

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

Our File No. 1064

RULE REVIEW CHECKLIST withdrawn 9/11/84

DATE RULE RECEIVED 8-28-84
DATE FOR REVIEW 9-6-84
DATE DUE 9-11-84

Adopted w/a hearing X
Adopted w/o hearing
Temporary rule

Approved _____ Disapproved _____ Returned to Agency _____

Resubmitted 9-17-84 Review: 9-26-84 Due 10-1-84
Approved 9-20-84 Disapproved _____ Returned to Agency _____

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

✓ Rule as Adopted

✓ Rule as Proposed see SR

✓ Order Adopting 8.27.84 Date

✓ Notice of Intent to Solicit Outside Opinion

✓ Order for rulemaking
N/A date of Hearing

✓ Certificate of Board's Authorizing Resolution

✓ Notice of rulemaking
? Sufficiency checking on 9/10

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

✓ Mailing list Certificate

✓ Publication in State Register
5.21.84 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

✓ Order Approving Incorporation by Reference

✓ Statement of Need and Reasonableness contains small biz statement — rule not applicable to sm. biz

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

To: Mike
Date: 9/10/84
Re: Bureau of Mediation Services — Questions of Representation
Fair Share Fees and Public Employee Dispute
Resolution

Notice of Rulemaking

The Notice of Rulemaking as it appears in the State Register complies with the notice requirements of Minn. Stat. § 14.22. However, what appears to be the notice as mailed does not. The person who can tell me for sure what was mailed will not be available until 9/11/84. Until then there is a question regarding the notice as mailed.

Rules as Adopted

p. 1, line 15 . 0210
p. 1, line 24 . 0310, subp. 2
p. 29, line 31 . 2510

The above sections provide for exercise of discretion by the director but there are no criteria to guide that discretion.

SF-00006-03

STATE OF MINNESOTA

DEPARTMENT BUREAU OF MEDIATION SERVICES **Office Memorandum**

TO: JUDITH WEHRWEIN
Special Assistant
Attorney General

DATE: 8/24/84

FROM: PAUL W. GOLDBERG
Director, Bureau of
Mediation Services

PHONE:

SUBJECT: Rules of the Bureau of Mediation Services Governing Questions of Representation; Fair Share Fees and Public Employee Dispute Resolution

Enclosed for your review are the following documents concerning the above-entitled rules:

1. Four copies of the rules as adopted (in Revisor's format);

2. Two copies of the order adopting rules;

3. Notice of intent to solicit;

4. Order for notice of intent to adopt without a public hearing;

5. Notice of intent to adopt without a public hearing;

6. Certificate (regarding mailing list);

7. Affidavit of mailing;

8. Notice and rules as printed in the State Register; statement of need and reasonableness; copies of comments received and responses to those comments;

9. Findings of fact and conclusions;

10. Certificate of compliance (signed by Special Assistant Attorney General Mark Levinger).

The Bureau did not receive any requests for notice of submission to the Attorney General. Accordingly, no such notices were given. In addition, please note that of the three written comments received concerning the proposed rules, only the comments dated June 13, 1984 from the Minnesota Federation of Teachers were submitted within the 30 day comment period. The comments from the Public Employment Relations Board dated June 22, 1984, and those from the Minnesota Public Employer Labor Relations Association dated July 3, 1984, were outside the 30 day period. Nevertheless,

the Bureau did respond in full to the late comments and accommodated a number of the viewpoints contained therein.

If you have any questions concerning any of these submissions, please feel free to contact me at 296-1496 or Mark Levinger at 296-8405.

PWG:bjg

Enclosures

SF-00008-03

STATE OF MINNESOTA

DEPARTMENT REVISOR OF STATUTES

Office Memorandum

TO: Jean King
Bureau of Mediation Services

DATE: July 9, 1984

FROM: John C. Fuller
Assistant Deputy Revisor

PHONE: 296-0955

SUBJECT: #446 Rules Governing Questions of Representation; Fair Share Fees and Public Employee Dispute Resolution

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

Please submit the rules to the Attorney General or the Office of Administrative Hearings, as appropriate, for final approval.

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

CRS/
Enclosure
ARO

SF-00006-02

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL

Office Memorandum

TO : Paul Goldberg, Director, Bureau of Mediation Services DATE: September 20, 1984
ATTN: Mark Levinger, Special Assistant Attorney General

FROM : J. Michael Miles JMM PHONE: 296-6555
Assistant Attorney General

SUBJECT: In the Matter of the Proposed Adoption of Rules of the Bureau of Mediation Services Governing Questions of Representation; Fair Share Fees and Public Employee Dispute Resolution.

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.

JMM:slz

Encs.

cc: Ms. Kathy Burek
Mr. Duane Harves

Bureau of Mediation Services

Adopted Rules Governing Questions of Representation; Fair Share Fees and Public Employee Dispute Resolution

Rules as Adopted

5510.0110 APPLICATION.

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

5510.0210 POLICY.

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

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

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

5510.0310 DEFINITIONS.

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

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

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

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

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

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

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

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

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

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

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

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

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

Subp. 14. **Holiday or legal holiday.** "Holiday" or "legal holiday" means those dates designated by Minnesota Statutes,

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section 645.44, subdivision 5, as holidays for the state of Minnesota.

Subp. ~~14~~ 15. **Open-window period.** "Open-window period" means the following period of time prior to the expiration of a labor contract:

A. for the state executive branch, 270 to 210 days;

B. for teachers, 180 to 120 days; and

C. for all other public employees, 120 to 60 days.

Subp. ~~15~~ 16. **Party.** "Party" means any exclusive representative, employee organization, or public employer recognized by the director whose legal rights, duties, and privileges will be directly determined in the proceedings; or any public employee who has filed a fair share fee challenge or decertification petition.

Subp. ~~16~~ 17. **Petition.** "Petition" means a written document containing information required by the director.

Subp. ~~17~~ 18. **Representation petition.** "Representation petition" means a petition filed by an employee organization stating that the exclusive representative no longer represents the majority of employees in an appropriate unit; and at least 30 percent of the employees in the appropriate unit wish to be represented by the petitioner.

Subp. ~~18~~ 19. **Service or serve.** "Service" or "serve" means service of a document required by parts 5510.0110 to 5510.2310, in person or by the United States Postal Service, postage prepaid and addressed to the bureau or a party at its last known address, unless some other manner of service is required by law. Unless otherwise provided by these parts, service upon the director or a party is effective upon receipt.

Subp. ~~19~~ 20. **Showing of interest or interest.** "Showing of interest" or "interest" means the submission of authorization signatures in the form of individual authorization cards to show support for a petition filed with the director.

Subp. ~~20~~ 21. **Time.** "Time" means, in computing any period of time prescribed or allowed by parts 5510.0110 to 5510.2310, that the day or any act or event on which the designated period

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of time begins to run shall not be included. The last day of the time period shall be included unless it is a Saturday, Sunday, or legal holiday.

Subp. ~~21~~ 22. **Transfer of exclusive representative status.** "Transfer of exclusive representative status" means the transfer of the rights and obligations of an exclusive representative to another employee organization.

Subp. ~~22~~ 23. **Unfair election practice.** "Unfair election practice" means any prohibition defined in part 5510.2110, or a violation of an election order issued by the director, and any unfair practice as defined by Minnesota Statutes, section 179A.13, committed by an employer or its agents or an employee organization or its agents, or an employee, which affects the result of a certification, representation, or decertification election.

Subp. ~~23~~ 24. **Unit clarification or clarification petition.** "Unit clarification" or "clarification petition" means a determination of the director regarding an appropriate unit involving:

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

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

C. modification of the unit description; or

D. modification of the unit structure.

5510.0410 FILING PETITION.

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

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

(1) election of officers;

(2) filling of vacancies in elected offices; and

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

B. have the petition signed by an authorized

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representative of the employee organization.

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

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

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

A. An employee organization may file petitions for:

(1) certification of exclusive representative; and

(2) challenge of affiliation.

B. An employer may file petitions for:

(1) certification of exclusive representative;

(2) unit clarification;

(3) amendment of certification; and

(4) challenge of affiliation.

C. An exclusive representative may file petitions for:

(1) unit clarification;

(2) amendment of certification;

(3) transfer of exclusive representative status; and

(4) abandonment of exclusive representative status.

D. A public employee may file petitions for:

(1) decertification of exclusive representative;

(2) challenge of fair share fee assessment; and

(3) challenge of affiliation.

Subp. 3. **Eligibility; joint-party petition.**

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

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

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

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right to file.

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

A. the petitioner;

B. the petitioner's representative, if any;

C. the other party; and

D. the other party's representative, if any.

5510.0510 LIMITATION ON FILING PETITION.

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

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

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

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

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

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

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

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continue in effect until the arbitration award is issued and a contract is executed pursuant to Minnesota Statutes, section 179A.20, subdivision 1.

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

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

A. certification election;

B. representation election;

C. amendment of certification; and

D. transfer of exclusive representative status.

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

5510.0610 WITHDRAWAL.

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

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

Subp. 3. **Representation election.** If the incumbent exclusive representative withdraws, the matter will be processed

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as though a certification petition had been filed by the challenging employee organization.

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

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

5510.0710 CERTIFICATION, REPRESENTATION, AND DECERTIFICATION PETITIONS.

Subpart 1. **Filing of petition.** ~~An employee organization or an employer may file a certification, representation, or decertification petition.~~ A petition for certification, representation, or decertification must include:

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

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

C. the type of public employer involved;

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

E. the proposed or previously determined appropriate unit description;

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

G. the date the petition is signed; and

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

Subp. 2. **Showing of interest.** Evidence of a showing of

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

5510.0810 AUTHORIZATION SIGNATURES.

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

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

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

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

C. the signature of the employee; and

D. the date the employee signed the card.

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

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

A. does not include the information and statements required by parts 5510.0110 to 5510.2310;

B. contains statements of explanation, interpretation, or advice;

C. is modified or altered in any way; or

D. is dated more than six months prior to the receipt of the petition by the director.

Subp. 4. **Effect of invalid authorization card.** The director shall not include invalid authorization cards in

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determining whether a petition has the necessary showing of interest. If there is evidence that authorization cards submitted to establish a showing of interest were obtained or submitted in a fraudulent manner, the petition or intervention will be denied and a one-year election bar for that unit shall be applied to the party submitting fraudulent cards.

5510.0910 UNIT CLARIFICATION PETITION.

Subpart 1. **Filing of petition.** ~~An exclusive representative or an employer may file a unit clarification petition.~~ A petition for unit clarification must include:

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

B. the type of public employer involved;

C. the approximate number of employees affected by the proposed unit clarification;

D. a specific statement of the unit clarification requested and the reasons for the request;

E. the date the petition is signed; and

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

5510.1010 AMENDMENT OF CERTIFICATION PETITION.

Subpart 1. **Filing petition.** ~~An exclusive representative or an employer may file an amendment petition.~~ A petition for amendment of certification must include:

A. a statement of the amendment requested;

B. the date the petition is signed; and

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

5510.1110 CHALLENGE TO AFFILIATION PETITION.

Subpart 1. **Filing petition.** ~~An employee, employer, or employee organization may file a petition challenging the affiliation of an employee organization in accordance with Minnesota Statutes, section 179A.06, subdivision 2.~~ A petition challenging affiliation under Minnesota Statutes, section 179A.06, subdivision 2 must include:

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

B. the name of the employee organization involved;

C. the date the petition is signed; and

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

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

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

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

5510.1210 TRANSFER OF EXCLUSIVE REPRESENTATIVE STATUS.

Subpart 1. **Filing petition.** ~~An exclusive representative may file a transfer petition.~~ A petition transferring exclusive representative status must include:

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

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

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

D. a copy of the current constitution or bylaws of

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the employee organization which has agreed to accept the transfer of the exclusive representative's rights and obligations, unless on file with the bureau; and

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

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

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

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

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

Subp. 6. **Petition.** If a majority of the employees vote in favor of the transfer, a petition shall be filed by the exclusive representative with the director.

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

A. issue an amended certification of exclusive representative;

B. order a representation election; or

C. dismiss the petition.

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

5510.1310 ABANDONMENT OF EXCLUSIVE REPRESENTATIVE STATUS.

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Subpart 1. **Filing petition.** ~~An exclusive representative may file an abandonment petition subject to parts 5510.0110 to 5510.2310.~~ A petition abandoning the status of exclusive representative must contain a statement that clearly indicates that the exclusive representative no longer wishes to represent the appropriate unit at the expiration of the contract or the one-year certification period.

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

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

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

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

5510.1410 FAIR SHARE FEE CHALLENGE PETITION.

Subpart 1. **Advance notice of fair share fee assessment.** ~~Notice of the fair share fee must be provided~~ The exclusive representative must provide written notice of the amount of the fair share fee assessment to the director, the employer, and each employee assessed:

~~A.~~ upon initial implementation of the fair share fee assessment;

~~B.~~ to employees hired after the original notice has been issued; and

~~C.~~ upon a change in the amount of the fair share fee assessment.

~~Subp. 2. Notice of assessment. The exclusive representative must provide advance written notice of the amount of the fair share fee assessment to the director, the employer, and each employee assessed.~~ The notice must contain:

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A. the name, address, and telephone number of the exclusive representative;

B. the amount of the regular dues of the exclusive representative;

C. the amount of the fair share fee assessment;

D. a statement identifying benefits available only to members of the exclusive representative and the monetary cost of the regular membership dues attributable to each benefit;

E. the bureau's current mailing address; and

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

Subp. ~~3~~ 2. **Employer provided information.** The employer shall provide to the exclusive representative the name, home mailing address, and social security number or other necessary payroll deduction information for all employees in the appropriate unit. Questions of necessary payroll deduction information shall be determined by the director.

Subp. ~~4~~ 3. **Mailing notice.** The notice of the fair share fee assessment shall be mailed by the exclusive representative to the employee's last known home mailing address provided by the employer.

Subp. 5 4. **Assessment.** On the effective day of the fair share fee assessment and thereafter, the amount of the assessment shall be deducted by the employer from the pay of the employee. The amounts deducted must be held in escrow by the employer and not remitted to the exclusive representative for a period of 30 calendar days from the ~~effective~~ date ~~of the deduction~~ notice is provided under subpart 1.

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

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

5510.1510 FAIR SHARE FEE CHALLENGE PETITION.

Subpart 1. **Filing petition.** ~~An employee being assessed a fair share fee or an employee who has been notified of a fair share fee assessment may file a fair share fee challenge petition.~~ A petition challenging a fair share fee assessment may be filed by individual employees and must include:

A. the name, address, and phone number of the petitioner and agent, if any;

B. the name, address, and phone number of the exclusive representative and agent, if any;

C. the name, address, and phone number of the employer and agent, if any;

D. the job classification of the petitioner;

E. the amount of regular membership dues in the unit;

F. the amount of the fair share fee assessment;

G. the amount that represents 85 percent of the regular membership dues;

H. the percent of regular membership dues which the fair share fee represents;

I. the benefits asserted to be available only to members of the exclusive representative;

J. a statement regarding whether the cost of benefits asserted to be available only to members is greater than the amount by which the regular membership dues were reduced in establishing the amount of the fair share fee;

K. the amount by which the fair share fee should be reduced; and

L. the date on which the petitioner received notice

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of the fair share fee assessment.

Subp. 2. **Filing petition.** A petition challenging the fair share fee assessment must be filed in person or by mail with the director. ~~The petition must be received by the director no later than 30 days after receipt by the employee of the notice of assessment.~~

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

Subp. 4. **Receipt of petition.** Upon receipt of the challenge petition and filing fee, the director shall provide a written receipt to the petitioner.

Subp. 5. **Service on exclusive representative and employer.** A copy of the challenge petition shall be served by the petitioner upon the exclusive representative and the employer, in person or by mail, within the 30-calendar-day challenge period. A petition not timely served shall be dismissed.

