

Rules of Department of Labor and Industrial Relations

Division 40—State Board of Mediation Chapter 2—General Rules

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Title 8—DEPARTMENT OF LABOR AND

INDUSTRIAL RELATIONS

Division 40—State Board of Mediation

Chapter 2—General Rules

8 CSR 40-2.010 Definitions

PURPOSE: This rule sets out definitions used in the rules of the State Board of Mediation.

(1) The following definitions are listed to clarify the terminology applicable to these rules unless otherwise specifically provided or unless plainly repugnant to the intent of the law or the context;

(A) Board means the Missouri State Board of Mediation;

(B) Chairman means the chief administrator of the State Board of Mediation;

(C) Certification means the designation by the chairman or the board of an employee organization as the majority representative of employees in an appropriate unit;

(D) Mediator means the board members, employees of the board or any officer so designated by the board to perform the functions and duties of mediation;

(E) Officer means any member, counsel, election officer, chairman or any other individual or employee specifically designated as an officer of the board to act on the board's behalf. The board may delegate to such officer all of the powers conferred upon the board in connection with the discharge of the duty(ies) so delegated;

(F) Party means any person, employee, group of employees, organization or public employer filing a charge, petition, request or application under these rules; any person, organization or public employer named as a party in a charge, complaint, request, application or petition filed under these rules; or any other person, organization or public employer whose intervention in a proceeding has been permitted or directed by the board, but nothing in this rule shall be construed to prevent the board or any designated officer, from limiting any party's participation in the proceedings to the extent of his/her interest; and

(G) Showing of interest means a designated percentage of employees in an allegedly appropriate bargaining unit or a bargaining unit determined to be appropriate, who are members of a labor organization or have designated it as their exclusive bargaining representative or have signed a petition requesting an election for certification or decertification of employee representatives.

AUTHORITY: section 295.070, RSMo 1986. Original rule filed Dec. 31, 1975, effective Jan. 10, 1976.

8 CSR 40-2.020 Petitions for Certification or Decertification

PURPOSE: This rule describes who may file petitions for certification or decertification and who the petitions shall be filed with.

(1) A petition for certification of public employee representative may be filed by any public employee, group of public employees, any individual or employee organization claiming to be the majority representative of public employees in an appropriate unit.

(2) A petition for certification of public employee representative may be filed by a public employer alleging that one (1) or more public employees, group of public employees, individuals or employee organizations having presented to him/her a claim to be recognized.

(3) A petition for decertification of public employee representative may be filed by any employee or group of employees or any individual acting on their behalf alleging that the certified or currently recognized employee representative is no longer the majority representative of such employees.

(4) Petition for clarification or amendment of certification may be filed by the majority representative of public employer or the public employer.

(5) All petitions shall be in writing and shall be filed with the chairman.

AUTHORITY: section 295.070, RSMo 1986. Original rule filed Dec. 31, 1975, effective Jan. 10, 1976.

8 CSR 40-2.030 Contents of Petition for Certification

PURPOSE: This rule describes the contents of a petition for certification.

(1) A petition for certification of public employee representative, when filed by a public employee, group of public employees, any individual or employee organization, shall contain the following:

(A) Name, address, telephone number of the public employer and the person to contact including his/her title, if known;

(B) A description of the bargaining unit claimed to be appropriate for the purpose of exclusive representation by the petitioner.

Such description shall indicate the general classifications of employees sought to be included and those sought to be excluded and the approximate number of employees in the unit claimed to be appropriate;

(C) Date of the request for recognition as majority representative and date such request was declined by the public employer or a statement that no reply has been received;

(D) Name, address and telephone number of the recognized or certified exclusive representative, if any, and the date of such certification or recognition and the expiration date of any applicable contract, if known to the petitioner;

(E) Names, addresses and telephone numbers of any other interested employee organizations, if known to the petitioner;

(F) Any other relevant facts;

(G) Name and affiliation, if any, of the petitioner and its address and telephone number;

(H) The signature of the petitioner's representative, including his/her title and telephone number; and

(I) A petition for certification of public employee representative shall be accompanied by a showing of interest as defined in 8 CSR 40-2.010(7) of not less than thirty percent (30%) of the employees in the unit alleged to be appropriate. Such showing of interest shall be dated not more than six (6) months prior to filing of petition.

