



Montana Board of Personnel Appeals –Overview

Montana Board of Personnel Appeals:

Overview of Public Employee Collective Bargaining in Montana

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WHAT IS THE BOARD OF PERSONNEL APPEALS (BOPA)?

- The Board of Personnel Appeals (BOPA) is a quasi-judicial board, created by statute. Mont. Code Ann. § 2-15-1705.
- Five-member panel appointed by the governor – members must represent labor organizations and management.
- Exists mainly to enforce and apply the statutory provisions of the Montana Collective Bargaining for Public Employees Act.
- BOPA hears appeals of the following matters:
 - State employee classification and wage appeals. Mont. Code Ann. § 2-18-1011; Administrative Rules of Montana, Title 24, Chapter 26, Subchapter 5.
 - Public employee collective bargaining cases
 - Union certification/decertification proceedings.
 - Unfair labor practices.
- BOPA is administratively attached and staffed by the Montana Department of Labor and Industry.
- Meetings of BOPA must be open to the public and comply with Montana’s Open Meeting Laws, including Mont. Code Ann. §§ 2-3-202; 2-3-203(1).

BOPA’S LAWS AND JURISDICTION

- BOPA mainly enforces Montana’s Collective Bargaining Act for Public Employees (MCBA) found in Title 39, Chapter 31, Montana Code Annotated.
 - BOPA’s rules are in Title 24, Chapter 26 of the Administrative Rules of Montana (ARMs).
 - BOPA follows National Labor Relations (NLRB) precedent – MCBA was largely modeled after the National Labor Relations Act (NLRA).
- MCBA only applies to public employees in Montana, including municipal, county, state, public school, and law enforcement employees.
 - “Public employee” is defined in Mont. Code Ann. § 39-31-103(9).
 - “Public employer” is defined in Mont. Code Ann. § 39-31-103(10).
- Other collective bargaining laws in the United States largely depend upon the employer:
 - The Railway Labor Act – railroad employees and airline employees.
 - National Labor Relations Act - private sector employees.
 - Federal Service Labor-Management Relations – federal government employees.
- State/municipal collective bargaining laws vary greatly across the United States.

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NLRB PRECEDENT

- Montana's Collective Bargaining Act for Public Employees (MCBA) was modeled after the National Labor Relations Act (NLRA).
- Many sections of the MCBA are nearly identical to the NLRA. *State Department of Highways v. Public Employees Craft Council*, 165 Mont. 349, 352, 52 P.2d 785 (1974).
 - Employee Rights, Mont. Code Ann. § 39-31-201 mirrors 29 U.S.C. § 157.
 - Public Employer ULP - Mont. Code Ann. § 39-31-401 mirrors 29 U.S.C. § 158(a).
 - Labor Organization ULP - Mont. Code Ann. § 39-31-402 mirrors 29 U.S.C. § 158(b).
- Where BOPA precedent or Montana Supreme Court precedent are silent as to an issue before BOPA, "it is appropriate for the [BOPA] to consider NLRB precedents. . . ." *State ex rel. Board of Personnel Appeals v. District Court*, 183 Mont. 223, 598 P.2d 1117 (1979).
 - Precedent is useful for both substantive AND procedural issues.
 - Montana has some, but not much, case law on the MCBA.
 - The NLRB has extensive precedents dating back to 1935.

BOARD AGENTS

- Board Agents are Department staff who works on behalf of BOPA at all levels.
- At the Department level, Board Agents make initial determinations and provide services on behalf of BOPA.
 - Mediators for grievances and negotiations of Collective Bargaining Agreements (CBAs).
 - Election Judges for Petitions for Union Certification, Decertification, etc.
 - Investigators for Unfair Labor Practice (ULP) Charges.
 - Investigators for State Employee Classification and Compensation Grievances.
 - Board Agents at this level may refer a matter for a Hearing.
- At the Hearing level, a Hearing Officer with the Officer from the Office of Administrative Hearings (OAH) acts as a Board Agent.
 - Hears argument and takes evidence – largely informal mini trials.
 - Drafts written decisions of the issues.
 - Hearing Officer decisions can be appealed by a party to BOPA.
- At the Board level, a Board Agent does administrative duties to serve BOPA.
 - Collects administrative record and appeal materials.
 - Complies with Montana's Open Meeting Laws, e.g., posting agenda, etc.
 - Determinations are made by the BOPA board members.

