Health Act of 1973. The citation has been contested and will be the subject of a hearing before the Occupational Safety and Health Review Commission. Affected employees are entitled to participate in this hearing as parties under terms and conditions established by the Occupational Safety and Health Review Commission in its Rules of Procedure. Notice of intent to participate should be sent to:

Occupational Safety and Health Review Commission
444 Lafayette Road
St. Paul, Minnesota 55101

All papers relevent to this matter may be inspected at:

(Place reasonably convenient to employees, preferably at or near workplace.)

Where appropriate, the second sentence of the above notice will be deleted and the following sentence will be substituted:

The reasonableness of the period prescribed by the Commissioner of Labor for abatement of the violation has been contested and will be the subject of a hearing before the Occupational Safety and Health Review Commission.

(8) The authorized employee representative, if any, shall be served with the notice set forth in paragraph (7) of this section and with a copy of the notice of contest.

(9) A copy of the notice of the hearing to be held before the Hearing Examiner shall be served by the employer on affected employees who are not represented by an authorized employee representative by posting a copy of the notice of such hearing at or near the place where the citation is required to be posted.

(10) A copy of the notice of the hearing to be held before the Hearing Examiner shall be served by the employer on the authorized employee representative of affected employees in the manner prescribed in paragraph (3) of this section, if the employer has not been informed that the authorized employee representative has entered an appearance as of the date such notice is received by the employer.

(11) Where a notice of contest is filed by an affected employee who is not represented by an authorized employee representative and there are other affected employees who are represented by an authorized employee representative, the unrepresented employee shall, upon receipt of the statement filed in conformance with Section 252(f) of these rules, serve a copy thereof on such authorized employee representative in the manner prescribed in paragraph (3) of this section and shall file proof of such service.

(12) Where a notice of contest is filed by an affected employee or an authorized employee representative, a copy of the notice of contest and response filed in support thereof shall be provided to the employer for posting in the manner prescribed in paragraph (g) of this section.

(13) An authorized employee representative who files a notice of contest shall be responsible for serving any other authorized employee representative whose members are affected employees.

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~~(14) Where posting is required by this section, such posting shall be maintain until the commencement of the hearing or until earlier disposition.~~

3. Unless otherwise ordered, service may be made by postage prepaid first class mail, personal delivery, or by posting. Service is made at the time of mailing, personal delivery, or posting.

4. Service must be certified by a written statement that sets forth the date and manner of service. The statement must be filed with the pleading or document.

5. If service is made by posting, the posting must take place wtihin two working days of receipt of the document posted. Certification of posting must be filed with the executive secretary within five working days of receipt of the document.

6. Where service is accomplished by first class mail or personal delivery, certification must be filed with the executive secretary within five working days of receipt of the document.

7. If there are any affected employees who are not represented by an authorized employee representative, the employer shall, within two working days of receiving the acknowledgement of the notice of contest or petition for modification of abatement date, post, where the citation is required to be posted, a copy of the notice of contest and a notice informing affected employees of their right to party status and of the availability of all pleadings for inspection and copying at reasonable times. A notice in the following form complies with this paragraph:

(Name of employer)

Your employer has been cited by the Commissioner of Labor and Industry for violation of the Minnesota Occupational Safety and Health Act of 1973. The citation has been contested and will be the subject of a hearing. Affected employees are entitled to participate in this hearing as parties under the terms and conditions established by the Occupational Safety and Health Review Board in its rules of procedure. Notice of intent to participate should be sent to: Executive Secretary, Occupational Safety and Health Review Board, 444 Lafayette Road, St. Paul, MN 55101, or any other address that the review board has.

All papers relevant to this matter may be inspected at:

(Place reasonably convenient to employees, preferably at or near workplace.)

Where appropriate, the second sentence of the above notice will be deleted and the following sentence will be substituted:

The reasonableness of the period prescribed by the Commissioner of Labor and Industry for abatement of the violations has been contested and will be the subject of a hearing.

8. Service and notice to affected employees not represented by an authorized employee representative are deemed accomplished by posting.

9. Certificatoin of the posting required in 7. must be filed with the executive secretary of the board within five working days of receipt of the document. If the employer fails to certify the posting in the prescribed manner, the board shall dismiss the notice of contest.

10. If there are any affected employees who are represented by an authorized employee representative, the employer shall by first class mail or personal delivery serve upon the representative the notice set forth in 7. and a copy of the notice of contest.

11. Service and notice to employees represented by an authorized employee representative are deemed accomplished by serving the representative by first class mail or personal delivery.

12. Certification of the service required in 10. must be filed with the executive secretary of the board within five working days of receipt of the document. If the employer fails to certify the service in the prescribed manner, the board shall dismiss the notice of contest.

13. A copy of the notice of hearing to be held before the hearing examiner must be served by the employer on affected employees who are not represented by an authorized employee representative by posting within two days of receipt a copy of the notice of hearing at or near the place where the citation is required to be posted.

14. Certification of the posting required in 13. must be filed with the hearing examiner and a copy sent to the executive secretary of the board within five working days of receipt of the notice of hearing. If the employer fails to certify the posting in the prescribed manner, the notice of contest shall be dismissed.

15. A copy of the notice of hearing to be held before the hearing examiner shall be served by the employer on the authorized employee representative of affected employees, if any, by mail or personal delivery, if the employer has not been informed that the authorized employee representative has entered an appearance as of the date the notice is received by the employer.

16. Certification of the service of the notice of hearing required in 15. must be filed with the hearing examiner and a copy sent to the executive secretary of the board within five working days of receipt of the document. If the employer fails to certify the service in the prescribed manner, the notice of contest shall be dismissed.

17. When a notice of contest is filed by an affected employee who is not represented by an authorized employee representative and there are other affected employees who are represented by an authorized employee representative, the unrepresented employee shall, upon receiving acknowledgement by the board of his notice of contest, serve a copy on the authorized employee representative by mail or personal delivery and shall file certification of service with the executive secretary within five working days.

18. When a notice of contest is filed by an affected employee or an authorized employee representative, a copy of the notice of contest must be provided to the employer for posting in the manner prescribed in E.

19. An authorized employee representative who files a notice of contest is responsible for serving any other authorized employee representative whose members are affected employees.

