

BEFORE THE BOARD OF PERSONNEL APPEALS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of)
ARM [list in numerical order], the)
adoption of New Rules I through __, and)
the repeal of ARM [list in numerical)
order] pertaining to the practices and)
procedures before the Board of)
Personnel Appeals.)

NOTICE OF PUBLIC HEARING ON
PROPOSED AMENDMENT,
ADOPTION, AND REPEAL

TO: All Concerned Persons

1. On [Date], at [Time] [a.m./p.m.], a public hearing will be held in [Room #, Building], [Address], Helena, Montana, to consider the proposed amendment, adoption, and repeal of the above-stated rules.

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Personnel Appeals no later than 5:00 p.m., on [one week before the hearing], to advise us of the nature of the accommodation that you need. Please contact [contact name], Board of Personnel Appeals, P.O. Box 201503, Helena MT 59620-1503; telephone (406) [telephone]; Montana TTD (406) 444-5549; facsimile (406) [fax]; or [e-mail].

3. GENERAL STATEMENT OF REASONABLE NECESSITY: There is a reasonable necessity to amend existing rules, adopt new rules, and repeal existing rules to update and clarify the board's processes and procedures. The changes adopt current business practices used by the board, including use of email, electronic documents, and electronic signatures. The rules clarify and define the roles of a board agent and the board, terms that were often used interchangeably under the old rules. The changes clarify the investigation, hearing, and appeal procedures for any grievance, appeal, petition, or complaint filed with the board. This update to the rules reduces the number of rules, removes duplicative rules, and removes rules that only duplicate statutory language.

There is also a reasonable necessity to amend existing rules, adopt new rules, and repeal existing rules to reflect the repeal of ARM Title 24, ch. 25, Collective Bargaining for Nurses. ARM Tile 24, ch. 25 contains rules that are the same in substance and language to rules in ARM Title 24, ch. 26, Board of Personnel Appeals. ARM Title 24, ch. 25 also contains rules that cross-reference the procedures in ARM Title 24, ch. 26. The few differences between ARM Title 24, ch. 25 and 26, based on the statutory differences between Title 39, ch. 31 and ch. 32, MCA, are reflected in the rules below. Where appropriate, the rules have been

amended to include the appropriate authorizing and implementing statutes found in Title 2, ch. 4, MCA, and Title 39, ch. 31 and ch. 32, MCA.

4. The board proposes the amendment of the following rules, stricken matter interlined, new matter underlined:

24.26.102 BOARD MEETINGS, QUORUM (1) The Board of Personnel Appeals shall meet upon the call of the chair or at the written request of at least three members. The board shall meet at a time and place designated by the chair or members calling the meeting.

(2) For the purpose of these rules, the term "representative quorum" means at least one of the appointed management board members, one of the appointed labor union or association members, and the chair or the chair's substitute.

~~(2) (a) A majority of the membership, provided that the chairperson is present, constitutes a quorum to do business. A representative quorum of at least three members is required to do substantive business, including adopt any resolution, motion, or other decision that is not purely procedural in nature. For the purpose of this rule, the term "representative quorum" means at least one of the appointed management board members, one of the appointed labor union or association members, and the chair or his or her substitute.~~

(b) A favorable vote of the representative quorum is sufficient to adopt any resolution, motion, or other decision that is not purely procedural.

(c) All board members shall serve as impartial decisionmakers and are not appointed to serve the organizations they represent.

(3) A single board member may issue a purely procedural order in a proceeding before the board. For example, a single board member may sign an order regarding a briefing schedule, or an order extending the time in which a party may file a brief.

(4) Unless otherwise provided by statute and not subject to modification, upon a showing of good cause the board may suspend, waive, or modify these rules to expedite decision, to prevent manifest prejudice to a party, to assure fair proceedings, or to afford substantial justice.

~~(3) The board shall select a member or an agent to act as administrator of the board.~~

AUTH: 2-4-201, 39-31-104, 39-32-103, MCA

IMP: 2-4-201, 2-15-124, 2-15-1705, MCA

REASON: The proposed amendments clarify the board's definition of a "representative quorum," and the procedures for completing both substantive and procedural matters. The amendments also clarify that the board has the power to suspend, waive, or modify its own rules, unless those rules are based on statutory requirements.

24.26.207 DEFINITIONS

(1) "Board" means the Board of Personnel Appeals and in the appropriate context may also mean an agent appointed by the board to perform certain board functions.

(2) "Board agent" means any a person designated by the board to act on its behalf.

(3) "CBA" means a collective bargaining agreement, as defined in 39-31-306, MCA. Any CBA negotiated between a public employer and a labor organization pursuant to Title 39, ch. 31 or 32, shall be for a duration of a minimum of 12 months.

(4) "Complainant" means a party or authorized lay representative who alleges a ULP complaint by a public employer or labor organization.

(3) and (4) remain the same but are renumbered as (5) and (6).

(7) "Department" means the Montana Department of Labor and Industry, unless otherwise specified in these rules.

(8) "Department designee" means any person authorized by one of the 20 principal departments within the executive branch, as provided by the constitution, to act on behalf of a department in a personnel matter.

(9) "Department head" means a director, commission, board, commissioner, or constitutional officer in charge of one of the 20 principal departments within the executive branch, as defined in 2-15-102, MCA.

(10) "Employee" means any person employed by the state of Montana, except persons exempt from policy under 2-18-103 and 2-18-104, MCA.

(11) "Excelsior list" means the list of employees who are included in the bargaining unit or proposed bargaining unit when petition for election is filed with the board. The excelsior list must include the employees current name, address, phone number, position, and job classification. The excelsior list must be provided by the public employer to the board agent and the petitioner within ten days of the board agent's mailing of the petition for election to the public employer.

(12) "Ex parte communication" means any communication between a party, or the party's authorized representative, and the board, board member(s), board agent, or hearing officer assigned to the case concerning a fact in dispute or merits of the case. A communication is only considered an ex parte communication once the matter has been referred for a hearing before a hearing officer or the board.

(13) "Grievance" means a grievance filed with the board contesting or challenging the operation of the broadband classification and pay plan, Title 2, chapter 18, pt. 1-3, MCA.

(14) "Grievance form" means the state employees classification and compensation appeal form.

(15) "Hearing officer" means a board agent from the department's Office of Administrative Hearings designated by the board to conduct hearings on matters before the board.

~~(5) (16) "Party" is any person, labor organization, or employer filing a petition, complaint, charge, or appeal grievance, appeal, petition, or complaint with the board; any person, labor organization, or employer named as a party in a petition, complaint, charge, or appeal, grievance, appeal, petition, or complaint; or any other person, labor organization, or employer whose timely motion to intervene has been granted.~~

(6) remains the same but is renumbered as (17).

(18) "Proof of interest" means the confidential authorization cards defined in ARM 24.26.604.

~~(7)~~ (19) "Petitioner" means a party any person, labor organization, or employer who files a petition with the board.

(20) "Probable merit" means supported by substantial competent evidence. It is more than a scintilla of evidence, but it may be less than a preponderance of the evidence.

(8) remains the same but is renumbered as (21).

(22) "Question of representation" means there is a question of whether a group of employees support a labor organization or existing exclusive representative to represent the group of employees for collective bargaining purposes.

~~(9)~~ (23) "Respondent" means a party any person, labor organization, or employer who is required to respond to a complaint, petition, or charge grievance, appeal, petition, or complaint filed with the board.

(24) "State Human Resources Division" means the State Human Resources Division of the Department of Administration.

(25) "ULP" means an unfair labor practices complaint filed with the board alleging an unfair labor practice against a public employer or a labor organization, as defined in 39-31-103(12); 39-31-401, and 39-31-402, MCA.

AUTH: 39-31-104, 39-32-103, MCA

IMP: 2-4-201, 2-18-1011, 39-31-101, 39-31-103, 39-31-207, 39-31-401, 39-31-402, 39-31-405, 39-32-112, 39-32-113, MCA

REASON: The proposed amendments consolidate the board's definitions into one rule. The amendment combines and replaces 24.25.201 DEFINITIONS, 24.26.502 DEFINITIONS, and 24.26.601 DEFINITIONS. The amendments add definitions for the board's election procedures for collective bargaining units, including "excelsior list," "proof of interest," and "question of representation." The amendments also clarify the difference between the "board," a "board agent," and a "hearing officer."

24.26.204 INTERVENTION (1) Any state employee, group of state employees, employee exclusive representative, labor organization, or public employer may be permitted to intervene in any grievance, appeal, petition, or complaint before the board by serving a motion to intervene upon the parties and the board. The motion shall be accompanied by affidavit(s) establishing a basis for intervention. The board agent shall determine the validity of the basis for intervention.

AUTH: 2-4-201, 39-31-104, 39-32-103, MCA

IMP: 2-4-201, 2-18-1011, 2-18-1012, 39-31-201, 39-31-207, 39-31-208, 39-31-405, 39-31-406, 39-32-112, 39-32-113 MCA

REASON: The proposed amendments clarify who may file a motion to intervene in any grievance, appeal, petition, or complaint before the board. The amendments also combine the existing rule with 24.25.103 INTERVENTION.

24.26.209 LAY REPRESENTATION BEFORE THE BOARD OR BOARD AGENT

(1) A lay representative, authorized by a party to the proceedings, may be permitted to appear in proceedings before the board or before an agent of the a board agent on behalf of interested parties so long as this lay representative does not charge a fee to provide representation and is not otherwise compensated for the representation except for the remuneration that he or she may receive as a permanent employee of the party to the proceedings.

AUTH: ~~2-4-201~~, 39-31-104, 39-32-103, MCA

IMP: 2-4-201, 39-31-201, 39-32-112, 39-32-113, MCA

REASON: The proposed amendments modernize the language of the existing rule. The proposed amendments apply this rule to Title 39, ch. 32, MCA, Collective Bargaining for Nurses.

24.26.229 EX PARTE COMMUNICATIONS (1) At any time that petitions, complaints, objections, election challenges, or other contested case matters have been set for hearing by the board or its agents before the hearing officer or the board, ex parte communications are prohibited.

~~(2) if any party or counsel in the case communicates with the board, board member, or the board agent assigned to such case, concerning any fact in dispute the case, an ex parte communication occurs, the board, board member, or board agent, or hearing officer as appropriate, shall notify all other parties of the communication in writing. and counsel in the case of such communications, either orally or in writing, and The board member, board agent, or hearing officer shall expressly include a written statement of such communication, notification to other parties and counsel, and responses received thereto in the record of the case.~~

~~(2)~~ (3) The mere noting of such ex parte communications in the record will not be considered evidence of the facts in dispute or merits of the case unless otherwise agreed by all parties to the case. The board and its agents shall rely only on the admissible evidence of record in determining the merits of any disputed issue in a case.

~~(3)~~ (4) This rule shall not apply to matters presented or obtained during preliminary investigation of the petition, complaint, objections, or challenge, made by board agents prior to the referral to a hearing officer or the board or service of the notice of hearing in a case, and shall not apply to requests for subpoenas.

(5) This rule shall not apply to purely procedural questions for the board agent or department staff such as discussions of extensions of time, scheduling, administrative matters, and/or questions of procedure.

AUTH: ~~2-4-201~~, 39-31-104, 39-32-103, MCA

IMP: 2-4-201, 39-31-105, 39-32-112, 39-32-113, MCA

REASON: The proposed amendments clarify the procedure for ex parte communications with the board. The amendments also clarify what is and is not an ex parte communication. The proposed amendments apply this rule to Title 39, ch. 32, MCA, Collective Bargaining for Nurses.

24.26.518 FAILURE OF DEPARTMENT HEAD, DESIGNEE, OR STATE HUMAN RESOURCES DIVISION TO ACT WITHIN PRESCRIBED TIME LIMIT

(1) remains the same.

AUTH: ~~2-18-1011~~, 39-31-104, MCA

IMP: 2-18-1011, MCA

REASON: The proposed amendments reflect the proper authorizing statute board rulemaking under Title 39, ch. 31, MCA.

24.26.523 FILING OF A NEW PETITION FOR HEARING AFTER FINAL ORDER ISSUED (1) - (2) remain the same.

(3) The petition and the affidavit shall proceed through the appeals procedure as prescribed in ~~ARM 24.26.508 up to step three (b)~~ NEW RULE IX GRIEVANCE PROCEDURE – STEP 1: DEPARTMENT HEAD OR DESIGNEE, NEW RULE X GRIEVANCE PROCEDURE – STEP 2: STATE HUMAN RESOURCES DIVISION, NEW RULE XI GRIEVANCE PROCEDURE – STEP 3: REVIEW BY BOARD AGENT.

(4) A board ~~or its designee~~ agent shall ~~then~~ conduct a preliminary investigation to determine if the alleged substantial change warrants a new hearing.

(a) If it is determined the alleged substantial change warrants a new hearing, the grievance procedure shall proceed as prescribed in ~~ARM 24.26.508~~ NEW RULE XI GRIEVANCE PROCEDURE – STEP 3: REVIEW BY BOARD AGENT.

(b) If it is determined the alleged substantial change does not warrant a new hearing, ~~the petition shall be dismissed~~ board agent shall issue a written order dismissing the petition. ~~(5) The order to dismiss shall be an appealable order.~~

(i) If a party disputes the dismissal, the board agent may refer the matter to the hearing officer pursuant to NEW RULE V HEARING OFFICER PROCEEDINGS AND RECOMMENDED ORDER. The hearing officer is not bound by the statutory or common law rules of evidence in this hearing.

(ii) If the employee or the department disputes the recommended order of the hearing officer, either party may file objections pursuant to NEW RULE VI BOARD REVIEW OF HEARING OFFICER'S RECOMMENDED ORDER within 20 days of service of the hearing officer's recommended order.

