


# Minnesota Attorney General: Administrative Rules Proceedings

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STATE OF MINNESOTA

# Office Memorandum

DEPARTMENT : ATTORNEY GENERAL

DATE : May 18, 1988

TO : ANDREA MITAU KIRCHER
Special Assistant Attorney General
Human Rights Division

FROM : CHRISTIE B. ELLER
Assistant Attorney General

PHONE : 296-6839

SUBJECT : In the Matter of the Adopted Permanent Rules Relating to Labor; Representation Elections; Appeal Status

The above-referenced rule has been approved as to its legality by the Attorney General on May 18, 1988.

Enclosed is the agency's copy of the approved rule. This office has already filed two copies with the Secretary of State, who will forward one copy to the Revisor of Statutes. The fourth is being retained by this division of the Attorney General's Office for its records.

Also enclosed are any petitions, requests, submissions or comments received by the agency and any extra copies of documents which the agency submitted to the Attorney General.

In order for a permanent rule without a hearing to become effective, your agency must establish a notice of adoption in the State Register in accordance with Minn. Stat. § 14.27. An emergency rule becomes effective five working days after approval by the Attorney General; however, the agency must publish a notice in the State Register in accordance with Minn. Stat. § 14.34.

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

CBE:bbl

Enclosure

cc: Maryanne Hruby
Duane Harves

# RULE REVIEW CHECKLIST

File No. 1479
DATE RECEIVED 5/04/88
REVIEW DATE 5/13/88
DUE DATE 5/18/88

APPROVED 5/18/88
DISAPPROVED
WITHDRAWN

Docket No. 05.0009.0650
ADOPTED W/O HEARING X
EMERGENCY RULE

REVISOR APPROVED Y
REVISOR DISAPPROVED
FILED W/SEC. STATE 5-18-88
RETURNED TO AGENCY

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✓ Rule as adopted (4 copies)

~~Notice to Solicit Outside Information/Opinion (if applicable)~~
~~Date published in State Register~~
~~Comments~~

~~Petition for Adoption of a Rule (if applicable)~~

~~Board's Authorizing Resolution~~
~~Date adopted~~

✓ Proposed rule
YES Revisor's Certificate

✓ Notice of Intent to Adopt Rule
179A.04(3f) Statutory Authority
No Small Business Statement
NO Expenditure of public money statement
YES Signature

✓ Statement of Need and Reasonableness (if applicable)
No Small Business Statement
No Fees - § 16A.128

✓ Affidavit of Mailing Notice of Intent to Adopt Rule
2/29/88 Date (30)/25 days before adoption
YES Notice attached
~~Copy of rule or summary attached~~

✓ Publication in State Register
2/29/88 Date (30)/25 days before adoption

~~Resolution Adopting~~
Date adopted

✓ Findings of FAct, Conclusions & Order Adopting
5/3/88 Date

~~Written requests, submissions or comments~~

✓ Declaration of attorney
A.M. Kirchen Name of SAAG representing agency

✓ Notice of Submission to Attorney General (if applicable)

MJC ✓ Affidavit of Mailing Notice to Attorney General (if applicable)

OFFICE MEMORANDUM

DEPARTMENT: BUREAU OF MEDIATION SERVICES
STATE OF MINNESOTA

TO: Rita Desmond
Attorney General's Office

DATE: PHONE: 649-5421

FROM: Paul W. Goldberg, Commissioner
Bureau of Mediation Services

SUBJECT: Rules of the Bureau of Mediation Services Governing Labor; Representation Elections; Appeal Status (5510.1910, 5510.2010)

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

1. A copy of the proposed rules with a certificate of approval as to form by the revisor of statutes attached.

2. The notice of intent to adopt a rule without a public hearing as mailed.

3. The statement of need and reasonableness in support of the proposed rule complying with part 2010.0700.

4. The affidavit of mailing the notice of intent to adopt a rule without a public hearing.

5. A copy of the notice of intent to adopt the rule without a public hearing as published in the state register.

6. Four copies of the rule as adopted.

7. The findings of fact, conclusions, and order adopting the rule.

8. The declaration of the attorney in the attorney general's office who represents the agency.

9. The notice of submission of the rule to the attorney general.

10. The affidavit of mailing notice of submission of the rule to the attorney general.

Bureau of Mediation Services

Adopted Permanent Rules Relating to Labor; Representation Elections; Appeal Status

Rules as Adopted

5510.1910 HEARINGS OR INVESTIGATIONS.

Subpart 1. to 14. [Unchanged.]