(2) A petition for certification of public employee representative filed by a public employer shall state that a claim for representation has been made by one (1) or more public employees, groups of public employees, individuals or employee organizations and that the public employer has a good faith doubt concerning the majority representative of its employees.

(3) A petition for certification of representative filed by a public employer shall include all the information set forth in 8 CSR 40-2.030(1), except subsection (I).

AUTHORITY: section 295.070, RSMo 1986. Original rule filed Dec. 31, 1975, effective Jan. 10, 1976.

8 CSR 40-2.040 Contents of Petition for Decertification

PURPOSE: This rule describes the contents of a petition for decertification.

(1) A petition for decertification of public employee representative shall contain the following:

(A) A statement that the employee representative certified by the chairman or the board or recognized by the public employer no longer represents a majority of the employees in the collective bargaining unit in which it is currently recognized or certified and such employee organization asserts a claim to be the majority representative of the employees;

(B) The petition for decertification of public employee representative also shall contain the information set forth in 8 CSR 40-2.030(1), except subsection (C); and

(C) The petition for decertification shall be accompanied by a showing of interest of not less than thirty percent (30%) of the employees in the unit in which an employee representative has been recognized or certified. A showing of interest shall indicate that the employees no longer desire to be represented for purposes of collective bargaining by the recognized or certified employee representative.

AUTHORITY: section 295.070, RSMo 1986. Original rule filed Dec. 31, 1975, effective Jan. 10, 1976.

8 CSR 40-2.050 Petition for Clarification of Unit or Amendment of Certification

PURPOSE: This rule describes who may file a petition for clarification of bargaining unit or amendment of certification and the contents of the petition.

(1) The majority representative or the public employer may file a petition for clarification of a bargaining unit or amendment of any certification issued by the chairman or the board.

(2) A petition for clarification or amendment, in addition to setting forth the information required by 8 CSR 40-2.030(1)(A) and (D)—(I), shall contain the following:

(A) A description of the present negotiation unit and the date of the certification or recognition;

(B) The proposed clarification or amendment of the unit; and

(C) A statement by petitioner setting forth reasons as to why clarification or amendment is requested.

AUTHORITY: section 295.070, RSMo 1986. Original rule filed Dec. 31, 1975, effective Jan. 10, 1976.

8 CSR 40-2.060 Number of Copies of Petition to be Filed

PURPOSE: This rule describes how many copies of petition shall be filed and who they shall be filed with.

(1) Five (5) copies of all petitions listed under these rules shall be filed with the chairman of the board by mail at P.O. Box 591, Jefferson City, MO 65102, or in person at 3315 West Truman Blvd., Suite 202, Jefferson City, MO 65109. Copies shall be served simultaneously on all known interested parties and proof of such service shall be furnished to the chairman.

*AUTHORITY: section 295.070, RSMo 1994. *Original rule filed Dec. 31, 1975, effective Jan. 10, 1976. Amended: Filed June 17, 1998, effective Jan. 30, 1999.*

**Original authority 1947.*

8 CSR 40-2.070 Validity of Showing of Interest

PURPOSE: This rule describes the validity of showing of interest.

(1) The showing of interest submitted pursuant to 8 CSR 40-2.030 and 8 CSR 40-2.040 shall not be furnished to any of the parties. The chairman shall determine the adequacy of the showing of interest and such decision shall not be subject to collateral attack at a hearing.

AUTHORITY: section 295.070, RSMo (1986). Original rule filed Dec. 31, 1975, effective Jan. 10, 1976.

8 CSR 40-2.080 Processing of Petition

PURPOSE: This rule describes the processing of petition to determine the facts.

(1) Upon the filing of any petition, the chairman shall investigate the petition to determine the facts. The chairman shall determine whether or not a valid question concerning the representation of employees exists in a prima facie appropriate unit.

AUTHORITY: section 295.070, RSMo 1986. Original rule filed Dec. 31, 1975, effective Jan. 10, 1976.

8 CSR 40-2.090 Withdrawal or Dismissal of Petition

PURPOSE: This rule describes why and when a petition may be withdrawn or dismissed.