20. Where posting is required by this section, posting must be maintained until commencement of the hearing or until earlier disposition.

21. If a settlement proposal is filed with the hearing examiner, it shall be served upon affected employees. For affected employees represented by an authorized employee representative, service shall be accomplished by personal delivery or first class mail to the representative. For affected employees not so represented, service shall be accomplished by posting. Proof of service of the settlement proposal on affected employees shall be filed with the hearing examiner.

~~(h)~~ F. Filing.

~~(1) Prior to the assignment of~~ 1. Before a case is assigned to a hearing examiner, all papers ~~shall~~ must be filed with the ~~Chairman of the Commission at 444 Lafayette Road, St. Paul, Minnesota 55101~~ executive secretary. ~~Subsequent to the assignment of~~ After the case has been assigned to a hearing examiner and before the issuance of his decision, all papers ~~shall~~ must be filed with the hearing examiner at the address given in the notice informing ~~such~~ the parties of the assignment, with the exception of the certification of posting and service prescribed in E.14. and 16., which must be filed with the hearing examiner and the executive secretary. ~~Subsequent to the~~ After issuance of the decision ~~to a~~ by the hearing examiner, all papers ~~shall~~ must be filed with the ~~chairman~~ executive secretary of the ~~commission~~ board.

~~(2)~~ 2. Unless otherwise ordered, all filing may be accomplished by first class mail.

~~(3)~~ 3. Filing is deemed effected at the time of mailing.

~~(i)~~ G. Consolidation. Cases may be consolidated on the motion of any party, on the hearing examiner's own motion, or on the ~~Commission's~~ board's own motion, where there exist common parties, common questions of law or fact, or both, or in ~~such~~ other circumstances as justice and the administration of the act require.

~~(j)~~ H. Severance. Upon its own motion, or upon the motion of any party ~~or intervenor,~~ the ~~Commisson~~ board or the hearing examiner may, for good cause, order any proceeding severed with respect to some or all issues or parties.

~~(k)~~ I. Protection of trade secrets and other confidential information. Upon application by any person in a proceeding where trade secrets or other matters may be divulged, the hearing examiner shall issue ~~such~~ orders as may be appropriate to protect the confidentiality of ~~such~~ these matters.

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." ADOPTED RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

MOSHC 251 8 MCAR § 1.7251 Parties and representatives.

~~(a)~~ A. Party status.

~~(1)~~ 1. Affected employees or an authorized representative may ~~elect~~ choose to participate as parties ~~at any time before the commencement of the hearing before the hearing examiner, unless for good cause shown, the Commission or the hearing examiner allows such election at a later time. See also Section 251(b) of these rules~~ provided they file notice at least five days before the start of the hearing. The notice must contain the employees' names, addresses, representatives, if any, and a statement that they are employees of the cited employer. This notice shall be filed with the executive secretary if a hearing examiner has not yet been assigned. After a hearing examiner has been assigned, this notice shall be filed with the hearing examiner and served upon all other parties.

~~(2)~~ 2. Where a notice of contest is filed by an employee or by an authorized employee representative with respect to the reasonableness of the ~~period~~ date for abatement of a violation, the ~~employer charged with the responsibility of abating the violation may elect party status at any time before the commencement of the hearing before the hearing examiner. See also Section 251(b) of these rules~~ type of alleged violation, the proposed penalty, or notification issued, the employer charged with the responsibility of the alleged violation may choose party status by filing a notice at least five days before the start of the hearing. The notice must contain the employer's name, address, and representative, if any. This notice shall be filed with the executive secretary if a hearing examiner has not yet been assigned. After a hearing examiner has been assigned, this notice shall be filed with the hearing examiner and served upon all other parties.

~~(b) Intervention; appearance by nonparties~~

~~(1) A petition for leave to intervene may be filed at any stage of a proceeding before commencement of the hearing before the hearing examiner.~~

~~(2) The petition shall set forth the interest of the petitioner in the proceeding and show that the participation of the petitioner will assist in the determination of the issues in question, and that the intervention will not unnecessarily delay the proceeding.~~

~~(3) The Commission or the hearing examiner may grant a petition for intervention to such an extent and upon such terms as the Commission or the hearing examiner shall determine.~~

~~(c)~~ B. Representatives of parties and intervenors.

~~(1)~~ 1. Any party or intervenor may appear in person or through a representative.

~~(2)~~ 2. A representative of a party or intervenor shall be deemed to control all matters respecting the interest of such party or intervenor in the proceeding.

~~(3)~~ 3. Affected employees who are represented by an authorized employee representative may appear only through ~~such~~ the authorized employee representative.

~~(4)~~ 4. Nothing contained herein ~~shall be construed to require~~ requires any representative to be an attorney-at-law.

~~(5)~~ 5. Withdrawal of appearance of any representative may be affected by filing a written notice of withdrawal and by serving a copy thereof on all parties and intervenors.

~~MOSHC 252~~ 8 MCAR § 1.7252 Pleadings and motions.

~~(a)~~ A. Form.

~~(1)~~ 1. Except as provided ~~herein~~ in 8 MCAR § 1.7252, there are no specific requirements ~~as to~~ on the form of any pleading. A pleading is simply required to contain a caption sufficient to identify the parties in accordance with ~~Section 252(b), which shall~~ B. It must include the ~~Commission's~~ board's and the hearing examiner's docket number, if any, and a clear and plain statement of the relief that is sought, together with the ground ~~therefor~~ for the relief.

~~(2)~~ 2. Pleadings and other documents ~~(, other than exhibits)~~ ~~shall~~, must be typewritten~~, double-spaced, on letter size opaque~~ or otherwise be legible on paper ~~(, approximately 8½ inches by 11 inches)~~. ~~The left margin shall be 1½ inches and the right margin 1 inch. Pleadings and other documents shall be fastened at the upper left corner.~~

~~(3)~~ 3. Pleadings ~~shall~~ must be signed by the party filing or by his representative. ~~Such~~ Signing constitutes a representation by the signer that he has read the document or pleading, that to the best of his knowledge, information, and belief the statements made ~~therein~~ in it are true, and that it is not interposed for delay.