AUTH: 39-31-104, MCA

IMP: 2-18-1011, 2-18-1012, MCA

REASON: The proposed amendments update the cross-references to the new grievance procedure for a classification and compensation grievance. The amendments clarify the appeal process for a classification and compensation grievances.

24.26.530 FREEDOM FROM INTERFERENCE, RESTRAINT, COERCION, OR RETALIATION

(1) – (3) remain the same.

(4) After ten days have elapsed from the date of service of the complaint, ~~the board shall commence with step four (d) of the formal grievances procedure~~ a board agent shall refer the matter to a hearing officer pursuant to NEW RULE V HEARING OFFICER PROCEEDINGS AND RECOMMENDED ORDER.

(5) If the employee or the department disputes the recommended order of the hearing officer, either party may file objections pursuant to NEW RULE VI BOARD REVIEW OF HEARING OFFICER'S RECOMMENDED ORDER within 20 days of service of the hearing officer's recommended order.

AUTH: 39-31-104, MCA
IMP: 2-18-1011, MCA

REASON: The proposed amendments update and clarify the appeal procedure for a claim of interference, restraint, coercion, or retaliation made against a department employer by an employee who has filed a classification and compensation grievance.

5. The board proposes the amendment and transfer of the following rules:

24.26.603 (24.26.XXX) FILING OF LABOR ORGANIZATION'S BYLAWS
(1) – (2) remain the same.

AUTH: 39-31-104, 39-32-103, MCA
IMP: 39-31-206, 39-32-113, MCA

REASON: The proposed amendments apply this rule to Title 39, ch. 32, MCA, Collective Bargaining for Nurses and combine the existing rule with 24.25.203 FILING OF LABOR ORGANIZATION'S BYLAWS.

24.26.604 (24.26.XXX) REQUIREMENTS FOR PROOF OF INTEREST AUTHORIZATION DOCUMENTS - CONFIDENTIALITY
(1) – (2) remain the same.

AUTH: 39-31-104, 39-32-103, MCA
IMP: 39-31-207, 39-32-113, MCA

REASON: The proposed amendments apply this rule to Title 39, ch. 32, MCA, Collective Bargaining for Nurses and combine the existing rule with 24.25.204 PROOF OF INTEREST CONFIDENTIAL.

24.26.651 (24.26.XXX) MERGERS AND CONSOLIDATIONS
(1) remains the same.

AUTH: 39 31 104, 39-32-103, MCA
IMP: 39-31-206, 39-31-207, 39-32-113, MCA

REASON: The proposed amendments apply this rule to Title 39, ch. 32, MCA, Collective Bargaining for Nurses.

24.26.665 (24.26.XXX) RUNOFF

(1) – (3) remain the same.

AUTH: 39-31-104, 39-32-103, MCA

IMP: 39-31-208, 39-32-113, MCA

REASON: The proposed amendments apply this rule to Title 39, ch. 32, MCA, Collective Bargaining for Nurses.

24.26.667 (24.26.XXX) CERTIFICATION (1) If an election occurred and no objections are filed within the time set forth above, or if the challenged ballots are insufficient in number to affect the result of the election, the board shall ~~forthwith issue to~~ serve the parties a certification of exclusive representative, where appropriate.

(2) In order to be certified by the board as the exclusive representative for any bargaining unit that existed before July 1, 1973, and is presently in existence, the labor organization must submit a copy of the existing ~~collective bargaining agreement~~ CBA as support of its claim.

AUTH: 39-31-104, 39-32-103, MCA

IMP: 39-31-208, 39-32-113, MCA

REASON: The proposed amendments apply this rule to Title 39, ch. 32, MCA, Collective Bargaining for Nurses and modernize the language of the rule.

24.26.695 (24.26.XXX) INTEREST MEDIATION

~~(1) When a dispute over the negotiation of a collective bargaining agreement exists between the~~ If a public employer and a labor organization ~~after a reasonable period of negotiation or upon expiration of the collective bargaining agreement,~~ either have a dispute over the negotiation of a new or expired CBA, one or both of the parties shall file a written petition with the board for interest mediation. ~~The original of the petition shall be signed by the petitioner or the authorized representative. The petitioner shall serve a copy of the petition simultaneously upon any party named in the petition. The petition shall contain:~~

(2) The petition shall be filed with the board pursuant to NEW RULE I DOCUMENT FORM and NEW RULE II DOCUMENT SERVICE. The petition shall contain:

(a) the name, address, and telephone number of the ~~petitioner or~~ labor organization and the organization's authorized representative;

(b) the name, address, and telephone number of the public employer;

(c) a description of the unit involved;

~~(d) the name, address, and telephone number of the recognized or certified labor organization and authorized representative thereof;~~

~~(e)~~ (d) a description of the dispute in detail;

~~(f)~~ (e) a statement as to what assistance is requested; and

~~(g)~~ (f) a statement indicating if the request is unilateral or joint.

~~(2)~~ (3) A petition may be withdrawn with the consent of the board.

~~(3)~~ (4) Upon petition for interest mediation, the board shall designate a qualified labor mediator ~~who is an agent of the board~~ to mediate the dispute. ~~Upon the written request of both parties, the board may instead request a mediator from the federal mediation and conciliation service, if one is available.~~

~~(4)~~ (5) Any information disclosed to the mediator in the performance of these duties shall not be divulged unless approved by the parties involved. All files, records, reports, documents, or other papers received or prepared by the mediator shall be classified as confidential and not as a public record. All communications, verbal or written, from the parties to the mediator and any information and evidence presented to the mediator during the proceeding are confidential. Such matters shall not be disclosed to anyone a non-party to the mediation without the prior written consent of the board all parties to the mediation.

~~(5)~~ (6) The mediator shall not testify or produce any confidential records or testimony evidence with regard to any mediation ~~on behalf of a party to any case pending to a non-party without written consent of all parties~~ or in any proceeding before any court, board, investigatory body, arbitrator, or fact finder without the written consent of ~~the board~~ all parties.

~~(6)~~ (7) The mediator may hold separate or joint meetings with the parties or their representatives, ~~and such meetings shall be private and nonpublic, except if otherwise mutually agreed upon by the parties.~~ Unless otherwise required by the constitution, mediations pursuant to this rule shall be held in private unless both parties agree in writing to waive private meetings.

AUTH: 39-31-104, 39-32-103, MCA

IMP: 39-31-307, 39-31-308, 39-32-112, MCA

REASON: The proposed amendments simplify the existing language. The proposed amendments clarify that the right of privacy in mediation proceedings is held by the parties, not the board as previously stated in the rules. The proposed amendments combine the existing rule with 24.25.801 PETITION and 24.25.802 MEDIATION. The proposed amendments apply this rule to Title 39, ch. 32, MCA, Collective Bargaining for Nurses.

24.26.695A (24.26.XXX) GRIEVANCE MEDIATION

(1)-(3) remain the same.

AUTH: 39-31-104, 39-32-103, MCA

IMP: 39-31-307, 39-31-308, 39-32-112, MCA

REASON: The proposed amendments apply this rule to Title 39, ch. 32, MCA, Collective Bargaining for Nurses and combine the existing rule with 24.25.801 PETITION and 24.25.802 MEDIATION.

24.26.697 (24.26.XXX) FACT FINDER

(1) ~~Either party to a dispute~~ the public employer or the exclusive representative may petition the board to initiate factfinding or, ~~if it is apparent that matters in disagreement might be more readily settled if facts involved were determined and publicly known, if public determination of facts and disagreements will expediate settlement,~~ the board may initiate factfinding in accordance with 39-31-308, MCA.

(2) Within three days of receipt of a party's petition for factfinding, the board agent shall submit a list of five qualified, disinterested persons to each of the parties to the dispute.

~~(3)~~ (a) Within five days of receipt of the list, the parties shall select a fact finder by having the petitioner strike two names and then the other party strike two names. The remaining name is that of the fact finder.

~~(4)~~ (b) The parties shall ~~immediately~~ notify the board agent of the name of the fact finder.

~~(3)~~ The board shall ~~notify the fact finder along with a request to immediately~~ shall establish dates and places of hearings.

(5) remains the same but is renumbered as (4).

~~(6)~~ (5) The fact finder may request the board agent to make the report public five days after the parties are served with the findings.

~~(7)~~ (6) Fifteen days after the parties are served the board agent shall ~~provide that~~ publicly post the fact finder's report ~~is open to public inspection.~~

~~(8)~~ (7) When a party petitions the board to initiate factfinding, the cost of factfinding must be equally borne by the parties. ~~The fact finder shall, within ten working days of the written findings, send a copy of the invoice to both parties on which they will be billed for one-half of the total. The parties shall pay directly to the fact finder within five~~ ten days.

~~(9)~~ (8) When the board initiates factfinding, the cost of factfinding proceedings must be equally borne by the board and the parties concerned. ~~The fact finder shall, within ten working days of the written findings, submit an invoice of the costs and fees to the board which shall send copies of the invoice to both parties on which they will be billed for one-third of the total. The parties shall pay the board within five~~ ten days and the board shall forward the total amount to the fact finder.

(9) Nothing in these rules prohibit the factfinder from mediating a matter that has been submitted for factfinding.

AUTH: 39-31-104, 39-32-103, MCA

IMP: 39 31 309, 39-32-112, MCA

REASON: The proposed amendments apply this rule to Title 39, ch. 32, MCA, Collective Bargaining for Nurses, combine the existing rule with 24.25.803 FACT FINDER, and simplify the existing language.

24.26.698 (24.26.XXX) ARBITRATION (1) The parties may, ~~at any period in the negotiations, agree to submit the issues to binding arbitration in accordance with 39-31-310, MCA.~~

~~(2) Both parties shall jointly notify the board in writing of this decision and of the identity of the arbitrator.~~

~~(3) (2)~~ The parties may petition the board to assist in the selection of the arbitrator by requesting that the board submit to them a panel provide a list of qualified arbitrators.

(3) Nothing in these rules shall be construed to limit the right of parties to select jointly any arbitrators or arbitration procedure acceptable to them.

AUTH: 39-31-104, 39-32-103, MCA

IMP: 39-31-310, 39-32-112, MCA

REASON: The proposed amendments apply this rule to Title 39, ch. 32, MCA, Collective Bargaining for Nurses, combine the existing rule with 24.25.804 ARBITRATION, and simplify the language.

24.26.698A (24.26.XXX) PANEL OF ARBITRATORS AND FACT FINDERS

(1) The board shall maintain a panel of qualified labor arbitrators and fact finders, ~~for referral, upon request,~~

(2) Upon request by one or more parties to a labor dispute, a board agent shall provide the parties with a list of arbitrators or fact finders randomly selected from the board's panel to the parties to the dispute.

~~(3) Panel members are expected to conform to the ethical standards and procedures set forth in the code of professional responsibility for arbitrators of labor disputes as approved by the national academy of arbitrators. The board has established procedures to compile lists and appoint arbitrators or fact finders from such lists and considers such facts as background, experience, availability, acceptability, geographical location, and the expressed preferences of the parties.~~

~~———— (2) Persons seeking to be listed on the panel must complete and submit an application form. The form may be obtained from the board offices, 1805 Prospect Avenue, Helena, or by writing to the board, P.O. Box 1728, Helena, MT 59624-1728. Upon receipt of an executed form, the board will review the application, assure that it is complete, and make any necessary inquiries. The board will review the completed application in light of the criteria set forth below and will decide whether an applicant should be listed on the panel. Each applicant will be notified in writing of the board's decision.~~

(4) Arbitrators or fact finders may submit a resume to the board at PO Box 201503, Helena, MT 59620, or by emailing the resume to dlierdbopa@mt.gov. Upon receipt of the resume and request to be included on the panel of arbitrators and fact finders, a board agent shall review the resume and make any necessary inquiries.

~~(3) (5)~~ Applicants will be accepted on the panel if they:

~~(a)(i)~~ are experienced in decision-making roles in the resolution of labor-management disputes; ~~or (ii)~~ have extensive experience in relevant positions in collective bargaining;

(b) are capable of conducting an orderly hearing, can analyze testimony and exhibits; and

(c) can prepare clear and concise findings and awards within reasonable time limits.

~~(4) The qualifications listed in subsection (3) of this rule are best demonstrated by the submission of actual arbitration awards and/or fact finding~~

~~reports prepared by the applicant while serving as an impartial arbitrator chosen by the parties to disputes. Equivalent experience acquired in training, internship or other development programs, or experience such as that acquired as a hearing officer or judge in labor relations controversies also may be considered by the board.~~

~~(5) remains the same but is renumbered as (6).~~

~~(6) (7) Initial listing on the panel may be for a period not to exceed three years and may be renewed for periods not to exceed two years, provided upon review the listing is not canceled by the board as set forth below. Notice of cancellation may be given to the member whenever the member: A board agent shall review the panel of Arbitrators and Fact Finders on a yearly basis and contact panel members to verify contact information, qualifications, and to ensure that panel members still wish to remain on the panel.~~

~~(a) no longer meets the criteria for admission;~~

~~(b) has been repeatedly and flagrantly delinquent in submitting awards;~~

~~(c) has refused to make reasonable and periodic reports to the board as required;~~

~~(d) has been the subject of complaints by parties who use board panels and the board, after appropriate inquiry, concludes that just cause for cancellation has been shown; or~~

~~(e) is determined by the board to be unacceptable by the parties, based on board records showing the number of times the arbitrator or fact finder's name has been proposed to the parties and the number of times the person has been selected.~~

~~(7) (8) When, pursuant to a request, the board submits a list of arbitrators or fact finders to the parties to a dispute, the names on the lists shall be drawn at random from the panel described above. However, the board will attempt to comply with a joint request of the parties to restrict the lists in any of the following ways:~~

~~(a) only arbitrators who are listed on the labor arbitration panel of the American arbitration association; or the federal mediation and conciliation service or~~

~~(b) only arbitrators who are members of the national academy of arbitrators;~~
~~or~~

~~(b) only arbitrators whose resumes filed with the board show that they are engaged exclusively or primarily in the practice of arbitration or fact finding; or~~

~~(c) only arbitrators who reside in Montana.~~

~~(8) (9) If they desire, the The parties may jointly request a second list of arbitrators or fact finders. A second list will consist of names drawn at random from the panel without regard to any restrictions requested by the parties.~~

~~(9) (10) Arbitrators and fact finders selected by the parties pursuant to referral of their name by the board shall notify the board of acceptance of appointments, scheduling of hearing, continuances or postponements, and cancellations.~~

~~(10) (11) Arbitrators and fact finders listed on the panel shall provide the board with one a copy of all written decisions or recommendations issued.~~

~~(11) Nothing contained herein should be construed to limit the right of parties to select jointly any arbitrators or arbitration procedure acceptable to them.~~

AUTH: 39-31-104, 39-32-103, MCA

IMP: 39-31-308, 39-31-310, 39-32-112, MCA

REASON: The proposed amendments apply this rule to Title 39, ch. 32, MCA, Collective Bargaining for Nurses, and simplify the board's process for creating and maintaining a panel of arbitrators and factfinders.

