

## Statement of Need and Reasonableness

### Proposed Amendments to Rules Relating to Transfer of Exclusive Representative Status.

General. Decisions interpreting the National Labor Relations Act, while not controlling, have been deemed instructive in determining the appropriate construction of the Public Employment Labor Relations Act, Minnesota Statutes Chapter 179A (International Union of Operating Engineers, Local 49 v. Minneapolis, 305 Minn. 364, 233 N.W. 2d 748 (1975); Minnesota State College Board v. PERB, 303 Minn. 453, 228 N.W. 2d 551 (1975)). On February 26, 1986, the U.S. Supreme Court unanimously held that a National Labor Relations Board rule requiring that nonunion employees be allowed to vote in elections transferring exclusive representative status from one employee organization to another exceeded the authority of the Board under the NLRA and constituted outside interference in union decision-making (National Labor Relations Board v. Financial Institution Employees of America, Local 1182, 54 LW 4203). The provisions of Minnesota Rule 5510.1210 were patterned after the NLRB policies and procedures struck down in this recent decision. It is appropriate to take notice of the opinion of the Supreme Court in this area when establishing procedures for the transfer of exclusive representative status under PELRA.

- 5510.1210, Subpart 3. Changes notice requirement to ensure that all members, but not necessarily all employees, within the appropriate unit receive written notice of a proposed transfer of exclusive representative status and any meeting(s) held to discuss the proposed transfer. The present rule denotes a right of nonmembers to determine internal union policy questions such as affiliations. The change conforms to the policy of allowing only union members to control the shape and direction of the union.
- 5510.1210, Subpart 4. This proposed amendment also reflects a shift to ensure that affected members of the union are provided adequate opportunity to participate in the discussion and decisions regarding transfer of exclusive representative status.
- 5510.1210, Subpart 5. Conforms to policy of preventing nonmembers from exerting control or influence upon internal decision making by the union.
- 5510.1210, Subpart 6. Guarantees that only members of the exclusive representative may decide questions of affiliation of transfer, while also ensuring that such membership rights are available to all employees in the appropriate unit.

Rules as Proposed

5510.1210 TRANSFER OF EXCLUSIVE REPRESENTATIVE STATUS.

Subpart 1. [Unchanged]

Subpart 2. [Unchanged]

Subpart 3. Notice. The exclusive representative must provide advance written notice of the proposed transfer to each employee member of the exclusive representative in the appropriate unit. The notice must state the time and location of the meeting or meetings to be held by the exclusive representative relating to the proposed transfer.

Subpart 4. Meeting. The exclusive representative must hold a meeting or meetings to permit discussion of the proposed transfer at a time and location which is reasonably convenient for the majority of the employees members of the exclusive representative in the appropriate unit.

Subpart 5. Election. The exclusive representative must conduct a secret ballot election among all-employees its members in the appropriate unit to determine approval or rejection of the proposed transfer in accordance with their constitutional requirements of the exclusive representative.

Subpart 6. Petition. If all employees in the appropriate unit have been afforded the opportunity to become members of the exclusive representative, and if a majority of the employees members of the exclusive representative voting in the election required by subpart 5 vote in favor of the transfer, a petition shall be filed by the exclusive representative with the director.

Subpart 7. [Unchanged]

Subpart 8. [Unchanged]