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3 REPRESENTATION

3.01 PETITION PROCESSING/SCHEDULING

3.01.01 - REPRESENTATION PETITIONS

The issuance of timely orders/decisions on representation issues is of vital importance to the Bureau's goal of minimizing adversarial labor-management relationships. In order to assure the timely issuance of orders/decisions, it is imperative that petitions be reviewed and scheduled as soon as feasible. Accordingly:

1. The Representation Specialist will review incoming petitions daily. Unique or sensitive issues will be brought promptly to the attention of the Labor Mediation Manager or Deputy Commissioner.
2. Within fifteen (15) calendar days of receipt of the petition, all petitions shall be assigned to a Representation Specialist, Mediator, or Hearing Officer for preliminary investigation pursuant to Policy 3.02 (investigation Review Procedure).

5/8/89; 9/20/89; 1/4/90; 2/28/97; 5/1/01; 10/1/01; 11/1/04; 4/9/18; 7/1/23

3.02 REPRESENTATION PETITION/INVESTIGATION PROCEDURE

1. The Representation Specialist receives and reviews petitions for completeness and assigns a case number. Where appropriate, a Notice of Maintenance of Status Quo Order is issued.
2. Petitions are reviewed by the Representation Specialist to determine the complexity of the issue(s). For cases requiring additional consideration and, if appropriate, will be assigned to a Mediator or Hearing Officer to work with the parties in an attempt to resolve the issue(s) without the necessity of conducting a formal hearing.
3. If the petition is assigned to a Mediator or Hearing Officer for preliminary investigation, the Mediator or Hearing Officer:
 - a. Contact each party seeking to resolve any conflict by explaining Bureau policies and encouraging the resolution of the issue(s) through joint motions, stipulations of fact, or agreement on all issues.
 - b. Prepares and issues appropriate orders with the assistance of the Representation Specialist.
 - c. If the investigation results in unresolved issues, a hearing will be scheduled to resolve these issues pursuant to Minn. Rule 5510.1910.

1/4/90; 2/29/97; 5/1/01; 10/1/01; 11/1/04; 7/1/23

3.03 CONTESTED CASE - POST HEARING PROCEDURE

1. Except in unusual circumstances, the order will be prepared by the Hearing Officer within thirty (30) calendar days of the close of the hearing record.
2. Contested case orders are reviewed and approved by the Labor Mediation Manager unless further review has been requested by the Commissioner, in which case final approval shall be at the Commissioner's discretion.
3. The Representation Specialist shall make the orders available on the Bureau's website upon issuance.

1/4/90; 2/28/97; 5/1/01; 10/1/01; 11/1/04; 4/9/18; 7/1/23

3.04 LEFT BLANK INTENTIONALLY

3.05 TRANSCRIPT AND DATA REPRODUCTION POLICY**3.05.01 - TRANSCRIPTS**

1. Requests for the preparation of a transcript pursuant to Minn. Rule 5510.1910 Subp. 10a. of a hearing conducted by the Bureau in accordance with the Public Employment Labor Relations Act, Minn. Stat. §179A (PELRA) or the Minnesota Labor Relations Act, Minn. Stat. §179 (MLRA) shall be:
 - a. Made on the record at the time of the hearing;
 - b. Requested by written notice to the Bureau; or
 - c. The request is made in writing by a party following timely appeal to the Courts. All appeal requests shall include a statement that the party agrees to pay for the transcript(s) based on the charges established in this policy.
2. Transcript shall include the record of the full hearing unless production of a partial transcript has been approved by the Labor Mediation Manager pursuant to Minn. Rule 5510.1910, Subp. 10A.
3. Requests for the preparation of a transcript other than as established above shall be granted only with the approval of the Commissioner or Labor Mediation Manager.
4. Payment for the established charges shall be by certified check or other form of guaranteed payment made payable to the transcriptionist.

**3.05.02 - REPRODUCTION AND PREPARATION OF BUREAU NON-CONFIDENTIAL
DATA RECORDS**

1. Requests for the reproduction or preparation of Bureau non-confidential data and records shall be made on the record at the time of the hearing or shall be requested by written notice to the Bureau. All requests shall include a statement that the party agrees to pay for the materials based on the charges established by this policy.

2. Payment for the established charges shall be by certified check or other form of guaranteed payment made payable to the Bureau of Mediation Services, State of Minnesota.