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

5510.2010 ELECTIONS.

Subpart 1. to 10. [Unchanged.]

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

Subp. 12. to 15. [Unchanged.]

RECEIVED BMS-

29 FEB 88 1: 49

APPROVED AS TO FORM AND LEGALITY

May 18 19 88

HUBERT H. HUMPHREY, III
ATTORNEY GENERAL

BY Christie D Elle
ASSISTANT ATTORNEY GENERAL

Bureau of Mediation Services

Proposed Permanent Rules Relating to Labor; Representation Elections; Appeal Status

Rules as Proposed

5510.1910 HEARINGS OR INVESTIGATIONS.

Subpart 1. to 14. [Unchanged.]

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

5510.2010 ELECTIONS.

Subpart 1. to 10. [Unchanged.]

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Subp. 12. to 15. [Unchanged.]



Approved by Revisor

# Office of the Revisor of Statutes

## Administrative Rules

**TITLE:** Proposed Permanent Rules Relating to Labor; Representation Elections; Appeal Status

**AGENCY:** Bureau of Mediation Services

**MINNESOTA RULES:** Chapter 5510

The attached rules are approved for publication in the State Register

John C. Fuller
Assistant Deputy Revisor

BUREAU OF MEDIATION SERVICES

Proposed Permanent Rules Relating to Representation Elections; Appeal Status

Notice of Intent to Adopt Rules without a Public Hearing

NOTICE IS HEREBY GIVEN that the Director, Bureau of Mediation Services, proposes to amend the above-entitled rules without a public hearing. The Director has determined that the proposed amendment of these rules will be noncontroversial in nature and has elected to follow the procedures set forth in Minnesota Statutes, Sections 14.22-14.28.

Persons interested in this rule are encouraged to submit comment in support of or in opposition to the proposed rule and shall have 30 days to do so. Each comment should identify the portion of the proposed rule being addressed, the reason the comment is being made, and any changes in the proposed rules which are being suggested. The proposed rule may be modified if the modifications are supported by the data and comments received by the Bureau and do not result in substantial change in the intent and purpose of the proposed rule.

Unless 25 or more person submit written requests for a public hearing on the proposed rule within the 30-day comment period, a public hearing will not be held. Persons requesting a public hearing should state their name and address and are encouraged to identify the portion of the proposed rule addressed by their request, the reason for the request, and any changes in the proposed rule which are being suggested. In the event a public hearing is required, the Bureau will proceed pursuant to Minnesota Statutes, sections 14.11.14.20.

Comments or written requests for a public hearing on these proposed rules should be submitted to:

Paul W. Goldberg, Commissioner
Minnesota Bureau of Mediation Services
1380 Energy Lane, Suite Two
St. Paul, MN 55108
(612) 649-5421

Authority to adopt this rule is contained in Minnesota Statutes, section 179A.04, subdivision 3(f). A Statement of Need and Reasonableness that describes the need for the and the reasonableness of the proposed rule and the information relied upon to support the amendment has been prepared and is available upon request from the Bureau at the above address or telephone number.

Upon adoption of the final rule without a public hearing, the proposed rule, 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 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 Rule as Adopted, should submit a written request to the address provided above.

A copy of the proposed rules is attached to this notice.

Copies of this notice and the proposed rule are available and may be obtained by contacting the Bureau at the above address or telephone number.

February 29, 1987

Paul W. Goldberg, Commissioner
Bureau of Mediation Services

Statement of Need and Reasonableness

Proposed Amendments to Rules Relating To Labor; Representation Elections; Appeal Status

5510.1910 - Clarifies the types of orders to which the rule is applicable and that the commissioner, not the PERB, is the authority for staying such orders.