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

1510.1610 INVESTIGATION OR HEARING.

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

5510.1710 FAIR SHARE FEE APPLICATION.

The determination of the validity of the amount of the fair share fee assessment shall apply from the effective date of the assessment being challenged to all employees in an appropriate

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unit who have an employment relationship which is similar to the petitioner, and who were assessed the same fair share fee.

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

5510.1810 JOINT-PARTY PETITION.

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

A. notarized signatures of the parties;

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

C. identification of the employees and job classifications included within the proposed appropriate unit and those employees and job classifications excluded from the proposed appropriate unit.

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

5510.1910 HEARINGS OR INVESTIGATIONS.

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

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

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

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

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

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

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

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

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

The person serving a subpoena shall make proof of service

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by filing the subpoena and an affidavit of service with the director.

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

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

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

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

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

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

The director may seek additional evidence and examine witnesses to the extent the director deems appropriate, but

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shall do so on the record and with the opportunity for any party to contest the evidence.

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

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

A. all pleadings, motions, and orders;

B. evidence received;

C. offers of proof, objections, and rulings on objections;

D. all memoranda or data submitted by any party in connection with the case; and

E. an audiomagnetic or stenographic recording of the hearing.

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

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

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

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

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

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

(1) all parties may present evidence and cross-examine witnesses;

(2) all parties have a right to be represented at the hearing;

(3) any objection to the conduct of the hearing, including the introduction of evidence, must be stated orally, together with a statment of the grounds for the objection;

(4) no objection to the conduct of the hearing, including the introduction of evidence, shall be waived by further participation in the hearing; and

(5) failure to appear at the hearing in person or through an authorized representative may prejudice the rights of a party.

B. Any stipulations, settlement agreements, or

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consent orders entered into by any of the parties prior to the hearing shall be entered into the record.

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

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

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

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

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

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

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

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

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

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

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more parties.

5510.2010 ELECTIONS.

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

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

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

A. identify the appropriate unit;

B. establish the cut-off date for voter eligibility;

C. include a list of the eligible voters;

D. include a sample ballot;

E. establish campaign and election rules;

F. provide for the parties to appoint observers;

G. identify the date, time, and location of an on-site election and provide for absentee ballots;

H. identify the date of mailing ballots in a mail ballot election;

I. include any other conditions which are necessary for the conduct of a fair election; and

~~I~~ J. provide for posting by the employer of the election order and attachments.

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

Subp. 5. **Correction of voter eligibility list.**

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

B. Names shall not be added to the voter eligibility list after the close of the hearing on the election petition unless names were inadvertently omitted or the cut-off date for

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voter eligibility is changed because of an appeal to the board or court order.

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

(1) transfer, promotion, or demotion of an employee out of the unit which is not prohibited by ~~the cease and desist~~ an order maintaining the status quo;

(2) an appeal to the board or court action which delays the conduct of the election or changes the cut-off date for voter eligibility; or

(3) voluntary or involuntary termination of an eligible voter who has not appealed the termination.

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

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

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

Subp. 7. **Election ballot.**

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

(1) the name of employee organizations which have submitted the required showing of interest; and

(2) no representation.

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

(1) the name of the exclusive representative;

(2) the name of employee organizations which have submitted the required showing of interest; and

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

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

(1) the name of the exclusive representative;

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(2) the name of employee organizations which have submitted the required showing of interest; and

(3) no representation.

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

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

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

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

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

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

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

Subp. 10. **Marking ballot.** The ballot shall be marked in accordance with the instructions on the ballot. A ballot which is defaced or identifies the voter shall be voided. When a voter inadvertently spoils a ballot, the voter shall immediately

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return the ballot to the director who shall destroy the spoiled ballot and provide another ballot to the voter.

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

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

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

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

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

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

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

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

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

Subp. 14. **Run-off election.** When a ballot contains more than two choices and none of the choices receives a majority of

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the valid votes cast, a run-off election shall be conducted between the choices receiving the greatest and second greatest number of votes. In a representation or decertification election, where the exclusive representative does not qualify for a run-off election, the election shall be considered a certification election for purposes of tie votes.

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

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

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

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

5510.2110 UNFAIR ELECTION PRACTICES.

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

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

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

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

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

E. ~~violation of~~ violating an election order.

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

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supporting the charge.

~~Subp. 3. Charge filed prior to election. If the alleged unfair election practice appears to materially affect the results of an election to be held, the director may:~~

~~A. postpone the election until the charge has been heard or investigated;~~

~~B. hold the election and conduct a hearing or an investigation at a later date to determine whether the election should be voided; or~~

~~C. hold the election and impound the ballots until a hearing or an investigation has been completed.~~

~~Subp. 4. Charge filed after election.~~ If a charge of an unfair election practice is filed ~~after an election has been~~ held, the director may:

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

B. conduct a hearing or investigation; and

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

Subp. ~~5~~ 3. **Determination.** Based on a hearing or investigation, the director shall issue an order. If an unfair election practice is established, the election may be voided and a new election may be ordered.

5510.2210 REQUEST FOR RECONSIDERATION.

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

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

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

Subp. 4. **Staying of order.** If the director determines that the request raises substantial and material issues, the

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challenged order may be stayed until a hearing or investigation has been held and a decision is issued.

5510.2310 STATUS OF EMPLOYEE ORGANIZATION.

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

A. fair share fee assessments;

B. dues check-off; and

C. time off for union officers.

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

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

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

5510.2410 APPLICATION.

Parts 5510.2410 to 5510.3210 govern the conduct of negotiations between an exclusive representative and an employer, the conduct of mediation, the certification of impasse to the board, the arbitration of impasse, and the notification of intent to strike.

5510.2510 POLICY.

Parts 5510.2410 to 5510.3210 must be liberally construed to

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

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

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

5510.2610 DEFINITIONS.

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

5510.2710 NEGOTIATION NOTICE.

A written notification of the desire to meet and negotiate an original contract, renewal of a contract, or a reopener of a contract must be served on the other party and the director. The written notice shall include:

A. the name, address, and phone number of the exclusive representative;

B. the name, address, and phone number of the exclusive representative's representative;

C. the name, address, and phone number of the employer;

D. the name, address, and phone number of the employer's representative;

E. a description of the appropriate unit for which such notice is being given;

F. the date of expiration of the current labor contract, if any;

G. the total number of employees employed by the employer;

H. the number of employees in the appropriate unit

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covered by the notice;

I. the date the notice is signed; and

J. the name and title of the person signing the notice.

5510.2810 PETITION FOR MEDIATION.

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

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

Subp. 3. **Notice.** Upon receiving a petition for mediation, the director must serve notice of the time and place for a mediation meeting of the exclusive representative and the employer.

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

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

A mediation meeting may be closed to the public by the director when, in his judgment, closing will facilitate resolution of the dispute. In all cases a meeting will be closed only after receipt by the bureau of a valid and timely petition for mediation or after initiation of mediation by the director. The director may close a meeting to the public prior

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to its start or at any time during the meeting.

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

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

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

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

Subp. 6. **Confidential information.** Confidential information includes:

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

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

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

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

Subpart 1. **Mediation period.** A mediation period commences

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on the day following receipt by the bureau of a petition for mediation or the day following issuance of notice that the director has initiated mediation.

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

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

Subp. 4. **Request for arbitration at impasse.** A joint request by the parties to submit the impasse to arbitration may be served at any time during the negotiations, mediation period, or thereafter. A joint request must be signed by the authorized representatives of both parties and must contain a list of the items in dispute and a statement agreeing to arbitrate the items.

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

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

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

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

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

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

C. if the exclusive representative serves a notice of

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intent to strike following receipt by the bureau of an offer to arbitrate; or

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

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

Subp. 5. **Certification of impasse to board.** Following receipt of a joint request to arbitrate or receipt of an acceptance of a single-party offer to arbitrate, the director ~~must~~ shall notify the board of the existence of an impasse. The notice of impasse must contain a statement that the negotiations between the parties are at impasse, a list of the issues determined by the director to be at impasse, and any final positions submitted by the parties.

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

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

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

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

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

(3) to amend the submitted final positions on any or all items certified to be at impasse. ~~An~~ Such agreement must

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specify the conditions and manner in which the final positions are to be amended.

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

Subp. 7. **Notice of intent to strike.**

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

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

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

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

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

(3) If the bureau receives a notice of intent to strike not more than five calendar days prior to the expiration of the mediation period or 45-day teacher impasse period, the strike notice period begins the day following the expiration of the mediation period. Notices received prior to these periods are void and of no effect.

D. If the 30-calendar-day strike notice period expires without a strike, the right to strike expires, but may be renewed by serving a new notice of intent to strike not more than five calendar days prior to the 30th day of the preceding strike notice period. A renewed strike notice period shall commence the day following expiration of the preceding period.

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The rules applying to the initial strike notice period, including the ten-day waiting period, apply to any renewal period.

E. The director ~~must~~ shall notify the parties in writing of the date of any strike notice, the date upon which the right to strike matures, and the date upon which the right to strike expires.

5510.3010 RENEWAL OF EXISTING CONTRACT; MEDIATION, IMPASSE AND ARBITRATION FOR CONFIDENTIAL, ESSENTIAL, SUPERVISORY EMPLOYEES, AND FOR PRINCIPALS AND ASSISTANT PRINCIPALS.

Subpart 1. **Mediation.** Mediation shall be scheduled by the director upon receipt of a petition filed under part 5510.2810.

Subp. 2. **Impasse.** During mediation of the dispute, the parties, individually or jointly, may request the director to declare the negotiations at impasse. If the director determines that further mediation efforts would not resolve the dispute, he shall declare the negotiations to be at an impasse and notify the parties in writing of that determination. The notice by the director ~~must~~ shall include:

A. the date on which an impasse was declared;

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

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

Subp. 3. **Final offer arbitration.** The parties may agree to limit the arbitrator's authority to a final offer item-by-item or a final offer total package award. If the parties do not agree to final offer arbitration, the impasse shall be decided by conventional arbitration.

Subp. 4. **Final positions.** If the final offer arbitration option is agreed to, the parties may not withdraw or amend the final positions filed with the director unless otherwise agreed to in writing by the parties. The agreement to amend may include, but is not limited to, an agreement:

A. that an item certified to be at impasse has been

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dropped as an item in dispute;

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

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

Subp. 5. **Certification of impasse to board.** Following the date established for submission of final positions of both parties, the director shall notify the board of the existence of an impasse. The notice of impasse shall contain a statement that the negotiations between the parties are at impasse, a list of the issues determined by the director to be at impasse, and any final positions submitted by the parties.

Subp. 6. **Confidentiality of final positions.** All final positions submitted to the bureau are confidential.

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

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

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

Subp. 3. **Mediation period.** The 60-day or 45-day mediation period provided under part 5510.2910 commences on the day following ~~certification of a new or different exclusive representative or resolution or a question of representation by the director~~ receipt by the bureau of a petition for mediation or the day following issuance of notice that the director has initiated mediation.

5510.3210 CONTRACT TRANSMITTAL.

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

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REPEALER. Minnesota Rules, parts 5500.2900, 5500.3000, 5500.3100, 5500.3200, 5500.3300, 5500.3400, 5500.3500, 5500.3600, 5500.3700, 5500.3800, 5500.3900, 5510.0100, 5510.0200, 5510.0300, 5510.0400, 5510.0500, 5510.0600, 5510.0700, 5510.0800, 5510.0900, 5510.1000, 5510.1100, 5510.1200, 5510.1300, 5510.1400, 5510.1500, 5510.1600, 5510.1700, 5510.1800, 5510.1900, 5510.2000, 5510.2100, 5510.2200, 5510.2300, 5510.2400, 5510.2500, 5510.2600, 5510.2700, 5510.2800, 5510.2900, 5510.3000, 5510.3100, 5510.3200, 5510.3300, 5510.3400, 5510.3500, 5510.3600, 5510.3700, 5510.3800, 5510.3900, 5510.4000, 5510.4100, 5510.4200, 5510.4300, 5510.4400, 5510.4500 are repealed.

APPROVED IN THE
REVISOR OF STATUTES'
OFFICE BY:

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
SEP 20 1984 11:20 A.M.
Joan Anderson
Secretary of State

APPROVED AS TO FORM AND LEGALITY
9/20 19 84
HUBERT H. HUMPHREY, III
ATTORNEY GENERAL
BY
SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
BUREAU OF MEDIATION SERVICES
205 AURORA AVENUE
SAINT PAUL 55103
PHONE 612-296-2525

September 17, 1984

Mr. Michael Miles,
Assistant Attorney General
204 State Administration Building
50 Sherburne Avenue
St. Paul, MN 55155

RE: Rules of the Bureau of Mediation Services
Governing Questions of Representation;
Fair Share Fees and Public Employee Dispute
Resolution

Dear Mr. Miles:

The Bureau of Mediation Services is resubmitting its rules for your approval. Rules 5510.0210 and 5510.2510 have been modified to comply with Minn. Stat. 14.04 as you requested.

If you have any questions concerning this matter, please contact me.

Sincerely

BUREAU OF MEDIATION SERVICES
STATE OF MINNESOTA

Paul W. Goldberg, Director

PWG:csc

AN EQUAL OPPORTUNITY EMPLOYER

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

September 11, 1984

Michael Miles
Assistant Attorney General
204 State Administration Building
50 Sherburne
St. Paul, MN 55155

Re: Rules of the Bureau of Mediation Services
Governing Questions of Representation;
Fair Share Fees and Public Employee Dispute Resolution

Dear Mike:

This is to notify you that my client, the Bureau of Mediation Services, hereby withdraws the above-entitled rules for the purpose of modifying the variance provisions contained in Rules 5510.0210 and 5510.2510. As soon as these two rules have been modified, the entire set of rules will be resubmitted for your consideration.

Very truly yours,

Mark B. Levinger

MARK B. LEVINGER
Special Assistant
Attorney General

MBL:me
cc: Paul W. Goldberg
Jean King

RECEIVED
DEC 12 1984
ATTORNEY GENERAL'
ADMINISTRATIVE AGENCIES

PROPOSED RULES

Pursuant to Minn. Stat. of 1980, §§ 14.21, an agency may propose to adopt, amend, suspend or repeal rules without first holding a public hearing, as long as the agency determines that the rules will be noncontroversial in nature. The agency must first publish a notice of intent to adopt rules without a public hearing, together with the proposed rules, in the *State Register*. The notice must advise the public:

1. that they have 30 days in which to submit comment on the proposed rules;
2. that no public hearing will be held unless 25 or more persons make a written request for a hearing within the 30-day comment period;
3. of the manner in which persons shall request a hearing on the proposed rules;

and

4. that the rule may be modified if modifications are supported by the data and views submitted.

If, during the 30-day comment period, 25 or more persons submit to the agency a written request for a hearing of the proposed rules, the agency must proceed under the provisions of §§ 14.13-14.20 which state that if an agency decides to hold a public hearing, it must publish in the *State Register* a notice of its intent to do so. This notice must appear at least 30 days prior to the date set for the hearing, along with the full text of the proposed rules. (If the agency has followed the provisions of subd. 4h and has already published the proposed rules, a citation to the prior publication may be substituted for republication.)

Pursuant to Minn. Stat. § 14.29, when a statute, federal law or court order to adopt, suspend or repeal a rule does not allow time for the usual rulemaking process, temporary rules may be proposed. Proposed temporary rules are published in the *State Register*, and for at least 20 days thereafter, interested persons may submit data and views in writing to the proposing agency.