2/20/81; 5/13/83; 1/4/90; 5/1/01; 10/1/01; 11/1/04; 4/9/18; 7/1/23

3.06 PRIVATE NON-PROFIT HEALTH CARE INSTITUTIONS

The 1974 health care amendments to the National Labor Relations Act argue against continued Bureau involvement in private sector non-profit health care facilities.

Federal regulatory authority preempts the State in the area of unit determinations and questions of representation, while Federal Board of Inquiry provisions and questions of efficiency weigh against continued mediation of disputes in non-public health care facilities.

Accordingly, it shall be the policy of the Bureau to decline requests for unit, representation, or mediation assistance in non-public health care facilities. Exceptions to this policy require approval of the Commissioner and may be made on an individual basis where:

- a. The parties jointly request the Bureau's involvement; or
- b. Public policy interests of the State warrant involvement by the Bureau.

3/21/88; 5/15/98; 10/1/01

3.07 APPROPRIATE STATE BARGAINING UNITS

3.07.01 - TEMPORARY UNIT ASSIGNMENTS

Minnesota Management and Budget determines the temporary unit assignment of newly-created state classifications or positions and provides direct notice to the affected exclusive representative(s) utilizing the Notice of Temporary Unit Assignment form.

Objections to temporary unit assignments must be received by the Bureau within twenty (20) calendar days from the date of notice. If no objections are received within the twenty (20) calendar daytime period, and the unit is appropriate, the Bureau will issue an order approving the unit assignment.

If objections are received, the Bureau will schedule a hearing. A Notice of Hearing will be issued by the Bureau at least fourteen (14) calendar days prior to the hearing date.

3.07.02 - ROSTER OF STATE UNIT ASSIGNMENTS

The Bureau maintains the roster of state unit assignments.

3.07.03 - ASSIGNMENT OF DISPUTED POSITIONS OR CLASSIFICATIONS TO APPROPRIATE UNITS

This policy shall apply to all disputes involving the assignment of positions or job classifications to state units for which there is a certified exclusive representative.

1. **Disputes.** For the purpose of determining a dispute as defined by Minn. Stat. §179A.01, the bureau will investigate issues concerning:
 - a. "Public employee" status pursuant to Minn. Stat. §179A.03, Subd. 14;
 - b. "Public employer" status pursuant to Minn. Stat. §179A.03, Subd. 15;
 - c. "Supervisory" status pursuant to Minn. Stat. §179A.03, Subd. 17;
 - d. "Confidential" status pursuant to Minn. Stat. §179A.03, Subd. 4;
 - e. Assignment of a classification to an appropriate unit if the classification:
 - i. Has not been previously assigned to a unit;
 - ii. Is newly created; or
 - iii. Has been significantly modified in occupational content.

- f. Assignment of supervisory positions to Unit #12, or #16;
 - g. Removal of non-supervisory positions from Unit #12, or #16;
 - h. Exclusion of confidential positions from Units #1 through #19, and Assignment of non-confidential positions to a unit.
2. **Objections.** The employer and/or an exclusive representative shall initiate any objections or requests for clarification by filing the following with the Bureau within twenty (20) calendar days of the Notice of Temporary Assignment:
- a. A written petition in the form prescribed by the Bureau, with copies to all affected parties; and
 - b. A detailed written explanation of the objection.
3. **Status of Job Classifications.** (Unit Assignment)
- a. Not Previously Assigned/Newly Created: Such job classifications shall be assigned to a unit on a temporary basis by Minnesota Management and Budget pursuant to Policy 3.07.01 Temporary Unit Assignments, until a determination is issued by the Bureau.
 - b. Significantly Modified: Job classifications significantly modified in occupational content shall remain as previously assigned until a final determination is issued by the Bureau.
4. **Status of Supervisory/Confidential Positions.** (Newly Created or Assigned)
- a. Assigned Positions. Supervisory or confidential positions which are presently assigned shall remain as assigned until a final determination is issued by the Bureau.
 - b. Newly Created Positions. Supervisory or confidential positions which are newly created or have not been previously assigned shall be assigned on a temporary basis by the Department of Management and Budget until a final determination is issued by the Bureau.

5. Parties.

- a. **Unit Assignment.** The parties to a question regarding unit assignment shall in all cases be:
 - i. Minnesota Management and Budget and
 - ii. Certified exclusive representatives of the involved state units.

