

CHAPTER 5500
BUREAU OF MEDIATION SERVICES
HEARING PROCEDURES

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PROCEEDINGS BEFORE THE COMMISSIONER**5500.0100 DEFINITIONS.**

Unless the language or context clearly indicates that a different meaning is intended, the words, terms, and phrases in parts 5500.0100 to 5500.0500 shall have the same meaning and definition as is contained in the definitions used in Minnesota Statutes, chapters 179 and 179A.

Statutory Authority: *MS s 179A.04*

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5500.0200 PURPOSE, CONSTRUCTION, AND WAIVER.

Parts 5500.0100 to 5500.0500 govern the conduct of all proceedings before the commissioner of mediation services involving mediation.

Parts 5500.0100 to 5500.0500 shall be liberally construed to effectuate the purposes and provisions of the Minnesota Labor Relations Act. The commissioner or the commissioner's agent may waive any requirements of parts 5500.0100 to 5500.0500 unless a party shows prejudice thereby.

Statutory Authority: *MS s 179A.04*

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

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5500.0300 PETITIONS.

A petition for mediation given under the Minnesota Labor Relations Act to the commissioner shall be in writing and shall contain the following:

- A. the name, address, and telephone number of the party filing the petition;
- B. the name, address, and telephone number of the agent or attorney representing petitioner;
- C. the name, address, and telephone number of adverse party in dispute;
- D. the name, address, and telephone number of attorney for adverse party, if known;
- E. if the adverse party is an association, a list giving the names, addresses, and telephone numbers of all members of the association directly interested shall be attached to the petition;
- F. the nature of the industry, business, or institution involved in the dispute;
- G. the number of employees involved in the dispute, directly and indirectly; and
- H. a clear and concise statement of the nature of the dispute and the demands of the party filing the petition.

Forms for filing this information may be obtained from the office of the commissioner of mediation services.

Statutory Authority: *MS s 179A.04*

History: *L 1987 c 186 s 15*

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5500.0400 EMPLOYER ASSOCIATIONS.

A petition for mediation may be given by or to any association of employers for collective bargaining purposes provided that a complete list of the names and addresses of all members of the employer association directly interested is contained in the notice.

Statutory Authority: *MS s 179A.04*

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5500.0500 MEETINGS.

The commissioner, upon receiving such petition, shall fix the time and place for meetings of the parties to the dispute. Notice in writing of the time and place so fixed shall be given by the commissioner to said parties. Such meetings shall be informal and limited by the commissioner to matters relative and material to the settlement of the dispute. The meetings shall not be open to the public and shall be limited to the parties and their representatives interested in the dispute. Agreements reached shall only be binding when agreed to by both parties and put in writing.

Statutory Authority: *MS s 179A.04*

History: *L 1987 c 186 s 15*

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PROCEEDINGS BEFORE APPOINTED COMMISSIONS OR REFEREES**5500.0600 DEFINITIONS.**

Unless the language or context clearly indicates that a different meaning is intended, the words, terms, and phrases in parts 5500.0600 to 5500.1100 shall have the same meaning and definition as is contained in the definitions used in Minnesota Statutes, chapters 179 and 179A.

Statutory Authority: *MS s 179A.04*

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5500.0700 PURPOSE, CONSTRUCTION, AND WAIVER.

Parts 5500.0600 to 5500.1100 govern the conduct of all proceedings before commissions appointed in labor disputes affecting public interests under Minnesota Statutes, sections 179.07 and 179.08. Parts 5500.0600 to 5500.1100 shall be liberally construed to effectuate the purposes and provisions of the Minnesota Labor Relations Act, Minnesota Statutes, chapter 179. The commission may waive any requirement of parts 5500.0600 to 5500.1100 unless a party shows prejudice thereby.

Statutory Authority: *MS s 179A.04*

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5500.0800 APPEARANCES.

