

5510.1910 HEARINGS OR INVESTIGATIONS.

Subpart 1. **Policy.** 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 commissioner.

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

Subp. 4. **Procedures.** Upon receipt of a petition, the commissioner shall hold hearings or conduct an investigation as required. Following receipt of a petition, the commissioner may issue 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 the commissioner's own motion, the commissioner may, in his or her discretion, hold a prehearing conference prior to a hearing. The commissioner may require the parties to file a prehearing statement containing items the commissioner 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 commissioner.

Subp. 6. **Subpoenas.** Requests for subpoenas for the attendance of witnesses or the production of documents must be made in writing to the commissioner 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, the sheriff's 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 commissioner.

Upon motion made at or before the time specified in the subpoena, the commissioner may quash or modify the subpoena on finding that it is unreasonable or oppressive.

Subp. 7. **Intervenor.** The commissioner shall permit an employee organization which submits a 30 percent showing of interest to intervene on a certification, representation, or decertification petition. The commissioner 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 commissioner'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 commissioner 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 commissioner 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 commissioner 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 commissioner may seek additional evidence and examine witnesses to the extent the commissioner deems appropriate, but shall do so on the record and with the opportunity for any party to contest the evidence.

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

Subp. 10. **The record.** The commissioner 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 commissioner shall retain the audiomagnetic or stenographic recording of the hearing for a period not less than 60 calendar days after issuing the order.

Subp. 10a. **Requests for transcripts.** The audiomagnetic recording of a hearing before the bureau may be transcribed in whole or in part upon the written request of any party or person, provided that the party or person requesting the transcript makes a request within the 60-day retention period and agrees in writing to pay full costs of preparation of the transcript.

Subp. 10b. **Preparation of case record on appeal.** Any person or party appealing a determination of the commissioner must agree in writing to pay for the cost of preparing the transcript of the hearing upon which the determination was based, as well as the costs of duplicating all relevant exhibits and other written case file material. If the appeal involves only a portion of the elements or factors decided by the commissioner, and only parts of the hearing are relevant to that element or factor, a partial transcript and record may be purchased. The extent of the transcript and record necessary to provide a complete record upon which that portion of the commissioner's determination was based will be determined by the commissioner, based upon the scope of the issues under appeal. However, any party to an appeal may request that a portion of the entire record be added to the record submitted by the commissioner. The party making such a request must agree in writing to pay for the cost of preparing this additional record. Any partial transcript shall include all testimony and evidence relevant to the issues under appeal.

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 commissioner 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 commissioner determines that the request could not have been filed earlier and that the rights of a party will be substantially affected by denial.

The commissioner may, at the commissioner's 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 commissioner is sufficient.

Subp. 12. **Conduct of hearing.** Unless the commissioner 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 commissioner 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 commissioner.

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 commissioner.

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

F. When all parties and witnesses have been heard, final argument may, in the discretion of the commissioner, be permitted. The commissioner 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 commissioner 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 commissioner 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 commissioner 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 commissioner must be based upon the record.

Subp. 15. **Order pending appeal.** Any unit determination, unit clarification, or fair share fee challenge order which is appealed shall continue in effect unless stayed by the commissioner upon request of one or more parties or as directed by an appellate court.

Statutory Authority: *MS s 179.02; 179A.04*

History: *9 SR 735; L 1987 c 186 s 15; 12 SR 2712; 15 SR 1226; 17 SR 1279; 23 SR 1564*

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