(1) If the chairman determines after an investigation that the petition has not been timely filed or that no valid question concerning the representation of employees exists in a prima facie appropriate unit, s/he may request the party filing such petition to withdraw the petition without prejudice or in the absence of such withdrawal, within a reasonable time, s/he may dismiss the petition. Such action may be taken by the chairman at any time prior to the closing of the case.

AUTHORITY: section 295.070, RSMo 1986. Original rule filed Dec. 31, 1975, effective Jan. 10, 1976.

8 CSR 40-2.100 Initial Action

PURPOSE: This rule describes the initial action to be taken upon the filing of a petition.

(1) Upon the filing of any petition, an authorized agent shall confer with and may hold informal conferences with the known interested parties in an attempt to ascertain the facts. The authorized agent shall encourage the parties to agree upon the appropriate bargaining unit and a suitable method by which representation is to be determined. Whenever the authorized agent shall determine that the parties are unable to agree upon a suitable method or upon the appropriate bargaining unit, and s/he is unable to settle the controversy without hearing, s/he shall conduct a hearing to resolve such matters and s/he shall notify the parties of the time and place of such a hearing in writing at least ten (10) days, excluding Saturdays, Sundays and legal holidays, in advance.

AUTHORITY: section 295.070, RSMo 1986. Original rule filed Dec. 31, 1975, effective Jan. 10, 1976.

8 CSR 40-2.110 Petition—Amendments or Withdrawal

PURPOSE: This rule states when a petition may be withdrawn or amended.

(1) At any time prior to issuance of a written notice of election for the purpose of resolving

the issue of representation, a petitioning party may amend or withdraw its petition at the discretion of the authorized agent.

AUTHORITY: section 295.070, RSMo 1986. Original rule filed Dec. 31, 1975, effective Jan. 10, 1976.

8 CSR 40-2.120 List of Employees

PURPOSE: This rule states that the public employer shall furnish the board with a list of employees.

(1) The public employer shall furnish to the board a current list of all employees in a proposed or agreed-upon bargaining unit. The list of employees must be submitted prior to or as a first order of business of any scheduled hearing.

AUTHORITY: section 295.070, RSMo 1986. Original rule filed Dec. 31, 1975, effective Jan. 10, 1976.

8 CSR 40-2.130 Intervention

PURPOSE: This rule describes who may intervene and the requirements needed to intervene.

(1) Any third party having a legitimate interest in any proceedings may file a petition of intervention setting forth facts sufficient to establish such interest and requesting that the board resolve contested factual matters in its favor. For purposes of third-party intervention, legitimate interest means the intervenor must be able to prove it is authorized to represent at least ten percent (10%) of the employees within a proposed bargaining unit. An intervening organization's showing of legitimate interest shall be made either prior to or during the course of any hearing that may be held. Any organization which has a signed, valid collective bargaining agreement encompassing the proposed bargaining unit, or any portion, shall be considered to have a legitimate interest in any proceedings upon presentation of same.

AUTHORITY: section 295.070, RSMo 1986. Original rule filed Dec. 31, 1975, effective Jan. 10, 1976.

8 CSR 40-2.140 Hearings

PURPOSE: This rule describes the issuance of notice of hearing and the contents of notice. It also states the purpose of the hear-

ing and the procedures to be followed at the hearing.

(1) The chairman shall issue a notice of hearing, if after the filing of a valid petition, the petitioner, the public employer and all intervenors are unable to resolve the matter through an agreed-upon method of adjustment approved by the chairman.

(2) A notice of hearing shall be served on all interested parties provided at least ten (10) days' notice, excluding Saturdays, Sundays and legal holidays, and shall include:

(A) A statement of the time, place and nature of the hearing;

(B) The name of the public employer, petitioner and intervenors, if any; and

(C) A statement of the legal authority and jurisdiction under which the hearing is to be held.

(3) Hearings under these rules are considered investigatory and not adversary. Their purpose is to develop a full and complete factual record upon which the board may base a meaningful report and recommendation.

(4) Representation hearings and the procedures following such hearings shall be in accordance with these rules.