Any party to or party affected by the dispute may appear before the commission in person or by attorney or by their representative, and shall have the right to offer competent evidence and to be heard on the issues at any commission hearing. Any party not directly involved in the dispute desiring to appear and have

the same rights before the commission as parties directly involved shall file a petition in writing with the commissioner or the commission setting forth the grounds upon which such person claims to be interested. The commission shall rule upon all such petitions, provided, however, that the parties to the dispute may present arguments and be heard on the question of permitting such appearances. The commission may permit appearances in person, by counsel, or by a representative, to such extent and upon such terms as it may deem just.

Statutory Authority: *MS s 179A.04*

History: *L 1987 c 186 s 15*

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5500.0900 EXAMINATIONS OF WITNESSES.

Witnesses shall be examined orally under oath, provided, however, that the testimony of all witnesses who reside outside of the state or who, through illness or other cause, are unable to testify in person before the commission may be taken by deposition in such manner and form as may be prescribed by the commission.

Statutory Authority: *MS s 179A.04*

Published Electronically: *June 11, 2008*

5500.1000 SUBPOENAS.

Subpoenas requiring the attendance and testimony of witnesses and the production of evidence, including books, records, correspondence, or documents relating to any matter pending before the commission, shall be issued in the name of the commission over the signature of one of the members thereof. Applications for the issuance of such subpoenas shall be filed with the commission by the party to the proceedings desiring the subpoena. Such application shall be timely and shall specify the names of the witnesses, the books, records, correspondence, or documents required to be produced by the witness. Witnesses summoned before the commission shall be paid fees and mileage in the same manner and amounts as are paid to witnesses in the district court of this state. Witnesses whose depositions are taken and persons taking the same shall be entitled to the same fees as provided by law for taking of depositions for use in the district court of this state. Witness fees and mileage shall be paid at the time of the service of the subpoena to the witness whose attendance is required by the subpoena by the parties at whose instance the subpoena is issued excepting witnesses subpoenaed by the commission who shall be paid as provided by law.

Statutory Authority: *MS s 179A.04*

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5500.1100 HEARINGS.

Subpart 1. **Conduct.** All hearings by the commission shall be open to the public. It shall be the duty of the commission conducting the hearing to inquire fully into the facts in dispute, to call, examine, and cross-examine witnesses, and to require the production of such documentary or other evidence as it may deem necessary to fully acquaint it with all the facts relating to the dispute.

Subp. 2. **Transcripts.** A stenographic record of the hearing shall be kept by the commissioner on the written request of any of the parties of interest to the proceeding, or by the commission.

Subp. 3. **Testimony and evidence.** Any party in interest to the proceeding shall have the right to appear at such hearing in person, by counsel, or representative and to call, examine, and cross-examine witnesses and to introduce into evidence such documentary or other evidence as the commission may deem admissible. In such proceeding the parties thereto shall be permitted to introduce only competent evidence, as defined in Minnesota Statutes, section 179.01, subdivision 12.

Subp. 4. **Stipulations.** At any such hearing the parties to the dispute may enter into stipulation of fact which shall have the same weight as though evidence has been adduced to prove the same.

Subp. 5. **Evidentiary objections.** Any objection with respect to the conduct of the hearing, including any objection to the introduction of evidence, shall be stated orally, together with a statement of the grounds of such objection, and included in the stenographic report of the hearing, if one is kept. No objection shall be deemed waived by further participation in the hearing.

Subp. 6. **Adjournment.** The commission may adjourn the hearing from day to day or from time to time and from place to place as it may deem proper upon appropriate notice thereof to the parties to said proceeding.

Subp. 7. **At close of evidence.** At the close of the hearing the parties to the proceeding shall be entitled to submit the matter on either oral or written arguments as the commission may determine. When permission for oral argument is granted, the commission shall fix the length thereof, and such argument shall not be included in the record of the hearing unless it is so directed by the commission. If the matter is submitted on written argument, the commission shall fix the time for the filing thereof by the respective parties to the proceeding.