UNFAIR LABOR PRACTICES

- A ULP is a violation of state law, defined in the MCBA.
- Mont. Code Ann. § 39-31-401 Unfair labor practices of public employer. It is an unfair labor practice for a public employer to:
 - (1) interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in 39-31-201;
 - (2) dominate, interfere, or assist in the formation or administration of any labor organization. However, subject to rules adopted by the board under 39-31-104, an employer is not prohibited from permitting employees to confer with the employer during working hours without loss of time or pay.
 - (3) discriminate in regard to hire or tenure of employment or any term or condition of employment in order to encourage or discourage membership in any labor organization;
 - (4) discharge or otherwise discriminate against an employee because the employee has signed or filed an affidavit, petition, or complaint or given any information or testimony under this chapter; or
 - (5) refuse to bargain collectively in good faith with an exclusive representative.
- Mont. Code Ann. § 39-31-402 Unfair labor practices of labor organization. It is an unfair labor practice for a labor organization or its agents to:
 - (1) restrain or coerce:(a) employees in the exercise of the right guaranteed in 39-31-201; or (b) a public employer in the selection of a representative for the purpose of collective bargaining or the adjustment of grievances;(2) refuse to bargain collectively in good faith with a public employer if it has been designated as the exclusive representative of employees;
 - (3) use agency shop fees for contributions to political candidates or parties at state or local levels.
- When a ULP charge is filed, a Board Agent investigates and drafts a written report.
 - Investigations are informal – e.g., hearsay, notes, written statements considered.
 - The Board Agent will determine if the ULP has probable merit or no probable merit. “‘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.” ARM 24.26.207(19).
- If a ULP is a grievance, as defined in the parties’ Collective Bargaining Agreement (CBA), the Board Agent can stay the ULP proceedings, ARM 24.26.1202.
- If a ULP has probable merit, it is referred for a Hearing.
 - A hearing on a ULP is also largely informal.
 - A Hearing Officer decision on a ULP may be appealed to BOPA.
- If a ULP has no probable merit, a party may file an objection directly to BOPA.

ELECTION PETITIONS

- The details for filing a Petition for Election are in the administrative rules, Title 24, chapter 26, subchapter 10, printed on page 14 of this handout.
 - Unit Determination Petitions, ARM 24.26.1012, et seq.
 - Employer Counter Petition, ARM 24.26.1016, et seq.
 - Petition to Intervene in Unit Determination, ARM 24.26.1018, et seq.
 - Employer Recognition Petition, ARM 24.26.1024, et seq.
 - Decertification Petition, ARM 24.26.1028, et seq.
 - Petition to Intervene in Decertification, ARM 24.26.1035, et seq.
 - Petition for Unit Clarification, ARM 24.26.1042, et seq.
 - Petition to Revoke Certification or Recognition, ARM 24.26.1048, et seq.
 - Petitions to Amend Certification of Exclusive Representative, ARM 24.26.1050, et seq.
- BOPA's rules specifically allow for a "card check" election for a unit determination proceeding if specific criteria are met:
 1. To qualify for a card check election, a Petition for Unit Determination must include:
 - a. Proof of Interest Cards that include the "card check" language
("if the card is submitted as proof of interest in support of a new unit determination petition for certification without an election, the card must also include a statement that the employee understands that the employee's signature may be used to obtain certification of the named labor organization as the exclusive bargaining representative without an election." ARM 24.26.1002(e));
and,
 - b. the number of cards must represent more than 50% of the employees in the bargaining unit;
 2. AND if no Employer Counter Petition or Petition to Intervene is received within the allotted time frames under the rules; THEN . . .
 3. AN ELECITON IS NOT REQUIRED, and the board agent shall promptly issue certification of representation. (ARM 24.26.1012 (3)(a)).