- b. **Supervisory Question.** The parties to a question regarding supervisory status of a job position shall in all cases be:
 - i. Minnesota Management and Budget, and
 - ii. The exclusive representative of the unit to which the job position is currently assigned; and
 - iii. The exclusive representative of the supervisory unit involved, i.e., either Unit #12 or #16

- c. **Confidential Question.** The parties to a question regarding confidential status of a job position shall in all cases be:
 - i. Existing Position.
 - ⇒ Minnesota Management and Budget and
 - ⇒ The exclusive representative of the unit to which the job position is currently assigned; and
 - ⇒ The exclusive representative of the unit to which the job position would be assigned if it were non-confidential.
 - ii. Newly Created.
 - ⇒ Minnesota Management and Budget.
 - ⇒ The exclusive representative of the unit to which the job position would be assigned if it were non-confidential.

6. **Appearance Status.** Participation by individuals or organizations having an appearance status will be limited to review of exhibits and making statements for the record, to the extent such matters are relevant to the proceeding.

7. **Procedures.** Upon receipt of a petition and accompanying documentation, the Bureau shall:

- a. Provide notice of the petition and documentation to all affected parties.
- b. Schedule a meeting for review and/or clarification of the petition if necessary.
- c. Schedule a hearing.

- d. Investigate any stipulations of the parties.
- e. Issue a determination based upon the hearing record and Bureau policies.

5/3/82; 9/26/84; 1/4/90; 2/28/97; 5/15/98/ 5/1/01; 10/1/01; 11/1/04; 4/9/18; 7/1/23

3.08 BARGAINING UNIT STANDARDS

3.08.01 - TEACHER UNITS

For the purposes of implementing the provisions of PELRA, a teacher is defined in Minn. Stat. §179A.03, Subd. 18.

1/20/81; 10/1/81; 5/1/01; 10/1/01; 11/1/04; 6/25/16

3.08.02 - PRINCIPAL AND ASSISTANT PRINCIPAL UNITS

1. **New Units.** In determining Principal and Assistant Principal units, it shall be Bureau policy to establish pure Principal and Assistant Principal Units, consistent with PELRA.
2. **Existing Units.** Where existing units of Principals and Assistant Principals include other classifications/positions, the prior bargaining history of the parties shall be given considerable weight in determining whether or not to modify the unit structure.
3. **Stipulations.** Stipulations or joint motions establishing Principal and Assistant Principal units including other classifications/positions shall not be accepted.

3.08.03 - LICENSURE AS A UNIT CRITERIA

In determining administrative/supervisory units in educational settings, the fact that position(s) require licensure by the State Department of Education shall not be the sole criteria considered. Rather, such required licensure shall be only one of the factors considered in determining such units.

1/4/90; 2/28/97; 5/1/01; 10/1/01; 11/1/04; 4/9/18

3.09 ELECTIONS

3.09.01 - LIMITATION ON PETITION FILING

1. No certification, representation, or decertification petition will be accepted when a labor organization is certified as an exclusive representative by the Bureau, for a one (1) year period from the date election results are certified.
2. "Transfer of Exclusive Representative" status. There shall be no transfer of exclusive representative request accepted for a one (1) year period from the date of the certification of a labor organization as an exclusive representative.
3. Abandonment of Exclusive Representative Status. An exclusive representative may abandon its status effective on or after the expiration of a contract, or after one year from the date of certification, whichever is later. Notice of such abandonment shall be given in writing to the employer and the Bureau. If the status of exclusive representative is abandoned, there shall be no contract or election bar to the conduct of a certification election.

3.09.02 - STATUS OF CONTRACT

1. **Decertification of Incumbent Exclusive Representative.**
 - a. The contract shall remain in effect until its expiration date.
 - b. The incumbent exclusive representative shall retain all rights and responsibilities established by PELRA and the contract through the expiration of the contract.
2. **Change in Exclusive Representative.**
 - a. The new exclusive representative assumes all rights and responsibilities as an exclusive representative effective the day following certification.
 - b. All rights and obligations of the collective bargaining agreement transfer to and are assumed by the new exclusive representative including the processing of pending grievances.
 - c. Payroll deduction of dues is subject to the provisions of Minn. Rule 5510.2310, Subp. C.