Subp. 8. **Disregarding testimony.** All or any part of the testimony of any witness may be disregarded by the commission, if said witness shall refuse to answer any question which the commission has ruled to be a proper one.

Subp. 9. **Record.** The record in the proceedings shall consist of the order appointing the commission, the notice of hearing, proof of service of such notice upon the parties to the proceedings, the objections of any person to the proceedings, the rulings thereon, all motions, stipulations between the parties, exhibits, documentary evidence, depositions, the stenographic notes or record if kept, and the report of the commission.

Statutory Authority: *MS s 179A.04*

History: *L 1987 c 186 s 15*

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PROCEEDINGS BEFORE LABOR REFEREES

5500.1200 DEFINITIONS.

Unless the language or context clearly indicates that a different meaning is intended, the words, terms, and phrases in parts 5500.1200 to 5500.2100 shall have the same meaning and definition as is contained in the definitions used in Minnesota Statutes, chapters 179 and 179A.

Statutory Authority: *MS s 179A.04*

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5500.1300 PURPOSE, CONSTRUCTION, AND WAIVER.

Parts 5500.1200 to 5500.2100 govern the conduct of all proceedings before labor referees appointed according to Minnesota Statutes, section 179.083. Parts 5500.1200 to 5500.2100 shall be liberally construed to effectuate the purposes and provisions of the Minnesota Labor Relations Act, Minnesota Statutes, chapter 179. The labor referee may waive any requirements of parts 5500.1200 to 5500.2100 unless a party shows prejudice thereby.

Statutory Authority: *MS s 179A.04*

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5500.1400 NOTICE OF CONTROVERSY.

A written notice that a jurisdictional controversy exists, which is made the ground for picketing or declaring a strike or boycott, may be filed with the commissioner of mediation services by a labor organization or organizations or by an employer or group of employers. Such notice shall be addressed to the commissioner and shall contain the following information:

A. the name, address, and telephone number of person or organization filing such notice, the address of its principal office or place of business;

B. if the notice is filed by an employer or organization of employers, the names, addresses, and telephone numbers of all labor organizations involved in such jurisdictional controversy, the nature of the employer's business or industry and the name, address, and telephone number, if known, of any representative or attorney for such employer or organization of employers;

C. if the notice is filed by a labor organization, the names, addresses, and telephone numbers of all employers and all other labor organizations involved in such jurisdictional controversy and the nature of the employer's business or industry, the name, address, and telephone number, if known, of any representative or attorney of such employer or employer's organization;

D. the classification of employment, the approximate number of employees in each classification, and the approximate total number of employees involved;

E. the names of all labor organizations with whom the employer or employers have labor agreements and the expiration date of such agreements;

F. a clear and concise statement of the nature of the controversy; the history of past collective bargaining experience between the parties involved; the date on which the controversy arose which is made the ground for picketing or declaring a strike or boycott; and whether such jurisdictional controversy is made the ground for one or more of the following: picketing, declaring a strike, or declaring a boycott against such employer; and the name of the labor organization taking such action.

Forms for filing this information may be obtained from the office of the commissioner of mediation services.

Statutory Authority: *MS s 179A.04*

History: *L 1987 c 186 s 15*

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5500.1500 CERTIFICATION TO GOVERNOR.

Whenever it appears to the commissioner that two or more labor organizations adversely claim for themselves or their members jurisdiction over certain classifications of work to be done for any employer or in any industry or over the persons engaged in or performing such work and such jurisdictional interference of dispute is made the ground for picketing an employer or declaring a strike or boycott against such employer, the commissioner shall certify that fact to the governor.

Statutory Authority: *MS s 179A.04*

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

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5500.1600 REFEREE APPOINTMENT AND DUTIES.