Bureau of Mediation Services

Proposed Rules Governing Questions of Representation; Fair Share Fees and Public Employee Dispute Resolution

Notice of Intent to Adopt Rules without a Public Hearing

NOTICE IS HEREBY GIVEN that the Bureau of Mediation Services proposes to adopt the above-entitled rules without a public hearing. The Bureau has determined that the proposed adoption of these rules will be noncontroversial in nature and has elected to follow the procedure set forth in Minnesota Statutes §§ 14.21 through 14.28 (Supp. 1983), as amended by Minn. Laws 1984, ch. 640, §§ 12-15, 33-34.

Persons interested in these rules shall have 30 days to submit comments in support of or in opposition to the proposed rules. Comments are encouraged. Each comment should identify the portion of the proposed rule addressed, the reason for the comment and any change proposed. The proposed rules may be modified if the modifications are supported by the data and views submitted to the agency and do not result in a substantial change in the proposed language.

Unless 25 or more persons submit a written request for a public hearing 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 Minnesota Statutes §§ 14.14 through 14.18 (Supp. 1983), as amended by Minn. Laws 1984, ch. 640, §§ 7-11.

Persons who wish to submit comments or a written request for a public hearing should submit such comments or request to:

Paul Goldberg, Director
Bureau of Mediation Services
205 Aurora Avenue
Saint Paul, Minnesota 55103
(612) 296-2525

Any person requesting a public hearing should state his or her name and address and is encouraged to identify the portion of the proposed rule addressed, the reason for the request, and any change proposed.

Authority for the adoption of these rules is contained in Minn. Laws 1984, ch. 462, § 5, subd. 3(f). Additionally, the Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rules and identifies the data and information relied upon to support the proposed rules has been prepared by and is available from Paul Goldberg upon request.

Upon adoption of the final rules without a public hearing, the proposed rules, this Notice, the Statement of Need and Reasonableness, all written comments received, and the final rules as adopted will be delivered to the Attorney General for

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review as to form and legality, including the issue of substantial change. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the final rules as proposed for adoption, should submit a written statement of such request to Paul Goldberg.

The rules proposed for adoption relate to the following matters: the rules governing procedures for questions of representation and fair share fee challenges have been modified to provide clarification, eliminate repetition and codify existing practices; the rules governing procedures for negotiations, mediation, certification of impasse, interest arbitration and the right to strike have been modified to provide clarification, eliminate repetition and codify existing practices. The rules thereby promote the understanding of public employees, employee organizations and employers of their rights and obligations under the Public Employment Labor Relations Act.

Copies of this Notice and the proposed rules are available and may be obtained by contacting Paul Goldberg.

Paul Goldberg, Director
Bureau of Mediation Services

Rules as Proposed (all new material)

5510.0110 APPLICATION.

Parts 5510.0110 to 5510.2310 apply to proceedings before the director involving matters of representation and fair share fee challenges under the act.

5510.0210 POLICY.

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

5510.0310 DEFINITIONS.

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

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

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

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

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

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

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

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

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

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

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

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

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

Subp. 14. Open-window period. "Open-window period" means the following period of time prior to the expiration of a labor contract:

A. for the state executive branch, 270 to 210 days;

B. for teachers, 180 to 120 days; and

C. for all other public employees, 120 to 60 days.

Subp. 15. Party. "Party" means any exclusive representative, employee organization, or public employer recognized by the director whose legal rights, duties, and privileges will be directly determined in the proceedings; or any public employee who has filed a fair share fee challenge or decertification petition.

Subp. 16. Petition. "Petition" means a written document containing information required by the director.

Subp. 17. Representation petition. "Representation petition" means a petition filed by an employee organization stating that the exclusive representative no longer represents the majority of employees in an appropriate unit; and at least 30 percent of the employees in the appropriate unit wish to be represented by the petitioner.

Subp. 18. Service or serve. "Service" or "serve" means service of a document required by parts 5510.0110 to 5510.2310, in person or by the United States Postal Service, postage prepaid and addressed to the bureau or a party at its last known address, unless some other manner of service is required by law. Unless otherwise provided by these parts, service upon the director or a party is effective upon receipt.

Subp. 19. Showing of interest or interest. "Showing of interest" or "interest" means the submission of authorization signatures in the form of individual authorization cards to show support for a petition filed with the director.

Subp. 20. Time. "Time" means, in computing any period of time prescribed or allowed by parts 5510.0110 to 5510.2310, that the day or any act or event on which the designated period of time begins to run shall not be included. The last day of the time period shall be included unless it is a Saturday, Sunday, or legal holiday.

Subp. 21. Transfer of exclusive representative status. "Transfer of exclusive representative status" means the transfer of the rights and obligations of an exclusive representative to another employee organization.

Subp. 22. Unfair election practice. "Unfair election practice" means any prohibition defined in part 5510.2110, or a violation of an election order issued by the director, and any unfair practice as defined by Minnesota Statutes, section 179A.13, committed by an employer or its agents or an employee organization or its agents, or an employee, which affects the result of a certification, representation, or decertification election.

Subp. 23. Unit clarification or clarification petition. "Unit clarification" or "clarification petition" means a determination of the director regarding an appropriate unit involving:

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

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

C. modification of the unit description; or

D. modification of the unit structure.

5510.0410 FILING PETITION.

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

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

(1) election of officers;

(2) filling of vacancies; and

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

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

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

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

Subp. 2. Eligibility; single-party petition.

A. An employee organization may file petitions for:

(1) certification of exclusive representative; and

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(2) challenge of affiliation.

B. An employer may file petitions for:

(1) certification of exclusive representative;

(2) unit clarification;

(3) amendment of certification; and

(4) challenge of affiliation.

C. An exclusive representative may file petitions for:

(1) unit clarification;

(2) amendment of certification;

(3) transfer of exclusive representative status; and

(4) abandonment of exclusive representative status.

D. A public employee may file petitions for:

(1) decertification of exclusive representative;

(2) challenge of fair share fee assessment; and

(3) challenge of affiliation.

Subp. 3. Eligibility; joint-party petition.

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

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

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

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

A. the petitioner;

B. the petitioner's representative, if any;

C. the other party; and

D. the other party's representative, if any.

5510.0510 LIMITATION ON FILING PETITION.

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

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

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

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

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

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

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

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

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

A. certification election;

B. representation election;

C. amendment of certification; and

D. transfer of exclusive representative status.

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

5510.0610 WITHDRAWAL.

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

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

Subp. 3. Representation election. If the incumbent exclusive representative withdraws, the matter will be processed as though a certification petition had been filed by the challenging employee organization.

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

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

5510.0710 CERTIFICATION, REPRESENTATION, AND DECERTIFICATION PETITIONS.

Subpart 1. Filing of petition. An employee organization or an employer may file a certification, representation, or decertification petition. A petition for certification, representation, or decertification must include:

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

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

C. the type of public employer involved;

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

E. the proposed or previously determined appropriate unit description;

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

G. the date the petition is signed; and

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

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

5510.0810 AUTHORIZATION SIGNATURES.

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

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

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

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

C. the signature of the employee; and

D. the date the employee signed the card.

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

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

A. does not include the information and statements required by parts 5510.0110 to 5510.2310;

B. contains statements of explanation, interpretation, or advice;

C. is modified or altered in any way; or

D. is dated more than six months prior to the receipt of the petition by the director.

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

5510.0910 UNIT CLARIFICATION PETITION.

Subpart 1. **Filing of petition.** An exclusive representative or an employer may file a unit clarification petition. A petition for unit clarification must include:

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

B. the type of public employer involved;

C. the approximate number of employees affected by the proposed unit clarification;

D. a specific statement of the unit clarification requested and the reasons for the request;

E. the date the petition is signed; and

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

5510.1010 AMENDMENT OF CERTIFICATION PETITION.

Subpart 1. **Filing petition.** An exclusive representative or an employer may file an amendment petition. A petition for amendment of certification must include:

A. a statement of the amendment requested;

B. the date the petition is signed; and

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

5510.1110 CHALLENGE TO AFFILIATION PETITION.

Subpart 1. **Filing petition.** An employee, employer, or employee organization may file a petition challenging the affiliation of an employee organization in accordance with Minnesota Statutes, section 179A.06, subdivision 2. A petition challenging affiliation must include:

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

B. the name of the employee organization involved;

C. the date the petition is signed; and

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

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

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

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

5510.1210 TRANSFER OF EXCLUSIVE REPRESENTATIVE STATUS.

Subpart 1. Filing petition. An exclusive representative may file a transfer petition. A petition transferring exclusive representative status must include:

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

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

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

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

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

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

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

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

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

Subp. 6. Petition. If a majority of the employees vote in favor of the transfer, a petition shall be filed by the exclusive representative with the director.

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

A. issue an amended certification of exclusive representative;

B. order a representation election; or

C. dismiss the petition.

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

5510.1310 ABANDONMENT OF EXCLUSIVE REPRESENTATIVE STATUS.

Subpart 1. Filing petition. An exclusive representative may file an abandonment petition subject to parts 5510.0110 to 5510.2310. A petition abandoning the status of exclusive representative must contain a statement that clearly indicates that the exclusive representative no longer wishes to represent the appropriate unit at the expiration of the contract or the one-year certification period.

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

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

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

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

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.

5510.1410 FAIR SHARE FEE CHALLENGE PETITION.

Subpart 1. **Advance notice of fair share fee assessment.** Notice of the fair share fee must be provided:

A. upon initial implementation of the fair share fee assessment;

B. to employees hired after the original notice has been issued; and

C. upon a change in the amount of the fair share fee assessment.

Subp. 2. **Notice of assessment.** The exclusive representative must provide advance written notice of the amount of the fair share fee assessment to the director, the employer, and each employee assessed. The notice must contain:

A. the name, address, and telephone number of the exclusive representative;

B. the amount of the regular dues of the exclusive representative;

C. the amount of the fair share fee assessment;

D. a statement identifying benefits available only to members of the exclusive representative and the monetary cost of the regular membership dues attributable to each benefit;

E. the bureau's current mailing address; and

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

Subp. 3. **Employer provided information.** The employer shall provide to the exclusive representative the name, home mailing address, and social security number or other necessary payroll deduction information for all employees in the appropriate unit. Questions of necessary payroll deduction information shall be determined by the director.

Subp. 4. **Mailing notice.** The notice of the fair share fee assessment shall be mailed by the exclusive representative to the employee's last known home mailing address provided by the employer.

Subp. 5. **Assessment.** On the effective day of the fair share fee assessment and thereafter, the amount of the assessment shall be deducted by the employer from the pay of the employee. The amounts deducted must be held in escrow by the employer and not remitted to the exclusive representative for a period of 30 calendar days from the effective date of the deduction.

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

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

5510.1510 FAIR SHARE FEE CHALLENGE PETITION.

Subpart 1. **Filing petition.** An employee being assessed a fair share fee or an employee who has been notified of a fair share fee assessment may file a fair share fee challenge petition. A petition challenging a fair share fee assessment must include:

A. the name, address, and phone number of the petitioner and agent, if any;

B. the name, address, and phone number of the exclusive representative and agent, if any;

C. the name, address, and phone number of the employer and agent, if any;

D. the job classification of the petitioner;

E. the amount of regular membership dues in the unit;

F. the amount of the fair share fee assessment;

G. the amount that represents 85 percent of the regular membership dues;

H. the percent of regular membership dues which the fair share fee represents;

I. the benefits asserted to be available only to members of the exclusive representative;

J. a statement regarding whether the cost of benefits asserted to be available only to members is greater than the amount by which the regular membership dues were reduced in establishing the amount of the fair share fee;

K. the amount by which the fair share fee should be reduced; and

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

Subp. 2. Filing petition. A petition challenging the fair share fee assessment must be filed in person or by mail with the director. The petition must be received by the director no later than 30 days after receipt by the employee of the notice of assessment.

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

Subp. 4. Receipt of petition. Upon receipt of the challenge petition and filing fee, the director shall provide a written receipt to the petitioner.

Subp. 5. Service on exclusive representative and employer. A copy of the challenge petition shall be served upon the exclusive representative and the employer, in person or by mail, within the 30-calendar-day challenge period. A petition not timely served shall be dismissed.

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

5510.1610 INVESTIGATION OR HEARING.

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

5510.1710 FAIR SHARE FEE APPLICATION.

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

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

5510.1810 JOINT-PARTY PETITION.

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

A. notarized signatures of the parties;

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

C. identification of the employees and job classifications included within the proposed appropriate unit and those employees and job classifications excluded from the proposed appropriate unit.

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

5510.1910 HEARINGS OR INVESTIGATIONS.

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

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

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

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

Subp. 5. Prehearing conference. The purpose of a prehearing conference is to simplify the issues to be determined, to obtain

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stipulations regarding foundation for testimony or exhibits, to identify the proposed witnesses for each party, to consider other matters that may be necessary or advisable and, if possible, to reach a settlement without the necessity for hearing. Any final settlement must be made a part of the record.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

A. all pleadings, motions, and orders;

B. evidence received;

C. offers of proof, objections, and rulings on objections;

D. all memoranda or data submitted by any party in connection with the case; and

E. an audiomagnetic or stenographic recording of the hearing.

The director must retain the audiomagnetic or stenographic recording of the hearing for a period not less than 60 calendar days after the issuance of his order. The record shall be transcribed, in whole or in part, at the request of any party to the hearing, provided the request is timely and the party requesting the transcript pays a charge per page as established by the director.

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

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

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

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

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

(1) all parties may present evidence and cross-examine witnesses;

(2) all parties have a right to be represented at the hearing;

(3) any objection to the conduct of the hearing, including the introduction of evidence, must be stated orally, together with a statement of the grounds for the objection;

(4) no objection to the conduct of the hearing, including the introduction of evidence, shall be waived by further participation in the hearing; and

(5) failure to appear at the hearing in person or through an authorized representative may prejudice the rights of a party.

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

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

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

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

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

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

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

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

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

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

Subp. 15. Order pending appeal. Any order appealed to the board shall continue in effect unless ordered otherwise by the board.

5510.2010 ELECTIONS.

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

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

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

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A. identify the appropriate unit;

B. establish the cut-off date for voter eligibility;

C. include a list of the eligible voters;

D. include a sample ballot;

E. establish campaign and election rules;

F. provide for the parties to appoint observers;

G. identify the date, time, and location of an on-site election and provide for absentee ballots;

H. include any other conditions which are necessary for the conduct of a fair election; and

I. provide for posting by the employer of the election order and attachments.

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

Subp. 5. Correction of voter eligibility list.

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

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

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

(1) transfer, promotion, or demotion of an employee out of the unit which is not prohibited by the cease and desist order;

(2) an appeal to the board or court action which delays the conduct of the election or changes the cut-off date for voter eligibility; or

(3) voluntary or involuntary termination of an eligible voter who has not appealed the termination.

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

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

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

Subp. 7. Election ballot.

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

(1) the name of employee organizations which have submitted the required showing of interest; and

(2) no representation.

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

(1) the name of the exclusive representative;

(2) the name of employee organizations which have submitted the required showing of interest; and

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

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

(1) the name of the exclusive representative;

(2) the name of employee organizations which have submitted the required showing of interest; and

(3) no representation.

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

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

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

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

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

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

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

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

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

A voter who has been mailed an absentee ballot by the director shall not vote at the on-site election.

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

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

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

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

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

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

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

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

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

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

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

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

5510.2110 UNFAIR ELECTION PRACTICES.

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

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

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

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

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

E. violation of an election order.

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

Subp. 3. Charge filed prior to election. If the alleged unfair election practice appears to materially affect the results of an election to be held, the director may:

A. postpone the election until the charge has been heard or investigated;

B. hold the election and conduct a hearing or an investigation at a later date to determine whether the election should be voted; or

C. hold the election and impound the ballots until a hearing or an investigation has been completed.

Subp. 4. Charge filed after election. If a charge of an unfair election practice is filed after an election has been held, the director may:

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

B. conduct a hearing or investigation; and

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

Subp. 5. Determination. Based on a hearing or investigation, the director shall issue an order. If an unfair election practice is established, the election may be voided and a new election may be ordered.