6. The board proposes the adoption of the proposed new rules:

a. New Rules – General Board Procedure

NEW RULE I DOCUMENT FORM

(1) All petitions, objections, motions, requests for enlargement of time, briefs, documents, and other papers filed with the board shall be eight and one-half inches by eleven inches (8½" x 11") in size, standard quality, opaque, unglazed paper, and in 12-point font or larger, double-spaced, and clearly legible. Exhibits or other documents shall be reproduced in like size unless the original exhibit is required. The board may require the reproduction of an oversized demonstrative or other exhibit in a size appropriate for the record.

(2) All submissions to the board should be captioned with the case's title and the assigned case number.

(3) All submission to the board must be signed by a party or a party's authorized representative. The board shall accept electronic signatures as defined in 1-5-602, MCA, in using the "/s/," for example, "/s/ James W. Murry."

AUTH: 39-31-104, 39-32-103, MCA

IMP: 39-31-105, 39-32-112, 39-23-113, MCA

REASON: The proposed new rule replaces 24.26.211 BRIEFS and 24.25.102 SERVICE, FILING, COMPUTATION OF TIME, combines those rules with sections in 24.26.215 HEARINGS and 24.25.107 HEARINGS. The new rule clarifies the formatting requirements for all submissions made to the board.

NEW RULE II DOCUMENT SERVICE

(1) All objections, motions, request for enlargement of time, briefs, and exhibits filed with the board must be served upon all parties of record, including intervenors or other parties allowed to appear for special purposes.

(a) The documents must contain or be accompanied by a certificate of service showing proof of the method of service and the date upon which such service was made.

(b) Service shall be made by personal delivery, first class mail, postage prepaid, electronic submission, or by any other method reasonably calculated to effect actual notice to all parties to the action.

(2) A party shall inform the board of any change of address within five days of the change.

AUTH: 39-31-104, 39-32-103, MCA

IMP: 39-31-105, 39-32-112, 39-23-113, MCA

REASON: The proposed new rule replaces 24.26.203 SERVICE AND FILING and 24.25.102 SERVICE, FILING, COMPUTATION OF TIME. The new rule clarifies what documents must be served on all parties to a proceeding before the board.

NEW RULE III FILINGS WITH THE BOARD

(1) Any document required or permitted to be filed with the board may be filed electronically or by hard copy.

(2) The electronic mail address for document filing is to dlierdhopa@mt.gov. Documents to be filed by e-mail must be attached in a .pdf format. Filings may be submitted in multiple attachments if necessary, and attachments totaling over ten MB may be sent to the board over the State's File Transfer Service.

(3) Hard copy filings may be mailed to the following address: Board of Personnel Appeals, P.O. Box 201503, Helena, MT 59620. The board's physical location is 1805 Prospect Avenue, Helena, MT 59601.

(4) A document is filed with the board, no matter how it is transmitted, on the date it is received by the board, not the date it is mailed. It is the responsibility of the filing party to ensure that documents are timely received by the board.

AUTH: 39-31-104, 39-32-103, MCA

IMP: 39-31-105, 39-32-112, 39-23-113, MCA

REASON: The proposed new rule replaces and combines 24.26.202 BOARD OF PERSONNEL APPEALS ADDRESS, 24.26.203 SERVICE AND FILING, 24.25.101 BOARD OF PERSONNEL APPEALS ADDRESS and 24.25.102 SERVICE, FILING, COMPUTATION OF TIME. The new rule updates and clarifies the acceptable methods for filing documents with the board and eliminates facsimile filing. The new rule also updates the board's email address, mailing address, and physical address.

NEW RULE IV TIME

(1) For the purposes of these rules, the term "day" means calendar day.

(2) In computing any period of time for acts required by the board's rules, time will be computed by excluding the first day and including the last day unless the last day falls upon a Saturday, Sunday, or legal holiday. In that event, the period runs until the end of the next day which is not a Saturday, Sunday, or legal holiday.

(3) The date of service is computed from the date on which service is made, as shown by the certificate of service or date of mailing. Service made by mail is complete upon mailing.

(4) Except as to dates fixed by statute and not subject to modification, the board may enlarge the time to perform an act required by these rules upon a written request of a party and good cause shown. A written request for an enlargement of time shall indicate that every other party has been contacted and whether any other party objects to the request.

AUTH: 39-31-104, 39-32-103, MCA

IMP: 39-31-105, 39-32-112, 39-23-113

REASON: The proposed new rule replaces 24.26.206 COMPUTATION OF TIME and 24.25.102 SERVICE, FILING, COMPUTATION OF TIME. The new rule clarifies and simplifies the method for calculating time in any proceeding before the board and specifies the method for requesting an enlargement of time.

NEW RULE V HEARING OFFICER PROCEEDINGS AND RECOMMENDED ORDER

(1) The board may refer matters to a hearing officer for consideration.
(2) All documents, pleadings, and papers filed with the Office of Administrative Hearings must comply with NEW RULE I DOCUMENT FORM and NEW RULE II DOCUMENT SERVICE.

(3) Documents may be filed with the Office of Administrative Hearings by mail or by other means deemed acceptable by the hearing officer. The address to mail documents is the Office of Administrative Hearings, Department of Labor and Industry, P.O. Box 1728, Helena, Montana 59624-1728.

(4) Filing with the Office of Administrative Hearings is effective upon actual receipt at the offices of the department or by the hearing officer and not upon mailing.

(5) A hearing officer shall conduct a hearing and related proceedings, consider evidence presented by the parties, and produce a written recommended order. The hearing officer shall serve the recommended order on all parties of record, including any intervenors.

AUTH: 39-31-104, 39-32-103, MCA

IMP: 2-18-1011, 39-31-105, 39-32-112, 39-32-113, MCA

REASON: The proposed new rule replaces and combines 24.26.215 HEARINGS and 24.25.107 HEARINGS. The new rule clarifies and simplifies the method for referring matters to the department's Office of Administrative Hearings.

NEW RULE VI BOARD REVIEW OF HEARING OFFICER'S RECOMMENDED ORDER

(1) A party may request review of the hearing officer's recommended order by filing objections with the Board within 20 days of service of the hearing officer's recommended order. Any objection must include all the party's specific objections and reasons for the objections. A party requesting review of the transcript must so state in the party's objection.

(a) If review of the transcript is not requested, briefs shall be due as follows:

(i) A party who wishes to file a response brief to an opposing party's objections must file and serve the response brief within 34 days of service of the hearing officer's recommended order.

(ii) A party who wishes to file a reply brief to an opposing party's response brief must file and serve the reply brief within 14 days of service of the response brief.

(b) If one or both parties request review of the transcripts, the requesting party shall file an original and an electronic version of the transcript with the board

within 28 days service of the hearing officer's recommended order, and briefs shall be due as follows:

(i) A party who wishes to file a response brief to an opposing party's objections must file and serve the response brief within 14 days of the boards' receipt of the transcript.

(ii) A party who wishes to file a reply brief to an opposing party's response brief must file and serve the reply brief within 14 days of service of the response brief.

(3) The following requirements apply to the preparation of the transcript:

(a) A transcript must be prepared by an impartial person with no affiliation to any party and with no interest in the outcome of the contested case. A transcript must be a verbatim and complete account of all proceedings on the record of the hearing and must be in the form commonly accepted by the courts of record of this state. The preparer of a transcript shall certify that the transcript is a complete and accurate account of the stenographic or electronic recording of the hearing and that the preparer has no affiliation with any party and has no interest in the outcome of the contested case.

(b) Preparation of the transcript is the responsibility of the party requesting review of the transcript. If more than one party requests review of the transcript, all parties requesting the review shall share equally in the cost of the transcript and copies.

(4) A brief and any exhibits must comply with the formatting standards in NEW RULE I DOCUMENT FORM and NEW RULE II DOCUMENT SERVICE. A brief may not exceed 20 pages in length.

(5) The board's review of the hearing officer's recommended order shall be confined to the complete record. The complete record for the purposes of this rule is comprised of all documents cited or referred to in briefing before the board. If a party intends to challenge any finding of fact of the hearing officer, the complete record additionally includes the transcript of the hearing.

(a) The party citing or referring to a document in its briefing is required to attach as an exhibit to its brief the entirety of such document. If a party fails to attach required documents to its briefing, the board may deny the appeal.

(b) Documents which may be included in the complete record are those enumerated at 2-4-614, MCA. Failure of a party to submit documents enumerated in that statute constitutes a stipulation by that party that the board need not review those documents.

(c) Exhibits not admitted at hearing may not be attached to briefs on appeal, unless the failure to admit such exhibit is a reason for appeal. On timely motion by any party, any exhibit improperly attached may be stricken from the appeal.

(6) Objections will be considered at the next board meeting after conclusion of the briefing schedule.

(7) Each objecting party will be granted 20 minutes for oral argument before the board. Each objecting party may reserve a portion of the 20 minutes for rebuttal. Oral argument may be waived by the parties, except where it is requested by the board. The board may allow additional time for oral argument upon request of an objecting party.

(8) The board shall review the recommended order to determine if the recommended order's findings of fact are supported by a preponderance of the evidence and whether the conclusions of law are correct.

(9) With the exception of ULP complaints, the board shall issue a written decision which affirms, rejects, modifies, or remands the hearing officer decision within 90 days of the hearing of the appeal. When reviewing a ULP complaint, the board shall issue a written decision which affirms, rejects, modifies, and/or remands the hearing officer decision within five months of the hearing of the appeal. The final decision of the board is a final agency decision

AUTH: 39-31-104, 39-32-103, MCA

IMP: 2-18-1011, 2-18-1012, 39-31-406, 39-32-112, 39-32-113, MCA

REASON: The proposed new rule replaces 24.26.221 EXCEPTIONS 24.26.222 OBJECTIONS TO BOARD'S AGENT'S RECOMMENDED ORDER 24.26.224 BOARD REVIEW, 24.26.683 PROPOSED FINDINGS, 24.26.684 EXCEPTIONS. The new rule specifies the board's process for reviewing a hearing officer's recommended order, including specific instructions for the parties about briefs, the transcript, the record, and oral argument.

b. New Rules - Classification and Compensation Grievance

NEW RULE VII CLASSIFICATION AND COMPENSATION GRIEVANCE PROCEDURE - GENERAL PROVISIONS

(1) Any employee, group of employees not represented by a labor organization, an exclusive representative, or an authorized representative, may utilize this grievance process to grieve a classification or compensation issue under Title 2, ch. 18, pt. 1-3.

(a) Employees must obtain a state employee classification and compensation grievance form and follow the accompanying instructions.

(b) Grievance forms may be obtained from the Board of Personnel Appeals, P.O. Box 201503, Helena, Montana, 59620, from the human resource office of any department within the executive branch, or from the department's website: erd.dli.mt.gov/labor-standards.

(2) The completed grievance form shall be submitted with the current position description, signed by the employee and the employee's immediate supervisor. If the current position description is disputed, the employee may include a proposed position description, signed by the employee, that represents the employee's understanding of the duties and responsibilities of the position.

(a) The completed grievance form must identify and explain all issues motivating the grievance. The grievance form shall include a list of issues that may be grieved.

(b) Classification standards are not appealable subjects on the grievance form under 2-18-1011 through 2-18-1013. The grievance shall be described in terms of the following appealable issues:

(i) substantial changes have occurred in this position to warrant reclassification. Specifically, this position should be allocated to (list band level and occupation title);

(ii) this position was incorrectly allocated to (list band level and occupation title) and should be allocated to (list band level and occupation title);

(iii) the classification rules have been incorrectly applied to this position (specific rule(s) should be cited); and

(iv) "other", but the issue must specifically relate to classification.

(3) The period of time for which retroactive pay for a compensation or classification appeal may be awarded under 2-18-1011 through 2-18-1013 or under parts 1 through 3 of this chapter may not extend beyond 30 days prior to the date on which the appeal was filed.

(4) The board encourages the parties to the grievance to engage in informal resolution of the issues raised in the grievance. Nothing in these rules shall be construed to prevent the parties from resolving the grievance at the earliest possible stage of the process.

AUTH: 39-31-104, MCA

IMP: 2-18-203, 2-18-1011, 2-18-1012, MCA

REASON: The proposed new rule clarifies the first steps for filing a classification and compensation grievance, and substantively it is the first section of 24.26.508 GRIEVANCE PROCEDURE. The proposed new rule also reflects the statutory limits on retroactive pay in 2-18-203, MCA. The proposed new rule also replaces 24.26.503 INFORMAL RESOLUTION OF APPEALS.