5510.2010 - Current procedures can create substantial delays in the conduct of representation elections. Under current rules, an employer's objection over a single supervisory determination in a unit of hundreds of employees can result in election delays in excess of six months. The revised rule would allow an election to proceed under most circumstances, eliminating a policy which has had unintentional adverse impact upon labor unions and been a source of frustration and irritation to the labor-management relationship.

In the Matter of the Proposed Adoption of Rules of the State Bureau of Mediation Services Governing Labor; Representation Elections; Appeal Status

AFFIDAVIT OF MAILING THE NOTICE OF INTENT TO ADOPT A RULE WITHOUT A PUBLIC HEARING AND CERTIFICATE OF MAILING LIST

STATE OF MINNESOTA )
)ss.
COUNTY OF RAMSEY )

Carol S. Cox being sworn, says:

I hereby certify that the list of persons and associations who have requested, pursuant to Minnesota Statutes, sections 14.14, subdivision 1a and 14.22 or 14.30, that their names be placed on the State Bureau of Mediation Services rulemaking mailing list is accurate, complete, and current as of this 29th day of February, 1988.

That on the 29th day of February, 1988, at the City of St. Paul, County of Ramsey, State of Minnesota, I mailed the attached Notice of Intent to Adopt A Rule Without a Public Hearing by depositing in the State of Minnesota Central Mail System for United States mailing, a copy thereof, with postage prepaid, to all persons and associations on the aforementioned mailing list.

Carol S. Cox
Name

Administrative Secretary
Title

Subscribed and sworn to before me this 29th day of February, 1988.

Kenneth L. Boxell

KENNETH L. BOXELL
NOTARY PUBLIC — MINNESOTA
RAMSEY COUNTY
My commission expires April 19, 1991

Persons interested in this rule are encouraged to submit comment in support of or in opposition to the proposed rule and shall have 30 days to do so. Each comment should identify the portion of the proposed rule being addressed, the reason the comment is being made, and any changes in the proposed rules which are being suggested. The proposed rule may be modified if the modifications are supported by the data and comments received by the Bureau and do not result in substantial change in the intent and purpose of the proposed rule.

Unless 25 or more persons submit written requests for a public hearing on the proposed rule within the 30-day comment period, a public hearing will not be held. Persons requesting a public hearing should state their name and address and are encouraged to identify the portion of the proposed rule addressed by their request, the reason for the request, and any changes in the proposed rule which are being suggested. In the event a public hearing is required, the Bureau will proceed pursuant to *Minnesota Statutes*, sections 14.11-14.20.

Comments or written requests for a public hearing on these proposed rules should be submitted to:

Paul W. Goldberg, Commissioner
Minnesota Bureau of Mediation Services
1380 Energy Lane, Suite Two
St. Paul, MN 55108
(612) 649-5421

Authority to adopt this rule is contained in *Minnesota Statutes*, section 179A.04, subdivision 3(f). A Statement of Need and Reasonableness that describes the need for and the reasonableness of the proposed rule and the information relied upon to support the amendment has been prepared and is available upon request from the Bureau at the above address or telephone number.

Upon adoption of the final rule without a public hearing, the proposed rule, 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 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 Rule as Adopted, should submit a written request to the address provided above.

A copy of the proposed rules is attached to this notice.

Copies of this notice and the proposed rule are available and may be obtained by contacting the Bureau at the above address or telephone number.

Dated: 29 February 1988

Paul W. Goldberg, Commissioner
Bureau of Mediation Services

## Rules as Proposed

**5510.1910 HEARINGS OR INVESTIGATIONS.**

Subpart 1. to 14. [Unchanged.]

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

**5510.2010 ELECTIONS.**

Subpart 1. to 10. [Unchanged.]

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

Subp. 12. to 15. [Unchanged.]