5510.2210 REQUEST FOR RECONSIDERATION.

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

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

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

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

5510.2310 STATUS OF EMPLOYEE ORGANIZATION.

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

A. fair share fee assessments;

B. dues check-off; and

C. time off for union officers.

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

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

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

5510.2410 APPLICATION.

Parts 5510.2410 to 5510.3210 govern the conduct of negotiations between an exclusive representative and an employer, the conduct of mediation, the certification of impasse to the board, the arbitration of impasse, and the notification of intent to strike.

5510.2510 POLICY.

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

5520.2610 DEFINITIONS.

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

5510.2710 NEGOTIATION NOTICE.

A written notification of the desire to meet and negotiate an original contract, renewal of a contract, or a reopener of a contract must be served on the other party and the director.

5510.2810 PETITION FOR MEDIATION.

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

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

Subp. 3. Notice. Upon receiving a petition for mediation, the director must serve notice of the time and place for a mediation meeting of the exclusive representative and the employer.

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

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

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

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

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

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

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

Subp. 6. Confidential information. Confidential information includes:

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

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

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

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

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Subpart 1. Mediation period. A mediation period commences on the day following receipt by the bureau of a petition for mediation or the day following issuance of notice that the director has initiated mediation.

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

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

Subp. 4. Request for arbitration at impasse. A joint request by the parties to submit the impasse to arbitration may be served at any time during the negotiations, mediation period, or thereafter. A joint request must be signed by the authorized representatives of both parties and must contain a list of the items in dispute and a statement agreeing to arbitrate the items.

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

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

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

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

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

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

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

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

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

Subp. 5. Certification of impasse to board. Following receipt of a joint request to arbitrate or receipt of an acceptance of a single-party offer to arbitrate, the director must notify the board of the existence of an impasse. The notice of impasse must contain a statement that the negotiations between the parties are at impasse, a list of the issues determined by the director to be at impasse, and any final positions submitted by the parties.

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

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

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

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

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

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

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

Subp. 7. Notice of intent to strike.

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

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

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

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

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

(3) If the bureau receives a notice of intent to strike not more than five calendar days prior to the expiration of the mediation period or 45-day teacher impasse period, the strike notice period begins the day following the expiration of the mediation period. Notices received prior to these periods are void and of no effect.

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

E. The director must notify the parties in writing of the date of any strike notice, the date upon which the right to strike matures, and the date upon which the right to strike expires.

5510.3010 RENEWAL OF EXISTING CONTRACT; MEDIATION, IMPASSE AND ARBITRATION FOR CONFIDENTIAL, ESSENTIAL, SUPERVISORY EMPLOYEES, AND FOR PRINCIPALS AND ASSISTANT PRINCIPALS.

Subpart 1. Mediation. Mediation shall be scheduled by the director upon receipt of a petition filed under part 5510.2810.

Subp. 2. Impasse. During mediation of the dispute, the parties, individually or jointly, may request the director to declare the negotiations at impasse. If the director determines that further mediation efforts would not resolve the dispute, he shall declare the negotiations to be at an impasse and notify the parties in writing of that determination. The notice by the director must include:

A. the date on which an impasse was declared;

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

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

Subp. 3. Final offer arbitration. The parties may agree to limit the arbitrator's authority to a final offer item-by-item or a final offer total package award. If the parties do not agree to final offer arbitration, the impasse shall be decided by conmentional arbitration.

Subp. 4. Final positions. If the final offer arbitration option is agreed to, the parties may not withdraw or amend the final positions filed with the director unless otherwise agreed to in writing by the parties. The agreement may include, but is not limited to, an agreement:

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

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

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

Subp. 5. Certification of impasse to board. Following the date established for submission of final positions of both parties, the director shall notify the board of the existence of an impasse. The notice of impasse shall contain a statement that the negotiations between the parties are at impasse, a list of the issues determined by the director to be at impasse, and any final positions submitted by the parties.

Subp. 6. Confidentiality of final positions. All final positions submitted to the bureau are confidential.

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

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

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

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.

Subp. 3. Mediation period. The 60-day or 45-day mediation period provided under part 5510.2910 commences on the day following certification of a new or different exclusive representative or resolution or a question of representation by the director.

5510.3210 CONTRACT TRANSMITTAL.

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

REPEALER. Minnesota Rules, parts 5500.2900, 5500.3000, 5500.3100, 5500.3200, 5500.3300, 5500.3400, 5500.3500, 5500.3600, 5500.3700, 5500.3800, 5500.3900, 5510.0100, 5510.0200, 5510.0300, 5510.0400, 5510.0500, 5510.0600, 5510.0700, 5510.0800, 5510.0900, 5510.1000, 5510.1100, 5510.1200, 5510.1300, 5510.1400, 5510.1500, 5510.1600, 5510.1700, 5510.1800, 5510.1900, 5510.2000, 5510.2100, 5510.2200, 5510.2300, 5510.2400, 5510.2500, 5510.2600, 5510.2700, 5510.2800, 5510.2900, 5510.3000, 5510.3100, 5510.3200, 5510.3300, 5510.3400, 5510.3500, 5510.3600, 5510.3700, 5510.3800, 5510.3900, 5510.4000, 5510.4100, 5510.4200, 5510.4300, 5510.4400, 5510.4500 are repealed.

Department of Natural Resources

Proposed Rules Governing State Recreational Trails

Notice of Intent to Adopt Rule Amendment without a Hearing

Notice is hereby given that the State Department of Natural Resources is proposing to adopt the above entitled amendments without a public hearing. The Commissioner of Natural Resources has determined that the proposed adoption of these amendments will be noncontroversial in nature and has elected to follow procedures as set forth in Minn. Stat. §§ 14.21-14.28.

The change will remove a duplicative requirement for a public hearing. Minnesota Rule NR 20 requires a public hearing prior to designation for trails other than those established by the legislature. The Outdoor Recreation Act (Minn. Stat. Chapter 86A), passed after adoption of NR 20, specifies that a trail can not be developed until a master plan has been developed, and that the master plan process must include a public hearing (Minn. Stat. 86A.09, Subd. 2). Minnesota Statute 86A.07, subdivision 3, which applies to the designation of state trails other than those designated by the legislature, does not prescribe a public hearing prior to designation. In short, Minn. Stat., Chapter 86A requires public hearings for all trails, and the requirement in NR 20 is duplicative.

Persons interested shall have 30 days to submit comments on the proposed amendments. The proposed amendments may be modified prior to final adoption of modifications are supported by the data and views submitted to the Department of Natural Resources and do not result in a substantial change in the proposed language.

Unless 25 or more persons submit written requests for a public hearing on the proposed amendments within the 30-day comment period, a public hearing will not be held. Identification of the particular objection, the suggested modifications, and the reasons or data relied upon to support the suggested modifications are desired. In the event a public hearing is required, the Department will proceed according to the provisions of Minn. Stat. §§ 14.13-14.20.

Persons who wish to submit comments or a written request for a public hearing, or persons who wish to receive a copy of this notice and/or a copy of the proposed amendment, should address their correspondence to:

Gordon Kimball, Trails Project Coordinator
Trails Operations Section
Trails & Waterways Unit
Department of Natural Resources
Box 52—Centennial Building
Saint Paul, MN 55155-1679

The Department's authority to adopt the rules is contained in Minn. Stat. § 84.86. A statement that describes the need for the reasonableness of the proposed amendment is available from the Department of Natural Resources upon request.

Upon adoption of the final amendment without a public hearing, the proposed amendment, this notice, the statement of need and reasonableness, all written comments received, and the final amendment as adopted will be delivered to the Attorney General for review as to form and legality, including the issue of substantial change. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the final amendment as proposed for adoption, should submit a written request to the above address.

Please be advised that Minn. Stat. Chapter 10A requires each lobbyist to register with the State Ethical Practices Board

STATE OF MINNESOTA

BUREAU OF MEDIATION SERVICES

In the Matter of the Proposed Adoption of Rules of the Bureau of Mediation Services Governing Questions of Representation; Fair Share Fees and Public Employee Dispute Resolution

ORDER ADOPTING RULES

Notice of the Bureau's intent to adopt the above-entitled rules without a public hearing was published in the State Register on May 21, 1984, and was sent by United States mail to all persons on the list maintained by the agency pursuant to Minnesota Statutes section 14.22 on May 16, 1984. 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 Minnesota Rules: Parts 5510.0110 to 5510.3210 are adopted this 27th day of August, 1984 pursuant to authority vested in me by Minnesota Statutes section 179A.04, subd. 3(f) (1984).

STATE OF MINNESOTA

Paul W. Goldberg

PAUL W. GOLDBERG
Director of Bureau of
Mediation Services

MINNESOTA BUREAU OF
MEDIATION SERVICES

Notice of Intent to Solicit Outside Opinion Regarding Proposed Rules Governing the Procedure for Determining Appropriate Units, Representation, Fair Share Fees, Mediation and Impasse Procedures in the Public Sector.

Notice is hereby given that the Minnesota Bureau of Mediation Services is seeking information or opinions from sources outside the agency in preparing to promulgate rules governing the procedure for determining appropriate units, representation, fair share fees, mediation and impasse procedures. Rules covering the subjects are currently codified at 8 MCAR § 2 (BMS 100-154). The promulgation of these new rules is authorized by Minn. Stat. § 179.71, subd. 5 (1980) which requires the Director of the Bureau of Mediation Services to adopt reasonable and proper rules relative to and regulating the forms of petitions, notices, orders and the conduct of hearings and elections.

The Minnesota Bureau of Mediation Services requests information and comments concerning the subject matter of these rules. Interested or affected persons or groups may submit statements of information or comment orally or in writing. Written statements should be addressed to:

Jean L. King
Bureau of Mediation Services
205 Aurora Avenue
St. Paul, Minnesota 55103

Oral statements will be received during regular business hours over the telephone at 296-2525 and in person at the above address.

All statements of information and comments shall be accepted until February 24, 1984. Any written material received by the Minnesota Bureau of Mediation Services shall become part of the record in the event that these rules are promulgated.

PAUL W. GOLDBERG, DIRECTOR
BUREAU OF MEDIATION SERVICES

STATE OF MINNESOTA

BUREAU OF MEDIATION SERVICES

In the Matter of the Proposed Adoption of Rules of the Bureau of Mediation Services Governing the Implementation of the Public Employment Labor Relations Act.

ORDER FOR NOTICE OF INTENT TO ADOPT RULES WITHOUT PUBLIC HEARING

IT IS ORDERED this 5 day of May, 1984, that a Notice of Intent to Adopt Rules Without Public Hearing in the above-entitled matter be given to all persons who have registered their names with the Bureau of Mediation Services for that purpose and be published in the State Register.

BUREAU OF MEDIATION SERVICES

Paul W Goldberg

PAUL GOLDBERG, Director

STATE OF MINNESOTA
BUREAU OF MEDIATION SERVICES
205 AURORA AVENUE
SAINT PAUL 55103
PHONE 612-296-2525

NOTICE OF INTENT TO ADOPT RULES WITHOUT A PUBLIC HEARING

Notice is hereby given that the Minnesota Bureau of Mediation Services proposes to adopt the enclosed rules without a public hearing. The Bureau has determined that the proposed adoption of these rules will be noncontroversial in nature and has elected to follow the procedure set forth in Minnesota Statutes §§ 14.21 through 14.28 (Supp. 1983), as amended by Minn. Laws 1984, ch. 640 §§ 12-15, 33-34.

You have 30 days to submit comments in support of or in opposition to the proposed rules. Comments are encouraged and should identify the portion of the proposed rule addressed, the reason for the comment, and any change proposed. The proposed rules may be modified if the suggested changes are supported by the data and views submitted to the Bureau and do not result in a substantial change in the proposed language.

Written comments should be submitted to:

Paul W. Goldberg, Director
Bureau of Mediation Services
205 Aurora Avenue
St. Paul, Minnesota 55103
(612) 296-2525

The proposed rules will be published in the May 21, 1984, edition of the State Register and the 30-day comment period ends on June 20, 1984.

Dated at St. Paul, Mn.,
May 16, 1984

PAUL W. GOLDBERG, DIRECTOR
BUREAU OF MEDIATION SERVICES

AN EQUAL OPPORTUNITY EMPLOYER

STATE OF MINNESOTA

BUREAU OF MEDIATION SERVICES

In the Matter of the Proposed Adoption of Rules of the Bureau of Mediation Services Governing the Implementation of the Pubilc Employment Labor Relations Act.

AFFIDAVIT OF MAILING

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

Janet L. Johnson being first duly sworn, deposes and says:

That on the 16 day of May, 1984, at the City of Saint Paul, County of Ramsey, State of Minnesota, s/he served the attached Notice of Intent to Adopt Rules Without Public Hearing by depositing in the United States mail at said City of Saint 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 Bureau of Mediation Services for the purpose of receiving notice of the proposed adoption of rules by this agency.

Subscribed and sworn to before me
this 16th day of May, 1984.

Ramona M Anderson
NOTARY PUBLIC

Ramona Marie Anderson
NOTARY PUBLIC—MINNESOTA
RAMSEY COUNTY
MY COMMISSION EXPIRES NOV. 14, 1984

STATE OF MINNESOTA

BUREAU OF MEDIATION SERVICES

In the Matter of the Proposed
Adoption of Rules of the Bureau
of Mediation Services Governing
the Implementation of the Public
Employment Labor Relations Act.

CERTIFICATE

I hereby certify that the list of names, associations, and other interested groups who have requested, pursuant to Minn. Stat. § 14.14, subd. 1a (Supp. 1983), that their names be placed on file with and maintained by the State Bureau of Mediation Services for the purpose of receiving notice of the proposed adoption of rules by this agency is accurate and complete as of 4:00 p.m., this 14th day of May, 1984.

Paul W. Goldberg

PAUL GOLDBERG, Director
Bureau of Mediation Services

STATE OF MINNESOTA

BUREAU OF MEDIATION SERVICES

In the Matter of the Proposed Adoption of Rules of the Bureau of Mediation Services Governing Questions of Representation; Fair Share Fees and Public Employee Dispute Resolution

FINDINGS OF FACT AND CONCLUSIONS

The above-entitled matter has been considered without a public hearing in accordance with Minn. Stat. S S 14.21 to 14.26 (1984).