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BOARD REVIEW

- Review of Board Agent Dismissal - only Unfair Labor Practices, AMR 24.26.1208.
 - Board Reviews Board Agent ULP decision to determine if the Board Agent properly investigated and if the ULP has probable merit.
 - Board can affirm the dismissal; or the Board can reverse the dismissal and refer the ULP for a Hearing.
- Hearing Officer Decision – All other types of cases – ARM 24.26.254.
 - Board Reviews Hearing Officer Decisions.
 - If the findings of fact are supported by competent substantial evidence; and
 - If the conclusions of law are correct.
 - Board review and deliberation happens in a public meeting, and substantive decisions are made by a majority vote of the quorum present.
- A BOPA decision is a Final Agency Decision, and a party request Judicial Review in District Court under Mont. Code Ann. § 2-4-701, et seq.
- District Court decisions may be appealed to the Montana Supreme Court.

USEFUL ADMINISTRATIVE RULES:

BOPA's complete administrative rules are available on the Secretary of State's website at <https://rules.mt.gov/>.

Select Procedural Rules

Unless otherwise stated, the general procedural rules are applicable to proceedings before a board agent as part of an unfair labor practice or election petition, and the rules are applicable an appeal to BOPA.

24.26.207 DEFINITIONS

- (1) "Board" means the Board of Personnel Appeals.
- (2) "Board agent" means 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, chapter 31 or 32, MCA, shall be for a duration of a minimum of 12 months.
- (4) "Complainant" means a party or authorized lay representative who alleges a ULP by a public employer or labor organization.
- (5) "Date of Filing" means the date of receipt by the board.
- (6) "Day" means calendar day unless otherwise specified.
- (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 exempted under 2-18-103 and 2-18-104, MCA.
- (11) "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.

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- (12) "Excelsior list" means the list of employees who are included in the bargaining unit or proposed bargaining unit when a petition for election is filed with the board. The excelsior list must include the employees' current name, address, phone number, position, and job classification.
- (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, parts 1 through 3, MCA.
- (14) "Grievance form" means the state employee 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.
- (16) "Party" is any person, labor organization, or employer filing a grievance, appeal, petition, or complaint with the board; any person, labor organization, or employer named as a party in a grievance, appeal, petition, or complaint; or any other person, labor organization, or employer whose timely motion to intervene has been granted.
- (17) "Party to an election" means a labor organization or employer.
- (18) "Petitioner" means any person, labor organization, or employer who files a petition with the board.
- (19) "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.
- (20) "Proof of interest" means the confidential authorization cards defined in ARM 24.26.604.
- (21) "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.
- (22) "Recommended Order" means the order of a hearing officer or other board agent consisting of proposed rulings on motions and evidentiary matters, findings of fact, conclusions of law, and a recommended order.
- (23) "Respondent" means any person, labor organization, or employer who is required to respond to a 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, or any successor division or agency.
- (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.

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Authorizing statute(s): 2-4-201, 39-31-104, 39-32-103, MCA

Implementing statute(s): 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

24.26.246 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 dliedbopa@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.

Authorizing statute(s): 39-31-104, 39-32-103, MCA

Implementing statute(s): 39-31-105, 39-32-112, 39-32-113, MCA

24.26.248 TIME

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

Authorizing statute(s): 39-31-104, 39-32-103, MCA

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Implementing statute(s): 39-31-105, 39-32-112, 39-32-113

Unfair Labor Practice Rules

24.26.1201 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, MCA, 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; and
 - (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.

Authorizing statute(s): 39-31-104, 39-32-103, MCA

Implementing statute(s): 39-31-401, 39-31-402, 39-31-404, 39-32-109, 39-32-112, MCA

24.26.1202 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

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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 ARM 24.26.1008.

(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.

Authorizing statute(s): 39-31-104, 39-32-103, MCA

Implementing statute(s): 39-31-405, 39-32-112, MCA

24.26.1204 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 ARM 24.26.1208. 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.

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(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 ARM 24.26.1206.