(5) Rights of parties are—

(A) Any party shall have the right to appear at such hearing in person, by counsel or by other representative, to call, examine and cross-examine witnesses and to introduce into the record documentary or other relevant evidence, except that the participation of any party shall be limited to the extent permitted by the board; and provided further, that five (5) copies of documentary evidence shall be submitted; and

(B) The board at its discretion may permit a reduced number of copies of documentary evidence for good cause shown.

(6) Rules of evidence are—

(A) The parties shall not be bound by rules of evidence whether statutory, common law or adopted by the rules of court;

(B) All relevant evidence is admissible, except as otherwise provided;

(C) The board, in its discretion, may exclude any evidence or offer of proof if they find that its probative value is substantially outweighed by the risk that its admission will either necessitate undue consumption of time or create substantial danger of undue prejudice or confusion;

(D) The board shall give effect to the rules of privilege recognized by law;

(E) Every party shall have a right to present his/her cause by oral and documentary evidence and to submit rebuttal evidence; and

(F) Every party and the board shall have the right to examine and cross-examine as may be required for a full and true disclosure of the facts.

(7) A charging party in asserting a violation of these rules shall have the burden of proving the allegations of the charge by a preponderance of the evidence.

(8) Stipulation of Fact.

(A) In any proceeding an agreed statement of facts may be introduced into the record with respect to any issue.

(B) An agreed statement of facts may be accepted by the chairman for a decision without a hearing.

(C) The acceptance of an agreed statement of facts by the chairman may be deemed a waiver of a right to hearing.

(9) Objections to Conduct of Hearing.

(A) Any objection with respect to the conduct of the hearing, including any objection to the introduction of evidence, may be stated orally or in writing accompanied by a short statement of the grounds for such objection and included in the record.

(B) No such objection shall be deemed waived by further participation in the hearing. Such objection shall not stay the conduct of the hearing.

(C) Automatic exceptions will be allowed to all adverse rulings.

(10) Motions Before or After Hearing.

(A) All motions, other than those made during a hearing, shall be made in writing to the chairman, shall briefly state the relief sought and shall be accompanied by affidavits setting forth the grounds for such motion.

(B) The moving party shall serve a copy of all motion papers on all other parties, and within three (3) days thereafter, excluding Saturdays, Sundays and legal holidays, shall file with the chairman the original and four (4) copies with proof of service.

(C) Answering affidavits, if any, must be served on all parties and the original, together with four (4) copies and proof of service, shall be filed with the chairman within five (5) days, excluding Saturdays, Sundays and legal holidays, after service of the moving papers, unless the chairman directs otherwise.

(D) The chairman may decide to hear oral argument or to hear testimony thereon, in which case s/he shall notify the parties of such fact and of the time and place of such argument or for the taking of such testimony.

(E) All such motions, rulings and orders thereon shall be part of the record of the proceedings.

(11) Filing of Brief and Oral Argument at Hearing.

(A) Any party shall be entitled, upon request, to a reasonable period prior to the close of the hearing for oral argument, which shall be included in the official transcript of the hearing.

(B) Any party shall be entitled, upon request made before the close of the hearing, to file a brief or proposed findings and conclusions, or both, with the board who may fix a reasonable time for such filing, but not in excess of twenty-one (21) days, excluding Saturdays, Sundays and legal holidays, from the close of the hearing.

(C) Requests for further extensions of time for good cause shown shall be made to the chairman.

(D) No request will be considered unless received at least three (3) days, excluding Saturdays, Sundays and legal holidays, prior to the expiration of the time fixed for the filing of briefs or proposed findings and conclusions, unless expressly authorized by the chairman.

(E) Notice of the request for any extension shall be served simultaneously on all other parties and proof of service shall be furnished.

(F) Five (5) copies of any brief or proposed findings and conclusions shall be filed with the chairman, and copies shall be served simultaneously on the other parties, and a statement of such service shall be furnished.

(12) At the discretion of the chairman, the hearing may be continued from day-to-day, or adjourned to a later date or to a different place, by announcement at the hearing by the chairman or by other appropriate notice.

AUTHORITY: section 295.070, RSMo 1986. This version of rule filed Dec. 31, 1975, effective Jan. 10, 1976.

Golden Valley Mem. Hosp. Dist. v. Mo. State Board of Mediation 559 SW2d 581 (Mo. App. 1977). Since it is clear that the general assembly did not intend to use the term "employee" as that word is used in sections 105.500-105.525, RSMo 1969 to designate everyone on the payroll of a public body, it is mandatory that the Board of Mediation resolve whether certain supervisory nurses shall be included in a bargaining unit.