After affording interested persons an opportunity to present data, statements and arguments, having reviewed all timely comments and having considered all of the evidence adduced upon the records, files and proceedings herein, the Bureau finds the following:

I. The Statement of Need and Reasonableness demonstrates the need for and reasonableness of the proposed rules.

II. The following amendments are not substantial in nature and are necessary and reasonable:

1. Staff review identified some confusion regarding the term "holiday or legal holiday" contained in 5510.0310, Definitions, Subp. 20. Therefore, a definition was added to 5510.0310, Definitions and is reflected in Subpart 14. The clarification is consistent with Minnesota Statutes 645.44 and limits the application of the term "holiday" to those observed by the State of Minnesota. p.2

2. 5510.0110, Application. The word "act" was clarified to mean the Public Employment Labor Relations Act because this is the initial reference to the term in the rules. p.1

3. 5510.01.0410, Filing Petition, Subpart 1 A (2). Pursuant to comments received, the term "filling of vacancies" was further defined to include only filling of vacancies in elected offices. This amendment is consistent with the meaning of the section and is not substantial in nature. p.4

4. 5510.0710, Certification, Representation, and Decertification Petitions. The first sentence is a duplication of information provided in 5510.0410, Subpart 2. The deletion was made to eliminate redundancy and does not constitute any substantive change. p.8

5. 5510.0810, Authorization Signatures, Subpart 2, Valid authorization signatures. Insertion of the word "individual" is to clarify the nature of cards required to support a petition and does not change the intent of original language. p.9

6. 5510.0910, Unit Clarification Petition, Subpart 1, Filing of Petition. The first sentence is a duplication of information provided in 5510.0410, Subpart 2. The deletion was made to eliminate redundancy and does not constitute any substantive change. Additional language is inserted to emphasize the singular sense of the term "an employee" deleted in this revision and is consistent with Minn. Stat. 179A.06, subd. 3. p.10 ? not done

7. 5510.1010, Amendment of Certification Petition, Subpart 1 Filing Petition. The first sentence is a duplication of information provided in 5510.0410, Subpart 2. The deletion was made to eliminate redundancy and does not constitute any substantive change. p.10

8. 5510.1110, Challenge to Affiliation Petition, Subpart 1, Filing Petition. The first sentence is a duplication of information provided in 5510.0410, Subpart 2. The deletion was made to eliminate redundancy and does not constitute any substantive change. p.10

9. 5510.1110, Challenge to Affiliation Petition, Subpart 3. The words "exclusive" and "labor" were inserted to provide consistency with the terminology used throughout the rules. p.11

10. 5510.1210, Transfer of Exclusive Representative Status, Subpart 1, Filing Petition. The first sentence is a duplication of information provided in 5510.0410, Subpart 2. The deletion was made to eliminate redundancy and does not constitute any substantive change p.11

11. 5510.1210, Subpart 7, Order. The amendment of this subpart by adding "or an investigation" is consistent with 1510.1610 which allows the Director to resolve the question in either fashion. p.12

12. 5510.1310, Abandonment of Exclusive Representative Status Subpart 1, Filing Petition. The first sentence is a duplication of information provided in 5510.0410, Subpart 2. The deletion was made to eliminate redundancy and does not constitute any substantive change. p.12

13. 5510.1410, Fair Share Fee Challenge Petition, Subpart 1. The amendment clarifies the requirement for providing notice and

eliminates Subpart 2 by inclusion of that information. The resulting language is orderly, understandable, and is consistent with the overall rule format.

14. 5510.1410, Fair Share Fee Challenge Petition, Subpart 4. Comments received indicated that the language was inconsistent with Minnesota Statutes 179A.06, subd. 3. The amendment provides consistency with current statutory requirements.

15. 5510.1510, Fair Share Fee Challenge Petition, Subpart 1. The first sentence is a duplication of information provided in 5510.0410, Subpart 2. The deletion was made to eliminate redundancy and does not constitute any substantive change.

Changing "applies" to "apply" and deleting "or joined" conforms to the singular challenge requirement of 5510.1510.

16. 5510.1510, Fair Share Fee Challenge Petition, Subpart 2. The second sentence was deleted because it is a duplication of information provided in 5510.0510, Limitation on Filing Petition, Subpart 5. The deletion was made to eliminate redundancy and does not constitute any substantive change.

17. 5510.1510, Fair Share Fee Challenge Petition, Subpart 3. The 1984 Public Employment Labor Relations Recodification Act deleted reference to the amount of the filing fee in Minnesota Statutes 179A.04, Subd. 1(e). Therefore, the previously established amount of the filing fee is now reflected in the rule.

18. 5510.1510, Fair Share Fee Challenge Petition, Subpart 5. The addition of "by the petitioner" clarifies the party responsible for serving a copy of the challenge petition and is consistent with current statutory requirements.

19. 5510.1710, Fair Share Fee Application. The addition of the word "same" clarifies the standards previously established and followed by the Bureau in determining the validity of the fair share fee fee assessment. The amendment does not reflect any substantive change but only serves to explain more fully the application of determinations. Changing "applies" to "apply" and deleting "or joined" conforms to the singular challenge requirement of 5510.1510.

20. 5510.1910, Hearings of Investigations, Subpart 4. The term "cease and desist" is eliminated in favor of generic terminology which better defines the nature of the order. "Cease and Desist" is archaic verbiage which serves no purpose and leads to confusion. This amendment is not substantive in nature, but is merely an update of terminology.

21. 5510.1910, Hearings or Investigations, Subpart 10, E. The amendment reflects additional information regarding transcription requests and reflects current Bureau policy. This amendment is not a substantial change but only serves to further clarify the standards established and practiced by the Bureau for transcript production.

22. 5510.1910, Hearings or Investigations, Subpart 15. Based on comments received regarding the status of Bureau orders under appeal, the Director determined that allowance should be made for the parties to request a stay of the order without the necessity for formal Board action. This amendment is less restrictive than the original language and addresses, in part, the concerns raised by comments.

23. 5510.2010, Elections, Subpart 3, H. Amendment was made to correct inadvertent omission of information contained on election orders. This amendment is consistent with established practice and policies.

24. 5510.2010, Elections, Subpart 5. Amendment reflects update of terminology as explained in "No. 20" above.

25. 5510.2010, Elections, Subpart 9. Amendments to delete "require" and insert "allow" are less restrictive in nature that the original language. The parties have the opportunity to request additional observers whether the Director initiates a request or not. This is not a substantial change.

26. 5510.2010, Elections, Subpart 10. The amendment clarifies current policy and practice and serves to further explain the procedure involved and its limitations.

27. 5510.2010, Elections, Subpart 13. Change of "party" to "observer" provides consistency with the terminology used throughout the rules and reduces possible confusion. This amendment is not substantial in nature.

28. 5510.2110, Unfair Election Practices, Subpart 1. This is a non-substantive grammatical revision.

29. 5510.2110, Unfair Election Practices, Subpart 2. The amendment reflects current practice and policy and corrects an error in the original language. The amendment is not substantial and is less restrictive by providing additional time for such charges to be filed.

30. 5510.2110, Unfair Election Practices, Subpart 3. Unfair election practices can only be remedied when they have affected the results of an election. Deletion of this subpart eliminates sub-

jective authority of the Director to speculate upon the impact of a practice, and reflects the actual practice of the parties to wait until election results have been determined prior to filing a charge. The revision is not substantive in nature and reflects actual practice.

31. 5510.2210, Unfair Election Practices, Subpart 4. Amendment reflects elimination of allowing charges to be filed prior to an election. This language is no longer necessary.

32. 5510.2710, Negotiation Notice. Amendment defines information to be contained on negotiation notices. Inasmuch as the negotiation notice is not a form available from the Bureau, it is necessary to inform all parties as to its contents. This is not a substantive change but merely is a clarification of information required, and reflects current practice and policy.

33. 5510.2910, Subpart 6, B(3). Clarifies which agreement the section refers to. This is not a substantive change, but only defines the terminology.

34. 5510.3010, Subpart 4. The addition of "to amend" further defines the agreement referred to in the section and is not substantive in nature.

35. 5510.3010, Subpart 4, C. The insertion of "such" for "an" defines the agreement referred to in the section and is not substantive in nature.

36. 5510.3110, Subpart 3. Based on comments received, the amendment corrects the language to accurately reflect the statutory requirements. The change is not substantive in nature and provides consistency with statutory provisions.

III. The rules as proposed, together with the above-described amendments, are needed and reasonable.

STATE OF MINNESOTA

Paul W. Goldberg

August 22, 1984

Paul W. Goldberg, Director
Bureau of Mediation Services

5510.0110 Application.

Identifies the procedures available to resolve questions of representation, unit clarification, and fair share fee challenges.

5510.0210 Policy.

Provides that these rules will be applied and interpreted in a manner which best effectuates the purposes of the act. Minn. Stat. 14.115 (Supp. 83) has been reviewed and considered in the promulgation of these rules, and is not applicable under subd. 7(b). These rules do not affect small business directly because they govern public sector employment relationships only.

5510.0310 Definitions.

Subparts 1 through 23 The definitions used in these rules describe the terminology of specific bureau responsibilities authorized by the act, and terminology pertinent to the bureau's activities to carry out those responsibilities.

5510.0410 Filing Petition.

Subparts 1 through 3 Define the general requirements necessary for the filing of a petition; identifies what petitions may be filed by an employee, employer, employee organization, or exclusive representative; and identifies what petitions may be filed singularly or jointly by employee organizations, exclusive representatives and employees. These subparts clarify the requirements of the act and simplify the petition process promulgated by the bureau to administer the act.

5510.0410 Filing Petition.

Subparts 1 through 4 Identifies the requirements which an employee organization, exclusive representative or public employee are subject to in terms of filing petitions. These subparts address the general conditions to which

each party is subject; the eligibility for filing single-party or joint-party petitions; and the general information to be provided on all petitions. The subparts provide all parties a general overview of all types of petitions, who can file them, and the minimum information needed by the bureau to process the same.

5510.0510 Limitation on Filing Petition.

Subparts 1, 2, 3, and 4 Maintains the intent of Minn. Stat. 179A.14, Subd. 12, by extending the one-year bar standard to petitions for unit clarification, elections for certification, representation, and decertification, and tranfer of exclusive representative status. The specific bar standards relate to contract coverage and negotiations certified to impasse in terms of when such questions of representation on appropriateness of unit may be raised. These subparts provide stability to the labor-management relationship, but also recognize the need to resolve unit clarification and representation questions in an orderly fashion.

5510.0510 Limitations on Filing Petition.

Subpart 5 Clarifies the requirement of Minn. Stat. 179A.06, subd. 3, regarding the timely receipt of fair share fee challenges.

5510.0510 Limitation on Filing Petition.

Subpart 6 Reaffirms the application of Minn. Stat. 179A.03, subd. 6, in relationship to petitions for certification and representation elections; petitions for amendment of certification and transfer of exclusive representation status.

5510.0510 Limitation on Filing Petition.

Subpart 7 Clarifies that all petitions must be filed in person or by mail.

5510.0610 Withdrawal.

Subpart 1 Generally defines what is considered a timely withdrawal relative to petitions and authorization signatures for certification, representation, or decertification elections; and limits the withdrawal of petitions for unit clarification, transfer of exclusive representative status, fair share fee challenge, amendment of certification, and determination of affiliation to any time prior to the close of the hearing conducted by the bureau. This rule establishes reasonable time lines that direct and guide the parties while maximizing prudent use of staff and financial resources of the bureau.

5510.0610 Withdrawal.

Subparts 2, 3, and 4 Specifically addresses the status of petitions for certification, representation and decertification elections if one or more of the petitioners withdraws as provided in 5510.0610, subpart 1. This rule standardizes the director's processing of or dismissal of petitions and precisely identifies those criteria for the parties.

5510.0710 Certification, Representation, and Decertification Petitions.

Subpart 1 Identifies the specific information required in addition to the general requirements delineated in 5510.0410. Securing adequate and pertinent information is essential for the parties to fully understand the request of the petitioner and for the bureau to carry out its responsibilities under the act.

5510.0710 Certification, Representation and Decertification Petitions.

Subpart 2 Requires that a showing of interest in the form of authorization signatures must be at least 30 percent of the estimated number of employees in the established or proposed appropriate unit as required by Minn. Stat. 179A.12, subd. 3. Additionally, the petitioning

employee organization is advised that the cut off for submission of a showing of interest is up to the close of the hearing. This time frame for submission of a showing of interest allows for responsible and systematic processing of petitions.

5510.0810 Authorization Signatures.

Subpart 1 Reaffirms the confidentiality of authorization signatures submitted to the director and establishes how such signatures may be withdrawn. This expresses current bureau policy which previously was not clear, particularly to the employees signing the authorization cards.

5510.0810 Authorization Signatures.

Subpart 2 Sets the criteria for determining the validity of authorization cards. This rule provides the bureau with sufficient information to assess the soundness of authorization signatures and assures that the rights of all parties are preserved.

5510.0810 Authorization Signatures.

Subparts 3 and 4 Sets the criteria for assessing the invalidity of authorization cards. If authorization cards are found to be invalid, the original petition, or intervenors on a petition, will be denied and a one-year bar for that unit shall be applied to the party submitting the fraudulent cards. The penalties for invalid authorization cards are not excessively harsh, but do establish adequate standards to uphold the integrity of the cards.

5510.0910 Unit Clarification Petition.

Identifies the specific information required in addition to the general requirements delineated in 5510.0410. Securing adequate and pertinent information is essential for the parties to understand the request of the petitioner and for the bureau to carry out its responsibilities under the act.

5510.1010 Amendment of Certification Petition.

Identifies the specific information required in addition to the general requirements delineated in 5510.0410. Securing adequate and pertinent information is essential for the parties to understand the request of the petitioner and for the bureau to carry out its responsibilities under the act.

5510.1110 Challenge to Affiliation Petition.

Subpart 1 Identifies the specific information required in addition to the general requirements delineated in 5510.0410. Securing adequate and pertinent information is essential for the parties to understand the request of the petitioner and for the bureau to carry out its responsibilities under the act.

5510.1110 Challenge to Affiliation Petition.

Subpart 2 Establishes that if an improper affiliation is determined, the certification, if any, of the involved employee organization will be withdrawn and any matters of representation or mediation pending before the bureau will be dismissed. All parties have a right and a need to know the effects of a determination of the question of affiliation. The penalty imposed is consistent with the intent of Minn. Stat. 179A.06, subd. 2.

5510.1110 Challenge to Affiliation Petition.

Subpart 3 Establishes that upon the withdrawal of a certification of exclusive representative as provided for in 5510.1110, subpart 2, any contract within the meaning of Minn. Stat. 179A.20 shall be null and void as of the date of the director's determination. All parties have a right to know the effect of a determination of the question of affiliation. The penalty imposed is consistent with the intent of Minn. Stat. 179A.06, subd. 2.

5510.1210 Transfer of Exclusive Representative Status.

Subpart 1 Identifies the specific information required in addition to the general requirements delineated in 5510.0410. Securing adequate and pertinent information is essential for the parties to understand the request of the petitioner and for the bureau to carry out its responsibilities under the Act. This procedure was established to allow a noncontroversial and voluntary take over of a certified exclusive representative by an employee organization during the term of a contract and at a time other than the open window period. The procedure was initially developed in 1975 pursuant to requests from employee organizations which indicated that the then-established representation procedures of the act were too restrictive and overly burdensome when there was a noncontested question of representation.

5510.1210 Transfer of Exclusive Representative Status.

Subparts 2, 3, 4, 5, 6, 7, and 8 Establishes the procedures by which an exclusive representative may transfer its status to another employee organization. This procedure is consistent with the intent of the act and provides stability, continuity and protection of the rights of all involved parties. These subparts codify existing practice which has been supported by court decision.

5510.1310 Abandonment of Exclusive Representative Status.

Subpart 1 Identifies the specific information required in addition to the general requirements delineated in 5510.0410. Securing adequate and pertinent information is essential for the parties to understand the request of the petitioner and for the bureau to carry out its responsibilities under the act.

5510.1310 Abandonment of Exclusive Representative Status.

Subparts 2, 3, 4, and 5

Provides a means by which an exclusive representative may disclaim representation of a unit without undergoing an election. This procedure maintains the effect of a labor contract yet allows the involved employees to seek other representation without being subject to Minn. Stat. 179A.12, subd. 12. The rights and desires of employee organizations certified as exclusive representatives and the employees represented are preserved without violation of the act and imposition of any penalties.

5510.1410 Fair Share Fee Challenge Petition.

Subparts 1, 2, 3, 4, and 5

Identifies the procedure promulgated by the bureau to implement Minn. Stat. 179A.06, subd. 3. The rule defines: 1) when advance written notice of fair share fee assessment must be provided; 2) what the notice must contain; 3) what information the employer is required to give the exclusive representative so that employees may be properly notified; 4) the manner in which the notice must be served on the employees; 5) when the employer shall deduct the fee; 6) when the fee should be transmitted to the exclusive representative if there is no challenge filed; and 7) that the employer must escrow the fair share fee if there is a challenge filed. These subparts codify existing practice that has been supported by court decision.