~~(4)~~ 4. The ~~Commission~~ board may refuse for filing any pleading or document ~~which~~ that does not comply with the requirements of ~~paragraphs (1)~~ 1., ~~(2)~~ 2., and ~~(3) of this section~~ 3.

~~(b)~~ B. Caption; titles of cases.

~~(1)~~ 1. Cases initiated by a notice of contest shall be titled:

Commissioner of Labor and Industry,

Complainant

v.

(Name of contestant),

Respondent

~~(2)~~ 2. Cases initiated by a petition for modification of ~~the~~ abatement ~~period~~ date shall be titled:

(Name of employer),

Petitioner

v.

Commissioner of Labor and Industry,

Respondent

3. Cases in which a third party interest has been exercised shall be entitled:

Commissioner of Labor and Industry,

Complainant

v.

(Name of employer),

(Name of Authorized Employee Representative),

Respondent

Authorized

employee

representative

~~(3)~~ 4. The titles listed in ~~paragraphs~~ ~~(1)~~ 1., 2., and ~~(2)~~ ~~of this section~~ ~~shall~~ 3. must appear at the left upper portion of the initial page of any pleading or document ~~(~~, other than exhibits~~)~~, filed.

~~(4)~~ 5. The initial page of any pleading or document ~~(~~, other than exhibits~~)~~ ~~shall~~, must show, at the upper right of the page, opposite the title, the docket number, if known, assigned by the ~~Commissioner~~ executive secretary of the board.

~~(c)~~ C. Notices of contest. The commissioner shall, within ~~30~~ seven working days of ~~receipt of~~ receiving a notice of contest, transmit the original to the ~~Commissioner~~ board, together with copies of all relevant documents.

~~(d)~~ D. Employer contests.

~~(1)~~ 1. Complaint.

~~(aa)~~ a. The commissioner shall file a complaint with the ~~Commission~~ board no later than 40 days after ~~his receipt of~~ receiving the notice of contest.

~~(bb)~~ b. The complaint ~~shall~~ must set forth all alleged violations and proposed penalties ~~which~~ that are contested, stating with particularity:

~~(i)~~ (1) the basis for jurisdiction;

~~(ii)~~ (2) the time, location, place, and circumstances of each ~~such~~ alleged violation; and

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." ADOPTED RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

~~(iii)~~ (3) the considerations upon which the ~~period~~ date for abatement and the proposed penalty on each ~~such~~ alleged violation ~~is~~ are based.

~~(ee)~~ ~~Where~~ c. If the commissioner seeks in his complaint to amend his citation or proposed penalty, he shall set forth the reasons for amendment and shall state with particularity the change sought.

d. At any time in the proceedings, an employer may withdraw his notice of contest.

2. Notice to respondent. The commissioner shall file and serve on the respondent no later than 40 days after receiving the notice of contest a notice stating the following:

a. that the basis for the board's authority to hold a hearing is to be found in Minnesota Statutes, section 182.664;

b. that the party has a right to be represented by legal counsel in all proceedings;

c. that the rules of the board and the rules of the Office of Administrative Hearings apply to the proceedings;

d. the name of the agency official or member of the Attorney General's staff to be contacted to discuss informal disposition under 9 MCAR § 2.207 or discovery under 9 MCAR § 2.214 C.; and

e. that a failure to appear at the hearing may result in the allegations of the pleadings being taken as true.

~~(2)~~ 3. Answer.

~~(aa)~~ a. Within 15 days after service of the complaint, the party against whom the complaint was issued shall file an answer with the ~~Commission~~ board.

~~(bb)~~ b. The answer ~~shall~~ must contain a short and plain statement denying those allegations in the complaint which the party intends to contest. Any allegation not denied ~~shall be~~ is deemed admitted.

c. If an answer is not filed with the executive secretary in a timely manner, the notice of contest shall be dismissed.

~~(e)~~ E. Petitions for modification of abatement ~~period~~ date.

~~(1) An employer may file with the Commissioner a petition for modification of an abatement period no later than the close of the next working day following the date on which abatement is required.~~

~~(2) The Commissioner shall transmit such petition to the Commission within 3 days after its receipt.~~

~~(3) The Commissioner shall file a response within 10 days of receipt of the petition.~~

~~(4) The burden of proving the need for modification of the abatement period shall rest with the petitioner.~~

1. When a petition for modification of abatement date filed under 8 MCAR § 1.7280 is objected to by the commissioner, affected employees, or an authorized employee representative, the petition must be processed as follows:

a. The petition, citation, and objections received by the Department of Labor and Industry must be forwarded to the board within three days after the expiration of the 15-day period set out in 8 MCAR § 1.7280 C.4.

b. The board shall docket and process the petition in the same manner as any other contested case, except that all hearings on the petitions must be handled on an expedited basis.

c. An employer petitioning for a modification of abatement date has the burden of proving that he has made a good faith effort to comply with the abatement requirements of the citation and that abatement has not been completed because of factors beyond his control.

d. Within ten days after receiving notice of the docketing by the board of any petition for modification of abatement date, each objecting party shall file a response setting forth the reasons for opposing the granting of a modification date different from that requested in the petition.

~~(f)~~ F. Employee contests.

~~(1) Where an affected employee or authorized employee representative files a notice of contest with respect to the abatement period, the commissioner shall, within 10 days from his receipt of the notice of contest, file a clear and concise statement of the reasons the abatement period prescribed by him is not unreasonable.~~

~~(2) No later than 10 days after receipt of the statement referred to in paragraph (1) of this section, the contestant shall file a response.~~

1. An affected employee or authorized employee representative may file a notice of contest with respect to the time fixed for abatement, the citation, the type of alleged violation, the proposed penalty, or notification issued.

2. Employee contestations will be handled in accordance with C. and D.

3. At any time in the proceedings, an employee may withdraw his notice of contest.

~~(g)~~ G. Statement of position. At any time prior to the commencement of the hearing before the hearing examiner, any ~~person entitled to appear as a party, or any person who has been granted leave to intervene,~~ party may file a statement of position with respect to any or all issues to be heard.

~~(h)~~ H. Response to motions. Any party ~~or intervenor~~ upon whom a motion is served ~~shall have 10~~ has ten days from service of the motion to file a response.