3. **Transfer or Assignment of Exclusive Representative Status.** A labor organization certified as an exclusive representative through a transfer shall assume all the rights and responsibilities for the administration of the existing contract until its expiration and have all rights and responsibilities established by PELRA.
4. **Abandonment of Exclusive Representative Status.** An exclusive representative abandoning its status shall retain all the rights and responsibilities for the administration of the contract and all rights and responsibilities established by PELRA until the expiration of the contract.

3.09.03 - SUFFICIENT SHOWING OF INTEREST

This policy shall apply to the determination of the validity of authorization signatures submitted on cards in accordance with Minn. Rule 5510.0810, by a labor organization or group of employees requesting the conduct of a certification, representation, division, or decertification election.

1. **Questions of Representation:** A question of representation is raised by the filing of a completed petition with the Bureau. The filing of the appropriate petition may result in the conduct of a certification, representation, division, or decertification election. To be accepted, the petition shall include:
 - a. Authorization signatures from thirty percent (30%) or more of the employees within the currently certified appropriate unit or the petitioned for appropriate unit.
 - b. Current constitution and by-laws of the petitioning labor organization, unless the constitution and by-laws have been previously filed with the Bureau.
2. **Showing of Interest:** A showing of interest shall only be in the form of authorization cards that include the following:
 - a. A written statement which reflects the purpose of the employee's authorization.
 - b. The employee's name clearly printed.
 - c. The signature of the employee making the authorization.
 - d. Contact information of the employee making the authorization.
 - e. The date on which the employee signed the authorization card.

- f. Authorization cards may contain the mailing address of the labor organization submitting the authorization card.
3. **Invalid Authorization Cards:** The Bureau shall consider invalid, and will not be consider for the purpose of determining a showing of interest, authorization cards which:
- a. Do not include the information and statements noted above.
 - b. Contain statements of explanation, interpretation, or advice on any part of the card.
 - c. Have the statement of authorization modified or altered by the employee signing the card.
 - d. Are dated more than one (1) year prior to the date the petition is received by the Bureau.
4. **Acceptance of Evidence of a Showing of Interest:** Evidence of a showing of interest shall be accepted by the Bureau:
- a. When the petition raising a question of representation is received by the Bureau.
 - b. Any time prior to the close of the hearing conducted by the Bureau based on the filing of the petition.
 - c. At such other date as may be established by Bureau order.

6/8/81; 2/28/97; 5/1/01; 10/1/01; 11/1/04; 4/9/18; 7/1/23

3.10 DIVISION OF UNITS CONTAINING PEACE OFFICERS

1. **Introduction.** Minn. Stat §179A.09, Subd. 3, provides that employees may divide an essential bargaining unit containing both licensed peace officers and other than licensed peace officers, into two separate units. The two units would be composed of:
 - a. “Peace officers”, who must be licensed as provided by Minn. Stat. §626.84 to §626.855,
 - b. All other essential personnel.
2. **Filing of Petition.** A request to divide an existing essential unit including licensed peace officers, needs be filed on a Bureau Division Petition. The petition may only be filed during the open-window period of the contract which covers the petitioning employees.
3. **Limitation on Filing of a Petition.** A petition to divide an existing essential unit including licensed peace officers will be dismissed under the following conditions:
 - a. During the term of a contract, except during the open-window period (Contract Bar);
 - b. If a bargaining dispute has been certified at impasse by the Bureau (Arbitration Bar); or
 - c. Less than one (1) calendar year has elapsed from the date the Bureau has issued a certification of exclusive representative (Decision Bar).
4. **Showing of Interest.** A petition requesting division shall be accompanied by a thirty percent (30%) showing of support among the petitioning employee group.
5. **Parties.** A spokesperson for a group of affected employees may file a petition requesting the division of an appropriate unit including licensed peace officers with other than licensed essential employees.
6. **Election Procedures.** Upon receipt of a valid Division Petition and showing of interest, the Bureau will conduct an election. Only indications by eligible employees in the petitioning employee group (“peace officers” or other essential personnel) shall be included in the tally .

7. **Status of Exclusive Representative.** The unit will be divided if a majority of the petitioning employee group favors dividing the unit. The outcome of an election determining a single or divided essential unit(s) will not affect the status of the incumbent exclusive representative. In the event the affected employees vote in favor of division the incumbent exclusive representative will be certified for both units.

8. **Questions of representation or decertification.** An employee organization may raise a question of representation, or a group of employees may raise a question of decertification during the open-window period by filing a Bureau Representation Petition.
 - a. The question of unit division shall be processed and answered prior to considering a question of representation or decertification, and subject to open window period restrictions.

