

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

In the matter of the amendment of)
ARM 24.26.612, 24.26.614,)
24.26.618, 24.26.643, and 24.26.680)
pertaining to public sector collective)
bargaining)

NOTICE OF PUBLIC HEARING ON
PROPOSED AMENDMENT

TO: All Concerned Persons

1. On April 6, 2018, at 10:00 a.m., the Board of Personnel Appeals (board) will hold a public hearing in the A and B conference rooms (upper floor) of the Beck Building, 1805 Prospect Avenue, Helena, Montana, to consider the proposed amendment 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 rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Labor and Industry no later than 5:00 p.m. on April 2, 2018, to advise us of the nature of the accommodation that you need. Please contact Patty Flynn-Anderson, Department of Labor and Industry, P.O. Box 201503, Helena, Montana, 59620-1503; telephone (406) 444-0032; fax (406) 444-4140; TDD/Montana Relay Service (406) 444-5549; or e-mail PFlynn-Anderson@mt.gov.

3. The rules as proposed to be amended provide as follows, new material underlined, deleted material interlined:

24.26.612 PETITIONS FOR NEW UNIT DETERMINATION AND ELECTION

(1) and (2) remain the same.

(3) ~~The original petition and three copies of the petition~~ shall be filed with the board.

(4) through (6) remain the same.

AUTH: 39-31-104, MCA

IMP: 39-31-207, MCA

REASON: The board believes there is reasonable necessity to amend this rule in order to eliminate for petitioners the unnecessary burden of filing three copies of a petition when a filing of only the original petition is necessary for the board's administrative purposes, and copies sent to board members can now be sent via secure electronic means.

24.26.614 EMPLOYER COUNTER PETITION (1) through (4) remain the same.

(5) A board agent shall have ten days to work with the parties to resolve issues raised in the counter petition. If the parties do not reach a resolution within ten days, the board agent shall transfer the counter petition to the Office of Administrative Hearings. A hearing examiner shall conduct an informal expedited hearing and issue a determination within 30 days of the counter petition's certification by the Office of Administrative Hearings. A hearing examiner may, at the hearing examiner's discretion or upon good cause shown by a party, extend the initial deadline for an additional period not to exceed a total of 60 days from the counter petition's certification by the Office of Administrative Hearings.

(5) and (6) remain the same but are renumbered (6) and (7).

AUTH: 39-31-104, MCA

IMP: 39-31-207, MCA

REASON: The board believes there is reasonable necessity to amend this rule in order to eliminate unnecessary administrative delays in the processing of petitions for election and to conform the board's administrative process to recently adopted rules by the National Labor Relations Board. This amendment provides an opportunity for the parties to resolve pre-election disputes in accordance with the board's policy to "encourage the practice and procedure of collective bargaining to arrive at friendly adjustment of all disputes between public employers and their employees" under 39-31-101, MCA. In the event voluntary resolution is unsuccessful, this amendment establishes a timeframe for a hearing officer's determination as to the pre-election disputes, where no timeframe previously existed under this rule. The board believes establishing such a timeframe will prevent the unwarranted delay of elections and promote a healthy collective bargaining environment for public employers and their employees.

24.26.618 PETITION TO INTERVENE (1) Within ~~20~~ ten days from the first day of posting of the notice of unit determination proceedings, any labor organization or group of employees may file a petition to intervene.

(2) through (5) remain the same.

AUTH: 39-31-104, MCA

IMP: 39-31-207, MCA

REASON: The board believes there is reasonable necessity to amend this rule in order to eliminate unnecessary administrative delays in the processing of petitions for unit determinations, while the board is otherwise amending its procedural rules to generally streamline its processes.

24.26.643 PETITION FOR DECERTIFICATION (1) through (4) remain the same.

(5) The ~~original~~ petition ~~and three copies of the petition~~ shall be filed with the board.

(6) through (8) remain the same.

AUTH: 39-31-104, MCA
IMP: 39-31-207, MCA

REASON: The board believes there is reasonable necessity to amend this rule in order to eliminate for petitioners the unnecessary burden of filing three copies of a petition when a filing of only the original petition is necessary for the board's administrative purposes, and copies sent to board members can now be sent via secure electronic means.

24.26.680 COMPLAINT (1) remains the same.

(2) A complaint shall be in writing. The ~~original~~ complaint shall be signed and verified by the complainant or the authorized representative. The ~~original and three copies of the~~ complaint shall be filed with the board.

(3) through (5) remain the same.

AUTH: 39-31-104, MCA
IMP: 39-31-406, MCA

REASON: The board believes there is reasonable necessity to amend this rule in order to eliminate for complainants the unnecessary burden of filing three copies of a complaint when a filing of only the original complaint is necessary for the board's administrative purposes, and copies sent to board members can now be sent via secure electronic means.

4. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Amber Carpenter, Department of Labor of Industry, P.O. Box 201503, Helena, Montana, 59620-1503; telephone (406) 444-1376; fax (406) 444-7071; or e-mail acarpenter@mt.gov, and must be received no later than 5:00 p.m., April 13, 2018.

5. The department and the board maintain 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 that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program or areas of law the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. 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, e-mailed to mcadwallader@mt.gov, or may be made by completing a request form at any rules hearing held by the agency.

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

7. With regard to the requirements of 2-4-111, MCA, the department, on behalf of the board, has determined that the amendment of the above-referenced

rules will not significantly and directly impact small businesses as the rules relate only to public sector employees.

8. The department's hearings bureau has been designated to preside over and conduct this hearing.

BOARD OF PERSONNEL APPEALS
ANNE L. MACINTYRE, CHAIRPERSON

/s/ Mark Cadwallader
Mark Cadwallader
Alternate Rule Reviewer

/s/ Galen Hollenbaugh
Galen Hollenbaugh
Commissioner
Department of Labor and Industry

Certified to the Secretary of State February 13, 2018.