~~(i)~~ I. Failure to file. Failure to file any pleading pursuant to ~~these rules~~ 8 MCAR §§ 1.7250-1.7255 when due, may, in the discretion of the ~~Commission~~ board or the hearing examiner, constitute a waiver of the right to further participation in the proceedings.

J. Reinstatement. Request for reinstatement of a notice of contest which has been dismissed by the board for failure to comply with procedures must be made in writing and be filed with the executive secretary of the board within five days of receipt of the order of dismissal. This statement should contain reasons why the rules of procedure have not been complied with.

~~MOSHC 255~~ 8 MCAR § 1.7253 Post hearing procedures.

~~(a)~~ A. Decisions of hearing examiners.

~~(1)~~ 1. The decision of the hearing examiner ~~shall~~ must include findings of fact, conclusions of law, and an order.

~~(2)~~ 2. The hearing examiner shall sign and date the decision. Upon ~~issuance~~ service of the decision by the hearing examiner, jurisdiction ~~shall rest~~ rests solely in the ~~Commission~~ board, and all subsequent motions, petitions, and other pleadings filed ~~subsequent to such issuance shall~~ must be addressed to the ~~Commission~~ board.

~~(b) Discretionary Review, Petition~~ B. Notice of appeal.

~~(1) A~~ 1. Any party ~~aggrieved by the decision of a Hearing Examiner~~ may ~~submit~~ file a ~~petition for discretionary review~~ notice of appeal of the findings and decision of a hearing examiner with the board.

~~(2) The petition must be received by the Commission at its offices in St. Paul, Minnesota on or before the 25th day following receipt by the Commission of the hearing examiner's decision.~~

~~(3) A petition should contain a concise statement of each portion of the decision and order to which exception is taken and may be accompanied by a brief of points and authorities relied upon. The original and three (3) copies shall be filed with the Commission.~~

~~(4) Failure to act on such petition within the review period shall be deemed a denial thereof.~~

2. A notice of appeal must contain a concise statement of each portion of the findings and decision to which exception is taken. It may be accomplished by a statement of reasons relied upon. The notice of appeal must include the legal or factual issues that are raised on appeal. The original and four copies shall be filed with the board.

3. The notice of appeal must be received by the board at its offices in St. Paul, Minnesota, on or before the 30th day following publication of the hearing examiner's findings and decision.

4. Within ten days after the filing of a notice of appeal, any other party may file a notice of appeal of the hearing examiner's findings and decision regardless of the 30-day period stated in 3.

5. At the time of filing a notice of appeal, the party seeking appeal shall serve a copy of the notice of appeal on every other party of record.

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C. Briefs. The board may order the parties to file any briefs or memoranda it deems necessary. Each brief or memorandum must state the legal or factual issues involved in the appeal and each party's stance on these issues.

~~(c)~~ D. Stay of ~~Final~~ order of hearing examiner.

~~(1) Any party aggrieved by a final order of the Commission may, while the matter is within the jurisdiction of the Commission, file a motion for a stay.~~

~~(2) Such motion shall set forth the reasons a stay is sought and the length of the stay requested.~~

~~(3) The Commission may order such stay for the period requested or for such longer or shorter period as it deems appropriate.~~ The timely filing by any party of a notice of appeal to the board stays the order of the hearing examiner.

~~(3)~~ E. Oral argument before ~~the Commission~~ board.

~~(1) Oral argument before the Commission ordinarily will not be allowed.~~

~~(2) In the event the Commission desires to hear oral argument with respect to any matter it will advise all parties to the proceeding of the date, hour, place, time allotted, and scope of such argument at least 10 days prior to the date set.~~

1. Oral argument before the board will be heard from each party or party's representative unless it is waived by that party.

2. At least ten days before the date set for oral argument, the executive secretary will advise all parties to the proceedings of the date, hour, place, time allotted, and scope of the argument.

3. The board is limited in its review of a hearing examiner's findings and decision to the matters preserved in the record.

F. Decision of hearing examiner not appealed to board. If no party files a notice of appeal within the 30-day time limit provided in B.2., the decision of the hearing examiner becomes a final order of the board.

~~MOSHC 256 Miscellaneous provisions~~ 8 MCAR § 1.7254

~~(a)~~ Settlement.

~~(1)~~ A. Settlement is encouraged at any stage of the proceedings ~~where such~~ if the settlement is consistent with the provisions and objections of the act.

~~(2) Settlement agreements submitted by the parties shall be accompanied by an appropriate proposed order.~~

~~(3) Where parties to settlement agree upon a proposal, it shall be served upon represented and unrepresented affected employees in the manner set forth in Section 250(g). Proof of such service shall accompany the proposed settlement when submitted to the Commission or the Hearing Examiner.~~

B. Settlement agreements must be signed and dated by each party.

C. Settlement agreements must contain a provision stating that the employer has served the agreement upon affected employees in the manner prescribed by 8 MCAR § 1.7250 E.21.

D. Settlement agreements submitted by the parties must be accompanied by an appropriate proposed order.

E. Only contested items are subject to settlement.

F. Once a settlement has been reached, the contesting party must withdraw the notice of contest.

G. All settlement agreements and orders must be approved by a hearing examiner. A settlement agreement and order shall not be approved until at least ten days following service of the settlement proposal on affected employees.

H. The board may vacate any settlement agreement and order that is contrary to the act or board rules.

I. An affected employee may file with the hearing examiner an objection to a proposed settlement agreement within ten days of service of the proposed agreement upon the employee.

8 MCAR § 1.7255 Miscellaneous provisions.

~~(b)~~ A. Expedited proceeding.

~~(1)~~ 1. Upon application of any party or intervenor, or upon his own motion, any ~~Commissioner~~ board member may order an expedited proceeding.

~~(2)~~ 2. When ~~such~~ an expedited proceeding is ordered, the executive ~~Commissioner~~ secretary shall notify all parties and intervenors.

~~(3)~~ 3. The hearing examiner assigned in an expedited proceeding shall make necessary rulings with respect to time for filing of pleadings and with respect to all other matters, without reference to times set forth in these rules, shall order daily transcripts of the hearing, and shall do all other things necessary to complete the proceeding in the minimum time consistent with fairness.