5510.1510 Fair Share Fee Challenge Petition.

Subpart 1

Identifies the specific information required in addition to the general requirements delineated in 5510.0410. Securing adequate and pertinent information is essential for the parties to understand the request of the petitioner and for the bureau to carry out its responsibilities under the act.

5510.1510 Fair Share Fee Challenge Petition.

Subpart 2 Defines how a petition must be filed with the director and that such petitions must be received by the director within 30 days from the date the employee receives notice of the assessment. This subpart codifies existing practice and is consistent with Minn. Stat. 179A.06, subd. 3.

5510.1510 Fair Share Fee Challenge Petition.

Subpart 3 Identifies the proper form of the filing fee and that absent such fee, the petition will be returned. This subpart codifies existing practice and is consistent with Minn. Stat. 179A.04, subd. 1(e).

5510.1510 Fair Share Fee Challenge Petition.

Subparts 4, 5, and 6 Specify bureau procedure when a fair share fee challenge petition and the filing fee are received. This procedure codifies existing practice, is consistent with the intent of the act, and preserves the due process rights of all parties.

1510.1610 Investigation or Hearing.

Establishes that a valid and timely fair share fee challenge petition shall be investigated by the director. The exclusive representative has the burden of proof to establish the validity of the fee, and failure of a party to appear at a hearing may prejudice its rights. The director must secure adequate information to resolve fair share fee challenges. Parties have a responsibility to present their positions on the issues raised. This rule codifies existing practice and preserves the due process rights of the parties.

5510.1710 Fair Share Fee Application.

Establishes that the director's determination relative to the amount of the fair share fee shall apply from the effective date of the assessment being challenged to all employees in an appropriate unit

who have an employment relationship which is similar to the petitioner, and who were assessed the fair share fee. If the fair share fee determination involves the assertion of lack of proper notice, such determinations will apply only to those employees who have filed or joined a challenge. This rule codifies existing practice which has been supported by court decision and is consistent with the intent of Minn. Stat. 179A.06, subd. 3.

5510.1810 Joint-Party Petition.

Subpart 1 For certification of exclusive representative petitions, identifies the specific information required in addition to the requirements delineated in 5510.0410 and 5510.0710. Securing adequate and pertinent information is essential for the bureau to carry out its responsibilities under the act and to assess the appropriateness of the petition.

5510.0810 Joint-Party Petition.

Subpart 2 For unit clarification petitions, identifies the specific information required in addition to the requirements delineated in 5510.0410 and 5510.0910. Securing adequate and pertinent information is essential for the bureau to carry out its responsibilities under the act and to assess the appropriateness of the petition.

5510.1910 Hearings or Investigations.

Subparts 1, 2, and 3 Lawful stipulations of agreement between the parties are encouraged, and the scope of a hearing inquiry and the conditions under which petitions may be consolidated for hearing are defined. The parties' knowledge of the bureau's position in these areas reduces staff and person hours necessary to resolve a dispute and fosters voluntary settlement of disputes.

5510.1910 Hearings or Investigations.

Subparts 4 and 5 These subparts address actions or options available to the bureau and the parties prior to the conduct of a hearing. The director may issue a cease desist order prohibiting negotiations and maintaining the status quo, in part or in whole, of the employees' terms and conditions of employment. The director may also conduct a prehearing conference. These activities may resolve issues prior to hearing, frame the issues, and provide opportunity for submission of evidence or testimony by the parties at the hearing. This constitutes a codification of existing practice and is consistent with the intent of the act.

5510.1910 Hearings or Investigations.

Subpart 6 Defines the basis upon which requests for subpoenas may be made and delineates the manner in which such subpoenas shall be served. This subpart reflects current policy and is consistent with statutory requirements, including Minn. Stat. 179A.04, subd. 3(b).

5510.1910 Hearings or Investigations.

Subpart 7 Identifies the manner in which employee organizations or employee groups may intervene on a petition for certification, representation, or decertification election. This subpart reflects current practice and is consistent with Minn. Stat. 179A.12, subd. 3.

5510.1910 Hearings or Investigations.

Subparts 8, 9, 10, and 11 Details the formal structure of the hearing including presentation of evidence, testimony of witnesses, sequestering of witnesses, general rules of evidence, and the components of the record. Additionally, the method and procedure for requesting continuances and postponements are defined. Given full knowledge of the rules and procedures governing

the conduct of the hearings, all parties are able to represent their respective positions and their due process rights are preserved. Additionally, this notice provides for an orderly hearing and maximizes the opportunity for all parties to contribute to the record.

5510.1910 Hearings or Investigations.

Subparts 12 and 13 These subparts outline the sequence of events at a hearing and prohibit the presence of television, newsreel, motion picture, still or other camera, and mechanical recording devices, other than that provided by the director. These subparts provide order to the hearing, minimizing distractions, so that a clear and complete record may be developed. These subparts express current practice and standardize, to the extent possible, hearings conducted by the director.

5510.1910 Hearings or Investigations.

Subpart 14 Establishes that all determinations issued by the director must be based upon the record. This reflects current practice, clarifies for all parties the basis upon which the director makes determinations, and is consistent with the intent of the act.

5510.1910 Hearings or Investigations.

Subpart 15 Clarifies the status of bureau orders that have been appealed to the board. This subpart eliminates confusion on the part of all parties in terms of the effectiveness of the director's order between the time an appeal is made until the board renders a decision.

5510.2010 Elections.

Subparts 1 through 6 Identify the manner by which an election shall be ordered by the director as provided for in Minn. Stat. 179A.12, subd. 3 through 10. These subparts address the following items:

1. Showing of interest;

2. Conduct of an on-site or mail ballot election;

3. Components of the election order;

4. Voter eligibility;

5. Correction of voter eligibility list; and

6. Right to vote.

These subparts provide essential information to all parties in terms of how an election is to be conducted and their rights and responsibilities. Additionally, by allowing elections to be conducted by mail ballot, as well as on-site, the rule recognizes the demands on personnel resources, budgetary considerations and the desires of the parties.

5510.2010 Elections.

Subpart 7 Details the choices contained on election ballots for certification, representation and decertification elections conducted by the director. Reaffirms the importance and application of 5510.1310, subparts 8, 9, and 17; 5510.0610, subparts 2, 3, and 4; and 5510.0710, subpart 2; 5510.1910, subpart 7; and 5510.2010, subpart 1. In short, any employee organization other than an incumbent exclusive representative must provide the proper showing of interest in order to appear on the ballot. In the case of representation election ballots, the choice of "no" will only appear if a 30 percent showing of interest has been submitted. This subpart is consistent with the intent of Minn. Stat. 179A.12.

5510.2010 Elections.

Subpart 8 Establishes the procedure for securing an absentee ballot as required by Minn. Stat. 179A.12, subd. 8. The procedure preserves the rights of the employees to vote while setting reasonable timelines that maintain the orderly conduct of the election.

5510.2010 Elections.

Subpart 9 Generally describes in what manner the election shall be conducted in terms of on-site or mail ballot, the location and polling hours. The subpart also defines the rights and responsibilities of observers and the authority of the director to impose additional requirements in terms of the number of observers. Knowledge of these procedures is essential to the conduct of a fair and orderly election and such procedure is consistent with the intent of Minn. Stat. 179A.12.

5510.2010 Elections.

Subpart 10 Identifies how the election ballot is to be marked, including the fact that a ballot which is defaced or identifies the voter shall be voided. The procedure is also outlined as to how a voter can obtain a new ballot should the original ballot be spoiled. Voters who are physically disabled or unable to read or write may receive assistance from the director in casting their ballots. Voters issued an absentee ballot are not allowed to vote on-site if the absentee ballot has been mailed to them prior to the election regardless of whether the ballot has been returned. This policy supports the rights of all eligible voters to cast their ballots, and also preserves the integrity of the election process. This subpart codifies current bureau practice.

5510.2010 Elections.

Subpart 11 Provides that in the event of an appeal to the board, the director shall conduct the scheduled election unless otherwise ordered by the board. This subpart is consistent with 5510.1910 subpart 15. It is encumbent upon the board to determine whether the issue under appeal would require postponement of the election. By not automatically staying an election when an appeal is made to the board, the question of representation may be resolved in a timely fashion without having the wheels of justice

impede that process, unless the board determines otherwise. This procedure is consistent with the board's rules.

5510.2010 Elections.

Subparts 12 and 13 Identifies the procedure for tabulation of ballots including mixing any mail ballots with those cast on site; ruling on ballots as to whether they are valid, void, or blank; and the disposition of blank or void ballots, as well as mail ballots returned by employees whose names have been deleted from the eligibility list. Upon completion of tabulation, the parties present are provided with a written tabulation of the results, and the director maintains all election materials for at least 60 days after the election date. These subparts assure that the ballots will be tabulated in an orderly and fair fashion and that all parties will be provided with the written results. Maintenance of the election materials guarantees that all materials will be available should an appeal be made to the board or the courts. This procedure protects the rights of the parties, is consistent with the act, and reflects current bureau policy.

5510.2010 Elections.

Subpart 14 Explains the manner in which a run-off election will be processed and what choices will appear on the ballot. This subpart is consistent with the requirements of Minn. Stat. 179A.12, subd. 9.

5510.2010 Elections.

Subpart 15 Provides that a tie vote in a certification election will result in no exclusive representative being certified; a tie vote in a representation election will result in the continued certification of the incumbent exclusive representative; and a tie vote in a decertification election will result in the continued certification of the incumbent exclusive representative.

This subpart is consistent with Minn. Stat. 179A.03, subd. 8; and Minn. Stat. 179A.12, subds. 1, 2, 3, and 10. Logically, if a majority of those voting is required to certify an employee organization as an exclusive representative, then the same majority vote is required to change or decertify an incumbent exclusive representative.

5510.2110 Unfair Election Practices.

Subparts 1 through 5 Defines unfair election practice charges and the manner in which they may be filed either before or after the conduct of an election. A charge must be filed within ten calendar days from the date of the tabulation of ballots, shall be in writing, shall be signed by the charging party, and shall state the name and address of the party against whom the charge is made. A copy of any charge so filed shall be served by the charging party on all other parties to the election. Charges filed prior to an election may result in 1) postponement of the election until the charge has been heard or investigated in accordance with 5510.1910; 2) proceeding with the conduct of the election and then hearing and investigating the charges to determine whether the election should be voided; or 3) proceeding with the conduct of the election, but impounding the ballots cast until a hearing or an investigation has been completed and a determination rendered. If charges are filed after the election has been completed, the director may 1) stay the certification of the election results; 2) conduct a hearing or investigation; and 3) rescind the certification of exclusive representative or the certification of election results. These subparts provide a means of resolving charges filed under Minn. Stat. 179A.12, subd. 11, in an orderly fashion while preserving the rights of all parties. This is consistent with the intent of the act and codifies existing practice.

5510.2210 Request for Reconsideration.

Subparts 1, 2, 3, and 4

Provides a means whereby parties may seek reconsideration of a director's determination without the necessity of formally appealing the matter to the board. Upon presentation of compelling grounds, such review is warranted. Every effort is provided to preserve the rights of all parties to due process and a just determination. Subpart 3 specifically declares that unfair election practice charges shall not be a ground for reconsideration. Unfair election practice charges are governed by 5510.2110 and it is appropriate that only one avenue of redress be provided.

5510.2310 Status of Employee Organization.

Subparts 1, 2, and 3

The processing of certification, representation, decertification, or transfer of exclusive representative status petitions may result in a change in or lack of exclusive representative prior to the expiration of a contract as delineated in Minn. Stat. 179A.20, subd. 1. This requires that the incoming and outgoing exclusive representatives must be knowledgeable concerning their continuing rights and responsibilities and of the point at which the transition is complete. Conjointly, the legal status of the contract and the rights of the involved employees must be preserved throughout the process. These subparts clearly define the standards established by the bureau to provide a smooth transition. The procedures codify existing policy and are consistent with the intent of the act.

5510.2410 Application.

Identifies the dispute resolution systems available to public sector labor and management to resolve disputes concerning the terms and conditions of employment.

5510.2510 Policy.

Provides that these rules will be applied and interpreted in a manner which best effectuates the purposes of the act. Minn. Stat. 14.115 (supp. 83) has been reviewed and considered in the promulgation of these rules, and is not applicable under subp. 7(b). These rules do not affect small businesses directly because they govern public sector employment relationships only.

5510.2610 Definitions.

The definitions used in these rules describe the terminology of specific bureau responsibilities authorized by the act, and terminology pertinent to the bureau's activities to carry out those responsibilities.

5510.2710 Negotiation Notice.

Requires that either the exclusive representative or the employer give written notice to the other party and the director of the desire to commence negotiations. This rule codifies current practice and is consistent with Minn. Stat. 179A.14, subd. 1.

5510.2810 Petition for Mediation.

Subparts 1, 2, and 3 Defines that the mediation process may be initiated by either party upon written petition or, if in the public interest, by the director. Following initiation, mediation meetings are scheduled by written notice at a time and place convenient for the exclusive representative and the employer. These subparts express current bureau policy and are consistent with Minn. Stat. 179A.15.

5510.2810 Petition for Mediation.

Subpart 4 Establishes the obligation that the exclusive representative and the employer have to the mediation process. The rule requires the attendance of each party's representative who shall have the authority to negotiate in good faith in an effort to reach an agreement concerning the terms and conditions of employment. While the parties may select and engage the services of a representative of their choice, absence of authority to reach agreement by the representative(s) would be contrary to the intent of the act, particularly Minn. Stat. 179A.01 and Minn. Stat. 179A.15.

5510.2810 Petition for Mediation.

Subpart 5 The director's decision to close a mediation meeting is solely for the purpose of meeting the statutory mandate of Minn. Stat. 179A.15 which states that the director "shall then take the most expedient steps to bring about a settlement..." This procedure reflects current policy, maximizes the opportunity for the parties to reach agreement, and constitutes a responsible use of authority granted by law.

5510.2810 Petition for Mediation.

Subpart 6 Defines the specific information which will be considered confidential by the Bureau. The exchange of positions, written or verbal, which take place during the mediation process have been determined to be confidential by several minnesota district courts as a necessity in maintaining the impartiality of the individual mediator and the mediation process. The process requires that each party be assured that its discussions with the mediator remain private. Absent this assurance no party can be realistically expected to candidly discuss

with the mediator their limits, priorities, or alternatives regarding the issues in dispute. Without confidentiality the appearance of impartiality is subject to question by all parties, a situation which limits the effectiveness of the mediation process and the resolution of labor-management disputes. This procedure codifies current bureau practice.

5510.2910 Subpart 1 Renewal of existing contract: mediation period, impasse, arbitration, and strike notice for all public employees, except confidential, essential, supervisory employees, and principals and assistant principals. Specifically establishes the date on which the thirty or sixty day mediation period commences as the day following receipt of a mediation petition or written notice of mediation by the director. Identification of the specific date for calculation of the mediaton period eliminates possible conflict among the parties in determining the mediation period. This subpart reflects current practice and is consistent with Minn. Stat. 179A.18, subds. 1(b) and 2(b).

5510.2910 Subpart 2 Renewal of existing contract: mediation period, impasse, arbitration, and strike notice for all public employees, except confidential, essential, supervisory employees, and principals and assistant principals. Clarifies that either the exclusive representative or the employer may request that the director declare the negotiations at an impasse. Such a request, during the mediation period, will be considered an offer to arbitrate the issues remaining in dispute. This subpart codifies current practice and is consistent with Minn. Stat. 179A.16, subds. 1 and 2.

5510.2910 Subpart 3 Renewal of existing contract: mediation period, impasse, arbitration, and strike notice for all public employees, except confidential, essential, supervisory employees, and principals and assistant principals.

