

In the Matter of
**Proposed Amendments to Rules of the
State Bureau of Mediation Services
Relating to Contract Bar, Fair Share
Fee Assessment, and Hearing Records**

**STATEMENT OF NEED
AND REASONABLENESS**

PART

NEED

REASONABLENESS

**5510.0510
Subpart 1.**

The Bureau has observed cases where a single party to a collective bargaining agreement has raised last-minute unit clarification issues during the course of contract negotiations. The consequences of such circumstances are highly disruptive of the bargaining process, cause protracted delays in the resolution of collective bargaining disputes, and have long-lasting negative impacts on the character of the labor-management process. The rule change is needed to prevent this disruption of bargaining, while protecting the right of either party to raise unit clarification issues -- in a timely manner.

The proposed rule allows single party petitions during that period in the life of a collective bargaining relationship when everything can be regarded as "up for grabs", while preventing such actions from unduly disrupting the bargaining process. Unit clarification and collective bargaining issues are disparate matters and, since unit issues are not mandatory subjects for bargaining, an arms-length relationship between them is appropriate. The rule allows a unit clarification matter to be raised at any time whenever both parties agree that it is an appropriate issue. The restraint it imposes upon single parties is reasonable in that they are free to raise any clarification issue, but must do so in a prudent and timely fashion.

**5510.1410
Subpart 1**

U.S. Supreme Court decisions on the subject of agency or fair share fees imposed upon non-members of an exclusive representative require that such non-members be provided with information regarding the use of such funds so that the right of non-members to object to impermissible use is protected. There has been confusion on the part of some exclusive representatives regarding the extent of the information which should be provided to non-members and current

The rule is reasonable in that it does not require the exclusive representative to create or maintain records or reports which are not common to good business practice, while providing the non-member with an opportunity to compare actual spending practices with proposed expenditures so that informed decisions can be made regarding the propriety of the amount of the fair share fee assessment, particularly where the fee is based upon prospective expenditures.

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practice varies widely. The proposed rule is needed to ensure that the information provided to non-members is sufficient to permit evaluation of the exclusive representative's pattern of spending and to enable the non-member to make informed decisions about potential grounds for challenging a fair share fee assessment.

The proposed rule also eliminates any requirement for the exclusive representative to file copies of fair share fee notices with the Bureau, a change which brings the rule into compliance with recent changes to M.S. 179A.06, subd. 3.

5510.1410
Subpart 4.

The proposed rule change is needed to clarify the escrow and processing requirements for fair share fee assessments deducted by public employers. Current language is confusing.

The proposed rule does not change intent, merely clarifies that only initial fair share fee deductions need be escrowed by the employer for 30 days.

5510.1510
Subpart 1.

The current rule requires unnecessary and redundant information be included in a petition challenging a fair share fee.

The proposed rule eliminates unnecessary data from the petition.

5510.1510
Subpart 3.

The current rule is inconsistent with State Operating Policies and Procedures #06;06;08.

The proposed rule is consistent with established policies.

5510.1510
Subpart 4.

Stylistic.

The proposed change establishes consistent terminology in these parts.

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5510.1910
Subpart 10.

The Bureau has encountered confusion and misunderstanding regarding the application of the current rule as to the production of transcripts and forwarding of the Bureau record upon appeal.

The language of this subpart is transferred to Subparts 11 and 12 and restated for ease of understanding and reference.

5510.1910
Subpart 11.

Because hearings before the Bureau are matters of public record, it is necessary to clarify procedures through which parties or the public may secure transcripts of such proceedings.

The Bureau has a 60-day retention schedule for the audio-magnetic or other verbatim record of hearings, and contracts with non-state vendors for the transcription of such records. The proposed rule retains provisions previously included in Subpart 10 while clarifying that parties need to request transcripts before the record retention period has elapsed.

5510.1910
Subpart 12.

Appeals from Bureau decisions are determined based upon the record established with the Bureau. It is, therefore, necessary to establish and/or clarify procedures for the preparation and forwarding of the record in the event of an appeal.

The proposed rule does not alter current policy or practice. It allows production of partial transcripts and records in the event of an appeal, while ensuring that the original decision-maker is able to present the full portion of the record upon which the decision was based.

Since an appeal may involve only one element of a much broader Bureau determination, it is unreasonable to require parties to assume the cost of a full transcript in order to appeal one particular element. However, in order to assure that an appealing party does not restrict the transcript and record to be forwarded to the appellate body to only those parts which favor its position, it is

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necessary that the Bureau retain the final determination as to the extent of the transcript and/or record to be provided.