NEW RULE VIII CONSOLIDATION OF GRIEVANCES:

(1) If more than one grievance affects more than one employee in the same manner, the grievances may be consolidated at any step of the grievance process. Appeals may be consolidated by board order upon a showing of good cause by any party.

(a) A consolidation may be altered or amended at any time before the final order of the board.

(b) If an employee or the employee's authorized representative opposes altering or amending the consolidation, the employee may request a hearing to be held before the final order of the board is issued.

(2) If the appeals are consolidated, the timelines in this rule will run from the dates associated with the latest appeal included in the consolidation.

(3) An employee who is not represented by a labor organization may opt out of consolidation of the appeal unless the appeals are consolidated by board order.

(4) An employee who is represented by a labor organization may not contradict the labor organization's representative on the issue of consolidating appeals.

AUTH: 39-31-104, MCA

IMP: 2-18-203, 2-18-1011, MCA

REASON: The proposed new rule clarifies and simplifies the board's ability to consolidate classification and compensation grievances. The new rule replaces one section of 24.26.508 GRIEVANCE PROCEDURE.

NEW RULE IX GRIEVANCE PROCEDURE – STEP 1: DEPARTMENT HEAD OR DESIGNEE

(1) The employee shall submit the appeal form and accompanying material to the department head or department designee. The department head or designee shall have 14 days to review the appeal, record his or her findings, record steps taken to resolve the appeal, and return it to the employee.

(2) The department head or designee is not limited to the issues raised by the employee in the appeal form but may address any other classification issue listed in NEW RULE VIII CONSOLIDATION OF GRIEVANCES deemed by the department head or designee to be important to the appeal.

(3) If the employee disputes the findings of the department head or designee, the employee may forward the appeal to NEW RULE X GRIEVANCE PROCEDURE – STEP 2: STATE HUMAN RESOURCES DIVISION.

AUTH: 39-31-104, MCA

IMP: 2-18-203, 2-18-1011, MCA

REASON: The new rule replaces the first step of the grievance process in in 24.26.508 GRIEVANCE PROCEDURE. The proposed new rule clarifies the first step in classification and compensation grievance process.

NEW RULE X GRIEVANCE PROCEDURE – STEP 2: STATE HUMAN RESOURCES DIVISION

(1) If an employee does not agree with the decision of the department head or designee, the employee shall submit the appeals form to the State Human Resources Division within 14 days of the date of the department head or designee's decision. The employee must identify and explain, in writing, how he or she disputes the findings of the department head or designee.

(2) The State Human Resources Division shall have 30 days to review the matter, record its findings in the appropriate section of the form, and return it to the employee or the proper representative.

(3) The State Human Resources Division's review and findings is not limited to the issues raised by the employee in the appeal form. The State Human Resources Division may review any additional classification issues or facts relevant to the appeal, including any additional issues raised upon consolidation of appeals pursuant to NEW RULE VIII CONSOLIDATION OF GRIEVANCES.

(4) The State Human Resources Division must prepare clear written findings explaining its position regarding each relevant issue.

(5) If the employee disputes the State Human Resources Division's findings and recommendations, the employee shall have 14 days to appeal to the board pursuant to NEW RULE XI GRIEVANCE PROCEDURE – STEP 3: REVIEW BY BOARD AGENT.

AUTH: 39-31-104, MCA
IMP: 2-18-203, 2-18-1011, MCA

REASON: The new rule replaces the second step of the grievance process in 24.26.508 GRIEVANCE PROCEDURE. The proposed new rule clarifies the second step in classification and compensation grievance process.

NEW RULE XI GRIEVANCE PROCEDURE – STEP 3: REVIEW BY BOARD AGENT

- (1) If the employee wishes to continue the grievance, the employee may submit the completed form to the Board of Personnel Appeals within 14 days of the date of the State Human Resources Division's decision.
- (2) The board agent shall serve the grievance upon the appropriate department employer, and the department employer shall have 14 days to respond to the grievance.
- (3) The board agent shall have 30 days from the receipt of the form to investigate the grievance and render a written preliminary decision.
- (4) If the employee or the department disputes the preliminary decision of the board agent, either party may file objections decisions within 14 days of service of the board decision, and the matter will be referred to a hearing officer pursuant to NEW RULE V HEARING OFFICER PROCEEDINGS AND RECOMMENDED ORDER. The hearing officer is not bound by the statutory or common law rules of evidence in this hearing.
- (5) If the employee or the department disputes the recommended order of the hearing officer, either party may file objections pursuant to NEW RULE VI BOARD REVIEW OF HEARING OFFICER'S RECOMMENDED ORDER within 20 days of service of the hearing officer's recommended order.

AUTH: 39-31-104, MCA
IMP: 2-18-203, 2-18-1011, 2-18-1012, MCA

REASON: The proposed new rule replaces the third step in the grievance process in 24.26.508 GRIEVANCE PROCEDURE. The new rule clarifies the third step in classification and compensation grievance process.

c. New Subchapter – Representation Petitions

NEW RULE XII APPROPRIATE UNIT

- (1) The board may consider a bargaining unit that consists of all the employees in any department, division, bureau, section, or combination thereof.
- (2) The board shall determine whether a bargaining unit is appropriate by determining whether the employees share a community of interest. A community of interest is determined by considering the following factors:
 - (a) wages;
 - (b) hours;
 - (c) fringe benefits and other working conditions;
 - (d) the history of collective bargaining;

- (e) common supervision;
 - (f) common personnel policies;
 - (g) extent of integration of work functions and interchange among employees affected; and,
 - (h) desires of the employees.
- (3) The board shall consider the following factors, in addition to those listed above in (2) when considering a proposed bargaining unit for nurses working at a healthcare facility, as defined in 39-32-102:
- (a) similarity of duties;
 - (b) licensure;
 - (c) conditions of employment.

AUTH: 39-31-104, 39-32-103, MCA

IMP: 39-31-202, 39-32-102, 39-32-106, 39-32-113, MCA

REASON: The proposed new rule combines 24.26.610 COMPOSITION OF UNIT, 24.26.611 APPROPRIATE UNIT, 24.25.301 COMPOSITION OF UNIT, and 24.25.302 APPROPRIATE UNIT. The new rule also defines community of interest as being the combined consideration of all the relevant factors used to determine an appropriate bargaining unit. The new rule also considers the additional considerations for an appropriate unit for nurses working in a healthcare facility pursuant to 39-32-106, MCA.

NEW RULE XIII PETITIONS FILED WITH THE BOARD – AMENDMENTS – WITHDRAWAL

- (1) All petitions filed with the board pursuant to this subchapter must comply with the following:
- (a) The petition shall meet the formatting requirements of NEW RULE I DOCUMENT FORM.
 - (b) The petition must contain the name, address, and phone number of the petitioner or their authorized representative.
 - (c) The petition must identify the name, address, and phone number for the relevant public employer and any exclusive representative and/or labor organization involved in the proceedings.
 - (d) The petition must be signed by the petitioner or their authorized representative.
- (2) The petition shall be filed with the board pursuant to NEW RULE III FILINGS WITH THE BOARD.
- (3) Upon receipt of the petition, a board agent shall be assigned to review and process the petition according to this subchapter.
- (4) The board agent or the hearing officer have discretion to allow the amendment of a petition, on their own accord or at the request of a party, but no petitions may be amended as follows:
- (i) after ballots are mailed in a mail-ballot election, or after the first ballot is cast in an in-person election; or

(ii) after an objection is filed with the board to a hearing officer's recommended order under NEW RULE XIV HEARING ON REPRESENTATION MATTERS.

(5) The petitioner may withdraw a petition for an election at any time before the first ballot is cast in the election.

AUTH: 39-31-104, 39-32-103, MCA

IMP: 39-31-207, 39-32-113, MCA

REASON: The proposed new rule replaces 24.26.205 AMENDING PETITIONS and 24.25.104 AMENDING PETITIONS. The new rule replaces repetitive language in the rules for petitions filed with the board and clarifies the general requirements for all petitions filed with the board pursuant to this subpart.

NEW RULE XIV HEARING ON REPRESENTATION MATTERS

(1) The board agent may refer matters to a hearing officer for consideration under this subpart.

(2) The hearing officer shall conduct an informal hearing for matters under this part.

(a) The hearing officer shall consider evidence submitted by the parties and take testimony from witnesses.

(b) The hearing officer is not bound by common law or statutory rules of evidence.

(3) The hearing officer shall issue a written order within 28 days of the board agent's referral of the matter to the hearing officer.

(4) A hearing officer may, at the hearing officer's discretion or upon good cause shown by a party, extend the order deadline for an additional period not to exceed a total of 35 days from the matter's referral to the hearing officer.

(5) Unless the rule specifically states otherwise, hearing officer's orders issued under this rule are subject to review by the board under NEW RULE VI BOARD REVIEW OF HEARING OFFICER'S RECOMMENDED ORDER.

AUTH: 39-31-104, 39-32-103, MCA

IMP: 39-31-202, 39-31-207, 39-31-208, 39-32-113, MCA

REASON: The proposed new rule provides for an expediated and informal process for consideration of matters under this part by the department's Office of Administrative Hearings.

NEW RULE XV UNIT DETERMINATION PETITIONS

(1) A labor organization or a group of employees may file a Unit Determination Petition (UD Petition) with the board alleging there is a question concerning representation and seeking an election to determine whether employees wish to be represented by the petitioner.

(2) The UD Petition shall contain:

(a) a description of the unit to be determined specifying inclusions and exclusions;

(b) a statement as to whether there is any known disagreement between the employer and the petitioner as to the nature and scope of the proposed unit and the reasons for the disagreement;

(c) the names of all labor organizations known to the petitioner who claim to represent employees in the proposed unit;

(d) the expiration dates and brief description of any contracts covering any employees in the proposed unit;

(e) the approximate number of employees in the proposed unit; and

(f) any other relevant facts.

(3) The UD Petition must be accompanied by proof of interest, consisting of authorization cards, or copies thereof.

(a) The board agent shall promptly issue a certification of representative because no question of representation exists, an election is not required, and an appropriate unit has been determined, if the following requirements of this subsection are met:

(i) the number of authorization cards submitted exceed 50% of the number of employees in the proposed bargaining unit;

(ii) an Employer Counter Petition is not filed within ten days of the date the board mailed the petition for unit determination to the employer, as provided by NEW RULE XVII EMPLOYER-COUNTER PETITION;

(iii) a petition to intervene has not been filed within ten days of the employer posting notice of unit determination proceedings, as provided by NEW RULE XVIII PETITION TO INTERVENE IN UNIT DETERMINATION; and

(iv) the showing of interest is adequate because more than 50% of the employees on the excelsior list have submitted an authorization card.

(b) An election is required pursuant to NEW RULE XXXIII ELECTION DIRECTED when at least 30% but not more than 50% of the employees on the excelsior list have submitted an authorization card.

(4) The board agent shall serve a copy of the UD Petition upon the public employer, and the board agent shall include with the UD Petition the Notice of Unit Determination. The Notice shall be posted pursuant to NEW RULE XVI NOTICE OF UNIT DETERMINATION PROCEEDINGS.

(5) Nothing in this rule shall be construed to prevent the parties from waiving a hearing and entering into a written consent election agreement pursuant to NEW RULE XXXIV CONSENT ELECTIONS.

AUTH: 39-31-104, 39-32-103, MCA

IMP: 39-31-207, 39-32-113, MCA

REASON: The proposed new rule replaces 24.26.612 PETITIONS FOR NEW UNIT DETERMINATION and 24.25.304 PETITIONS FOR NEW UNIT DETERMINATION AND ELECTION. The new rule clarifies the requirements for a unit determination petition.

NEW RULE XVI NOTICE OF UNIT DETERMINATION PROCEEDINGS

(1) Upon receipt of the petition, the employer shall post the Notice of Unit Determination in a conspicuous manner for a period of 20 days.

(2) If employees do not work in a central location, the employer shall disseminate the Notice to all affected employees, consistent with typical business practices for disseminating information.

(3) The employer shall confirm in writing to the board that it has received, posted and or disseminated the Notice, and the employer shall continue posting the Notice for the required 20 days.

AUTH: 39-31-104, 39-32-103, MCA

IMP: 39-31-207, 39-32-113, MCA

REASON: The proposed new rule replaces and combines 24.26.616 NOTICE OF UNIT DETERMINATION PROCEEDINGS and 24.25.306 NOTICE OF UNIT DETERMINATION PROCEEDINGS. The new rule acknowledges that employees may not all work in a central location, and it provides for a method of providing notice to employees by other reasonable means.

NEW RULE XVII EMPLOYER-COUNTER PETITION

(1) The employer may file an Employer Counter Petition (EC Petition) with the board within ten days of the board's service of the petition for a new unit determination on the employer if the employer disagrees with the appropriateness of the proposed unit as described in the petition.

(2) The EC Petition shall contain:

(a) the employer's disagreement with the petitioner's proposed appropriate unit;

(b) a detailed description of the employer's proposed appropriate unit;

(c) the number of employees in the employer's proposed unit;

(d) the expiration dates and brief description of any contracts covering any employees in the employer's proposed unit; and

(e) any other relevant facts.

(3) The employer shall serve a copy of the EC Petition upon the petitioner.

(4) A board agent shall have five business days to work with the parties to resolve issues raised in the EC Petition. If the issue of the unit description is not resolved, the board agent shall transfer the counter petition to a hearing officer pursuant to NEW RULE XIV HEARING ON REPRESENTATION MATTERS.

(a) If a party disputes the recommended order of the hearing officer, the party may file objections pursuant to NEW RULE VI BOARD REVIEW OF HEARING OFFICER'S RECOMMENDED ORDER within 14 days of service of the hearing officer's recommended order.

(b) Orders issued by the board on the composition of the unit under this rule are not subject to further appeal.