Authorizing statute(s): 39-31-104, 39-32-103, MCA

Implementing statute(s): 39-31-405, 39-32-112, MCA

24.26.1206 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 in 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 ARM 24.26.242. 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 the final agency decision of the board.

(b) If the board determines that the ULP complaint is supported by probable merit, the board shall issue a written order remanding the matter to a hearing officer pursuant to ARM 24.26.1208.

Authorizing statute(s): 39-31-104, 39-32-103, MCA

Implementing statute(s): 39-31-405, 39-32-112, MCA

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24.26.1208 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, MCA, 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 exceptions pursuant to ARM 24.26.254 within 20 days after service of the hearing officer's recommended order.

Authorizing statute(s): 39-31-104, 39-32-103, MCA

Implementing statute(s): 39-31-405, 39-31-406, 39-32-112, MCA

Petitions and Elections Rules

24.26.1001 FILING OF LABOR ORGANIZATION'S BYLAWS

- (1) Any employee organization seeking certification from the board as exclusive representative of a group of employees must first file with the board a copy of the labor organization's written bylaws. If revisions or changes are made, the bylaws must be refiled.
- (2) The bylaws must provide for and guarantee that:
 - (a) provisions are made for democratic organization and procedures;
 - (b) elections are held pursuant to adequate standards and safeguards;
 - (c) controls are provided for the regulation of officers and agents having fiduciary responsibility; and
 - (d) sound accounting, fiscal control, and annual audit requirements exist.

Authorizing statute(s): 39-31-104, 39-32-103, MCA

Implementing statute(s): 39-31-206, 39-32-113, MCA

24.26.1002 REQUIREMENTS FOR PROOF OF INTEREST AUTHORIZATION DOCUMENTS – CONFIDENTIALITY

- (1) An authorization card is proof of interest that must be submitted in support of a petition for certification. The card must contain the following:
 - (a) the employee's name, typed or legibly printed;
 - (b) the employee's signature;
 - (c) the date of the employee's signature, dated within six months of the date of the filing of the petition;
 - (d) a statement that the employee designates the named labor organization as the employee's exclusive representative for purposes of collective bargaining with the employee's employer; and
 - (e) if the card is submitted as proof of interest in support of a new unit determination petition for certification without an election, the card must also include a statement that the employee understands that the employee's signature may be used to obtain certification of the named labor organization as the exclusive bargaining representative without an election.
- (2) The proof of interest submitted with any petition shall not be furnished to any of the parties. The board agent shall consider the adequacy of the showing of interest and such decision shall not be subject to challenge.

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Authorizing statute(s): 39-31-104, 39-32-103, MCA

Implementing statute(s): 39-31-207, 39-32-113, MCA

24.26.1004 COMPOSITION OF UNIT

(1) The board may consider a bargaining unit that consists of all the employees in any department, division, bureau, section, or combination thereof.

Authorizing statute(s): 39-31-104, 39-32-103, MCA

Implementing statute(s): 39-31-202, 39-32-102, 39-32-106, 39-32-113, MCA

24.26.1005 APPROPRIATE UNIT

(1) 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.

(2) The board shall consider the following factors in addition to those listed in (1) when considering a proposed bargaining unit for nurses working at a health care facility, as defined in 39-32-102, MCA:

- (a) similarity of duties;
- (b) licensure; and
- (c) conditions of employment.

Authorizing statute(s): 39-31-104, 39-32-103, MCA

Implementing statute(s): 39-31-202, 39-32-102, 39-32-106, 39-32-113, MCA

24.26.1006 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 ARM 24.26.242.

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- (b) The petition must contain the name, address, and phone number of the petitioner or an 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 an authorized representative.
- (2) The petition shall be filed with the board pursuant to ARM 24.26.246.
- (3) Upon receipt of the petition, a board agent shall be assigned to review and process the petition according to this subchapter.
- (4) A petition may be amended at the board agent's or hearing officer's discretion or at the request of a party, but no petitions may be amended as follows:
 - (a) after ballots are mailed in a mail-ballot election, or after the first ballot is cast in an in-person election; or
 - (b) after an objection is filed with the board to a hearing officer's recommended order under ARM 24.26.1008.
- (5) The petitioner may withdraw a petition for an election at any time before the first ballot is cast in the election.

