

Statement of Need & Reasonableness

Proposed Permanent Rules Relating to Grievances.

Statement of Need

5510.5110 to 5510.5180, are required to effectuate the provisions of Minn. Stat. § 179A.20, subd. 4 (1984).

Statement of Reasonableness

Grievance arbitration procedures have gained wide acceptability in both the private and public labor relations sectors in the U.S., appearing in an estimated 95% of all collective bargaining agreements. The exact terms and provisions of these procedures has largely been left to the parties to define and even PELRA encourages a negotiated procedure rather than suggesting a model. It is only when the parties fail to agree to their own procedure that the procedure set forth in these parts would come into play. Although the following procedure establishes a rational and fair system for the processing of grievances, it is purposefully not intended to represent the "perfect" procedure. In fact, parties are encouraged to negotiate a procedure which is tailored to their individual circumstances and interest. Should the parties be unable to do so, however, they would still have access to a procedure which is reasonable, impartial and relatively fast.

5510.5110 and 5510.5120, are normal expressions of policy and application.

5510.5130 provides definitions for various terms used in these parts. These definitions are typical within the context of grievance procedures and are, where appropriate, designed to expedite the processing of grievances.

5510.5131 provides a method for computing the passage of time which is consistent with the method used in other agency rules and in the construction of statutes.

5510.5140 provides for a reasonable time frame for the raising of a grievance and encourages informal resolution of the matter by an employee's immediate supervisor.

5510.5150 requires that an unresolved dispute must be reduced to and presented in a timely fashion to the next level of supervision. Because the matter is becoming formalized within the context of the labor contract, and not a matter of inherent individual rights and potentially involves a duty of fair representation by the exclusive representative, the exclusive representative must initiate the action at this level of the procedure.

Time limits provided are reasonable and typical, as is the requirement for a written employer response.

- 5510.5160 provides the right of the exclusive representative to appeal unresolved issues to the employer's top-level management in a timely fashion. The parties are required to meet and attempt to resolve the dispute and a timely written response is required.
- 5510.5170 allows the exclusive representative to refer unresolved issues to arbitration, sets forth a fair procedure for selection of an arbitrator, sets forth the legal limits of an arbitrator's authority to bind the parties, provides a reasonable basis for sharing the cost of arbitration, and discourages resort to legalistic rituals and procedures.
- 5510.5180 provides for the processing of these matters during normal work time without loss of pay or benefits, allows procedural waivers by the parties, and encourages full attention to the procedure and time lines by providing a "default" penalty upon the party which fails to respond in a timely fashion.

Statement of Need and Reasonableness

Changes Made to Proposed Rules Published on December 15, 1986.

- 5510.5110 Technical change to incorporate part 5510.5190.
- 5510.5120 Technical change to incorporate part 5510.5190.
- 5510.5130, Subp. 1 Technical change to incorporate part 5510.5190.
- 5510.5130, Subp. 5 This change is prompted by comments received and would continue the current right of exclusive representatives to grieve disciplinary action other than termination taken against probationary employees.
- 5510.5130, Subp. 6 This change is prompted by comments received and serves to simplify the meaning of the term.
- 5510.5130, Subp. 8 This change applies customary standards for service by mail and is intended to reduce potential controversy over timeliness of service.
- 5510.5150 This change restores the current 15 day period for serving a written grievance and is prompted by comments received.
- 5510.5160 This change restores the current ten day period for appealing a written grievance response and is prompted by comments received.
- 5510.5170, Subp. 1 This change is prompted by comments received and merely clarifies the service obligation of an exclusive representative which intends to arbitrate a matter.
- 5510.5170, Subp. 3 This change is prompted by comments received and restores the current scope or arbitral authority under the BMS Grievance procedure. It is appropriate to allow the desires of the parties and common professional conduct and practice in labor arbitration to govern the scope questions the deleted language attempted to set forth. No change in practice was intended in this area, yet it is arguable that a reviewing court could infer a change in authority by virtue of the new language in this area.
- 5510.5190 This change is prompted by comments received and is appropriate to avoid imposing changes in the terms of a contract which may not be agreed upon by the parties to that agreement. Since the parties may have negotiated their own procedure to avoid the provisions of the one being promulgated, but have no opportunity to do so during the life of an existing agreement, they should be permitted to live under the procedure in effect at the time their contract was executed.