**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.**

**Transportation Department**
8870.0100; .0200; .0300; .0400; .0500; .0600; .0700; .0800; .0900; .1000; .1100 (adopted) ..... 1712

**Veterinary Medicine Board**
9100.0400 (proposed) ..... 1450

**Waste Management Board**
9200.6000; .6001; .6002; .6003; .6004; .6007; .6008; .6010 (adopted) ..... 1564
9200.6902-.6905 (proposed) ..... 1807
9220.0100; .0110; .0120; .0130; .0140; .0150; .0160; .0170; .0180 (proposed) ..... 1704
9220.0200-.0680 (proposed) ..... 1541

**Human Services Department**
9500.1100 (adopted) ..... 1611
9502.0335 (proposed) ..... 1607
9515.1000; .1200; .1300; .1400; .1500; .2200; .2300; .2400; .2500; .2600 (proposed) ..... 1389
9515.1100 (proposed repealer) ..... 1389
9530.4100; .4120; .4130; .4200; .4210; .4220; .4230; .4250; .4260; .4270; .4280; .4300; .4310; .4320; .4330; .4340; .4350; .4370; .4380; .4390; .4400; .4410; .4450 (adopted) ..... 1451
9530.0100; .0200; .0300; .0400; .0500; .0600; .0700; .0800; .0900; .1000; .1100; .1200; .1300; .1400; .1500; .1600; .1700; .2500; .2600; .2700; .2800; .2900; .3000; .3100; .3200; .3300; .3400; .3500; .3600; .3700; .3800; .3900; .4000 (repealed) ..... 1451
9549.0059;.0060; (proposed) ..... 1649
9553.0020; .0030; .0035; .0040; .0050; .0075 (adopted) ..... 1711
9553.0041; .0050; .0060 (proposed) ..... 1429

# Proposed Rules

Pursuant to Minn. Stat. of 1982, §§ 14.22, 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 the 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 §§ 14.14-14.20, which state that if an agency decides to hold a public hearing, it must publish a notice of intent in the *State Register*.

Pursuant to Minn. Stat. §§ 14.29 and 14.30, agencies may propose emergency rules under certain circumstances. Proposed emergency rules are published in the *State Register* and, for at least 25 days thereafter, interested persons may submit data and views in writing to the proposing agency.

# Department of Commerce

## In the Matter of the Proposed Adoption of Rules Relating to Non-Profit Risk Indemnification Trusts

### Notice of Withdrawal

Notice is hereby given that the above-entitled rules as published in the *State Register* on January 25, 1988 at page 1509 are hereby withdrawn.

# Bureau of Mediation Services

## Proposed Permanent Rules Relating to Labor; Representation Elections; Appeal Status

### Notice of Intent to Adopt Rules Without a Public Hearing

NOTICE IS HEREBY GIVEN that the Director, Bureau of Mediation Services, proposes to amend the above-entitled rules without a public hearing. The Director has determined that the proposed amendment of these rules will be noncontroversial in nature and has elected to follow the procedures set forth in *Minnesota Statutes*, Sections 14.22-14.28.

STATE OF MINNESOTA

BUREAU OF MEDIATION SERVICES

In the Matter of the Proposed Adoption of Rules of the State Bureau of Mediation Services Governing Labor; Representation Elections; Appeal Status

FINDINGS OF FACT, CONCLUSIONS, AND ORDER ADOPTING RULE WITHOUT PUBLIC HEARING

Notice of the Commissioner's intent to adopt the above-entitled rules was published in the State Register on February 29, 1988, and was sent by United States mail to all persons on the list maintained by the agency pursuant to Minnesota Statutes section 14.14, subdivision 1a and 14.22 on February 29, 1988. The statement of need and reasonableness was prepared before the notice of intent to adopt a rule without a public hearing was mailed to all persons on the rulemaking mailing list and published in the State Register and was available to the public.

All persons were given the opportunity to submit comment on the rule for 30 days after notice of proposed rulemaking. No requests for a public hearing on the rule were received by the the agency.

No submissions or comments on the rule were received by the agency.