(c) Once the order of the board is issued that determines the appropriate unit, the matter shall proceed to NEW RULE XX NURSE UNIT AT HEALTHCARE FACILITY - PROFESSIONAL EMPLOYEE SPECIAL ELECTION if appropriate or NEW RULE XXXIII ELECTION DIRECTED.

(5) If the employer does not file an EC Petition and the time for intervention has passed, the board agent shall review the petitioned-for unit to determine that it is appropriate under NEW RULE XII APPROPRIATE UNIT, and then proceed to NEW

RULE XX NURSE UNIT AT HEALTHCARE FACILITY - PROFESSIONAL
EMPLOYEE SPECIAL ELECTION if appropriate or NEW RULE XXXIII ELECTION
DIRECTED.

(6) If the board directs an election, and provided the employer has not previously done so, the employer must provide the excelsior list to the board's agent and the petitioner within five days of the notice of the board directed election. If the excelsior list is not provided by the employer, then the board agent may determine the list of eligible voters in consultation with the petitioner.

AUTH: 39-31-104, 39-32-103, MCA

IMP: 39-31-202, 39-31-207, 39-32-113, MCA

REASON: The proposed new rule replaces and combines 24.26.614 EMPLOYER COUNTER PETITION and 24.25.305 EMPLOYER COUNTER PETITION. The new rule clarifies the requirements for an employer counter petition. The new rule also clarifies the appeal procedure for an employer counter petition when the employer disputes the composition of the bargaining unit. Under 39-31-202, MCA, the legislature has given the board the authority to determine the composition of an appropriate bargaining unit. "In order to ensure employees the fullest freedom in exercising the rights guaranteed by this chapter, the board or an agent of the board shall decide the unit appropriate for the purpose of collective bargaining[.]" Section 39-31-202, MCA. Employee's rights include forming and joining any labor organization without unnecessary delay. Section 39-31-201, MCA. Therefore, the board's determination of an appropriate bargaining unit is not subject to further challenge or appeal so that the matter may proceed to an election without unnecessary delay.

Furthermore, this interpretation is in line with the National Labor Relations Board (NLRB)'s interpretation of the National Labor Relations Act (NLRA). The Montana Supreme Court has long-held that is appropriate to consider interpretations of the NLRA when interpreting Montana's law Collective Bargaining for Public Employees. *Bonner Sch. Dist. No. 14 v. Bonner Educ. Ass'n*, 2008 MT 9, ¶ 18, 341 Mont. 97, 102, 176 P.3d 262, 265 (citing *State by Dep't of Highways v. Pub. Emps. Craft Council*, 165 Mont. 349, 353, 529 P.2d 785, 787 (1974)).

"The [NLRB's] certification decisions are not final orders subject to direct judicial review." *Warren Unilube, Inc. v. NLRB*, 690 F.3d 969, 973 (8th Cir. 2012) (citing *Boire v. Greyhound Corp.*, 376 U.S. 473, 476-77 (1964)).

Furthermore, Congress "rejected a House amendment which would have permitted any interested person to obtain review immediately after a certification because, as Senator Taft noted, 'such provision would permit *dilatory tactics* in representation proceedings.'" *Boire*, 376 U.S. at 479 (emphasis added).

There is a reasonable necessity to adopt this new rule to create a just and speedy process for elections in unit-determination proceedings. By not allowing the composition of a unit to be reviewed beyond the board before the election, pursuant

to 39-31-202, MCA, the board is making the processing of unit determination petitions more efficient, further ensuring the rights of employees to form and join labor unions pursuant to 39-31-201, MCA.

NEW RULE XVIII PETITION TO INTERVENE IN UNIT DETERMINATION

(1) Any labor organization, employee, or group of employees may file a petition to intervene within ten days of the first day of posting of the notice of unit determination proceedings.

(2) The petition shall be accompanied by proof of interest, consisting of authorization cards, or copies thereof, from at least ten percent of the employees in the unit. The cards shall indicate the signatories' choice of exclusive representative.

(3) The petition to intervene shall conform in all other respects to the requirements for a UD Petition.

(4) The board agent shall review the petition and the authorization cards for compliance with these rules and serve a copy of the petition to intervene upon all other parties.

AUTH: 39-31-104, 39-32-103, MCA
IMP: 39-31-207, 39-32-113, MCA

REASON: The proposed new rule replaces and combines 24.26.618 PETITION TO INTERVENE and 24.25.307 PETITION TO INTERVENE. The new rule clarifies the requirements for intervention in a unit determination proceeding.

NEW RULE XIX UNIT DETERMINATION PETITION INVESTIGATION AND HEARING

(1) The board agent shall investigate all questions and facts concerning the proposed unit, and shall have the following options:

(a) to direct a unit determination hearing after the time for intervening has passed; or

(b) to dispense with a unit determination hearing under the following conditions:

(i) the employer has not filed a counter petition;

(ii) no intervenors contest the petitioner's proposed unit; or

(iii) the parties have entered into a consent election agreement pursuant to

NEW RULE XXXIV CONSENT ELECTION.

(2) The excelsior list must be provided to the board agent and the petitioner within ten days of the board agent's mailing of the UD Petition to the public employer.

(3) If the board agent directs a hearing, the matter shall be referred to a hearing officer, pursuant to NEW RULE XIV HEARING ON REPRESENTATION MATTERS. Orders issued by the hearing officer under this rule are not subject to appeal to the board.

(4) If the unit does not include nurses working for a healthcare facility under 39-32-106, MCA, within five days of the board agent's determination to dispense with the hearing, or within five days of service of the hearing officer's order, the board agent shall direct the election and schedule the pre-election conference

pursuant to NEW RULE XXXIII ELECTION DIRECTED. Either party shall raise any challenges for individual inclusions and exclusions to the unit at the pre-election conference.

(5) If the unit approved in the hearing officer's order includes nurses working for a healthcare facility under 39-32-106, MCA, the board agent must also comply with proceed to NEW RULE XX NURSE UNIT AT HEALTHCARE FACILITY - PROFESSIONAL EMPLOYEE SPECIAL ELECTION.

AUTH: 39-31-104, 39-32-103, MCA

IMP: 39-31-207, 39-32-113, MCA

REASON: The proposed new rule replaces and combines 24.26.620 PROCEDURE FOLLOWING FILING OF PETITION FOR NEW UNIT DETERMINATION AND ELECTION, 24.25.303 PROFESSIONAL EMPLOYEES, and 24.25.308 PROCEDURE FOLLOWING FILING OF PETITION FOR NEW UNIT DETERMINATION AND ELECTION. Pursuant to 39-32-106, MCA, the professional employees in a unit that includes nurses working in a healthcare facility, as defined in 39-32-102, MCA, must be given the opportunity to vote on whether or not they wish to join a bargaining unit. Under 39-31-202, MCA, the legislature has given the board the authority to determine the composition of an appropriate bargaining unit. "In order to ensure employees the fullest freedom in exercising the rights guaranteed by this chapter, the board or an agent of the board shall decide the unit appropriate for the purpose of collective bargaining[.]" Section 39-31-202, MCA. Therefore, the board agent's determination of an appropriate bargaining unit under this rule is not subject to further challenge or appeal.

NEW RULE XX NURSE UNIT AT HEALTHCARE FACILITY - PROFESSIONAL EMPLOYEE SPECIAL ELECTION

(1) The entirety of this rule applies only to UD Petitions for a healthcare facility that includes professional nursing staff in the proposed unit, as defined in 39-32-106, MCA.

(2) If a hearing officer issues an order pursuant to NEW RULE XIV HEARING ON REPRESENTATION MATTERS, and the approved unit includes both professional nursing employees, as defined in 39-32-102, MCA, and nonprofessional employees, the board agent shall conduct a special election among professional employees to determine whether they wish to be included in the proposed unit.

(a) The board agent shall conduct the election by secret ballot in a prompt and efficient manner. Notice of the special election shall be posted by the employer no less than five days prior to the special election.

(b) If a majority of the professional employees in the proposed unit do not desire to be included in the proposed unit, the professional employees shall be excluded from the unit. If a majority of the professional employees in the proposed unit desire to be included in the unit, the professional employees shall be included in the unit.

(c) The board agent shall issue a written certification of the results of the special election and serve it on the parties.

(3) Within five days of service of the board agent's certification of the special election, the board agent shall direct the election and schedule the pre-election conference pursuant to NEW RULE XXXIII ELECTION DIRECTED. Either party shall raise any challenges for individual inclusions and exclusions to the unit at the pre-election conference.

AUTH: 39-32-103, 39-32-103, MCA

IMP: 39-32-102, 39-32-105, 39-32-106, 39-32-113, MCA

REASON: The proposed new rule replaces 24.25.303 PROFESSIONAL EMPLOYEES. Pursuant to 39-32-106, MCA, the professional employees in a unit that includes nurses working in a healthcare facility, as defined in 39-32-102, MCA, must be given the opportunity to vote on whether or not they wish to join a bargaining unit. The new rule clarifies the procedure for complying with 39-32-106, MCA, within the process for forming a bargaining unit under these rules.

NEW RULE XXI EMPLOYER RECOGNITION PETITION

(1) An employer may file an Employer Recognition Petition (ER Petition) with the board alleging that one or more labor organizations have presented to it a claim to be recognized as the exclusive representative in an appropriate unit.

(2) ER Petitions may be filed under the following circumstances:

(a) during the period not more than 90 days, and not less than 60 days prior to the termination date of the existing CBA;

(b) during January of the year the existing CBA terminates if the bargaining unit is comprised of employees of school districts, units of the university system, or a community college;

(c) after the termination date of the existing CBA; or

(d) when the incumbent bargaining representative gives notice to the employer that it desires to begin negotiations of a successor agreement.

(3) The ER Petition shall contain:

(a) a statement naming all labor organizations making a claim to the employer to be recognized as the exclusive representative and bargaining agent;

(b) a concise statement of how the demands for recognition took place;

(c) a description of the bargaining unit the labor organizations demand to represent, including the approximate number of employees in the unit or units that are in dispute, and an enumeration, by job title, of the inclusions and exclusions proposed by the labor organizations;

(d) a brief description, including expiration dates, of all contracts covering employees in the proposed unit; and

(e) any other relevant facts.

(4) A board agent shall review and investigate the employer petition.

(5) If the board agent determines there are not sufficient grounds to act on the ER Petition, the agent shall issue a written determination of the reasons for not proceeding with the recognition proceedings. The agent shall serve the determination on the employer.

(a) The petitioner may file objections to the board agent's determination within 14 days of the service of the determination.

(b) The objections shall be forwarded to the hearing officer for consideration pursuant to NEW RULE XIV HEARING ON REPRESENTATION MATTERS.

(6) If the board agent finds there is sufficient, objective criteria to doubt the certified or recognized bargaining representative's majority status, meaning there is a question of representation, then the board agent shall serve a copy of the petition on all parties claiming to be the exclusive representative and bargaining agent. After service of the petition, the procedures for Unit Determination and elections, including the right to intervene, will then proceed pursuant to NEW RULE XV UNIT DETERMINATION PETITIONS.

AUTH: 39-31-104, 39-32-103, MCA

IMP: 39-31-207, 39-32-113, MCA

REASON: The proposed new rule replaces 24.26.622 EMPLOYER PETITION. The new rule clarifies the timing and requirements for an employer recognition petition.

NEW RULE XXII DECERTIFICATION PETITION

(1) An employee, a group of employees, or a labor organization may file a Decertification Petition (DC Petition), provided that 12 months have elapsed since the last election.

(2) DC Petitions may be filed under the following circumstances:

(a) during the period not more than 90 days, and not less than 60 days prior to the termination date of the existing CBA; or,

(b) during January of the year the existing CBA terminates, if the bargaining unit is comprised of employees of school districts, units of the university system, or a community college; or,

(c) after the termination date of the existing CBA.

(3) The DC Petition shall contain:

(a) a statement that the labor organization that has been certified or is currently being recognized by the employer as the exclusive representative no longer represents the interests of the majority of the employees in the unit;

(b) the name of the labor organization, if any, which claims to be the majority representative;

(c) a description of the bargaining unit involved and the approximate number of employees; and

(d) any other relevant facts.

(4) The petition shall be accompanied by proof of interest, consisting of authorization cards, or copies thereof, from at least 30 percent of the employees in the unit. The cards shall indicate that the signatories do not desire to be represented for collective bargaining purposes by the board-certified or employer-recognized exclusive representative.

(5) The board shall serve a copy of the DC petition upon the labor organization(s) concerned and the public employer, and the board agent shall include the Notice of Unit Decertification with the petition. The Notice shall be posted pursuant to NEW RULE XXIV NOTICE OF DECERTIFICATION PROCEEDINGS.

AUTH: 39-31-104, 39-32-103, MCA

IMP: 39-31-207, 39-32-113, MCA

REASON: The proposed new rule replaces and combines 24.26.643 PETITION FOR DECERTIFICATION and 24.25.501 PETITION FOR DECERTIFICATION. The new rule clarifies the timing and requirements for a decertification petition.

NEW RULE XXIII ANSWER TO DECERTIFICATION PETITION

(1) Each party may file an answer to the DC Petition with the board within 14 days of the board's service of the DC Petition on the parties.

(2) The composition of the unit is not a proper matter to be considered in a decertification proceeding. Eligible voters for any decertification election shall be those who are members of the bargaining unit at the time of the filing of the DC Petition.

AUTH: 39-31-104, 39-32-103, MCA

IMP: 39-31-207, 39-32-113, MCA

REASON: The proposed new rule replaces and combines 24.26.644 ANSWER and 24.25.502 ANSWER. The new rule allows the parties to have 14 days to file an answer rather than ten days in the previous rule.

NEW RULE XXIV NOTICE OF DECERTIFICATION PROCEEDINGS

(1) Upon receipt of the petition, the employer shall post the Notice of Decertification Proceedings in a conspicuous manner for a period of 20 days.