~~(c)~~ B. Standards of conduct. All persons appearing in any proceeding shall conform to the standards of ethical conduct required in the courts of the state of Minnesota.

~~(d)~~ C. Ex parte communication.

~~(1)~~ 1. With respect to the merits of any case not concluded, there shall be no ex parte communication~~, with respect to the merits of any case not concluded,~~ between the ~~Commission~~ board, including any member, officer, employee, or agent of the ~~Commission~~ board who is employed in the decisional process, and any of the parties or intervenors.

~~(2) In the event such~~ 2. If ex parte communication occurs, the ~~Commission or the Hearing Examiner~~ board may make ~~such~~ orders or take ~~such~~ whatever action ~~as~~ fairness requires. Upon notice and hearing, the ~~Commission~~ board may take ~~such~~ any disciplinary action ~~as is~~ appropriate in the circumstances against any person who knowingly and willfully makes or solicits the making of a prohibited ex parte communication.

~~(e)~~ D. Restrictions ~~as to~~ on participation by investigative or prosecuting officers. In any proceeding noticed pursuant to the rules in this part, the Commissioner of Labor and Industry shall not participate or advise with respect to the report of the hearing examiner or the ~~Commission~~ board decision.

~~(f)~~ E. Inspection and reproduction of documents.

~~(1)~~ Subject to the provisions of law restricting public disclosure of information, any person may, at the offices of the ~~Commission~~ board, inspect and copy any document filed in any proceeding.

~~(2)~~ Costs ~~shall be~~ are borne by ~~such~~ the person.

~~(g)~~ F. Restrictions with respect to former ~~employees~~ employee or member.

~~(1)~~ 1. No former employee or member of the ~~Commission~~ board or the Department of Labor and Industry ~~shall~~ may appear before the ~~Commission~~ board as an attorney or other representative for any party in any proceeding or other matter, formal or informal, in which he participated personally and substantially during the period of his employment or tenure.

~~(2)~~ 2. No former employee or member of the ~~Commission~~ board or the Department of Labor and Industry ~~shall~~ may appear before the ~~Commission~~ board as an attorney or other representative for any party in any proceeding or other matter, formal or informal, ~~for~~ in which he was ~~personally responsible~~ involved during the period of his employment or tenure, unless one year has elapsed since the termination of ~~such~~ the employment or tenure.

~~(h)~~ G. Special circumstances; waiver of rules. In special circumstances not contemplated by ~~the provisions of these rules~~ 8 MCAR §§ 1.7250-1.7255, or for good cause shown, the ~~Commission~~ board may, upon application by any party or intervenor, or on its own motion, after ~~3~~ three days notice to all parties and intervenors, waive any rule or make ~~such~~ any orders as justice or the administration of the act requires.

~~(i)~~ H. Penalties.

~~(1)~~ 1. All penalties assessed by the ~~Commission~~ board are civil.

~~(2)~~ 2. The ~~Commission~~ board has no jurisdiction under ~~Section 18 of the Act~~ Minnesota Statutes, section 182.667 and ~~will~~ must conduct no proceeding ~~thereunder~~ under it.

Repealer. Rules MOSHC 253 and 254 of the Department of Labor and Industry are repealed.

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." ADOPTED RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

STATE OF MINNESOTA

OCCUPATIONAL SAFETY AND HEALTH REVIEW BOARD

In the Matter of the Proposed Adoption of Rules of the State of Minnesota Governing Rules of Procedure for Practice Before the Minnesota Occupational Safety and Health Review Board

FINDINGS OF FACT AND CONCLUSIONS

After affording interested persons an opportunity to present written comments and having considered all of the comments and recommendations, I find that the rules should be changed as set forth in the attached document.

STATE OF MINNESOTA

K. L. SOVEREIGN
CHAIRPERSON

CHANGES IN THE PROPOSED RULES

1. Page 2, §1.7250 B.

B. Scope of Rules.

Rules 8 MCAR SS 1.7250-1.7255 shall govern all proceeding before the board. ~~except~~ Additionally, all contested case and rule hearing proceedings are governed by 9 MCAR SS 2.101-2.222.

Reasons: The hearing examiner must apply the rules of the Office of Administrative Hearings and reveiw board rules to contested cases.

2. Pages 5-6, §1.7250 E.4.

4. Service must be certified by a written statement that sets forth the date and manner of service. The statement must be signed by the person accomplishing service, and it must be filed with the pleading or document.

Reason: This clarifies the intent of the review board.

3. Page 6, §1.7250 E.7.

...Affected employees are entitled to participate in this hearing as parties under the terms and conditions established by the Occupational Safety and Health Reveiw Board in its rules of procedure. Notice of intent to participate should be sent to: Executive Secretary, Occupational Safety and Health Review Board, 444 Lafayette Road, St. Paul, MN 55101, or any other address that the review board has. The notice of intent to participate must contain the employees' names, addresses, representatives, if any, and a statement that they are affected employees of the cited employer.

All papers relevant...

Reason: This tells affected employees what must be included in the notice of intent to participate. There has been a problem with these notices not containing addresses or statements saying the person is an employee. For administrative purposes, these items must be included in the notice.

4. Page 9, §1.7250 E.21.

21. If a settlement proposal is filed with the hearing examiner, it shall be served upon affected employees by the employer.

Reason: This clarifies the intent of the review board.

5. Page 10, §1.7251 A.1.

1. Affected employees or an authorized representative may choose to participate as parties provided they file notice of intent to participate at least five days before the start of the hearing. The notice of intent to participate must contain the employees' names, addresses, representatives, if any, and a statement that they are affected employees of the cited employer.

Reason: The added language makes this section consistent with the notice of contest provision in §1.7250 E.7. (Both say notice of intent to participate.) Also, the word "affected" was added because only affected employees may choose to participate; others must petition for intervention.

6. Page 11, §1.7251 A.3 (New 3).

3. Intervention and appearance by nonparties may be granted pursuant to 9 MCAR S 2.210.

Reason: This tells people where to refer when they want to intervene.