Authorizing statute(s): 39-31-104, 39-32-103, MCA

Implementing statute(s): 39-31-207, 39-32-113, MCA

24.26.1008 HEARING ON REPRESENTATION MATTERS

- (1) The board agent may refer matters to a hearing officer for consideration under this subchapter.
- (2) The hearing officer shall conduct an informal hearing for matters under this subchapter.
 - (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, the hearing officer's orders issued under this rule are subject to review by the board under ARM 24.26.254.

Authorizing statute(s): 39-31-104, 39-32-103, MCA

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Implementing statute(s): 39-31-202, 39-31-207, 39-31-208, 39-32-113, MCA

24.26.1012 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 exceeds 50 percent of the number of employees in the proposed bargaining unit;
- (ii) an employer counter petition is not filed within seven days of the date the board mailed the petition for unit determination to the employer, as provided by ARM 24.26.1016;
- (iii) a petition to intervene has not been filed within seven days of the employer posting notice of unit determination proceedings, as provided by ARM 24.26.1018; and
- (iv) the showing of interest is adequate because more than 50 percent of the employees on the excelsior list have submitted an authorization card.

(b) An election is required pursuant to ARM 24.26.1070 when at least 30 percent but not more than 50 percent of the employees on the excelsior list have submitted an authorization card.

Authorizing statute(s): 39-31-104, 39-32-103, MCA

Implementing statute(s): 39-31-207, 39-32-113, MCA

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24.26.1014 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.

Authorizing statute(s): 39-31-104, 39-32-103, MCA

Implementing statute(s): 39-31-207, 39-32-113, MCA

24.26.1016 EMPLOYER COUNTER PETITION

- (1) The employer may file an employer counter petition (EC petition) with the board within 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;
 - (e) an excelsior list for the employees in the proposed counter-unit; and
 - (f) 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 ARM 24.26.1008.
 - (a) If a party disputes the recommended order of the hearing officer, the party may file exceptions pursuant to ARM 24.26.254 within ten 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 pursuant to ARM 24.26.1022 if appropriate or ARM 24.26.1070.

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(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 ARM 24.26.1005, and then proceed pursuant to ARM 24.26.1022 if appropriate or ARM 24.26.1070.

Authorizing statute(s): 39-31-104, 39-32-103, MCA

Implementing statute(s): 39-31-202, 39-31-207, 39-32-113, MCA

24.26.1018 PETITION TO INTERVENE IN UNIT DETERMINATION

(1) Any labor organization, employee, or group of employees may file a petition to intervene within seven 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.

Authorizing statute(s): 39-31-104, 39-32-103, MCA

Implementing statute(s): 39-31-207, 39-32-113, MCA

24.26.1020 UNIT DETERMINATION PETITION INVESTIGATION AND HEARING

(1) The board agent shall serve a copy of the UD petition on 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 ARM 24.26.1014.

(2) 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 ARM 24.26.1072.

(3) 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.

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(4) If the board agent directs a hearing, the matter shall be referred to a hearing officer, pursuant to ARM 24.26.1008. Orders issued by the hearing officer under this rule are not subject to appeal to the board.

(5) If the unit does not include nurses working for a health care facility under 39-32-106, MCA, within seven days of the board agent's determination to dispense with the hearing, or within 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 ARM 24.26.1070. Either party shall raise any challenges for individual inclusions and exclusions to the unit at the pre-election conference.

(6) If the unit approved in the hearing officer's order includes nurses working for a health care facility under 39-32-106, MCA, the board agent must also comply with ARM 24.26.1022.

Authorizing statute(s): 39-31-104, 39-32-103, MCA

Implementing statute(s): 39-31-207, 39-32-113, MCA

24.26.1022 NURSE UNIT AT HEALTH CARE FACILITY – PROFESSIONAL EMPLOYEE SPECIAL ELECTION

(1) This rule applies to UD petitions for a health care facility that include professional nursing staff in the proposed unit, as defined in 39-32-106, MCA.

