

TO: Board of Personnel Appeals
FROM: Dept. of Labor and Industry
DATE: October 19, 2020
RE: Proposed Changes to DRAFT MAR Notice No. 24-26-353

The Department of Labor and Industry proposes the following changes to DRAFT MAR Notice No. 24-26-353 based on informal comment and internal review. The proposed changes make several deadlines and procedures within the rules internally consistent, and the changes further clarify board procedure.

24.26.207 DEFINITIONS

(1)-(10) remain the same.

(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)-(25) remain the same.

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

NEW RULE IV TIME

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

(2)-(4) remain the same.

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

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

NEW RULE XV UNIT DETERMINATION PETITIONS

(1)-(3)(a)(i) remain the same.

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

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

(3)(a)(iv)-(3)(b) remain the same.

~~(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

NEW RULE XVII EMPLOYER-COUNTER PETITION

(1) The employer may file an Employer Counter Petition (EC Petition) with the board within ~~ten~~ seven 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) an excelsior list for the employees in the proposed counter-unit; and

~~(e)~~ (f) any other relevant facts.

(3)-(4) remain the same.

(4)(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 44 20 days of service of the hearing officer's recommended order.

(4)(b)-(5) remain the same.

~~(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

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~~ seven days of the first day of posting of the notice of unit determination proceedings.

(2)-(4) remain the same

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

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

NEW RULE XIX UNIT DETERMINATION PETITION INVESTIGATION AND HEARING

(1) The board agent shall mail a copy of the UD Petition to 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.

(1)-(3) remain the same but are renumbered as (2)-(4).

~~(4)~~ (5) If the unit does not include nurses working for a healthcare facility under 39-32-106, MCA, within ~~five~~ seven days of the board agent's determination to dispense with the hearing, or within ~~five~~ seven 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) remains the same but is renumbered as (6).

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

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

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

(1)-(2) remain the same.

(3) Within ~~five~~ seven 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

NEW RULE XXI EMPLOYER RECOGNITION PETITION

(1) – (2)(c) remain the same.

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

(3) – (5) remain the same.

(6) If the board agent finds there is sufficient, objective criteria to doubt the certified or recognized ~~bargaining exclusive~~ 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

NEW RULE XXII DECERTIFICATION PETITION

(1) - (4) remain the same.

~~(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

NEW RULE XXVI DECERTIFICATION PETITION INVESTIGATION AND HEARING

(1) 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.

(1) – (3) remain the same but are renumbered as (2)-(4).

~~(4) (5) Within three seven days of the board agent's determination to dispense with the hearing, or within three seven 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

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:

(1)(a) - (3) remain the same.

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

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

NEW RULE XXXVII NOTICE OF ELECTION

(1) – (1)(a)(i) remain the same.

(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, and the date ballots shall be counted which is the date of the election;

(1)(b) – (2) remain the same.

(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. as follows:

(a) for an on-site election, the Notice of Election shall be posted for a minimum of five days prior to the date of the election; or

(b) for a mail-ballot election, the Notice of Election shall be posted for a minimum of fifteen days prior to the date of the election.

(4) 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) (5)~~ 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 of the ~~notice for a minimum of five days.~~ Notice of Election for the required period of time in (3) above.

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

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

NEW RULE XXXIX MAIL BALLOT ELECTIONS

(1) - (3) remain the same.

(4) Ballots shall be counted not less than ten or more than 20 days after they are mailed. For a mail-ballot election, the date ballots are counted is the date of the election.

(5) - (6) remain the same

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

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