7. Page 14, §1.7252 D.2.

~~e. that a failure to appear at the hearing may result in the allegations of the pleadings being taken as true.~~

e. that respondent has a right to a contested case hearing before an independent Hearing Examiner from the State Office of Administrative Hearings pursuant to Minn. Stat. SS 15.0418-15.0422 and 15.052 and Minn. Stat. S 182.664 sub. 3;

f. that respondent may present evidence and argument with respect to the issues and cross-examine witnesses;

g. Where the procedural rules may be obtained;

h. that parties may attempt to settle the matter without a hearing;

i. that should respondent wish to initiate discovery pursuant to 9 MCAR S 2.214 C prior to the setting of a hearing date, respondent must file a discovery motion with the Review Board and the case will be transferred to the Office of Administrative Hearings for a decision on the discovery motion.

p.11

Reason: These items are currently included in the notices issued by the Commissioner but were not refered to in the proposed rules. The deleted part "e" more appropriately belongs in the notice of hearing and order, and it will be included in further changes.

8. Page 16, §1.7252 K (New K).

k. Notice of Readiness for Hearing

1. Subsequent to the timely filing of an answer, a party that is prepared for hearing may file a Notice of Readiness for Hearing with the board and serve a copy on all parties.

2. Upon receipt of the Notice of Readiness for Hearing, the board shall schedule a hearing. The board shall serve a written notice of Hearing and Order on all parties at least 30 days prior to the hearing date. The employer shall serve a copy of the notice of Hearing & Order on affected employees and authorized employee representatives pursuant to 8 MCAR S 1.7250(E). The notice of Hearing and Order must state the following:

p.13

a. that if a party chooses to appear at the hearing, a notice of appearance must be filed by that party with the hearing examiner within 20 days of the date of service of the notice of Hearing and Order pursuant to 9 MCAR 2.205; and

b. that a failure to appear at the hearing may result in the allegations of the pleadings being taken as true.

Reason: These provisions are added to give notice to all parties of the procedures involved for proceeding to a hearing. Without these items, parties would not know that these procedures are required.

9. Page 19, §1.7254 C.

C. Settlement agreements must contain a provision stating the date on which the employer has served the agreement upon affected employees in the manner prescribed by 8 MCAR § 1.7250 E.21.

Reason: The hearing examiner must know the date of service so that he may comply with §1.7254 G and I; he must allow 10 days after service for comment before he can approve the settlement agreement.

10. Page 19, §1.7254 I.

I. An affected employee may file with the hearing examiner an objection to a proposed settlement agreement within ten days of service of the proposed agreement upon the employee. The Hearing Examiner shall give consideration to the objection before approving or disapproving the settlement.

Reason: This clarifies the review board's intent.

CERTIFICATE OF BOARD'S

RESOLUTION ADOPTING RULES

I, Kenneth L. Sovereign, do hereby certify that I am a member and the chairperson of the Minnesota Occupational Safety and Health Review Board of the State of Minnesota, a board duly authorized under the laws of the State of Minnesota, and that the following is a true, complete, and correct copy of a resolution adopted at a meeting of the Minnesota Occupational Safety and Health Review Board, duly and properly called and held on the 11th day of October, 1983, that a quorum was present at said meeting, that a majority of those present voted for the resolution, and that said resolution is set forth in the minutes of said meeting and has not been rescinded or modified.

> "RESOLVED, that the Rules of Procedure For Practice Before the Minnesota Occupational Safety and Health Review Board be and they hereby are approved and adopted, pursuant to authority vested in us by Minnesota Statutes §14.06 and that Kenneth L. Sovereign, the Chairperson of the Minnesota Occupational Safety and Health Review Board, be and hereby is authorized to sign an order adopting these rules and further is authorized to perform the necessary acts to provide that these rules shall have the force and effect of law."

IN WITNESS WHEREOF, I have hereunto subscribed my name this 21st day of October, 1983.

K L Sovereign

(Officer of the Board)

Barbara M. Louisell

Attest by one other Board member

MINNESOTA OCCUPATIONAL SAFETY AND HEALTH REVIEW BOARD

STATEMENT OF NEED AND REASONABLENESS

GENERAL PROVISIONS

8 MCAR §1.7250

General Changes

The number system is changed to conform with the MCAR system, making it easier to locate the rules of the Review Board.

It is desirable to add citations to particular Minnesota statute sections in the Act to facilitate the researcher's task.

The word "period" is changed to "date" to be consistent with 8 MCAR §1.7280 which deals with an employer's right to petition for modification of an abatement "date." In light of statutory changes in terminology, this change is reasonable.

Specific Rule Changes

A. Definitions (pp. 1-2)

2. The word "Commission" is changed to "Board" to conform to the change which occurred in a 1975 amendment to the Act. (Minn. Stat. §182.651(3)). (p.1)

3. The word "chairperson" replaces "chairman" to avoid sex discrimination. (p.1)

4. The word "Clerk" is changed to "Executive Secretary" for clarity and appropriateness of title. "Executive Secretary" is the term used by the Federal Review Commission at 29 C.F.R. §2200.1 (d). For the purpose of this Act, the Executive Secretary refers to the Executive Secretary of the Minnesota Occupational Safety and Health Review Board and is the administrative contact person for the Board. (p.1)

5. Minn. Stat. §14.50 (1982) now provides that Hearing Examiners be assigned by the chief hearing examiner of the Office of Administrative Hearings. The change in the Review Board rules is necessary since the Chairperson of the Review Board no longer assigns Hearing Examiners. (p.1)

6. The term "affected employee" is changed to mean one who, in the scope of his employment, is exposed to hazards. Recent cases hold that an employee need not actually be exposed to a hazard to be affected. If an employee is, will be, or has been in "zones of danger" during the course of his duties, he is considered affected. See Sec. of Labor v. Gilles & Cotting, Inc., 1975-76 CCH, OSHD para. 20,448 (Rev. Comm. 1976), Sec. of Labor v. J.R. Simplot Co.,

1978-79 CCH, OSHD para. 23,050 (Rev. Comm. 1979), and the Minnesota Occupational Safety and Health Review Board in Commissioner v. Standard Storage Battery, Docket No. 1057, filed February 18, 1981. (p.1)

7. "Authorized employee representative" is expanded to entitle non-union employees the same right to representation as union employees. (p.1)

8. "Representative" is expanded to show that a representative may, or may not, be by legal counsel. (p.1)

14,15, & 16. The words "party," "intervenor," and "person" are used throughout the board rules. To provide clarity and consistency in the interpretation of the rules, it is necessary to define these terms. The definitions provided are in accordance with the Office of Administrative Hearings' rules. (p. 2)

B. Scope of Rules (p.2)

The Office of Administrative Hearings is required under Minn. Stat. §14.48 to hear all agency contested cases, and it has promulgated its own set of rules to use while presiding over these hearings. Thus, it is necessary to incorporate those rules by reference into the board rules.