Lincoln County Memorial Hospital v. Mo. State Board of Mediation 549 SW2d 665 (Mo. App. 1977). An appeal does not lie, except in unusual cases, from an administrative determination of appropriate bargaining unit, prior to determination of majority representative status by the Board of Mediation. Public policy is against the calculated stalling of collective bargaining by dilatory tactics, which led congress to eliminate separate judicial review of the determination of an appropriate bargaining unit. Achievement of this public policy requires expeditious completion of the administrative process, and this can best be done by adoption of the federal rule requiring that the entire administrative process be terminated before judicial review can become operative.

City of Kirkwood v. Missouri State Board of Mediation 478 SW2d 690 (Mo. App. 1972). Section 295.030, RSMo requiring appointment of a five-member board, does not require that all five must sit in a hearing. On the contrary, section 295.040 states that three members of the board shall constitute a quorum for the transaction of business.

State ex rel. State Board of Mediation v. Pigg 244 SW2d 75 (Mo. Banc, 1951). It is apparent that the part of the chapter dealing with the State Board of Mediation and the public hearing panels is in no wise dependent upon sections 295.090, 295.180 and 295.200, RSMo although these later sections are dependent upon the sections providing for mediation and public hearing panels.

Op. Atty. Gen. No. 4, King, Jr., 2-1-72. Missouri State Board of Mediation is not precluded from mediating dispute in industry subject to federal labor relations statutes, pursuant to section 295.080, RSMo 1969 unless Federal Mediation and Conciliation Service actually assumes jurisdiction by proferring its services.

8 CSR 40-2.150 Notices of Election

PURPOSE: This rule describes the posting of notice of election, contents of notice of election and improper use of notice of election.

(1) Appropriate notices of election shall be furnished to all interested parties, and shall be prominently posted by the public employer, no less than six (6) days, excluding Saturdays, Sundays and legal holidays, prior to

opening of the polls. Such notice shall contain—

- (A) The date, hours and place of election;
- (B) The eligibility period;
- (C) The details and procedures for an election;
- (D) The appropriate units; and
- (E) A sample ballot.

(2) The reproduction of any document purporting to be a copy of the board's official ballot, other than one (1) completely unaltered in form and content and clearly marked "sample" on its face, which suggests either directly or indirectly to employees that the board endorses a particular choice, may constitute grounds for setting aside an election upon objections properly filed.

(3) The public employer shall furnish to the board a list including the names and addresses of all eligible voters in the unit as determined by the board or agreed to by the parties. This list must be supplied to the board fourteen (14) working days prior to the election, excluding Saturdays, Sundays and legal holidays, or as specified in the Direction of Election.

AUTHORITY: section 295.070, RSMo 1986. Original rule filed Dec. 31, 1975, effective Jan. 10, 1976. Amended: Filed Oct. 4, 1979, effective Jan. 12, 1980.

8 CSR 40-2.160 Election Procedure

PURPOSE: This rule describes the procedure to be followed in an election.

(1) Each of the interested parties may designate two (2) persons as observers at the polls, subject to such limitations as the chairman may prescribe. Unless otherwise stipulated by the interested parties, observers must be non-supervisory employees of the public employer.

(2) Any observer or the authorized agent, for good cause, may challenge an employee's eligibility to vote. Challenged ballots shall be folded, placed in a sealed envelope with the name of the voter plainly written on the outside. Challenged ballots will not be considered unless they might affect the results of the election, in which case the authorized agent shall investigate and determine the eligibility to vote of the persons whose ballots are challenged. Challenged ballots which are disallowed will be destroyed. Challenged ballots which are allowed will be counted. The names of the persons whose ballots are

challenged shall be made a part of the record of the election proceedings.

(3) All elections shall be by secret ballot.

(4) Ballots may not be tallied until after the posted time for the closing of the polls unless all eligible voters have cast their ballots. Upon the conclusion of the election, the chairman shall furnish the parties with a tally of the ballots.

(5) An organization shall be certified if it receives a majority of the votes cast.