(2) If employees do not work in a central location, the employer shall disseminate the Notice to all affected employees, consistent with typical business practices for disseminating information.

(3) The employer shall confirm in writing to the board that it has received, posted, and shall continue posting of the notice for the required 20 days.

AUTH: 39-31-104, 39-32-103, MCA

IMP: 39-31-207, 39-32-113, MCA

REASON: The proposed new rule replaces and combines 24.26.645 NOTICE OF DECERTIFICATION PROCEEDINGS and 24.25.503 NOTICE OF DECERTIFICATION PROCEEDINGS. The new rule acknowledges that employees may not all work in a central location, and it provides for a method of providing notice to employees by other reasonable means.

NEW RULE XXV PETITION TO INTERVENE IN DECERTIFICATION

(1) Any labor organization, employee, or group of employees may file a petition to intervene within ten days of the first day of posting of the notice of decertification proceedings.

(2) The petition shall be accompanied by proof of interest, consisting of authorization cards, or copies thereof, from at least ten percent of the employees in the unit. The cards shall indicate that the signatories do not desire to be represented for collective bargaining purposes by the current board-certified or employer-

recognized exclusive representative, and the cards shall identify the signatories' choice of a new exclusive representative.

(3) The petition to intervene shall conform in all other respects to the requirements for a UD Petition.

(4) The board agent shall review the petition and the authorization cards for compliance with these rules and serve a copy of the petition to intervene upon all other parties.

AUTH: 39-31-104, 39-32-103, MCA

IMP: 39-31-207, 39-32-113, MCA

REASON: The proposed new rule replaces and combines 24.26.646 PETITION TO INTERVENE and 24.25.504 PETITION TO INTERVENE. The new rule clarifies the requirements for filing a petition to intervene in decertification proceedings.

NEW RULE XXVI DECERTIFICATION PETITION INVESTIGATION AND HEARING

(1) The board agent shall investigate all questions and facts concerning the DC Petition and shall have the following options:

(a) to direct a hearing after the time for intervening has passed;

(b) to dispense with a hearing and schedule the election and a pre-election conference; or.

(c) dismiss the DC Petition if it does not meet the requirements as outlined in NEW RULE XXII DECERTIFICATION PETITION.

(3) If the board agent directs a hearing, the matter shall be referred to a hearing officer, pursuant to NEW RULE XIV HEARING ON REPRESENTATION MATTERS. Orders issued by the hearing officer under this rule are not subject to appeal to the board.

(4) Within three days of the board agent's determination to dispense with the hearing, or within three days of service of the hearing officer's order, the board agent shall direct the election and schedule the pre-election conference pursuant to NEW RULE XXXIII ELECTION DIRECTED.

AUTH: 39-31-104, 39-32-103, MCA

IMP: 39-31-207, 39-32-113, MCA

REASON: The proposed new rule replaces and combines 24.26.647 PROCEDURE FOLLOWING FILING OF PETITION FOR DECERTIFICATION and 24.25.505 PROCEDURE FOLLOWING FILING OF PETITION FOR DECERTIFICATION.

NEW RULE XXVII DISAFFIRMANCE OF REPRESENTATION BY BARGAINING REPRESENTATIVE DURING DECERTIFICATION

(1) An incoming exclusive representative may file an affidavit of disaffirmance of representation with the board agent under the following circumstances:

(a) A minimum of 12 months has passed since the date of certification by the board or recognition by the employer of the exclusive representative; and,

(b) A DC Petition has been filed by an employee or group of employees.

(2) The affidavit must be signed by the exclusive representative, dated, and notarized by a notary public of the State of Montana. Electronic notarization is acceptable under these rules.

(3) Upon the filing of the affidavit, the board agent shall remove the exclusive representative's name from the ballot in the DC election. If no other bargaining representative appears on the ballot, no election shall be conducted.

AUTH: 39-31-104, 39-32-103, MCA

IMP: 39-31-207, 39-32-113, MCA

REASON: The proposed new rule replaces 24.26.648 DISAFFIRMANCE OF REPRESENTATION BY BARGAINING REPRESENTATIVE. The new rule clarifies that a disaffirmance may only occur during a decertification proceeding, and the new rule clarifies the requirements for a disaffirmance.

NEW RULE XXVIII PETITION FOR UNIT CLARIFICATION OF BARGAINING UNIT

(1) The public employer or exclusive representative of the bargaining unit in question may file a Unit Clarification Petition (UC Petition) under the following circumstances:

- (a) there is no question concerning representation; and
- (b) the parties to the CBA are neither engaged in negotiations nor within 120 days of the expiration date of the CBA, unless the parties mutually agree to permit the petition; and,
- (c) a UC Petition as not been filed with the board concerning substantially the same unit within the past 12 months immediately preceding the filing of the UC petition; and,
- (d) no election has been held in substantially the same unit within the past 12 months immediately preceding the filing of the UC Petition.

(2) A UC Petition shall contain the following:

- (a) the identification and description of the existing bargaining unit;
- (b) a description of the proposed clarification of the unit;
- (c) the job classification(s) of employees as to whom the clarification issue is raised, and the number of employees on each such classification;
- (d) a statement setting forth the reason why petitioner desires a clarification of the unit;
- (e) a statement that no other employee organization is certified to represent any of the employees who would be directly affected by the proposed clarification; and
- (f) a brief and concise statement of any other relevant facts.

AUTH: 39-31-104, 39-32-103, MCA

IMP: 39-31-202, 39-31-207, 39-32-113, MCA

REASON: The proposed new rules replaces and combines 24.26.630 PETITION FOR UNIT CLARIFICATION OF BARGAINING UNIT and 24.25.401 PETITION FOR UNIT CLARIFICATION OF BARGAINING UNIT.

NEW RULE XXIX BOARD AGENT REVIEW OF UNIT CLARIFICATION PETITION

(1) A board agent will review the UC Petition to ensure it timely filed under subsection (1) above. If it is not, the board agent will issue a written determination dismissing the petition.

(a) If either party disputes the determination, the party may submit additional information to the board agent within 14 days of service of the board agent's determination, and the board agent shall issue a redetermination.

(b) If either party objects to the redetermination, they may file written objections with the board agent within 14 days of service of the board agent's redetermination. The board agent shall then refer the matter to a hearing officer pursuant to NEW RULE XIV HEARING ON REPRESENTATION MATTERS.

(2) If the board agent finds the UC Petition is timely filed under subsection (1), above, the board agent shall serve the petition on the parties.

(a) The parties will have 14 days from service of the UC Petition to file a response to the UC Petition.

(b) Failure to respond will result in the board agent issuing a recommended order granting the relief requested by the petitioner.

AUTH: 39-31-104, 39-32-103, MCA

IMP: 39-31-202, 39-31-207, 39-32-113, MCA

REASON: The proposed new rules replaces and combines 24.26.630 PETITION FOR UNIT CLARIFICATION OF BARGAINING UNIT and 24.25.401 PETITION FOR UNIT CLARIFICATION OF BARGAINING UNIT.

NEW RULE XXX BOARD INVESTIGATION OF UNIT CLARIFICATION PETITION, AGREEMENT, MEDIATION, APPEAL

(1) If the board agent serves the petition on the parties, the board agent shall investigate the UC petition. If no question of fact exists and the parties agree with the modification of the existing unit, the board agent shall issue an order consistent with the agreement of the parties. The order shall be signed by the board agent and all parties.

(2) If the board agent determines that a question of fact exists, the parties shall mediate the dispute before an agency mediator. Mediation will be concluded within 45 days of assignment unless the parties mutually agree to an extension.

(3) If the parties are unable to mediate the dispute, the board agent shall transfer the matter to the hearing officer pursuant to NEW RULE XIV HEARING ON REPRESENTATION MATTERS.

(a) If a party disputes the recommended order of the hearing officer, the party may file objections pursuant to NEW RULE VI BOARD REVIEW OF HEARING OFFICER'S RECOMMENDED ORDER within 14 days of service of the hearing officer's recommended order.

(b) Orders of the board that determine the appropriate unit under this rule are not subject to further appeal or challenge.

AUTH: 39-31-104, 39-32-103, MCA

IMP: 39-31-202, 39-31-207, 39-32-113, MCA

REASON: The proposed new rules replaces and combines 24.26.630 PETITION FOR UNIT CLARIFICATION OF BARGAINING UNIT and 24.25.401 PETITION FOR UNIT CLARIFICATION OF BARGAINING UNIT. Under 39-31-202, MCA, the legislature has given the board the authority to determine the composition of an appropriate bargaining unit. "In order to ensure employees the fullest freedom in exercising the rights guaranteed by this chapter, the board or an agent of the board shall decide the unit appropriate for the purpose of collective bargaining[.]" Section 39-31-202, MCA. Therefore, the board's determination of an appropriate bargaining unit under this rule is not subject to further challenge or appeal.

NEW RULE XXXI PETITION TO REVOKE CERTIFICATION OR RECOGNITION

(1) The employer or the exclusive representative of a bargaining unit may file a petition to revoke board certification or employer recognition of an exclusive representative (RC Petition).

(2) The board agent assigned to review the RC Petition will order revocation only upon an unequivocal showing that:

(a) no CBA is in effect; and

(b) the exclusive representative disclaims further interest in representing the bargaining unit.

(3) The board agent shall issue a written determination explaining their grant or denial of the revocation. If either party disagrees with the determination, they may submit additional information to the board agent within 14 days of service of the board agent's determination, and the board agent shall issue a redetermination.

(4) If either party objects to the redetermination, they may file written objections with the board agent within 14 days of service of the board agent's redetermination. The board agent shall then refer the matter to a hearing officer pursuant to NEW RULE XIV HEARING ON REPRESENTATION MATTERS.

AUTH: 39-31-104, 39-32-103, MCA

IMP: 39-31-207, 39-32-113, MCA

REASON: The proposed new rule replaces 24.26.649 PETITIONS TO REVOKE CERTIFICATION OR RECOGNITION. The new rule provides clarification and detail for the process of revoking certification or recognition of a bargaining unit by requiring the board agent to review the request for revocation and issue a written determination. The new rule also provides for a right to appeal the board agent's determination.

NEW RULE XXXII PETITIONS TO AMEND CERTIFICATION OF EXCLUSIVE REPRESENTATIVE

(1) A labor organization may file a petition to amend the certification of an exclusive representative (AC Petition) when there is no question of representation and one of the following circumstances exists:

(a) the name or affiliation of the exclusive representative has changed; or

(b) the name of the employer has changed.

(2) AC Petitions to affiliate exclusive representatives of bargaining units with other labor organizations shall show that members of the bargaining unit were afforded due process and will have continuity of representation.

(a) Due process in the affiliation process shall be demonstrated by a showing that members of the bargaining unit were:

(i) given notice of the impending affiliation vote;

(ii) given an opportunity to discuss the proposed affiliation at a meeting prior to voting; and

(iii) permitted to vote by secret ballot on the affiliation question.

(b) Continuity of representation shall be demonstrated by a showing that:

(i) there will be a continuation of bargaining unit autonomy;

(ii) local officers will be retained;

(iii) financial arrangements are not substantially different under the affiliation than before; and

(iv) procedures regulating grievance handling, voting and by-law changes are continued.

(3) The board agent shall investigate all questions and facts concerning the proposed affiliation and shall have the following options:

(a) The board agent may issue a written determination approving the affiliation and allowing the certification.

(b) The board agent may issue a written determination denying the petition.

(4) If either party disagrees with the determination, they may submit additional information to the board agent within 14 days of service of the board agent's determination, and the board agent shall issue a redetermination.

(5) If either party objects to the redetermination, they may file written objections with the board agent within 14 days of service of the board agent's redetermination. The board agent shall then refer the matter to a hearing officer pursuant to NEW RULE XIV HEARING ON REPRESENTATION MATTERS.

AUTH: 39 31 104, 39-32-103, MCA

IMP: 39-31-206, 39-31-207, 39-32-113, MCA

REASON: The proposed new rule replaces 24.26.650 PETITIONS TO AMEND CERTIFICATION OF EXCLUSIVE REPRESENTATIVE. The new rule provides clarification and detail for the process of amending a certification of an exclusive representative by requiring the board agent to review the request for revocation and issue a written determination. The new rule also provides for a right to appeal the board agent's determination.

d. New Subchapter – Representation Elections

NEW RULE XXXIII ELECTION DIRECTED

(1) The board agent shall issue a written order directing an election to occur and scheduling a pre-election conference within five days of completion of the requirements of NEW RULE XIX UNIT DETERMINATION PETITION INVESTIGATION AND HEARING or NEW RULE XXVI DECERTIFICATION

PETITION INVESTIGATION AND HEARING or NEW RULE XX NURSE UNIT AT HEALTHCARE FACILITY - PROFESSIONAL EMPLOYEE SPECIAL ELECTION.

(2) The pre-election conference shall occur no more than five days after the election is directed.

(3) The board agent shall coordinate with the parties to determine the date of the pre-election conference and the date of the election.

(4) The election shall be conducted under the direction and supervision of the board agent. The full board has discretion to review any determinations made by the board agent regarding the election.

(5) Elections shall be held by mail ballot unless a party submits a written request for an onsite election to the board agent. The board agent shall grant an onsite election only upon a showing of good cause by the requesting party.

AUTH: 39-31-104, 39-32-103, MCA

IMP: 39-31-208, 39-32-113, MCA

REASON: The proposed new rule replaces and combines 24.26.655 ELECTION DIRECTED, 24.26.656 CONDITIONS, and 24.25.601 ELECTION DIRECTED. The new rule specifies the procedure and timing for a board agent to direct an election and schedule a pre-election conference. The new rule includes a timeline for an election to be directed and a pre-election conference to occur.