Identifies the specific conditions under which negotiations are considered to be at impasse and that either the exclusive representative or the employer may offer to arbitrate the issues remaining in dispute. This procedure codifies current policy and is consistent with the act.

5510.2910 Subpart 4 Renewal of existing contract: mediation period, impasse, arbitration and strike notice for all public employees, except confidential, essential, supervisory employees, and principals and assistant principals. Establishes:

1. The time periods during which a joint request to arbitrate the disputed terms and conditions of employment may be submitted to the director. Such a joint request must be in writing, signed by authorized representatives of the parties, include a list of the items in dispute, and contain a statement committing to arbitrate the terms in dispute. The rule encourages the parties to arbitrate disputes as opposed to engaging in a work stoppage and further avoids any misunderstanding concerning the agreement of the parties to arbitrate the items in dispute.
2. The conditions and requirements for a single party arbitration offer consistent with a joint request for arbitration as per 5510.2910, subpart 4, paragraph 1.
3. The requirement that an acceptance of a single party offer to arbitrate shall be effective only upon receipt of written acceptance of the offer by the bureau and the offering party. The offer and the acceptance becomes binding on the parties unless they mutually agree in writing otherwise. The rule sets out an orderly means of the parties to submit issues in dispute to arbitration.

4. The four actions that must be taken by a party to reject an offer to arbitrate.

5. The condition that an offer to arbitrate by a party is considered withdrawn if it is rejected in accordance with 5510.2910, subpart 4, paragraph 4. The rule limits the duration of the offer to arbitrate, but does not restrict either party from again offering to arbitrate a dispute.

This procedure codifies existing practice and is consistent with the act.

5510.2910 Subpart 5 Renewal of existing contract: mediation, period, impasse, arbitration, and strike notice for all public employees, except confidential, essential, supervisory employees, and principals and assistant principals. Establishes the procedures and notice requirements for the director to notify the public employment relations board when the parties have agreed to arbitrate a dispute over the terms and conditions of employment. This procedure is consistent with Minn. Stat. 179A.16.

5510.2910 Subpart 6 Renewal of existing contract: mediation period, impasse, arbitration, and strike notice for all public employees, except confidential, essential, supervisory employees, and principals and assistant principals. Allows the parties to mutually agree in writing to resolve their dispute by final offer arbitration. If the final offer option is agreed upon, the parties must submit the agreement to the Bureau prior to the date final positions are due. Absent mutual agreement to arbitrate by final offer, the dispute will be decided by conventional arbitration. If final offer arbitration is agreed upon, modification of a party's final position is specifically limited to only changes which the parties agree to in writing. Absent mutual agreement, the final positions submitted to the director may not be modified. This subpart provides a means for the parties to continue to attempt to resolve the items in dispute, while

continuing to maintain the confidentiality of their respective final positions and the integrity of the arbitration process. This procedure codifies existing practice and is consistent with Minn. Stat. 179A.16.

5510.2910 Subpart 7, A and B

Renewal of existing contract: mediation period, impasse, arbitration, and strike notice for all public employees, except confidential, essential, supervisory employees, and principals and assistant principals.

Establishes the conditions which must be met by an exclusive representative for the director to accept a notice of intent to strike as valid and timely. This subpart is consistent with Minn. Stat. 179A.18.

5510.2910 Subpart 7, C

Renewal of existing contract: mediation period, impasse, arbitration, and strike notice for all public employees, except confidential, essential, supervisory employees, and principals and assistant principals.

Provides for the calculation of the thirty day strike notice period into the ten day no-strike period and the twenty day right to strike period. In addition the rule provides for a five day "grace period" for the receipt of a notice. The rules establish an orderly and single source for the computation of the calendar of actions which can be taken during the strike notice period, thus avoiding confusion or dispute on the part of the exclusive representative, employer, or the bureau. This subpart is consistent with Minn. Stat. 179A.18, and codifies existing practice.

5510.2910 Subpart 7, D

Renewal of existing contract; mediation period, impasse, arbitration, and strike notice for all public employees, except confidential, essential, supervisory employees, and principals and assistant principals.

Establishes the conditions under which an original strike notice expires and the manner in which the notice may be renewed, subject to the same standards as an originally served notice. This codifies existing practice and is consistent with the act.

5510.2910 Renewal of existing contract: mediation period, impasse, arbitration, and strike notice for all public employees, except confidential, essential, supervisory employees, and principals and assistant principals.

Subpart 7, E

Requires the director to notify all parties to a dispute that a valid and timely notice of intent to strike has been received and the dates during which a strike can legally commence. The rule provides all parties with a common timetable of legal strike actions. This subpart codifies existing practice and is consistent with the act.

5510.3010 Renewal of existing contract: mediation period, impasse, and arbitration for confidential, essential, supervisory employees, and principals and assistant principals.

Subparts 1 and 2

Identifies the procedures to follow for requesting the director to determine that negotiations between the parties are at impasse. If impasse is declared the rule provides for written notification to the parties of the decision and the timetable for the submission of final positions. This procedure is consistent with Minn. Stat. 179A.16, subds. 2 and 3, and provides for an orderly processing of such requests.

5510.3010 Renewal of existing contract: mediation period, impasse, and arbitration for confidential, essential, supervisory employees, and principals and assistant principals.

Subpart 3

Provides that essential employees and certain employees considered to be essential, or their employers, may mutually agree to submit a negotiation impasse to final offer arbitration. Absent a mutual agreement the impasse will be determined by conventional arbitration. This subpart is consistent with Minn. Stat. 179A.16, subd. 7, and codifies existing practice.

5510.3010 Subpart 4 Renewal of existing contract: mediation period, impasse, and arbitration for confidential, essential, supervisory employees, and for principals and assistant principals.

Restricts the modification of a final position, if the final offer option is selected, to changes which the parties mutually agree to in writing. Absent such an agreement the final positions submitted to the director stand as submitted. This subpart provides a means for the parties to continue to attempt to resolve the items in dispute, while continuing to maintain the confidentiality of their respective final positions and the integrity of the arbitration process. This procedure codifies existing practice and is consistent with Minn. Stat. 179A.16.

5510.3010 Subpart 5 Renewal of existing contract: mediation period, impasse, and arbitration for confidential, essential, supervisory employees, and principals and assistant principals.

Establishes the procedures and notice requirements for the director to notify the board of a negotations impasse between essential employees or employees treated as essential and their employer. This procedure codifies existing practice and is consistent with Minn. Stat. 179A.16.

5510.3010 Subpart 6 Renewal of existing contract: mediation period, impasse, and arbitration for confidential, essential, supervisory employees, and principals and assistant principals.

Identifies a final position as confidential data thereby retaining the integrity of the arbitration process.

5510.3110 Subpart 1 New or different exclusive representative: mediation period, impasse, arbitration, and strike notice for all public employees.

Except as provided otherwise by this rule the standards and conditions established by 5510.2810 and 5510.2910 shall apply where an original or different exclusive representative is certified by the director.

5510.3110 Subpart 2 New or different exclusive representative: mediation period, impasse, arbitration, and strike notice for all public employees. Establishes that negotiations between and exclusive representative and the employer shall commence following determination of a question of representation by the director.

5510.3110 Subpart 3 New or different exclusive representative: mediation period, impasse, arbitration and strike notice for all public employees. Establishes the commencement of the sixty or forty-five day mediation period as effective the day following the certification of an original or different exclusive rperesentative by the director. The rule provides a consistency with 5510.2810 and 5510.2910.

5510.3210 Contract Transmittal.

Minn. Stat. 179A.04, subd. 3(g) states that the director shall "receive, catalogue, and file...all decisions of arbitration panels..." It logically follows that for the bureau to maintain a complete record of all mediation matters that the signed contract should also be a part of the bureau's records. Having the contracts on file also allows the bureau to make its records available to employers, exclusive representatives, and other interested persons who wish to do research. While the bureau's ability in this area is limited, the services provided assist persons attempting to increase their knowledge of labor relations.

STATEMENT OF COMPLIANCE WITH

RULEMAKING PROCEDURES

I, Special Assistant Attorney General Mark Levinger, do hereby declare that I have examined the proposed 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.

Mark B. Levinger

MARK LEVINGER
Special Assistant
Attorney General

DATED: Aug. 24, 1984

AG copy; this version withdrawn

Bureau of Mediation Services

Adopted Rules Governing Questions of Representation; Fair Share Fees and Public Employee Dispute Resolution

Rules as Adopted

5510.0110 APPLICATION.

Parts 5510.0110 to 5510.2310 apply to proceedings before the director involving matters of representation and fair share fee challenges under the Public Employment Labor Relations Act. FF 2.

5510.0210 POLICY.

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

basis? or director approval

5510.0310 DEFINITIONS.

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

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

basis? of director's determination

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

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

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

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

Subp. 7. **Certification of exclusive representative or certification.** "Certification of exclusive representative" or

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

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

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

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

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

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

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

Subp. 14. **Holiday or legal holiday.** "Holiday" or "legal holiday" means those dates designated by Minnesota Statutes, section 645.44, subdivision 5, as holidays for the state of Minnesota. FF 1.

Subp. ~~14~~ 15. **Open-window period.** "Open-window period" means the following period of time prior to the expiration of a labor contract:

A. for the state executive branch, 270 to 210 days;

B. for teachers, 180 to 120 days; and

C. for all other public employees, 120 to 60 days.

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Subp. ~~15~~ 16. **Party.** "Party" means any exclusive representative, employee organization, or public employer recognized by the director whose legal rights, duties, and privileges will be directly determined in the proceedings; or any public employee who has filed a fair share fee challenge or decertification petition.

Subp. ~~16~~ 17. **Petition.** "Petition" means a written document containing information required by the director.

Subp. ~~17~~ 18. **Representation petition.** "Representation petition" means a petition filed by an employee organization stating that the exclusive representative no longer represents the majority of employees in an appropriate unit; and at least 30 percent of the employees in the appropriate unit wish to be represented by the petitioner.

Subp. ~~18~~ 19. **Service or serve.** "Service" or "serve" means service of a document required by parts 5510.0110 to 5510.2310, in person or by the United States Postal Service, postage prepaid and addressed to the bureau or a party at its last known address, unless some other manner of service is required by law. Unless otherwise provided by these parts, service upon the director or a party is effective upon receipt.

Subp. ~~19~~ 20. **Showing of interest or interest.** "Showing of interest" or "interest" means the submission of authorization signatures in the form of individual authorization cards to show support for a petition filed with the director.

Subp. ~~20~~ 21. **Time.** "Time" means, in computing any period of time prescribed or allowed by parts 5510.0110 to 5510.2310, that the day or any act or event on which the designated period of time begins to run shall not be included. The last day of the time period shall be included unless it is a Saturday, Sunday, or legal holiday.

Subp. ~~21~~ 22. **Transfer of exclusive representative status.** "Transfer of exclusive representative status" means the transfer of the rights and obligations of an exclusive representative to another employee organization.

Subp. ~~22~~ 23. **Unfair election practice.** "Unfair election

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

Subp. ~~23~~ 24. **Unit clarification or clarification petition.** "Unit clarification" or "clarification petition" means a determination of the director regarding an appropriate unit involving:

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

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

C. modification of the unit description; or

D. modification of the unit structure.

5510.0410 FILING PETITION.

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

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

(1) election of officers;

(2) filling of vacancies in elected offices; and FF3

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

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

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

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

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

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A. An employee organization may file petitions for:

(1) certification of exclusive representative; and

(2) challenge of affiliation.

B. An employer may file petitions for:

(1) certification of exclusive representative;

(2) unit clarification;

(3) amendment of certification; and

(4) challenge of affiliation.

C. An exclusive representative may file petitions for:

(1) unit clarification;

(2) amendment of certification;

(3) transfer of exclusive representative status; and

(4) abandonment of exclusive representative status.

D. A public employee may file petitions for:

(1) decertification of exclusive representative;

(2) challenge of fair share fee assessment; and

(3) challenge of affiliation.

Subp. 3. **Eligibility; joint-party petition.**

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

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

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

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

A. the petitioner;

B. the petitioner's representative, if any;

C. the other party; and

D. the other party's representative, if any.

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5510.0510 LIMITATION ON FILING PETITION.

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

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

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

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

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

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

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

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

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

A. certification election;

B. representation election;

C. amendment of certification; and

D. transfer of exclusive representative status.

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

5510.0610 WITHDRAWAL.

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

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

Subp. 3. **Representation election.** If the incumbent exclusive representative withdraws, the matter will be processed as though a certification petition had been filed by the challenging employee organization.

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

Subp. 4. **Decertification election.** If the petitioner withdraws and no other employee organization has petitioned or

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intervened, the petition shall be dismissed. If the petitioner withdraws, but another employee organization which has petitioned or intervened does not, the matter shall be processed as a representation petition.

5510.0710 CERTIFICATION, REPRESENTATION, AND DECERTIFICATION PETITIONS.

Subpart 1. **Filing of petition.** ~~An employee organization or an employer may file a certification, representation, or decertification petition.~~ A petition for certification, representation, or decertification must include:

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

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

C. the type of public employer involved;

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

E. the proposed or previously determined appropriate unit description;

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

G. the date the petition is signed; and

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

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

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5510.0810 AUTHORIZATION SIGNATURES.

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

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

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

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

C. the signature of the employee; and

D. the date the employee signed the card.

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

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

A. does not include the information and statements required by parts 5510.0110 to 5510.2310;

B. contains statements of explanation, interpretation, or advice;

C. is modified or altered in any way; or

D. is dated more than six months prior to the receipt of the petition by the director.

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

5510.0910 UNIT CLARIFICATION PETITION.

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Subpart 1. **Filing of petition.** ~~An exclusive representative or an employer may file a unit clarification petition.~~ A petition for unit clarification must include: FF6

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

B. the type of public employer involved;

C. the approximate number of employees affected by the proposed unit clarification;

D. a specific statement of the unit clarification requested and the reasons for the request;

E. the date the petition is signed; and

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

5510.1010 AMENDMENT OF CERTIFICATION PETITION.

Subpart 1. **Filing petition.** ~~An exclusive representative or an employer may file an amendment petition.~~ A petition for amendment of certification must include: FF 7

A. a statement of the amendment requested;

B. the date the petition is signed; and

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

5510.1110 CHALLENGE TO AFFILIATION PETITION.

Subpart 1. **Filing petition.** ~~An employee, employer, or employee organization may file a petition challenging the affiliation of an employee organization in accordance with Minnesota Statutes, section 179A.06, subdivision 2.~~ A petition challenging affiliation under Minnesota Statutes, section 179A.06, subdivision 2 must include: FF8

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

B. the name of the employee organization involved;

C. the date the petition is signed; and

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

Subp. 2. **Status of certification.** If the affiliation of

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

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

Subp. 3. **Status of contract.** Upon the withdrawal of the status of exclusive representative pursuant to a determination of improper affiliation, any labor contract within the meaning of Minnesota Statutes, section 179A.20, which covers employees of the unit for which withdrawal was ordered and to which the involved organization is a party is null and void as of the date of the director's determination. FF8

5510.1210 TRANSFER OF EXCLUSIVE REPRESENTATIVE STATUS.

Subpart 1. **Filing petition.** ~~An exclusive representative may file a transfer petition.~~ A petition transferring exclusive representative status must include: FF10

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

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

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

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

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

Subp. 2. **Right to transfer.** An exclusive representative may transfer its rights and obligations to another employee

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organization by complying with subparts 3 and 4.

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

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

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

Subp. 6. **Petition.** If a majority of the employees vote in favor of the transfer, a petition shall be filed by the exclusive representative with the director.