Based on the comments and evidence in the record before the agency, I find the following:

The above-captioned rule is needed and reasonable.

NOW, THEREFORE, IT IS ORDERED that the rules identified as Minnesota Rules: Parts 5510.1910 and 5510.2010, are adopted this 3 day of May, 1988, pursuant to authority vested in me by Minnesota Statutes section 179A.04, Subd. 3(f) (1984).

Name Paul W. Goldberg

Title Commissioner

In the Matter of the Adoption of Rules of the State Bureau of Mediation Services Governing Labor; Representation Elections; Appeal Status

**DECLARATION OF COUNSEL**

I, Andrea M Kircher, Special Assistant Attorney General, do hereby declare that I have examined the above-captioned rule, and the supporting rulemaking record, and that, based on my examination, the Administrative Procedure Act and Minnesota Rules, chapter 2010 have been followed. Any exceptions are listed below. For Attorney General billing purposes, the four-digit docket client code is 0650.

A M Kircher

Andrea Kircher
Special Assistant
Attorney General

Dated: 5-3-88

STATE OF MINNESOTA

BUREAU OF MEDIATION SERVICES

In the Matter of the Proposed Adoption Of Rules of the State Bureau of Mediation Services Governing Labor; Representation Elections; Appeal Status

NOTICE OF SUBMISSION OF RULE ADOPTED WITHOUT PUBLIC HEARING TO THE ATTORNEY GENERAL

Pursuant to your request and in accordance with Minnesota Statues, section 14.26:

PLEASE TAKE NOTICE that the above-captioned rule as adopted has been submitted to the Office of the Attorney General on the date of this notice, May 3, 1988, for review as to legality and form to the extent form relates to legality. The proposed rule, the rule as adopted, all the notices, the Statement of Need and Reasonableness, all written comments and requests for a hearing received, and other required documents also have been submitted to the Attorney General.

The rule must be approved or disapproved by the Attorney General within 14 calendar days of the date of submission to the attorney general. You may submit written comments to the attorney general on the legality of the rule or the legality of any rule. Any written comments must be submitted within eight calendar days of the date of the submission of the rule to the Attorney General. Your comments must address only the issue of legality of the rule or the legality of the specific parts or subparts of the rule. The attorney general standards for review are set forth in Minnesota Rules, part 2010.1000. You may receive a copy of the attorney general decision upon written request to the attorney general. Your comments or requests for the decision must be directed to:

The Office of the Attorney General
204 Administration Building
50 Sherburne Avenue
Saint Paul, Minnesota 55155
Telephone Number: (612) 296-1288

Any written comments submitted to the Attorney General must be submitted simultaneously to:

Paul W. Goldberg, Commissioner
State Bureau of Mediation Services
1380 Energy Lane, Suite Two
Saint Paul, Minnesota 55108
Telephone Number: (612) 649-5421

Name Paul W Goldberg

Title Commissioner

Dated: 5-3-88

In the Matter of the Proposed Adoption of Rules of the State Bureau of Mediation Services Governing Labor; Representation Elections; Appeal Status

AFFIDAVIT OF MAILING THE NOTICE OF SUBMISSION OF RULE ADOPTED WITHOUT PUBLIC HEARING TO THE ATTORNEY GENERAL

STATE OF MINNESOTA )
)ss.
COUNTY OF RAMSEY )

Carol S. Cox, being sworn says:

That on the 8 day of May, 1988, in the City of Saint Paul, County of Ramsey, State of Minnesota, I mailed the attached Notice of Submission to the Attorney General by depositing in the State of Minnesota Central Mail System for United States mailing, a copy thereof, with postage prepaid, to all persons and associations who requested notice that the rules in the above-entitled matter have been submitted to the attorney general.

Carol S. Cox
Name

Administrative Secretary
Title

Subscribed and sworn to before me this
_____ day of _____, 19___.

Kenneth L. Boxell

KENNETH L. BOXELL
NOTARY PUBLIC — MINNESOTA
RAMSEY COUNTY
My commission expires April 19, 1991