

5510.1910 HEARINGS OR INVESTIGATIONS.

Subpart 1. **Policy.** The commissioner must accept stipulations or agreements that are consistent with bureau rules and the act.

Subp. 2. **Applicability and scope.**

A. This part applies to a hearing or investigation when provided under this chapter or chapter 5530.

B. For a hearing or investigation on a petition under this chapter, the hearing or investigation must address all issues raised by a valid petition that are within the commissioner's jurisdiction.

Subp. 2a. **Virtual hearing.** If all parties agree, the hearing may take place virtually through an online conferencing or videoconferencing tool.

Subp. 3. **Consolidating hearings.** The commissioner may consolidate one or more hearings or petitions if the commissioner determines that consolidation will serve the act's purposes.

Subp. 4. **Commissioner's duties.** Upon receiving a petition under parts 5510.0410 to 5510.1810, the commissioner must:

A. hold a hearing or conduct an investigation as required under Minnesota Statutes, section 179A.12, subdivision 5; and

B. 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.**

A. The purpose of a prehearing conference is to:

- (1) simplify the issues to be determined;
- (2) obtain stipulations regarding foundation for testimony or exhibits;
- (3) identify the proposed witnesses for each party;
- (4) consider other matters that may be necessary or advisable; and
- (5) if possible, reach a settlement, which if reached must be made a part of the record.

B. Upon the request of a party or the commissioner's motion, the commissioner may:

- (1) hold a prehearing conference; and
- (2) require the parties to file a prehearing statement containing items the commissioner deems necessary to fulfill the purposes of the prehearing conference.

C. A prehearing conference is informal. Agreements simplifying issues, amendments, stipulations, or other matters may be entered on the record or made the subject of a commissioner order.

Subp. 6. Subpoenas.

A. Requests for subpoenas for the attendance of witnesses or the production of documents must be made in writing to the commissioner and:

- (1) contain a brief statement demonstrating the relevance of the testimony or evidence sought;
- (2) identify all persons to be subpoenaed; and
- (3) identify with specificity any documents sought.

B. A subpoena must be served by the sheriff, the sheriff's deputy, or any other individual who is not a party in accordance with rule 45.02 of the Rules of Civil Procedure for the District Courts of Minnesota.

C. When a subpoena is served, the cost of service, fees, and expenses of any witness subpoenaed must be paid by the party at whose request the witness appears.

D. The individual serving a subpoena must make proof of service by filing the subpoena and an affidavit of service with the commissioner.

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

Subp. 7. Intervenor.

A. The commissioner must permit an employee organization that submits a 30 percent showing of interest to intervene on a certification, representation, or decertification petition.

B. The commissioner must 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. Evidence, witnesses, and testimony.

A. Parties may present evidence, rebuttal testimony, and argument on the issues and may cross-examine witnesses. Individuals or organizations having an appearance status may only review exhibits and make statements for the record.

B. A 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 motion, witnesses may be excluded from the hearing room so that they cannot hear other witness testimony.

Subp. 9. Rules of evidence.

A. The commissioner may admit all evidence that 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 must give effect to the rules of privilege recognized by law. Evidence that is incompetent, immaterial, or unduly repetitious may be excluded.

B. All evidence to be considered in the case, including all records and documents possessed by the commissioner or an accurate copy, must be made a part of the record. Matters not part of the record must not be considered when determining the case.

C. The commissioner may seek additional evidence and examine witnesses to the extent the commissioner deems appropriate but must do so on the record and with the opportunity for a party to contest the evidence.

D. The commissioner may take judicial notice of undisputed facts.

Subp. 10. Hearing record.

A. The commissioner must maintain the record for 90 calendar days in each case under this part. The record must contain:

- (1) all pleadings, motions, and orders;
- (2) evidence received;
- (3) offers of proof, objections, and rulings on objections;
- (4) all memoranda or data submitted by a party on the case; and
- (5) a hearing recording or transcript.

B. The commissioner must keep the hearing recording or transcript for not less than 90 calendar days after issuing a determination under subpart 14.

Subp. 10a. Requests for transcripts. A hearing recording may be transcribed in whole or in part upon the written request of a party or person if the party or person requesting the transcript:

- A. makes a request within the 90-day retention period under subpart 10, item B; and
- B. agrees to pay the full costs for preparing the transcript.

Subp. 10b. Preparing case record on appeal.

A. An individual or party appealing a determination under subpart 14 must agree in writing to pay for the:

- (1) cost of preparing the transcript of the hearing upon which the determination was based; and
- (2) costs of duplicating all relevant exhibits and other written case-file material.

B. An appealing individual or party may purchase a partial transcript and record if:

- (1) the appeal involves only a portion of the elements or factors decided by the commissioner; and
- (2) only parts of the hearing are relevant to that element or factor.

C. For a request under item B, the commissioner must determine, on the basis of the elements or factors under appeal, the extent of the transcript and record necessary to provide a complete record upon which that portion of the commissioner's determination was based.

D. A 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 a request under this item must agree in writing to pay for the cost of preparing the additional record. Any partial transcript must include all testimony and evidence relevant to the issues under appeal.

Subp. 11. Continuances.

A. The commissioner must grant a hearing continuance or postponement request only upon a showing of substantial cause.

B. All requests under item A must be served according to parts 5510.0110 to 5510.2310. Requests served less than six calendar days before a hearing must 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.

C. The commissioner must continue a hearing that has already started whenever the commissioner determines a continuance is needed to determine the issues. For a continuance under this item, the commissioner must give oral notice on the record.

Subp. 12. Conducting hearing. Unless the commissioner determines that the public interest will be otherwise served, a hearing under this part must be conducted according to this subpart.

A. After opening the hearing, the commissioner must state the procedural rules for the hearing, including that:

- (1) all parties may present evidence and cross-examine witnesses;
- (2) all parties have a right to be represented at the hearing;
- (3) an 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, is waived if the objecting party continues to participate 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 before the hearing must 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 presents its evidence. The other parties 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 be permitted. The commissioner must 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 must:

- (1) close or continue the hearing; and
- (2) order when the record of the proceedings closes.

Subp. 13. Disrupting hearing.

A. Recording devices, other than those provided by the commissioner or authorized by the commissioner with the consent of all parties, must not be operated in the hearing room during the hearing.

B. An individual may not:

- (1) interfere with the free, proper, and lawful access to or egress from the hearing room;
or
- (2) interfere or threaten to interfere with the hearing.

Subp. 14. Commissioner determinations. All determinations issued by the commissioner must be based on the record.

Subp. 15. Order pending appeal. A unit determination or unit clarification that is appealed continues 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; 179.82; 179A.04; 179A.16; 626.892*

History: *9 SR 735; L 1987 c 186 s 15; 12 SR 2712; 15 SR 1226; 17 SR 1279; 23 SR 1564; 46 SR 1387*

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