

In the Matter of
Proposed Amendment to Rules of the
State Bureau of Mediation Services
Relating to Referral to Arbitration

STATEMENT OF NEED
AND REASONABLENESS

PART

NEED

REASONABLENESS

5510.2930,
Subpart 1

Open-window periods exist, in part, to assure that employees have an opportunity to freely choose to change or retain their exclusive representative at least once every 3 years if they so desire. To balance this employee right, an incumbent exclusive representative's rights are assured through an arbitration bar which prevents questions of representation and decertification from being raised when issues on a contract have been certified to arbitration. This arbitration bar was intended to assure that the exclusive representative who negotiated the contract to impasse would continue to be the exclusive representative for the duration of that contract. An unexpected result of these two provisions occurs when a contract has been certified to arbitration before the designated open-window period occurs. Just such an occurrence has raised the question of whether or not the arbitration bar pre-empts the open-window period. This proposed rule change is needed to assure that the arbitration bar cannot pre-empt the open-window period and thus inadvertently or intentionally prevent employees from exercising their rights under PELRA.

This change is reasonable in that it protects the rights of employees to raise questions of representation or decertification prior to the expiration of an existing contract sufficiently in advance to allow any change in exclusive representative to be settled before extensive negotiations of a successor contract. Further, it leaves intact the exclusive representative's protection through the arbitration bar. It does both by assuring that the Bureau does not certify issues to arbitration until after the open-window period has closed.

In the Matter of
Proposed Amendment to Rules of the
State Bureau of Mediation Services
Relating to Arbitration Bar

STATEMENT OF NEED
AND REASONABLENESS

PART

NEED

REASONABLENESS

5510.0510,
Subpart 4

This change is necessary to extend the protection of the arbitration bar to initial contract negotiations. When this rule was originally promulgated in 1984, the language was drafted as the result of experiences with successor contracts and was thus limited to such. However, the protection of the arbitration bar is as essential to initial contracts as it is to successor contracts and this change is necessary to clarify that applicability.

This change is reasonable in that it preserves the fundamental public policy objective of the Public Employment Labor Relations Act (PELRA) which is to promote orderly and constructive relationships between employers and exclusive representatives. Certification to impasse occurs only when the commissioner is convinced that substantial good-faith bargaining efforts have been made by the parties. Thus such certification occurs once a contract is substantially intact and contains substantial agreed upon terms and conditions of employment with only the remaining items in dispute to be decided in arbitration. At this eleventh hour in the bargaining process, stable and harmonious labor relations are promoted by a bar to rival petitions that could possibly negate the entire bargaining process that had occurred.