(2) If a hearing officer issues an order pursuant to ARM 24.26.1008, 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 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

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pursuant to ARM 24.26.1070. Either party shall raise any challenges for individual inclusions and exclusions to the unit at the pre-election conference.

Authorizing statute(s): 39-32-103, MCA

Implementing statute(s): 39-32-102, 39-32-105, 39-32-106, 39-32-113, MCA

24.26.1024 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 proposed exclusive representative gives notice to the employer that it desires to begin negotiations of a CBA.

(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 exceptions to the board agent's determination within 14 days of the service of the determination.
- (b) The exceptions shall be forwarded to the hearing officer for consideration pursuant to ARM 24.26.1008.

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(6) If the board agent finds there is sufficient, objective criteria to doubt the certified or recognized 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 ARM 24.26.1012.

Authorizing statute(s): 39-31-104, 39-32-103, MCA

Implementing statute(s): 39-31-207, 39-32-113, MCA

24.26.1028 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.

Authorizing statute(s): 39-31-104, 39-32-103, MCA

Implementing statute(s): 39-31-207, 39-32-113, MCA

24.26.1030 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.

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(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.

Authorizing statute(s): 39-31-104, 39-32-103, MCA

Implementing statute(s): 39-31-207, 39-32-113, MCA

24.26.1032 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.

Authorizing statute(s): 39-31-104, 39-32-103, MCA

Implementing statute(s): 39-31-207, 39-32-113, MCA

24.26.1034 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.

Authorizing statute(s): 39-31-104, 39-32-103, MCA

Implementing statute(s): 39-31-207, 39-32-113, MCA

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24.26.1036 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 ARM 24.26.1032.
- (2) 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 ARM 24.26.1028.
- (3) If the board agent directs a hearing, the matter shall be referred to a hearing officer, pursuant to ARM 24.26.1008. Orders issued by the hearing officer under this rule are not subject to appeal to the board.
- (4) Within seven days of the board agent's determination to dispense with the hearing, or within 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 ARM 24.26.1070.

Authorizing statute(s): 39-31-104, 39-32-103, MCA

Implementing statute(s): 39-31-207, 39-32-113, MCA

24.26.1038 DISAFFIRMANCE OF REPRESENTATION BY BARGAINING REPRESENTATIVE DURING DECERTIFICATION

- (1) An 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.

Authorizing statute(s): 39-31-104, 39-32-103, MCA

Implementing statute(s): 39-31-207, 39-32-113, MCA

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24.26.1042 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 has 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 the 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.

Authorizing statute(s): 39-31-104, 39-32-103, MCA

Implementing statute(s): 39-31-202, 39-31-207, 39-32-113, MCA

24.26.1044 BOARD AGENT REVIEW OF UNIT CLARIFICATION PETITION

(1) A board agent will review the UC petition to ensure it is timely filed under ARM 24.26.1042. 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 exceptions 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 ARM 24.26.1008.

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(2) If the board agent finds the UC petition is timely filed under ARM 24.26.1042, 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.

Authorizing statute(s): 39-31-104, 39-32-103, MCA

Implementing statute(s): 39-31-202, 39-31-207, 39-32-113, MCA

24.26.1046 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 ARM 24.26.1008.

(a) If a party disputes the recommended order of the hearing officer, the party may file exceptions pursuant to ARM 24.26.254 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.

Authorizing statute(s): 39-31-104, 39-32-103, MCA

Implementing statute(s): 39-31-202, 39-31-207, 39-32-113, MCA

24.26.1048 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

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- (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 exceptions 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 ARM 24.26.1008.

Authorizing statute(s): 39-31-104, 39-32-103, MCA

Implementing statute(s): 39-31-207, 39-32-113, MCA

24.26.1050 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:

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- (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 exceptions 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 ARM 24.26.1008.