(6) Within ten (10) days, excluding Saturdays, Sundays and legal holidays, after the tally of ballots has been furnished, any party may file with the board an original and four (4) copies of objections to the conduct of the election or conduct affecting the results of the election, which shall contain a short statement of the reasons therefore. Such filing must be timely whether or not the challenged ballots are sufficient in number to affect the results of the election. Copies of such objections shall be served simultaneously on the other parties by the party filing them and a statement of service shall be made.

(7) If no objections are filed within the time set forth previously, if the challenged ballots are insufficient in number to affect the result of the election, and if no runoff election is to be held, the chairman shall forthwith issue to the parties a certification of the results of the election, including certification of representative, where appropriate.

(8) If objections are filed to the conduct of the election or conduct affecting the result of the election or if the challenged ballots are sufficient in number to affect the result of the election, the chairman shall investigate such objections or challenges or both.

(9) Where objections are filed or challenges are determinative, the chairman shall conduct an investigation and, where appropriate, shall issue a notice of hearing for the board to hear the matters alleged and to issue a report and recommendations. The objecting party shall bear the burden of proof regarding all matters alleged in the objections to the conduct of the election or conduct affecting the results of the election.

(10) If the majority of the votes cast are in opposition to the labor organization(s), a petition for certification by these organizations shall not be reviewed by the board until a period of one (1) year has lapsed from the election date.

AUTHORITY: section 295.070, RSMo 1986. Original rule filed Dec. 31, 1975, effective Jan. 10, 1976.

8 CSR 40-2.170 Run-off Election

PURPOSE: This rule describes the requirements for a run-off election.

(1) The chairman may conduct a run-off election without further order of the board when an election in which the ballot provides for not less than three (3) choices (that is, at least two (2) employee organizations and neither) results in no choice receiving a majority of the valid ballots cast. Only one (1) run-off shall be held pursuant to this section, unless the board directs otherwise.

(2) The ballot in the run-off election shall provide for a selection among the two (2) or more choices receiving the largest number of votes, the sum of whose votes aggregate at least one (1) more than half of the total votes cast.

(3) Employees who were eligible to vote in the original election and who are in an eligible category on the date of the run-off election shall be eligible to vote in the run-off election.

(4) An inconclusive election is one in which none of the choices on the ballot has received a majority of the valid ballots cast. In the event the number of ballots cast in an inconclusive election in which the ballot provided for a choice among two (2) or more representatives and neither or none is equally divided among the several choices; or in the event the number of ballots cast for one (1) choice in such election is equal to the number cast for the third choice, the chairman shall declare the first election a nullity and shall conduct another election providing for a selection from among the choices afforded in the original ballot and s/he shall thereafter proceed in accordance with 8 CSR 40-2.170(1)—(3). In the event two (2) or more choices receive the same number of ballots and another choice receives no ballots and there are no challenged ballots that would affect the results of the election and if all eligible voters have cast valid ballots, there shall be no run-off election and a certification of results of election shall be issued. Only one (1) such further election pursuant to this rule may be held.

(5) Upon the conclusion of the run-off election, the provisions of 8 CSR 40-2.160 shall govern, insofar as applicable.

AUTHORITY: section 295.070, RSMo 1986. Original rule filed Dec. 31, 1975, effective Jan. 10, 1976.

8 CSR 40-2.180 Agreement for Consent Election

PURPOSE: This rule states that the parties may stipulate to an election and to the details of an election.

(1) Where one (1) or more employee organizations assert a claim to represent employees in an appropriate unit and a petition for certification of public employee representative or a petition for decertification of public employee representative has been filed, the parties may stipulate, subject to the approval of the chairman, that a secret ballot election shall be conducted by the board among the employees in an appropriate bargaining unit to determine whether they desire to be represented for purposes of negotiations by any or none of the employee organizations involved. The parties to such proceeding shall be the public employer, the petitioner and any intervenors who shall have complied with the requirements set forth in 8 CSR 40-2.130.

(2) The parties shall stipulate as to the composition of the bargaining unit, the eligibility period for participation in the election, the dates, hours and places of the election and the designations on the ballot.

AUTHORITY: section 295.070, RSMo 1986. Original rule filed Dec. 31, 1975, effective Jan. 10, 1976.