If the governor in the governor's discretion appoints a labor referee to hear and determine the jurisdictional controversy, said labor referee shall immediately fix a time and place for the first hearing before said referee and shall mail to each of the parties to the controversy, at least five days before the date set for the first hearing, a notice thereof, together with a copy of parts 5500.1200 to 5500.2100; provided, that notice may be waived or the time therefor shortened by agreement of the parties. Notice of such hearing shall be given to all parties directly involved in or affected by the controversy so far as named in the original notice or known to the labor referee, and all such parties shall be deemed to be parties to the proceedings. A copy of the original notice, relative to said jurisdictional controversy, shall be sent by certified mail to each party with the first notice of hearing.

Statutory Authority: *MS s 179A.04*

History: *17 SR 1279*

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5500.1700 HEARINGS.

All hearings before the labor referee shall be conducted in conformity with the following rules:

A. All hearings before the labor referee shall be open to the public. It shall be the duty of the labor referee conducting the hearing to inquire fully into the facts in dispute, to call, examine, and cross-examine witnesses, and to require the production of such documentary or other evidence as the referee may deem necessary to fully acquaint him with all the facts relating to the dispute.

B. Any party in interest to the proceeding shall have the right to appear at such hearing in person, by counsel or representative and to call, examine, and cross-examine witnesses and to introduce into evidence such documentary or other evidence as the labor referee may deem admissible. In such proceeding the parties thereto shall be permitted to introduce only competent evidence, as defined in Minnesota Statutes, section 179.01, subdivision 12.

C. At any such hearing the parties to the dispute may enter into stipulation of facts which shall have the same weight as though evidence had been adduced to prove the same.

D. Any objection with respect to the conduct of the hearing, including any objection to the introduction of evidence, shall be stated orally, together with a statement of the grounds of such objection,

and included in the stenographic report of the hearing, if one is kept. No objection shall be deemed waived by further participation in the hearing.

E. The labor referee may adjourn the hearing from day to day or from time to time and from place to place as the referee may deem proper upon appropriate notice thereof to the parties to said proceeding.

F. At the close of the hearing the parties to the proceeding shall be entitled to submit the matter on either oral or written arguments as the labor referee may determine. When permission for oral argument is granted, the labor referee shall fix the length thereof, and such argument shall not be included in the stenographic record of the hearing unless it is so directed by the labor referee. If the matter is submitted on written argument, the labor referee shall fix the time for the filing thereof by the respective parties to the proceeding.

G. All or any part of the testimony of any witness may be disregarded by the referee, if said witness shall refuse to answer any question which the referee has ruled to be a proper one.

H. The record in the proceedings shall consist of the order appointing the labor referee, the notice of hearing, proof of service of such notice of hearing upon the parties to the proceeding, the objections of any person to the proceedings, the rulings thereon, all stipulations between the parties, exhibits, documentary evidence, depositions, findings of fact and conclusions, if such are made, the stenographic notes or record, if kept, and the determination of the jurisdictional controversy by the labor referee.

Statutory Authority: *MS s 179A.04*

History: *17 SR 1279*

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5500.1800 EXAMINATION OF WITNESSES.

Witnesses shall be examined orally, under oath, provided, however, that the testimony of all witnesses who reside outside of the state or who, through illness or other cause, are unable to testify in person before the labor referee may be taken by deposition in such manner and form as may be prescribed by the labor referee.

Statutory Authority: *MS s 179A.04*

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5500.1900 SUBPOENAS.

Subpoenas requiring the attendance and testimony of witnesses and the production of evidence, including books, records, correspondence, or documents relating to any matter pending before the labor referee, shall be issued in the name of the referee over the referee's signature. Applications for the issuance of such subpoenas shall be filed with the referee by the party to the proceedings desiring the subpoena. Such application shall be timely and shall specify the names of the witnesses, the books, records, correspondence, or documents required to be produced by the witness. Witnesses summoned before the labor referee shall be paid fees and mileage in the same manner and amounts as are paid to witnesses in the district court of this state. Witnesses whose depositions are taken and persons taking the same shall be entitled to the same fees as provided by law for taking of depositions for use in the district court of this state. Witness fees and

mileage shall be paid at the time of the service of subpoena to the witness whose attendance is required by the subpoena by the parties at whose instance the subpoena is issued, excepting witnesses subpoenaed by the labor referee, who shall be paid as provided by law.