Authorizing statute(s): 39-31-104, 39-32-103, MCA

Implementing statute(s): 39-31-206, 39-31-207, 39-32-113, MCA

24.26.1052 MERGERS AND CONSOLIDATIONS

- (1) When national, regional, or state-wide labor organizations with local affiliates merge, combine or consolidate in accordance with their respective by-laws and constitutions, the merged, combined or consolidated labor organization shall have the same rights, duties and privileges under law as its predecessor organizations.

Authorizing statute(s): 39-31-104, 39-32-103, MCA

Implementing statute(s): 39-31-206, 39-31-207, 39-32-113, MCA

24.26.1070 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 ARM 24.26.1020, 24.26.1022, or 24.26.1036.
- (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 on-site election to the board agent. The board agent shall grant an on-site election only upon a clear and convincing showing that a mail ballot election is not feasible.

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Authorizing statute(s): 39-31-104, 39-32-103, MCA

Implementing statute(s): 39-31-208, 39-32-113, MCA

24.26.1072 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 passed.
- (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.

Authorizing statute(s): 39-31-104, 39-32-103, MCA

Implementing statute(s): 39-31-209, 39-32-113, MCA

24.26.1074 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.

Authorizing statute(s): 39-31-104, 39-32-103, MCA

Implementing statute(s): 39-31-208, 39-32-113, MCA

24.26.1076 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 e-mail, 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 the order of labor organization names to appear on the ballot pursuant to ARM 24.26.1080. If the parties cannot agree on the order of names, the board agent shall determine the order.

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Authorizing statute(s): 39-31-104, 39-32-103, MCA

Implementing statute(s): 39-31-208, 39-32-113, MCA

24.26.1078 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, the deadline for returning ballots, and the date ballots shall be counted which is the date of the election;
- (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 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 working days prior to 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.

(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 the required period of time in (3).

Authorizing statute(s): 39-31-104, 39-32-103, MCA

Implementing statute(s): 39-31-208, 39-32-113, MCA

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24.26.1080 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 ARM 24.26.1038.
 - (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.

Authorizing statute(s): 39-31-104, 39-32-103, MCA

Implementing statute(s): 39-31-208, 39-32-113, MCA

24.26.1082 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. For a mail ballot election, the date ballots are counted is the date of the election.
- (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.

Authorizing statute(s): 39-31-104, 39-32-103, MCA

Implementing statute(s): 39-31-208, 39-32-113, MCA

24.26.1084 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

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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.

Authorizing statute(s): 39-31-104, 39-32-103, MCA

Implementing statute(s): 39-31-208, 39-32-113, MCA

24.26.1086 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 employee 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 voter.

Authorizing statute(s): 39-31-104, 39-32-103, MCA

Implementing statute(s): 39-31-208, 39-32-113, MCA

24.26.1088 RUNOFF

(1) The board shall conduct a runoff election when an election in which the ballot provides for not less than three choices (i.e., at least two representatives and no representative) results in no choice receiving a majority of the valid ballots cast.

(2) The ballot in the runoff election shall provide for a selection between the two choices receiving the largest and second largest number of votes in the previous election.

(3) Those eligible to vote in the original election shall be eligible to vote in the runoff election.

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Authorizing statute(s): 39-31-104, 39-32-103, MCA

Implementing statute(s): 39-31-208, 39-32-113, MCA

24.26.1090 BALLOT TALLY AND EXCEPTIONS

- (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 e-mail 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 exceptions 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) Exceptions shall be in writing and shall contain a brief statement of the facts upon which the exceptions are based. Exceptions shall be served upon all parties to the election.
- (5) The board agent shall review the exceptions and refer the matter to a hearing officer pursuant to ARM 24.26.1008.
- (6) An order of the hearing officer issued under this part shall be appealable to the board pursuant to ARM 24.26.254.

Authorizing statute(s): 39-31-104, 39-32-103, MCA

Implementing statute(s): 39-31-208, 39-32-113, MCA

24.26.1092 CERTIFICATION

- (1) If an election occurred and no exceptions 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 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 CBA as support of its claim.