2/28/97; 5/1/01; 10/1/01; 11/1/04; **7/1/23**

3.11 INTERPRETATION OF NOTICE OF MAINTENANCE OF STATUS QUO

When the Bureau receives a petition which requires an election for employees to choose a bargaining representative (certification, decertification, division, or challenge), or the clarification of a unit, the Bureau's duty is to assure a fair environment while the matter is being determined. To aid in this duty, a Notice is issued by the Bureau for the purpose of assuring a "level playing field" while the process proceeds. This is called a Notice of Maintenance of Status Quo. It contains the following elements:

1. Wages, hours, and all existing conditions of employment of the employees shall not be changed as of the date of this Notice.
2. Negotiations shall not be carried on.
3. Threats or promises as to changes in wages, hours and conditions of employment are prohibited.
4. Employees shall not be questioned by the employer with respect to membership in a labor organization.
5. Employees shall not be discriminated against as a result of the filing of the petition.
6. The Employer shall post this Notice of Maintenance of Status Quo at the work locations of all employees involved.
7. The Maintenance of Status Quo is to remain posted until lifted.

Often the Bureau receives questions from parties about whether specific actions might violate the Notice. Providing accurate answers to complex questions requires findings of fact and conclusions of law. Such findings and conclusions require a due process hearing where each party has an opportunity to present evidence and cross-examine witnesses.

Accordingly, when the Bureau receives requests, formal or informal, for the interpretation of a Notice of Maintenance of Status Quo, it attempts to help the parties resolve them by agreement. Failing this, the Bureau will give general guidance but does not make statements or rulings about whether specific actions violate the Notice.

6/8/81; 2/28/97; 5/1/01; 11/1/04; 4/9/18; 7/1/23

3.12 UNION DEMOCRACY

1. **Purpose.** The purpose of this policy is to establish guidelines for Bureau supervision of union democracy elections. The Bureau recognizes that this is an important function serving to assure the democratic conduct of union affairs as set forth in the MLRA.
2. **Scope.** Pursuant to authority established under Minnesota Labor Relations Act (MLRA), Minn. Stat. §179.18-179.25, the Bureau may, upon request, supervise the conduct of local union elections. These may include local union officer elections, delegate elections, union organizational questions, and contract ratification votes.
3. **Types of Services.** Consistent with this policy the Bureau may provide the following types of services:
 - a. Consulting on technical issues associated with printing, mailing, receipt, and tallying of ballots.
 - b. Direct assistance with secured custody of ballots after they have been printed.
 - c. Direct assistance with mailing ballots.
 - d. Arranging a post office box or other secured delivery address.
 - e. Picking up ballots from post office box or secured delivery address on day of tabulation.
 - f. Organizing tabulation of ballots.
 - g. Tabulating ballots.
 - h. Issuing written document certifying results.
4. **Policy.**

Requests. All requests must be approved by the Labor Mediation Manager or Commissioner prior to Bureau commitment. Requests for Bureau assistance in union democracy matters shall be in writing and must include:

 - i. Name and address of the labor organization;
 - ii. Name, address, and telephone number of the person or persons responsible under the union by-laws or constitution for the conduct of the election;
 - iii. A statement specifying the offices or other issues to be contested in the election;
 - iv. The dates upon which all pertinent events are scheduled (nominations, mailing of ballots, tabulation of ballots etc.);

- v. Copies of relevant by-laws, constitution, and/or election rules;
 - vi. Approximate number of eligible voters; and
 - vii. Sample ballot.
- a. Procedure. When the Bureau agrees to perform union democracy services its role should be specified in a written form. The document should specify what services the Bureau will provide, and specify in detail the expectations of the labor organization and authority of the Bureau
- b. Control of procedures. The Bureau has considerable technical experience in conducting representation elections and overseeing union democracy elections. The agency requires it be delegated control over the functions and procedures it agrees to perform.
- c. Priority. In allocating staff resources, the Bureau will give priority to mediation, representation, and labor-management programs. The rationale for this determination is that services provided in these programs are more directly tied to the bureau's core mission of resolving labor disputes and avoiding work stoppages. The agency will make every effort to accommodate requests to supervise/monitor local union elections consistent with the program priorities

2/2/01; 10/1/01; 11/1/04; 4/9/18