

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

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 24.26.604, 24.26.612, 24.26.620,) PROPOSED AMENDMENT
24.26.655, and 24.26.667 pertaining to)
new unit determinations and elections)

TO: All Concerned Persons

1. On December 3, 2019, at 10:00 a.m., a public hearing will be held in Conference Room B 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 public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Personnel Appeals no later than 5:00 p.m., on November 27, 2019, to advise us of the nature of the accommodation that you need. Please contact Theresa McGowan-Sroczyk, Board of Personnel Appeals, P.O. Box 201503, Helena MT 59620-1503; telephone (406) 444-1389; Montana TTD (406) 444-5549; facsimile (406) 444-4140; or TSroczyk@mt.gov.

3. The rules proposed to be amended are as follows, stricken matter interlined, new matter underlined:

24.26.604 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.

(1) remains the same but is renumbered (2).

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

Reasonable Necessity: There is reasonable necessity to amend this rule to clarify the requirements for proof of interest documents. The amendments specify the name, signature, and date requirements. The amendments also clarify the substantive information requirements for the proof of interest as demonstrated on the authorization cards. Specifically, the cards are required to include a statement that clearly indicates the person signing the card understands the intent they are affirming by their signature. If a majority of employees in the proposed unit sign cards such that the card is used as proof of interest to form a unit without the need for an election, the card must include a statement that the person signing understands the card may be used as proof without an election. Specific language is not required, but the language must clearly indicate the substantive intent. The following language is a good example:

"I designate [name of labor organization] as the exclusive bargaining representative for the purposes of collective bargaining with [name of employer]. I understand that my signature may be used to obtain certification of the above-named labor organization as the exclusive bargaining representative, without an election.
Employee Name Employee Signature Date Signed"

24.26.612 PETITIONS FOR NEW UNIT DETERMINATION AND ELECTION

(1) A petition for new unit determination ~~and election~~ may be filed with the board by a labor organization or a group of employees.

(2) through (4) remain the same.

(5) The petition ~~shall~~ must be accompanied by proof, consisting of authorization cards, or copies thereof, ~~from 30 percent of the employees in the proposed unit, which have been individually signed and dated within six months of the date of the filing of the petition. The cards shall indicate that the signatories desire to be represented for collective bargaining purposes by the petitioner.~~

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

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

(ii) a counter-petition petition is not filed within ten days of the date the board mailed the petition for unit determination to the employer, as provided by ARM 24.26.614;

(iii) a petition to intervene has not been filed within ten days of the employer posting notice of unit determination proceedings, as provided by ARM 24.26.618; and

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

(b) An election is required pursuant to ARM 24.26.620 when at least 30% but not more than 50% of the employees on the excelsior list have submitted an authorization card.

(6) remains the same.

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

Reasonable necessity: There is reasonable necessity to amend this rule to make clear that elections are not required in all proceedings for new unit determinations if a majority of employees show support for representation with authorization cards and no one files an opposing petition. In this situation, no question of representation exists and an appropriate unit has been determined by the adequacy of the showing of interest on valid authorization cards. This rule provides a way to save time and resources for unit determinations by avoiding unnecessary procedures when employees have indicated an intent to seek a representative for collective bargaining. The proposed rule properly protects employees' right to self-organize, by streamlining the proceeding when no opposing petitions are filed. The rule applies when:

1. a majority of employees submit proper proof of interest that indicates their desire to be represented for collective bargaining purposes without an election;
2. the employer posts the notice of unit determination proceedings as required by ARM 24.26.616;
3. the employer does not file a counter petition;
4. another union does not file a petition to intervene;
5. another group of employees does not file a petition to intervene; and
6. the showing of interest is adequate based on the excelsior list provided for by ARM 24.26.620.

Because the procedure in (5)(a) only applies to new unit determinations, only unrepresented employees may submit proof of interest authorization cards.

24.26.620 PROCEDURE FOLLOWING FILING OF PETITION FOR NEW UNIT DETERMINATION AND ELECTION (1) If an election is required by ARM 24.26.612, the ~~The~~ board shall direct an investigation of all questions and facts concerning the proposed unit, and shall have the following options:

- (a) and (b) remain the same.
- (2) The excelsior list must be provided to the petitioner within ten days of the board's mailing of the petition to the public employer ~~posting of notice of the unit determination proceedings.~~
- (3) remains the same.

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

Reasonable Necessity: There is reasonable necessity to amend this rule to clarify that it does not apply to new unit determinations that do not require an election. There is also reasonable necessity to clarify that the timeline for the employer to provide the excelsior list to the petitioner starts from the date the board notifies the employer, not the date the employer posts the notice of unit determination proceedings. The date the employer is notified is determined and documented by

the department and should be used as the proper date to determine when information should be provided in order to streamline the proceedings.

24.26.655 ELECTION DIRECTED (1) When a petition for an election has been filed, the board shall direct an election be held, if the board or its agent has determined an appropriate unit and the provisions of ARM 24.26.612 require an election ~~has been determined or if no question of representation exists~~. The election shall be conducted under the direction and supervision of the board's agent. Determinations made by the board's agent are subject to review by the Board of Personnel Appeals at the board's discretion.

AUTH: 39-31-104, MCA
IMP: 39-31-208, MCA

Reasonable necessity: There is reasonable necessity to amend this rule to clarify that it only applies when an election is required.

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

(2) remains the same.

AUTH: 39-31-104, MCA
IMP: 39-31-208, MCA

Reasonable necessity: There is reasonable necessity to amend this rule to clarify that it only applies when an election is required.

4. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to Theresa McGowan-Sroczyk, Board of Personnel Appeals, P.O. Box 201503, Helena MT 59620-1503, by facsimile to (406) 444-4140, or e-mail to TSroczyk@mt.gov, and must be received no later than 5:00 p.m., December 6, 2019.

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

6. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request, which includes the name

and e-mail or mailing address of the person to receive notices, and specifies the particular subject matter or matters regarding which the person wishes to receive notices. Such written request may be mailed or delivered to the Department of Labor and Industry, attention: Mark Cadwallader, 1315 E. Lockey Avenue, P.O. Box 1728, Helena, Montana 59624-1728, faxed to the department at (406) 444-1394, or e-mailed to mcadwallader@mt.gov, or may be made by completing a request form at any rules hearing held by the agency.

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

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

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

BOARD OF PERSONNEL APPEALS
ANNE L. MACINTYRE
PRESIDING OFFICER

/s/ MARK CADWALLADER
Mark Cadwallader
Alternate Rule Reviewer

/s/ GALEN HOLLENBAUGH
Galen Hollenbaugh, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State October 29, 2019.