Statutory Authority: *MS s 179A.04*

History: *17 SR 1279*

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5500.2000 FINAL DETERMINATION OF REFEREE.

On concluding the hearings and investigations, the labor referee shall make a determination of the jurisdictional controversy. The determination shall be in writing and shall set forth in detail the findings of the labor referee upon all the issues presented and the referee's decision thereon. The labor referee shall file with the commissioner the record of the proceedings. In case, before a final determination is made, a written agreement shall be filed with the labor referee and the commissioner, duly executed by all the parties to the dispute, settling all questions at issue, the labor referee shall cease his or her activities without making a determination and shall include in the record of the proceedings said written agreement.

Statutory Authority: *MS s 179A.04*

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

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5500.2100 RECONSIDERATION.

Any party to a jurisdictional controversy proceeding may request a reconsideration or clarification of the determination of the labor referee, on any or all of the following grounds: that there is material evidence newly discovered, which, with reasonable diligence, could not be found or produced at the prior hearings; that the determination is not justified by the evidence; that any adverse party has been guilty of misconduct which materially affected the result. Such request shall be in writing and shall set forth the facts upon which it is based. Copies of such request shall be served on all other parties to the proceeding and upon the labor referee. The labor referee may then proceed to consider the request if the referee deems the grounds stated sufficient, or may reject the same on deeming the grounds insufficient. On determining to consider the request, the labor referee shall order a preliminary hearing thereon, notice of which shall be given as provided for the first hearing upon such jurisdictional controversy. After such hearing the labor referee shall make an order granting or denying the request. If the request is granted, the labor referee shall proceed to reconsider or clarify the determination and shall fix a time and place for hearing thereon, of which notice shall be given as for the first hearing. The labor referee may by order limit the matters upon which the referee will receive new or additional evidence. Thereupon, further proceedings shall be had as upon the original notice or jurisdictional controversy. At the conclusion thereof, the labor referee shall affirm the determination or shall make and file an amended determination which shall supersede the original determination.

Statutory Authority: *MS s 179A.04*

History: *17 SR 1279*

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PROCEEDINGS BEFORE BOARDS OF ARBITRATION**5500.2200 APPLICABILITY.**

Parts 5500.2200 to 5500.2800 shall apply to all arbitration proceedings under Minnesota Statutes, chapter 179A, subject to all applicable provisions of the law.

Statutory Authority: *MS s 179A.04*

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5500.2300 ARRANGEMENTS FOR HEARING.

When a board of arbitrators has been appointed, it shall immediately fix a time and place for the first hearing before said board. The chair shall mail to each of the parties to the dispute, at least five days before the date set for the first hearing, a notice thereof, together with a copy of parts 5500.2200 to 5500.2800; provided that notice may be waived or the time therefor shortened by agreement of the parties. Any hearing may be adjourned to a certain time, which shall be announced at the close of the hearing, without further notice, but if no time be fixed for further hearing upon adjournment, notice shall be given as for the first hearing.

Statutory Authority: *MS s 179A.04*

History: *17 SR 1279*

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5500.2400 PROCEEDINGS DURING THE HEARING.