For the same reason, MOSH 253 and 254 are obsolete and are stricken from these rules.

C. Construction of Terms (p.2)

This section is now covered in Minn. Stat. §182.664. It is reasonable to strike it from the rules to eliminate repetition.

D. Computation of Time (p.2)

This section is now covered in Minn. Stat. §182.664. It is reasonable to strike it from the rules to eliminate repetition.

C. Extensions of Time (p.3)

The three-day-in-advance limitation is appropriate to avoid surprise and/or prejudice. It allows for a time extension to be granted or denied before the original due date.

E. Service and Notice (pp. 3-8)

It is desirable to reorder, and add a clearer numbering system to the service requirements to clarify for the employer and employee (represented and unrepresented) what procedures each is responsible for regarding service of notice and certification. (pp. 3-8)

E.4. - (p.5) It is desirable to change the word "proof" to "certification" since this accurately reflects the title of the required document.

E.5., E.6. - (p.6) To account for employers having remote locations for posting and/or serving, it is desirable to extend the period for posting and/or serving from two days to five days. This additional time is reasonable to allow an employer adequate time to post and/or serve notice on affected employees.

E.7. - (p.6) Since all cases are initially heard by the Office of Administrative Hearings (Minn. Stat. §14.50), it is necessary to strike the words "before the Occupational Safety and Health Review Commission" from this rule. This is a reasonable method of achieving compliance with State law.

E.7. - (p.6) Since the Review Board may change location at some future date, it is necessary to add the phrase "or any other address that the Review Board has."

E.7. - (p.6) According to Minn. Stat. §175.001, the new title is Commissioner of Labor and Industry. Thus, it is necessary to add the words "and Industry" to this rule to achieve compliance with State law.

E.9. - (p.7) The addition of this rule requiring certification by the employer of completion of the posting requirement in paragraph E.7 is necessary as an incentive for employers to inform affected non-union employees. This requirement is reasonable since it is easy to comply with, and it places a small burden on the employer to fulfill an important responsibility.

E.12. - (p.7) The certification requirement, applying to affected union employees, is added here for the same reasons stated above in E.9.

E.14. and E.16. - (pp.7-8) This certification is necessary as an added incentive to the employer to fulfill the requirement of service of the notice of hearing requirement of paragraphs E.13 and E.15, and to prove to the Board that affected employees have been notified. It is a reasonable request since it places only a small added burden on the employer.

E.15. - (p.8) The addition of the words "if any" is necessary to accomodate the situation when the employee has no authorized representative.

E.21. - (p.9) Since settlement is allowed under 8 MCAR §1.7254 of these rules, it is necessary to add a provision setting forth the requirements for service of the settlement agreement. The provisions supplied are in accordance with 29 C.F.R. §2200.100 of the Federal Rules and are thus a reasonable way to accomplish this need.

F. Filing (pp.9-10)

Since the Chairperson of the Review Board is not a full-time position, and since he does not maintain a permanent office, it is desirable to change the provision by requiring the filing of

papers with the Executive Secretary. The Executive Secretary is the Board's administrative contact person, is a full-time position, and maintains a permanent office. Thus, it is reasonable to require papers to be filed with this person. (p.9).

The new exception to filing papers after the case has been assigned to a hearing officer is necessary to assure compliance to the certification requirements in paragraphs E.14 and E.16. Since the Review Board is the authority making sure the certification requirements are met, it is reasonable to require filing of such certifications with the Board's Executive Secretary. (p.9)

PARTIES AND REPRESENTATIVES

8 MCAR §1.7251

A. Party Status (pp.10-11)

1. Since 8 MCAR §1.7250 A.14 defines "party" to include intervenors, it is necessary to combine party status and intervention to be consistent with this definition. To accomplish this clarification, it is reasonable to include the provisions for intervention since an intervenor attains party status. Thus, Part B of 8 MCAR §1.7251 becomes redundant and should be deleted. (p.10)

   The formalized notice requirements for becoming a party are necessary and reasonable to give the hearing examiner ample time to organize the hearing. Also, it gives all parties ample notice of who will be their adversaries. (p.10)

2. In accordance with Minn. Stat. §182.661 (3) and Minn. Stat. §182.664 (3), it is necessary to broaden the employer's ability to elect party status so as to be equal with the employee's ability to contest. (p.10)

PLEADING AND MOTIONS

8 MCAR §1.7252

A. Form (pp.11-12)

1. To have the parties identify clearly all documents for the case, it is necessary for them to include the Board's and the Hearing Examiner's docket numbers. This will achieve the goal of proper processing of documents and will assure that the parties receive proper copies.

B. Caption: Titles of Cases (pp.12-13)

3. This addition is an appropriate change since it illustrates cases handled, and it shows the correct way to title cases. Also, it places no extra burden on the filing party.

5. Since the Executive Secretary assigns docket numbers, it is necessary to have the rule reflect that practice.

C. Notice of Contest (p.13)

In order to have hazards abated in a speedy fashion and to run the judicial process efficiently and quickly, the rule is changed from allowing the commissioner 30 days in which to transmit the notice of contest to the Board to a 7-day period. This change also mirrors the Federal requirement (29 C.F.R. §2200.32).

D. Employer Contests (pp.13-14)

2. Notice to Respondent

Since the hearings are conducted by the Office of Administrative Hearings, this section is added to outline and clarify to the employer his rights and duties. The wording of this rule conforms to the rules of the Office of Administrative Hearings (9 MCAR §2.204), and it is a reasonable way to inform parties of these rights and duties. (p.14)

E. Petitions for Modification of Abatement Date (pp.14-15)

It is necessary to add these new rules of procedure since they were adopted by Minnesota OSHA at 8 MCAR §1.7280, and they are in compliance with Federal Rules (29 C.F.R. §2200.34).