NEW RULE XXXIV CONSENT ELECTION

(1) If there are no challenges to the unit composition or to the question of representation, the parties may waive the hearing and enter into a consent election agreement after the time to intervene has past.

(2) The board agent shall draft the consent agreement that includes a description of the unit and the time and place for the election.

(3) The agreement must be signed by all parties. The bargaining unit set out in the consent agreement shall be deemed an appropriate bargaining unit once it is signed by the parties.

AUTH: 39-31-104, 39-32-103, MCA

IMP: 39-31-209, 39-32-113, MCA

REASON: The proposed new rule replaces 24.26.617 CONSENT ELECTIONS. The new rule clarifies the requirements for a consent election. The new rule lists the requirements for a consent election and clarifies the role of the board agent.

NEW RULE XXXV ELIGIBLE VOTERS

(1) The employees eligible to vote shall be those within the unit on the date of the filing of the UD Petition or the DC Petition with the board, excluding those employees who voluntarily terminated their employment after the filing date.

(2) The excelsior list shall be used to determine the unit members employed on the date of filing of the petition.

(3) Any challenges to eligible voters shall be raised at the pre-election conference.

AUTH: 39-31-104, 39-32-103, MCA
IMP: 39-31-208, 39-32-113, MCA

REASON: The proposed new rule replaces 24.26.658 ELIGIBLE VOTERS. The new rule clarifies that the excelsior list is used to determine the employees and that any challenges to eligible voters must be raised at the pre-election conference.

NEW RULE XXXVI PRE-ELECTION CONFERENCE

(1) Prior to distributing the Notice of Election, the board agent shall hold a pre-election conference with all parties. The pre-election conference may be held telephonically, by videoconference, by email, or in person.

(2) The parties shall submit any challenges to voters in writing to the board agent before or during the pre-election conference.

(3) The board agent shall certify the list of eligible voters, specifically designating any voters who will be challenged.

(4) The parties shall determine that order of labor organization names to appear on the ballot pursuant to NEW RULE XXXVIII BALLOTS. If the parties cannot agree on the order of names, the board agent shall determine the order.

AUTH: 39-31-104, 39-32-103, MCA
IMP: 39-31-208, 39-32-113, MCA

REASON: The proposed new rule specifies the procedures and issues that must be addressed at a pre-election conference. Requiring the parties to communicate during the pre-election conference is an important part of the election process because it reduces the number of questions, issues, and conflicts that may arise in the election process.

NEW RULE XXXVII NOTICE OF ELECTION

(1) Within five days after an election is directed, but not before the pre-election conference, the board agent shall distribute a Notice of Election to the parties. This Notice of Election will specify:

(a) whether the election will be by mail or held on-site;

(i) for an on-site election, the Notice shall specify the location and date of the election; or,

(ii) for a mail-ballot election, the Notice shall specify the date ballots will be mailed, the location for returning ballots, and the deadline for returning ballots;

(b) a description of the unit;

(c) rules concerning eligibility to vote;

(d) a sample ballot; and

(e) any additional information and instruction the board agent considers appropriate.

(2) The board agent shall send copies of the Notice of Election and the sample ballot to all labor organizations appearing on the ballot and to the public employer.

(3) The public employer shall post the Notice of Election and the sample ballot in a conspicuous manner for a minimum of five working days prior to the election at work locations where notices are normally posted for the benefit of employees in the appropriate unit. If employees do not work in a central location, the employer shall disseminate the Notice to all affected employees, consistent with typical business practices for disseminating information.

(4) The employer shall confirm in writing to the board that it has received, posted, and shall continue posting of the notice for a minimum of five days.

AUTH: 39-31-104, 39-32-103, MCA

IMP: 39-31-208, 39-32-113, MCA

REASON: The proposed new rule replaces 24.26.659 NOTICE. The new rule clarifies what must be contained in the Notice of Election by specifically listing the requirements. The new rule distinguishes between mail-ballot and on-site elections. The new rule further acknowledges that employees may not work in one central location, and therefore the Notice may need to be distributed electronically or by other reasonable means.

NEW RULE XXXVIII BALLOTS

(1) All elections shall be by secret ballot.

(2) The order of labor organization names to appear on the ballot shall be determined during the pre-election conference.

(a) The current exclusive representative shall always be on the ballot unless otherwise agreed or a proper affidavit of disaffirmance has been filed pursuant to NEW RULE XXVII DISAFFIRMANCE OF REPRESENTATION BY BARGAINING REPRESENTATIVE DURING DECERTIFICATION.

(b) "No Representation" will always be listed as the last choice on the ballot.

(3) Only those labor organizations which have been designated by proof of interest of more than ten percent of the employees in the unit shall be placed on the ballot.

(4) Absentee ballots shall not be allowed in an on-site election.

AUTH: 39-31-104, 39-32-103, MCA

IMP: 39-31-208, 39-32-113, MCA

REASON: The proposed new rule combines and replaces 24.26.660 BALLOTS and 24.26.657 SECRET BALLOT. The new rule clarifies how to determine which labor organizations must appear on the ballot and how a current exclusive representative can be removed from the ballot.

NEW RULE XXXIX MAIL BALLOT ELECTIONS

(1) Ballots may be mailed the same time as the Notice of Election.

(2) Ballots shall include a security envelope and instructions for completing the ballot.

(3) Ballots may be returned by mail or by hand delivery to a location determined by the board agent and included in the Notice of Election.

(4) Ballots shall be counted not less than ten or more than 20 days after they are mailed.

(5) Ballots shall be counted at a date, time, and location determined by the board agent. Ballots must be received by the board agent by that date and time to be counted.

(6) All parties are entitled to have observers present for the ballot count. Failure or refusal of one party to send an observer to the ballot count does not infringe on the right of another party to send an observer to that place

AUTH: 39-31-104, 39-32-103, MCA

IMP: 39-31-208, 39-32-113, MCA

REASON: The proposed new rule replaces 24.26.661 POLL WATCHERS and specifies the procedures for a mail-ballot election. There is a reasonable necessity to have a clear rule because the majority of elections under this subpart occur over mail ballot.

NEW RULE XL ON-SITE ELECTIONS – POLL WATCHERS AND POLLING AREA ELECTIONEERING

(1) Prior to the commencement of an on-site election the board agent shall designate the polling area and no electioneering of any kind shall be permitted within this area. Any violation of this rule by any party or its representative or agent may be grounds for setting aside the election.

(2) Each party to the election is entitled to be represented by an equal number of observers at each polling place.

(3) The failure or refusal of one party to send an observer to a polling place does not infringe on the right of another party to send an observer to that place.

(4) Observers shall be employees eligible to vote, or in the case of employer's observers, shall be any appropriate persons who are not on the list of eligible voters. Each party may observe the ballot counting.

AUTH: 39-31-104, 39-32-103, MCA

IMP: 39-31-208, 39-32-113, MCA

REASON: The proposed new rule combines and replaces 24.26.661 POLL WATCHERS 24.26.662 POLLING AREA ELECTIONEERING. The new rule clarifies specific procedures for on-site elections and preserves the historic protections for voters in an on-site election.

NEW RULE XLI CHALLENGES TO BALLOTS

(1) All employees whose names appear on the list certified by the board agent at the pre-election conference shall be eligible to vote.

(2) Either party may challenge a prospective voter for cause.

(a) for a mail ballot election, a ballot will be mailed to all certified and challenged voters.

(b) for an on-site election, any employees who wishes to vote, but whose name is not on the certified list, will be permitted to vote, but will be challenged by the board agent.

(3) A challenged voter shall be permitted to vote but the ballot shall not be counted. The ballot shall instead be sealed in a separate, unmarked envelope under the supervision of the board agent and inserted in a special identifiable form envelope to be held by the board pending determination of the eligibility of the challenged voters.

AUTH: 39-31-104, 39-32-103, MCA

IMP: 39-31-208, 39-32-113, MCA

REASON: The proposed new rule replaces 24.26.663 CHALLENGES. The new rule distinguishes between on-site and mail-ballot elections, and it clarifies the board agent's procedure to addressing challenged ballots.

NEW RULE XLII BALLOT TALLY AND OBJECTIONS

(1) The majority of the valid votes cast shall determine the election. In the case of a tie vote, no certification shall be issued.

(2) The board agent shall notify the parties of the ballot tally on the day the ballots are counted by email or by other means reasonably calculated to confer the information on the parties. However, in either on-site or mail-ballot elections, the burden is on the parties to confirm the election tally with the board agent assigned to the election.

(3) The parties to the election may file objections with the board relating to the conduct of the election or conduct affecting the results of the election, including challenged ballots, within five days of the tally of the ballots.

(4) Objections shall be in writing and shall contain a brief statement of the facts upon which the objections are based. Objections shall be served upon all parties to the election.

(5) The board agent shall review the objections and refer the matter to a hearing officer pursuant to NEW RULE XIV HEARING ON REPRESENTATION MATTERS.

(6) An order of the hearing officer issued under this part shall be appealable to the board pursuant to NEW RULE VI BOARD REVIEW OF HEARING OFFICER'S RECOMMENDED ORDER.

AUTH: 39-31-104, 39-32-103, MCA

IMP: 39-31-208, 39-32-113, MCA

REASON: The proposed new rule combines and replaces 24.26.664 MAJORITY and 24.26.666 BALLOT TALLY AND OBJECTIONS. The new rule clarifies the specific requirements for filing objections to an election, and the new rule clarifies the appeal procedure for objections to an election.

e. New Subchapter – Unfair Labor Practices

NEW RULE XLIII ULP COMPLAINT

(1) A ULP may be filed by an employee, a group of employees, a labor organization, or a public employer.

(2) Any ULP must be filed with the board within six months of the alleged unfair labor practice, unless the complainant is a member of the armed forces who was prevented from filing the charge because of serving in the armed forces as described in 39-31-404, in which case the charge must be filed within six months from the day of the service member's discharge.

(3) A ULP shall be in writing.

(4) The ULP shall be by the complainant or the exclusive representative, and the complaint shall contain the following:

(a) the name, address, and telephone number of the complainant;

(b) the name, address and telephone number of the party against whom the charge is made;

(c) a clear and concise statement of facts constituting the alleged violation, including the time and place of occurrence of the particular acts.

(d) a statement of the statute or rules alleged to have been violated.

(5) If an individual employee is filing an unfair labor practice against an employer, the ULP complaint form shall include the signature of the employee's exclusive representative.

(a) If the employee does not have an exclusive representative, the ULP must so state.

(b) If the employee has an exclusive representative, and the ULP complaint form does not contain a signature of the exclusive representative, the complaint must include an explanation about why the exclusive representative is not involved.

(6) A board agent shall conduct an informal investigation of the ULP complaint.

AUTH: 39-31-104, 39-32-103, MCA

IMP: 39-31-401, 39-31-402, 39-31-404, 39-32-109, 39-32-112, MCA

REASON: The proposed new rule replaces 24.26.680 COMPLAINT and 24.25.701 COMPLAINT. The new rule clarifies the requirements for a ULP complaint. The new rule also includes the exception to the six-month deadline for filing a ULP for members of the armed forces found in 39-31-404, MCA.

NEW RULE XLIV STAY OF INFORMAL ULP INVESTIGATION

(1) If during the course of the informal investigation of the ULP, the board agent determines the charge may be resolved through the final and binding arbitration provisions contained in the applicable CBA, the board agent may issue a recommended order staying the informal investigation.

(2) A party may appeal the board agent's recommended order to stay proceedings by filing an objection with the board agent within 14 days after service of the recommended order.

(3) The board agent shall refer an appeal of the recommended order to stay the informal investigation to a hearing officer pursuant to NEW RULE XIV HEARING ON REPRESENTATION MATTERS.

(4) If the hearing officer affirms and adopts the board agent's recommended order to stay the informal investigation, the stay remains in place until there is a subsequent request to review the stay, or the hearing officer's order staying the informal investigation dissolves by operation of law.

(5) The board agent may dissolve the stay and continue with the informal investigation into the ULP if a party provides a written request to the board agent and a showing of at least one of the following:

(a) the ULP has not been resolved in a reasonable amount of time; or
(b) the arbitration decision has not resolved the ULP; or
(c) the decision to stay the proceedings was inconsistent with the laws governing collective bargaining in Montana.

(6) A decision by the board's agent to dissolve a stay is not appealable or subject to review.

AUTH: 39-31-104, 39-32-103, MCA

IMP: 39-31-405, 39-32-112, MCA

REASON: The proposed new rule replaces 24.26.680A STAY OF INFORMAL INVESTIGATION. The new rule clarifies that the stay may be granted by a board agent, rather than the full board.

NEW RULE XLV INFORMAL INVESTIGATION OF ULP BY BOARD AGENT

(1) The board agent assigned to investigate the ULP shall serve the complaint on each Respondent charged with an unfair labor practice.

(2) The Respondent shall file a written response to the complaint with the board within ten days of the board service of the ULP on the Respondent.

(3) The board agent shall investigate the ULP and make a written finding of whether there is probable merit to support the ULP. The written finding will include a short summary of the investigation and the reasons for the board agent's determination. The board agent shall serve the finding on all Complainants and Respondents.

(a) If the board agent determines the ULP is supported by probable merit, the matter shall be set for a hearing before a hearing officer pursuant to NEW RULE – HEARING ON ULP COMPLAINT. A minimum of five working days must pass between the date of service of the finding on all parties and the date of the hearing.

(b) If the board agent determines that the ULP is not supported by probable merit, the board agent shall issue a notice of intent to dismiss the ULP complaint.

(4) A party may request review of the notice of intent to dismiss the ULP complaint within ten days of receipt of the notice of intention to dismiss pursuant to NEW RULE: BOARD REVIEW OF DISMISSAL OF ULP COMPLAINT.