Authorizing statute(s): 39-31-104, 39-32-103, MCA

Implementing statute(s): 39-31-208, 39-32-113, MCA

BOPA Review of Hearing Officer Rule**24.26.254 BOARD REVIEW OF HEARING OFFICER'S RECOMMENDED ORDER**

(1) A party may request review of the hearing officer's recommended order by filing exceptions with the board within 20 days of service of the hearing officer's recommended order. Any exception must include all the party's specific exceptions and reasons for the exceptions. The exceptions serve as the party's opening brief. 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 exceptions 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 exceptions must file and serve the response brief within 14 days of the board's 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.

(2) 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.

(3) A brief and any exhibits must comply with the formatting standards in ARM 24.26.242 and 24.26.244. A brief may not exceed 20 pages in length.

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(4) 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 the 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.

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

(6) 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.

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

(8) The board shall issue a written decision which affirms, rejects, modifies, or remands the hearing officer decision as follows:

(a) For a matter arising under ARM Title 24, chapter 26, subchapter 10, the written decision shall be issued within 14 days of the hearing of the appeal.

(b) For a ULP complaint arising under ARM Title 24, chapter 26, subchapter 12, the written decision shall be issued within five months of the hearing on the appeal.

(c) For all other matters, the written decision shall be issued within 90 days of the hearing of the appeal.

(9) The final decision of the board is a final agency decision.

Authorizing statute(s): 39-31-104, 39-32-103, MCA

Implementing statute(s): 2-18-1011, 2-18-1012, 39-31-406, 39-32-112, 39-32-113, MCA



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RESOURCES

Contact Information:

Board of Personnel Appeals

301 South Park Avenue, Floor 5
PO Box 201503
Helena, MT 59620-1503
(406) 444-0564
(406) 444-4140 – fax
DLIERDBOPA@mt.gov

Wendy Jackson

Dispute Resolution Section Chief
Employment Standards Division
Montana Department of Labor & Industry
(406) 444-0564
wendyjackson@mt.gov

BOPA Website:

- <https://erd.dli.mt.gov/labor-standards/collective-bargaining/board-of-personnel-appeals/>
- Board Member Information - To avoid ex parte communication, please do not contact Board members directly. Please direct any correspondence to BOPA using the contact information provided above.
- Forms –
 - Includes links to BOPA forms to file requests for Mediation, Arbitration, Factfinding, and other services provided by the Department.
 - Also includes links to file an Unfair Labor Practice, Petitions for Elections, Classification Appeal, etc.
- Roster of Arbiters
- BOPA Decisions
- Links to Montana’s Public Sector Collective Bargaining Statutes and Rules

Notice of Department/BOPA Rulemaking

- The agency maintains a list of interested persons who wish to receive notices of proposed rulemaking actions by the agency, program, or board, including BOPA.
- Sign up to receive Notice of Department Rulemaking – indicate BOPA and any other topic, program, or board of interest.
 - dli.mt.gov/rules – click on “Interested Party” to sign up; or,
 - Mail a Letter to P.O. Box 1728, Helena, Montana 59624.

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Online Resources:

- Montana Code Annotated:
 - <https://archive.legmt.gov/bills/mca/index.html>
 - Collective Bargaining for Public Employees, Title 39, Chapters 31, 32, 33 and 34
- Administrative Rules of Montana:
 - <https://rules.mt.gov/>
 - Board of Personnel Appeals Rules: Title 24, Chapter 26
- National Labor Relations Board (NLRB):
 - nlrb.gov
 - Includes links to NLRB statutes, rules, and procedures
 - Includes links to NLRB cases and decisions
- American Bar Association Labor and Employment Law Section:
 - https://www.americanbar.org/groups/labor_law/
 - Includes online resources and continuing education courses
 - Full access requires payment of ABA and Section membership fees

Other Resources:

- *The Developing Labor Law: The Board, the Courts, and the National Labor Relations Act*, John E. Higgins, Jr., 7th ed., American Bar Association, 2017 (latest printed version).
- *The Developing Labor Law: The Board, the Courts, and the National Labor Relations Act, 2025 Update*, Jayme L. Sophir, et al., 8th ed., American Bar Association, 2025 (E-Book PDF file available on the ABA website).