F. Employee Contests (pp.15-16)

To be in compliance with Minn. Stat. §182.661(3), this rule should be broadened to allow an affected employee, or an authorized employee representative, the same contestation grounds that are enjoyed by employers.

PREHEARING PROCEDURES AND DISCOVERY/HEARINGS

8 MCAR §1.7253 / 8 MCAR §1.7254

Incorporation of Office of Administrative Hearings rule hearing and contested case procedures:

See page 2 "Scope of Rules"

POST HEARING PROCEDURES

8 MCAR §1.7253

A. Decisions of Hearing Examiners (p.16)

2. The word "issuance" is changed to "service" to provide clarity in the procedure.

B. Notice of Appeal (pp.17-18)

1. To expand a parties' right to appeal, the system of discretionary review has been abolished. Any aggrieved party has the right to appeal. Therefore, it is reasonable to change the basis for appeal, and rename the process "Notice of Appeal."

2. In a recent holding, the Review Board determined that parties must include in the Notice of Appeal all issues they wish to appeal. Thus, parties may not discuss issues not stipulated in the Notice of Appeal. See Commissioner v. Sarver Roofing, OSHRB Docket No. 509, filed June 29, 1979. Also, the proposed rules require that an original and four copies of the Notice of Appeal be filed with the Review Board since three Board members and the law clerk require a copy.

3. To conform with Minn. Stat. §182.664, Subd. 5, the changes from "25" to "30" days and from "receipt by the Commissioner" to "publication of the hearing examiner's findings and decision" are necessary.

4. It is necessary to add this 10-day provision to allow adverse parties time to cross-appeal.

(4.) "Failure to act on such petition within the review period shall be deemed a denial thereof." - This paragraph is removed since it is in conflict with the parties' automatic right to appeal. See Commissioner v. Gresser, Inc., OSHRB Docket No. 420, filed October 20, 1978.

5. It is necessary to add this requirement to assure that all parties are informed of the appeal.

C. Briefs (p.18)

It is necessary and reasonable to add this power to the Board to order briefs and/or memoranda from the parties. In many cases the matters are difficult in nature, and the arguments are unclear or poorly presented at oral argument. To insure that an informed and fair decision can be rendered, it is reasonable for the Board to order additional written material to clear up such confusions.

D. Stay of Order of the Hearing Examiner (p.18)

It is reasonable to strike paragraphs 1 thru 3, and to add "timely filing by any party of a Notice of Appeal to the Board stays the order of the Hearing Examiner." This simplifies the rule and conforms to other provisions of the proposed rules.

E. Oral Argument Before the Board (p.18)

The deletions and additions made in this section are necessary to conform to other provisions of the proposed rule. The Board's practice is to hear oral argument from each party, as requested,

to more clearly understand the case, ask questions of the parties, and arrive at the best decision possible.

SETTLEMENT

8 MCAR §1.7254

(p.19)

A. To avoid the necessity of a formal hearing to decide whether parties can come to a settlement agreement, it is reasonable and necessary to add these settlement provisions.

B, C. To assure compliance with 8 MCAR §1.7250 E.21 and to encourage employee involvement, it is necessary to require the employer to post the proposed settlement agreement and order for affected employees. Signing and dating the settlement agreement indicates service upon affected employees. The addition of this requirement is a reasonable way to assure compliance.

E. To comply with Minn. Stat. §182.661, Subd. 1, it is necessary and reasonable to restrict the settlement agreement to issues raised in the notice of contest only.

F. To avoid scheduling a hearing when settlement has been reached, it is necessary to require the contesting party to withdraw the notice of contest on modified items.

G, H. It is necessary to add these two provisions to allow the Office of Administrative Hearings, and the Review Board, an opportunity to review the settlement to assure compliance with the rules of both bodies.

I. To protect employees' rights, it is reasonable to allow affected employees to file with the Hearing Examiner an objection to a proposed settlement agreement within ten days of service of the agreement upon them. This practice is incorporated in the Federal rules of procedure at C.F.R. 29 §2200.100.

MISCELLANEOUS PROVISIONS

8 MCAR §1.7255

A. Settlement

Since the provisions for settlement are now contained in 8 MCAR §1.7254 it is redundant to include settlement under miscellaneous provisions as well. Thus it was both necessary and reasonable to delete this section. (p.19)

C. Ex Parte Communication (p.20)

2. Since the Office of Administrative Hearings has their own rules, it is necessary and reasonable to delete them from this paragraph.

D. Restrictions With Respect to Former Employees (pp.20-21)

1. Barring former members of the Board from appearing before the Board as attorney or representative for any party is necessary to avoid any bias of the Board toward or against such persons.

   The term "tenure" is added to refer to members of the Board who are restricted from appearing in the new provision. Since Board members' service is not a form of employment, but rather appointment, it is reasonable to add the term "tenure" when referring to them.

2. It is necessary to change the term "personally responsible" to "involved" to avoid the possibility of any bias from the Board. Since former employees or members may have worked on a case without being the primary person responsible, it is reasonable to change the term to avoid any possible bias.

In the Matter of the Proposed Adoption
of Rules of the State of Minnesota
Governing Rules of Procedure For
Practice Before the Minnesota Occupational
Safety and Health Review Board

STATEMENT OF
COMPLIANCE WITH
RULEMAKING PROCEDURE

I, Erica Jacobson, do hereby declare that I have examined the rules and all related documents and that, based on my examination and my personal familiarity with the applicable procedures, the Administrative Procedure Act, the rules of the Office of Administrative Hearings, and the rules of the Attorney General have been followed. Any exceptions are noted below.

I note that there is no certificate of board's authorizing resolution, as required by 1 MCAR § 1.203F. However, I believe that the absence of this document is not crucial, since the attached minutes of the Board meeting on April 22, 1983, indicate the Board's decision to proceed with the process of adopting rules without a public hearing and two of the three members of the Board signed the order for notice of intent to adopt rules without a public hearing.

Erica Jacobson

ERICA JACOBSON 6-2638
Special Assistant
Attorney General

Dated: Oct 31, 1983