AUTH: 39-31-104, 39-32-103, MCA

IMP: 39-31-405, 39-32-112, MCA

REASON: The proposed new rule replaces 24.26.680B RESPONSE TO COMPLAINT AND INVESTIGATION OF COMPLAINT and 24.25.701 COMPLAINT. The new rule clarifies the board agent's investigation of a ULP.

NEW RULE XLVI BOARD REVIEW OF DISMISSAL OF ULP COMPLAINT

(1) If a party disputes the board agent's notice of intent to dismiss the ULP complaint, the party shall file a written request for review by the board within ten days of receipt of the notice of intention to dismiss. The request for review must contain the specific factual and/or legal reasons that the board agent's finding of no probable merit was error.

(2) If a board agent has received a request for review, the board agent shall issue a notice of time and place and briefing schedule as follows:

(a) A party who wishes to file a response brief to the request for review must file and serve the response brief within 14 days of service of the notice of time and place and briefing schedule.

(b) A party who wishes to file a reply brief to an opposing party's response brief must file and serve the reply brief within 14 days of service of the response brief.

(3) Briefing must comply with the formatting standards in NEW RULE: DOCUMENT FORM AND SERVICE. A brief may not exceed 20 pages in length.

(4) Each party will be granted 20 minutes for oral argument before the board for each objection. The appellant party may reserve a portion of that time for rebuttal. Oral argument may be waived by the parties, except where it is requested by the board.

(5) On review, the board will consider the record as prepared by the board's agent in reaching the decision of no probable merit, any report detailing the investigation and analysis of the board's agent, and any argument set forth by interested parties.

(6) The board will review the board agent's notice of intent to dismiss.

(a) If the board determines that the charge is not supported by probable merit, the board shall issue a written order affirming the board agent's notice of intent to dismiss. The board order affirming the dismissal is final agency decision of the board.

(b) If the board determines that the ULP complaint is supported by probable merit, the matter shall issue a written order remanding the matter to a hearing officer pursuant to NEW RULE: HEARING OFFICER REVIEW OF ULP COMPLAINT.

AUTH: 39-31-104, 39-32-103, MCA

IMP: 39-31-405, 39-32-112, MCA

REASON: The proposed new rule replaces 24.26.680B RESPONSE TO COMPLAINT AND INVESTIGATION OF COMPLAINT and 24.25.701 COMPLAINT. The new rule clarifies the board's review of a dismissal of a ULP and the unique timeline and standards of review provided in statute, 30-31-405, MCA.

NEW RULE XLVII HEARING OFFICER REVIEW OF ULP COMPLAINT

(1) If the board agent or the board determines that the ULP complaint is supported by probable merit, the board shall refer the matter to a hearing officer to review the ULP complaint.

(2) The hearing officer shall issue a notice of time and place for the hearing. A minimum of five working days must pass between the date of service of the board's finding on all parties and the date of the hearing

(3) In addition to any rights under 2-4-611, each party may move to disqualify the hearing officer appointed by the board, without cause. Each party may exercise this right one time, and the motion must be made within five days of service of the hearing officer's notice of time and place of the hearing.

(4) The Respondent shall file a written answer with the hearing officer within a deadline set by the hearing officer. The Respondent's answer shall address each allegation in the ULP complaint, including allegations raised by the board or the board agent during subsequent proceedings on the ULP complaint.

(5) The hearing officer shall review the ULP to determine if the ULP complaint is supported by a preponderance of the evidence.

(a) The hearing officer is not bound by the rules of evidence in this review.

(b) The hearing officer may allow persons to intervene and testify at the hearing.

(6) The hearing officer must issue a written recommended order including a written summary of testimony taken, recommended findings of fact, conclusions of law, and order.

(7) If a preponderance of the evidence does not support the ULP complaint, the hearing officer shall file a recommended order with the board dismissing the ULP complaint.

(8) If a preponderance of the evidence supports the ULP complaint, the hearing officer shall file an order with the board that orders Respondent(s) to cease and desist from the unfair labor practice. The hearing officer shall order appropriate affirmative relief.

(a) The hearing officer may order reinstatement of an employee(s) or backpay.

(b) The hearing officer may order the Respondent(s) to report to the board to ensure compliance with the order.

(c) The hearing officer and the board may not order reinstatement or backpay for an employee that was terminated for cause.

(9) A party that disputes the hearing officer's recommended order may file objections pursuant to NEW RULE VI BOARD REVIEW OF HEARING OFFICER'S RECOMMENDED ORDER within 20 days after service of the hearing officer's recommended order.

AUTH: 39-31-104, 39-32-103, MCA

IMP: 39-31-405, 39-31-406, 39-32-112, MCA

REASON: The proposed new rule replaces 24.26.681 ANSWER, 24.26.682 NOTICE OF HEARING 24.26.683, PROPOSED FINDINGS, 24.26.684 EXCEPTIONS, 24.26.685 DISQUALIFICATION OF HEARING OFFICER, 24.25.702 ANSWER, 24.25.703 NOTICE OF HEARING, 24.25.704 PROPOSED FINDINGS. The new rule clarifies the process for a hearing officer's review of a ULP complaint pursuant to the unique statutory timelines and standards under 39-31-405,

MCA, and 39-31-406, MCA. The new rule condenses five rules from ARM Title 24, ch. 26 and three rules from ARM Title 24, ch. 25, into one rule.

7. The board proposes the repeal of the following rules:

24.26.101 ORGANIZATION OF BOARD OF PERSONNEL APPEALS

REASON: The proposed repeal is because this rule is duplicative of ARM 24.1.101.

24.26.202 BOARD OF PERSONNEL APPEALS ADDRESS,
24.26.203 SERVICE AND FILING,
24.26.205 AMENDING PETITIONS,
24.26.206 COMPUTATION OF TIME,
24.26.208 NOTICE OF HEARINGS,
24.26.210 CONTESTED CASES, DEFAULT ORDER WHEN PARTY FAILS TO
APPEAR AT HEARING,
24.26.211 BRIEFS,
24.26.212 MOTIONS,
24.26.215 HEARINGS,
24.26.219 SUSPENSION,
24.26.221 EXCEPTIONS
24.26.222 OBJECTIONS TO BOARD'S AGENT'S RECOMMENDED ORDER
24.26.224 BOARD REVIEW,
24.26.230 SEVERABILITY,
24.26.501 PURPOSE,
24.26.502 DEFINITIONS,
24.26.503 INFORMAL RESOLUTION OF APPEALS,
24.26.508 GRIEVANCE PROCEDURE,
24.26.601 DEFINITIONS,
24.26.602 DURATION OF NEGOTIATED AGREEMENTS,
24.26.610 COMPOSITION OF UNIT,
24.26.611 APPROPRIATE UNIT,
24.26.612 PETITIONS FOR NEW UNIT DETERMINATION,
24.26.614 EMPLOYER COUNTER PETITION,
24.26.616 NOTICE OF UNIT DETERMINATION PROCEEDINGS,
24.26.617 CONSENT ELECTIONS,
24.26.618 PETITION TO INTERVENE,
24.26.620 PROCEDURE FOLLOWING FILING OF PETITION FOR NEW UNIT
DETERMINATION AND ELECTION,
24.26.622 EMPLOYER PETITION,
24.26.630 PETITION FOR UNIT CLARIFICATION OF BARGAINING UNIT,
24.26.643 PETITION FOR DECERTIFICATION,
24.26.644 ANSWER,
24.26.645 NOTICE OF DECERTIFICATION PROCEEDINGS,
24.26.646 PETITION TO INTERVENE,
24.26.647 PROCEDURE FOLLOWING FILING OF PETITION FOR
DECERTIFICATION,

24.26.648 DISAFFIRMANCE OF REPRESENTATION BY BARGAINING REPRESENTATIVE,
24.26.649 PETITIONS TO REVOKE CERTIFICATION OR RECOGNITION,
24.26.650 PETITIONS TO AMEND CERTIFICATION OF EXCLUSIVE REPRESENTATIVE,
24.26.651 MERGERS AND CONSOLIDATIONS,
24.26.655 ELECTION DIRECTED,
24.26.656 CONDITIONS,
24.26.657 SECRET BALLOT,
24.26.658 ELIGIBLE VOTERS,
24.26.659 NOTICE,
24.26.660 BALLOTS,
24.26.661 POLL WATCHERS,
24.26.662 POLLING AREA ELECTIONEERING,
24.26.663 CHALLENGES,
24.26.664 MAJORITY,
24.26.666 BALLOT TALLY AND OBJECTIONS,
24.26.680 COMPLAINT,
24.26.680B RESPONSE TO COMPLAINT AND INVESTIGATION OF COMPLAINT,
24.26.681 ANSWER,
24.26.682 NOTICE OF HEARING,
24.26.683 PROPOSED FINDINGS,
24.26.684 EXCEPTIONS,
24.26.685 DISQUALIFICATION OF HEARING OFFICER

REASON: The proposed repeal is because all the rules listed above have been replaced by combining and reorganizing the old rules.

24.25.302 APPROPRIATE UNIT

REASON: The proposed repeal is to eliminate a rule that is largely duplicative of the equivalent rule defining an appropriate unit found in ARM Title 24, ch. 26. The substantive differences requiring consideration of duties, licensure, and conditions of employment for bargaining units for nurses working at a healthcare facility found in 39-32-106, MCA, are included in NEW RULE XII APPROPRIATE UNIT.

24.25.303 PROFESSIONAL EMPLOYEES

REASON: The proposed repeal is because the substance of this rule is included in NEW RULE XIX UNIT DETERMINATION PETITION INVESTIGATION AND HEARING and NEW RULE XX NURSE UNIT AT HEALTHCARE FACILITY - PROFESSIONAL EMPLOYEE SPECIAL ELECTION.

24.25.304 PETITIONS FOR NEW UNIT DETERMINATION AND ELECTION,
24.25.305 EMPLOYER COUNTER PETITION,
24.25.307 PETITION TO INTERVENE,

24.25.308 PROCEDURE FOLLOWING FILING OF PETITION FOR NEW UNIT DETERMINATION AND ELECTION,
24.25.401 PETITION FOR UNIT CLARIFICATION OF BARGAINING UNIT,
24.25.501 PETITION FOR DECERTIFICATION,
24.25.504 PETITION TO INTERVENE,
24.25.505 PROCEDURE FOLLOWING FILING OF PETITION FOR DECERTIFICATION,
24.25.601 ELECTION DIRECTED,
24.25.803 FACT FINDER,
24.25.804 ARBITRATION

REASON: The proposed repeal removes of the above-listed rules removes the rules in ARM Title 24, ch. 25, that directly cross-reference the processes and procedures found in ARM Title 24, ch. 26. The proposed repeal eliminates redundant rules and cross-referencing between chapters.

24.25.101 BOARD OF PERSONNEL APPEALS ADDRESS,
24.25.102 SERVICE, FILING, COMPUTATION OF TIME,
24.25.103 INTERVENTION,
24.25.104 AMENDING PETITIONS,
24.25.105 CONTESTED CASES, DEFAULT ORDER WHEN PARTY FAILS TO APPEAR AT HEARING,
24.25.107 HEARINGS,
24.25.201 DEFINITIONS,
24.25.203 FILING OF LABOR ORGANIZATION'S BYLAWS,
24.25.204 PROOF OF INTEREST CONFIDENTIAL,
24.25.301 COMPOSITION OF UNIT,
24.25.306 NOTICE OF UNIT DETERMINATION PROCEEDINGS,
24.25.502 ANSWER,
24.25.503 NOTICE OF DECERTIFICATION PROCEEDINGS,
24.25.701 COMPLAINT,
24.25.702 ANSWER,
24.25.703 NOTICE OF HEARING,
24.25.704 PROPOSED FINDINGS,
24.25.801 PETITION,
24.25.802 MEDIATION

REASON: The proposed repeal of the above-listed rules removes the rules in ARM Title 24, ch. 25, that substantively duplicate rules in ARM Title 24, ch. 26. The proposed repeal eliminates redundant rules.

8. The board proposes the transfer of the following rules:

24.25.206 (24.26.XXX) NOTICE OF STRIKE
(1) remains the same.

AUTH: 39-32-103, MCA

IMP: 39-32-110, MCA

REASON: The proposed renumbering allows for a logical organization of rules.

9. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to [**Contact Name**], Board of Personnel Appeals, P.O. Box 201503, Helena MT 59620-1503, by facsimile to (406) [**fax**], or e-mail to [**e-mail**], and must be received no later than 5:00 p.m., [**Date**].

10. An electronic copy of this notice of public hearing is available through the department's web site at <http://dli.mt.gov/events/calendar.asp>, under the Calendar of Events, Administrative Rules Hearings Section. In addition, although the department strives to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems, and that a person's difficulties in sending an e-mail do not excuse late submission of comments.

11. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request, which includes the name and e-mail or mailing address of the person to receive notices and specifies the particular subject matter or matters regarding which the person wishes to receive notices. Such written request may be mailed or delivered to the Department of Labor and Industry, attention: Mark Cadwallader, 1315 E. Lockey Avenue, P.O. Box 1728, Helena, Montana 59624-1728, faxed to the department at (406) 444-1394, or e-mailed to mcadwallader@mt.gov, or may be made by completing a request form at any rules hearing held by the agency.

12. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

13. Pursuant to 2-4-111, MCA, the department, on behalf of the board, has determined that the rule changes proposed in this notice will not have a significant and direct impact upon small businesses.

14. The department's Office of Administrative Hearings has been designated to preside over and conduct this hearing.

BOARD OF PERSONNEL APPEALS
ANNE L. MACINTYRE
PRESIDING OFFICER

/s/ MARK CADWALLADER
Mark Cadwallader
Alternate Rule Reviewer

/s/ BRENDA NORDLUND
Brenda Nordlund, Acting Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State [Date].

DRAFT