Subp. 7. **Order.** Based on the record of hearing or an investigation, the director may: } FF 11

A. issue an amended certification of exclusive representative;

B. order a representation election; or

C. dismiss the petition.

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

5510.1310 ABANDONMENT OF EXCLUSIVE REPRESENTATIVE STATUS.

Subpart 1. **Filing petition.** ~~An exclusive representative may file an abandonment petition subject to parts 5510.0110 to 5510.2310.~~ FF12 A petition abandoning the status of exclusive representative must contain a statement that clearly indicates that the exclusive representative no longer wishes to represent the appropriate unit at the expiration of the contract or the one-year certification period.

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

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

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

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

5510.1410 FAIR SHARE FEE CHALLENGE PETITION.

Subpart 1. **Advance notice of fair share fee assessment.** ~~Notice of the fair share fee must be provided~~ The exclusive representative must provide written notice of the amount of the fair share fee assessment to the director, the employer, and each employee assessed: FF13

~~A.~~ upon initial implementation of the fair share fee assessment;

~~B.~~ to employees hired after the original notice has been issued; and

~~C.~~ upon a change in the amount of the fair share fee assessment.

~~Subp. 2. Notice of assessment. The exclusive representative must provide advance written notice of the amount of the fair share fee assessment to the director, the employer, and each employee assessed.~~ The notice must contain: FF13

A. the name, address, and telephone number of the exclusive representative;

B. the amount of the regular dues of the exclusive representative;

C. the amount of the fair share fee assessment;

D. a statement identifying benefits available only to members of the exclusive representative and the monetary cost of

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the regular membership dues attributable to each benefit;

E. the bureau's current mailing address; and

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

Subp. ~~3~~ 2. **Employer provided information.** The employer shall provide to the exclusive representative the name, home mailing address, and social security number or other necessary payroll deduction information for all employees in the appropriate unit. Questions of necessary payroll deduction information shall be determined by the director.

Subp. ~~4~~ 3. **Mailing notice.** The notice of the fair share fee assessment shall be mailed by the exclusive representative to the employee's last known home mailing address provided by the employer.

Subp. 5 4. **Assessment.** On the effective day of the fair share fee assessment and thereafter, the amount of the assessment shall be deducted by the employer from the pay of the employee. The amounts deducted must be held in escrow by the employer and not remitted to the exclusive representative for a period of 30 calendar days from the ~~effective~~ date ~~of the deduction~~ notice is provided under subpart 1. FF 14

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

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

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ordered by the director.

5510.1510 FAIR SHARE FEE CHALLENGE PETITION.

Subpart 1. **Filing petition.** ~~An employee being assessed a fair share fee or an employee who has been notified of a fair share fee assessment may file a fair share fee challenge petition.~~ A petition challenging a fair share fee assessment may be filed by individual employees and must include: FF 15

A. the name, address, and phone number of the petitioner and agent, if any;

B. the name, address, and phone number of the exclusive representative and agent, if any;

C. the name, address, and phone number of the employer and agent, if any;

D. the job classification of the petitioner;

E. the amount of regular membership dues in the unit;

F. the amount of the fair share fee assessment;

G. the amount that represents 85 percent of the regular membership dues;

H. the percent of regular membership dues which the fair share fee represents;

I. the benefits asserted to be available only to members of the exclusive representative;

J. a statement regarding whether the cost of benefits asserted to be available only to members is greater than the amount by which the regular membership dues were reduced in establishing the amount of the fair share fee;

K. the amount by which the fair share fee should be reduced; and

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

Subp. 2. **Filing petition.** A petition challenging the fair share fee assessment must be filed in person or by mail with the director. ~~The petition must be received by the director no later than 30 days after receipt by the employee of the notice of assessment.~~ FF 16

Subp. 3. **Filing fee.** The challenge petition must be

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accompanied by a certified check or other guaranteed form of payment in the amount of $10, made payable ~~in the proper amount~~ to "Treasurer, State of Minnesota." A challenge petition filed without the proper filing fee shall be returned to the individual filing the petition. FF17

Subp. 4. **Receipt of petition.** Upon receipt of the challenge petition and filing fee, the director shall provide a written receipt to the petitioner.

Subp. 5. **Service on exclusive representative and employer.** A copy of the challenge petition shall be served by the petitioner upon the exclusive representative and the employer, in person or by mail, within the 30-calendar-day challenge period. A petition not timely served shall be dismissed. FF18

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

1510.1610 INVESTIGATION OR HEARING.

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

5510.1710 FAIR SHARE FEE APPLICATION.

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

Fair share fee determinations based on lack of proper notice ~~applies~~ apply only to employees who have filed ~~or joined~~ a challenge. FF19

5510.1810 JOINT-PARTY PETITION.

Subpart 1. **Certification of exclusive representative.** A

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joint petition for certification of an exclusive representative must include:

A. notarized signatures of the parties;

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

C. identification of the employees and job classifications included within the proposed appropriate unit and those employees and job classifications excluded from the proposed appropriate unit.

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

5510.1910 HEARINGS OR INVESTIGATIONS.

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

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

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

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

Subp. 5. **Prehearing conference.** The purpose of a prehearing conference is to simplify the issues to be

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

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

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

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

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

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

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

Subp. 7. **Intervenor.** The director shall permit an employee organization which submits a 30 percent showing of interest to intervene on a certification, representation, or

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decertification petition. The director shall permit a group of employees submitting a 30 percent showing of interest wishing to decertify an exclusive representative to intervene on a representation petition.

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

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

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

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

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

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

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

A. all pleadings, motions, and orders;

B. evidence received;

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C. offers of proof, objections, and rulings on objections;

D. all memoranda or data submitted by any party in connection with the case; and

E. an audiomagnetic or stenographic recording of the hearing.

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

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

All requests for continuances or postponements of a hearing must be served in accordance with parts 5510.0110 to 5510.2310.

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

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

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

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

(1) all parties may present evidence and cross-examine witnesses;

(2) all parties have a right to be represented at the hearing;

(3) any objection to the conduct of the hearing, including the introduction of evidence, must be stated orally, together with a statment of the grounds for the objection;

(4) no objection to the conduct of the hearing, including the introduction of evidence, shall be waived by further participation in the hearing; and

(5) failure to appear at the hearing in person or through an authorized representative may prejudice the rights of a party.

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

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

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

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

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

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

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

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

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

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

Subp. 15. **Order pending appeal.** Any order appealed to the board shall continue in effect unless ordered otherwise by the board or unless stayed by the director upon request of one or more parties. } ff 22

5510.2010 ELECTIONS.

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

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

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

A. identify the appropriate unit;

B. establish the cut-off date for voter eligibility;

C. include a list of the eligible voters;

D. include a sample ballot;

E. establish campaign and election rules;

F. provide for the parties to appoint observers;

G. identify the date, time, and location of an on-site election and provide for absentee ballots;

H. identify the date of mailing ballots in a mail ballot election; FF23

I. include any other conditions which are necessary for the conduct of a fair election; and

~~I~~ J. provide for posting by the employer of the election order and attachments.

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

Subp. 5. **Correction of voter eligibility list.**

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

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

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

(1) transfer, promotion, or demotion of an employee out of the unit which is not prohibited by ~~the cease and desist~~ an order maintaining the status quo; FF24

(2) an appeal to the board or court action which

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delays the conduct of the election or changes the cut-off date for voter eligibility; or

(3) voluntary or involuntary termination of an eligible voter who has not appealed the termination.

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

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

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

Subp. 7. **Election ballot.**

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

(1) the name of employee organizations which have submitted the required showing of interest; and

(2) no representation.

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

(1) the name of the exclusive representative;

(2) the name of employee organizations which have submitted the required showing of interest; and

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

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

(1) the name of the exclusive representative;

(2) the name of employee organizations which have submitted the required showing of interest; and

(3) no representation.

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

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the name and home mailing address of the eligible voter, identification of the employer, signature of the eligible voter, and date of the election.

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

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

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

The parties to an on-site election may designate one observer who is permitted to be present at each polling location during the casting of the ballots and their tabulation. The director may ~~require~~ allow FF25 attendance of more than one observer per party.

The parties to a mail ballot election may each designate one observer who is permitted to be present during the tabulation of the ballots. The director may ~~require~~ allow FF25 attendance of more than one observer per party.

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

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

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

A voter who has been mailed an absentee ballot by the director shall not be permitted to vote at the on-site election under any circumstances. FF26

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

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

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

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

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

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

Subp. 13. **Tabulation of election results.** Upon the conclusion of the election, the director shall prepare and sign a tabulation of election results. A copy of the tabulation of election results shall be furnished to each ~~party~~ observer FF 27 present. Following the completion of the tabulation, the director shall retain all election ballots and materials for at least 60 calendar days.

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

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

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

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

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

5510.2110 UNFAIR ELECTION PRACTICES.

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

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

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

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

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

E. ~~violation of~~ violating an election order.

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

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~~Subp. 3. Charge filed prior to election. If the alleged unfair election practice appears to materially affect the results of an election to be held, the director may:~~

~~A. postpone the election until the charge has been heard or investigated;~~

~~B. hold the election and conduct a hearing or an investigation at a later date to determine whether the election~~

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~~should be voided; or~~

~~C. hold the election and impound the ballots until a hearing or an investigation has been completed.~~ FF 30

~~Subp. 4.~~ **Charge filed after election.** If a charge of an unfair election practice is filed ~~after an election has been held~~, the director may:

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

B. conduct a hearing or investigation; and

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

Subp. 5 3. **Determination.** Based on a hearing or investigation, the director shall issue an order. If an unfair election practice is established, the election may be voided and a new election may be ordered.

5510.2210 REQUEST FOR RECONSIDERATION.

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

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

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

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

5510.2310 STATUS OF EMPLOYEE ORGANIZATION.

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

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including:

A. fair share fee assessments;

B. dues check-off; and

C. time off for union officers.

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

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

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

5510.2410 APPLICATION.

Parts 5510.2410 to 5510.3210 govern the conduct of negotiations between an exclusive representative and an employer, the conduct of mediation, the certification of impasse to the board, the arbitration of impasse, and the notification of intent to strike.

5510.2510 POLICY.

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

5510.2610 DEFINITIONS.

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

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5510.2710 NEGOTIATION NOTICE.

A written notification of the desire to meet and negotiate an original contract, renewal of a contract, or a reopener of a contract must be served on the other party and the director. The written notice shall include:

A. the name, address, and phone number of the exclusive representative;

B. the name, address, and phone number of the exclusive representative's representative;

C. the name, address, and phone number of the employer;

D. the name, address, and phone number of the employer's representative;

E. a description of the appropriate unit for which such notice is being given;

F. the date of expiration of the current labor contract, if any;

G. the total number of employees employed by the employer;

H. the number of employees in the appropriate unit covered by the notice;

I. the date the notice is signed; and

J. the name and title of the person signing the notice.

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5510.2810 PETITION FOR MEDIATION.

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

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

Subp. 3. **Notice.** Upon receiving a petition for mediation, the director must serve notice of the time and place for a

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mediation meeting of the exclusive representative and the employer.

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

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

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

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

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

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

In the event the director determines that a closed meeting is necessary, but the director cannot be physically present at the meeting and a timely and valid notice of intent to strike

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has been received by the bureau, the director may authorize a closed meeting upon written notice to the governing body and exclusive representative at least 24 hours prior to the closed meeting. The written notice must include the date, time, and place of the closed meeting of the governing body and limit the purpose of the meeting to matters relevant to the dispute.

Subp. 6. **Confidential information.** Confidential information includes:

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

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

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

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

Subpart 1. **Mediation period.** A mediation period commences on the day following receipt by the bureau of a petition for mediation or the day following issuance of notice that the director has initiated mediation.

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

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

Subp. 4. **Request for arbitration at impasse.** A joint request by the parties to submit the impasse to arbitration may be served at any time during the negotiations, mediation period, or thereafter. A joint request must be signed by the authorized

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representatives of both parties and must contain a list of the items in dispute and a statement agreeing to arbitrate the items.

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

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

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

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

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

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

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

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

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

Subp. 5. **Certification of impasse to board.** Following receipt of a joint request to arbitrate or receipt of an acceptance of a single-party offer to arbitrate, the director ~~must~~ shall notify the board of the existence of an impasse. The notice of impasse must contain a statement that the negotiations between the parties are at impasse, a list of the issues determined by the director to be at impasse, and any final

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positions submitted by the parties.

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

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

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

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

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

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

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

Subp. 7. **Notice of intent to strike.**

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

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

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fulfilled.

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

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

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

(3) If the bureau receives a notice of intent to strike not more than five calendar days prior to the expiration of the mediation period or 45-day teacher impasse period, the strike notice period begins the day following the expiration of the mediation period. Notices received prior to these periods are void and of no effect.

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

E. The director ~~must~~ shall notify the parties in writing of the date of any strike notice, the date upon which the right to strike matures, and the date upon which the right to strike expires.

5510.3010 RENEWAL OF EXISTING CONTRACT; MEDIATION, IMPASSE AND ARBITRATION FOR CONFIDENTIAL, ESSENTIAL, SUPERVISORY EMPLOYEES, AND FOR PRINCIPALS AND ASSISTANT PRINCIPALS.

Subpart 1. **Mediation.** Mediation shall be scheduled by the director upon receipt of a petition filed under part 5510.2810.

Subp. 2. **Impasse.** During mediation of the dispute, the parties, individually or jointly, may request the director to declare the negotiations at impasse. If the director determines

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that further mediation efforts would not resolve the dispute, he shall declare the negotiations to be at an impasse and notify the parties in writing of that determination. The notice by the director ~~must~~ shall include:

A. the date on which an impasse was declared;

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

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

Subp. 3. **Final offer arbitration.** The parties may agree to limit the arbitrator's authority to a final offer item-by-item or a final offer total package award. If the parties do not agree to final offer arbitration, the impasse shall be decided by conventional arbitration.

Subp. 4. **Final positions.** If the final offer arbitration option is agreed to, the parties may not withdraw or amend the final positions filed with the director unless otherwise agreed to in writing by the parties. The agreement to amend FF34 may include, but is not limited to, an agreement:

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

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

C. to amend the submitted final positions on any or all items certified to be at impasse. ~~An~~ Such FF35 agreement must specify the conditions and manner in which the final positions are to be amended.

Subp. 5. **Certification of impasse to board.** Following the date established for submission of final positions of both parties, the director shall notify the board of the existence of an impasse. The notice of impasse shall contain a statement that the negotiations between the parties are at impasse, a list of the issues determined by the director to be at impasse, and any final positions submitted by the parties.

Subp. 6. **Confidentiality of final positions.** All final

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positions submitted to the bureau are confidential.

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

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

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

Subp. 3. **Mediation period.** The 60-day or 45-day mediation period provided under part 5510.2910 commences on the day following ~~certification of a new or different exclusive representative or resolution or a question of representation by the director~~ receipt by the bureau of a petition for mediation or the day following issuance of notice that the director has initiated mediation. FF36

5510.3210 CONTRACT TRANSMITTAL.

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

REPEALER. Minnesota Rules, parts 5500.2900, 5500.3000, 5500.3100, 5500.3200, 5500.3300, 5500.3400, 5500.3500, 5500.3600, 5500.3700, 5500.3800, 5500.3900, 5510.0100, 5510.0200, 5510.0300, 5510.0400, 5510.0500, 5510.0600, 5510.0700, 5510.0800, 5510.0900, 5510.1000, 5510.1100, 5510.1200, 5510.1300, 5510.1400, 5510.1500, 5510.1600, 5510.1700, 5510.1800, 5510.1900, 5510.2000, 5510.2100, 5510.2200, 5510.2300, 5510.2400, 5510.2500, 5510.2600, 5510.2700, 5510.2800, 5510.2900, 5510.3000, 5510.3100, 5510.3200, 5510.3300, 5510.3400, 5510.3500, 5510.3600, 5510.3700, 5510.3800, 5510.3900, 5510.4000, 5510.4100, 5510.4200, 5510.4300, 5510.4400, 5510.4500 are repealed.

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