Any party to the dispute may be represented by a representative or an attorney at law. The first party requesting any action shall be called the moving party. The other party shall be called the defending party. Each party shall have the right to cross-examine the witnesses of the other party. The order of the proceedings shall be as follows: the moving party shall outline that party's case, call witnesses, and present evidence; upon the completion of the case of the moving party, the defending party shall outline that party's case, call witnesses, and present evidence. The opportunity to call witnesses in rebuttal shall be accorded to each party. Exhibits may be offered by either party and when received in evidence by the board shall be made a part of the record. After the parties have concluded the presentation of their evidence, they may make arguments in the same order as hereinbefore provided for submission of evidence, and thereupon the hearings shall be closed. All proceedings and the record thereof shall be confidential unless both parties agree in writing to the release thereof by the board. No member of the board shall present the case or examine the witnesses of any party to the dispute except so far as such examination may be necessary to amplify the testimony disclosed by the examination by the parties to the dispute.

Statutory Authority: *MS s 179A.04*

History: *17 SR 1279*

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5500.2500 EVIDENCE.

The board shall hear all evidence which is competent, relevant, and material to the issue. The board shall not conduct any hearing hereunder unless all parties to the dispute are present in person or by their designated representatives; provided, however, that a hearing may proceed in the absence of any party who consents thereto, or who fails to appear after due notice of the hearing, or who leaves without being excused by the board. The board may, however, make any independent inspection of the subject matter of the dispute, or make such inquiries or obtain such information outside of the hearings as it may deem necessary and proper; provided, however, that the parties to the dispute shall be afforded an opportunity to examine any evidence so secured, and to introduce evidence in opposition thereto, unless the right to such examination and introduction of evidence is waived in writing. The parties shall furnish such evidence as the board may require, as far as possible and the failure to produce such evidence when required may be considered by the board in making its award. The board may, at its discretion, receive written briefs, and shall fix at the close of the hearings the time within which the same shall be served upon the opposing parties and filed with proof of such service.

Statutory Authority: *MS s 179A.04*

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5500.2600 AMENDMENTS.

The original statement of the dispute may be amended by a supplemental written agreement signed by all parties and filed with the board at any time before the final decision. No issues shall be considered by the board except as specified in the original agreement or a supplemental agreement executed and filed as herein provided.

Statutory Authority: *MS s 179A.04*

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5500.2700 AWARD.

When the board shall have concluded its hearings and investigations, it shall make an award. The award shall be in writing, signed by a majority of the arbitrators, and shall set forth in detail the findings of the board upon all the issues before it and its decision thereon. The board shall file with the commissioner the stenographic record of its proceedings, if kept, together with all exhibits and records and the original findings, opinion, and award made by it. In case before a final award is made a written agreement shall be filed with the board, duly executed by all of the parties to the dispute, settling all questions at issue, the board shall cease its activities without making an award and shall file its records with the commissioner as hereinbefore provided.

Statutory Authority: *MS s 179A.04*

History: *L 1987 c 186 s 15*

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5500.2800 RECONSIDERATION OF THE AWARD.

Any party to an arbitration proceeding may request a reconsideration of the award made by the board therein upon any or all of the following grounds: that there is material evidence, newly discovered,

which with reasonable diligence could not have been found and produced at the prior hearings; that the award is not justified by the evidence or is contrary to law; that any adverse party has been guilty of misconduct which materially affected the result. Such request shall be in writing and shall set forth the facts constituting grounds upon which it is based. Copies of such request shall be served upon all other parties to the proceedings, upon the chair of the board, and upon the commissioner. The board may then proceed to consider the request, if it deems the grounds stated sufficient, or may reject the same if it deems the grounds insufficient. If the board determines to consider the request, it shall order a preliminary hearing thereon, notice of which shall be given as provided for the first hearing upon an arbitration agreement. After such hearing, the board shall make its order granting or denying the request. If the request is granted, the board shall proceed to reconsider the award and shall fix a time and place for the hearing thereon, of which notice shall be given as for the first hearing. The board may by order limit the matters upon which it will receive new or additional evidence. Thereupon further proceedings shall be had as upon the original arbitration agreement. At the conclusion thereof the board shall affirm the award or shall make and file amended award which shall supersede the original award.

Statutory Authority: *MS s 179A.04*

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

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