IDAPA 09 – IDAHO DEPARTMENT OF LABOR

09.05.03 – Rules for Determining Bargaining Representatives

Who does this rule apply to?
These rules apply to the following individuals/entities:
Idaho businesses, cities and counties with union employees, Idaho unions, union employees, union bargaining representatives and negotiators, Idaho legal authorities, and lawyers and legal counsel.

What is the purpose of this rule?
This rule establishes the requirements, processes and procedures for investigating, setting forth a petition, and determining employee wishes for union representation, representing union employees in a collective bargaining unit, issuing a certification for a union to serve as a collective bargaining unit, designing and preparing ballots and cross-checking votes, selecting and notifying voters of the locations for voting; and defining voter eligibility.

What is the legal authority for the agency to promulgate this rule?
This rule implements the following statutes passed by the Idaho Legislature:

Worker's Compensation and Related Laws — Industrial Commission -
Employment Security Law:

- Section 72-1381, Idaho Code – Director to Cooperate with Governor in Mediation of Disputes
- Section 72-1382, Idaho Code – Employment Security Law

Who do I contact for more information on this rule?

Idaho Department of Labor
317 W. Main Street
Boise, ID 83735
Phone: (208) 332-3570 x 2102
Fax: (208) 334-3536
Email: rules@labor.idaho.gov
Web: labor.idaho.gov

Table of Contents

09.05.03 – Rules for Determining Bargaining Representatives

000. Legal Authority. 3
001. Title And Scope. 3
002. (Reserved) 3
003. Administrative Appeals. 3
004. -- 011. (Reserved) 3
012. Union Agreements And Insulated Period. 3
013. Strikers Deemed Employees. 3
014. Employee Representation. 3
015. -- 999. (Reserved) 5

000. LEGAL AUTHORITY.
These rules are promulgated under Section 72-1382, Idaho Code, and Title 67, Chapter 52, Idaho Code. (3-20-20)

001. TITLE AND SCOPE.

01. Title. IDAPA 09.05.03, "Rules for Determining Bargaining Representatives." (3-20-20)

02. Scope. The rules govern all proceedings before the Department brought pursuant to Section 72-1382, Idaho Code, or concerning mediation proceedings brought pursuant to Section 72-1381, Idaho Code. IDAPA Sections 09.05.03.011, 09.05.03.012, 09.05.03.013, and 09.05.03.014 relate only to powers concerning determination of representation under Section 72-1382, Idaho Code, and for conciliation and mediation purposes under Section 72-1381, Idaho Code. (3-20-20)

002. (RESERVED)

003. ADMINISTRATIVE APPEALS.
There is no administrative appeal under this chapter. (3-20-20)

004. -- 011. (RESERVED)

012. UNION AGREEMENTS AND INSULATED PERIOD.
Once the contract becomes effective as a bar to an election, no petition will be accepted until the end of the period during which the contract is effective as a bar. A contract for a fixed period of more than three (3) years will bar an election sought by a contracting party during the life of the contract, but will act as a bar to an election sought by an outside party for only three (3) years following its effective date. A contract of no fixed period will not act as a bar at all. Petitions filed not more than ninety (90) days but over sixty (60) days before the end of the contract bar period will be accepted and can bring about an election, or if a petition is filed after a contract expires it will be accepted. The last sixty (60) days of the contract bar period is called an insulated period. During that time the parties to the existing contract are free to negotiate a new contract or to agree to extend the old one. If they do so, petitions will not be accepted until ninety (90) days before the end of the new contract bar period. (1-21-74)

013. STRIKERS DEEMED EMPLOYEES.
Strikers are deemed to be employees even though replaced by other workers for representation purposes only and may be entitled to vote in any election conducted within twelve (12) months after the commencement of the strike. (1-21-74)

014. EMPLOYEE REPRESENTATION.

01. Petition or Union Representation. Any employer, union, or employee may petition the Department to conduct an investigation and/or hearing to determine whether the majority of the employees of any given business wish union representation and what union they wish to be represented by. Such petition must fully set forth and allege the exact question concerning representation of employees in the collective bargaining unit. The request must fully state the name of the employer, the place of business, the type of business, the name of the labor organization or organizations involved; and if the request is made by the employer it must include a list of employees employed in said unit. (1-21-74)

02. Requests Made by Unions. If the request is made by a union, such union must submit written statements or authorization cards from at least thirty percent (30%) of those workers in the unit to establish there is such a question of representation, except in establishments having less than six (6) employees, in which case twenty-five percent (25%) of the employees involved will be deemed sufficient. A description of the bargaining unit must be given. (1-21-74)

03. Collective Bargaining Unit. When a question arises concerning representation of employees in a collective bargaining unit the Department will investigate in order to determine the wishes of the majority of the employees in said unit. (3-20-20)

04. Hearings. In any such investigation, a hearing may be held after giving due notice to all interested parties as provided for in the procedural rules of the Department. If as a result of such hearing or investigation the parties agree which union, if any, may properly represent them, a certification will be made and issued by the Director of the Department designating the union for bargaining purposes. If after such a hearing and/or investigation, there is any doubt as to the wishes of the majority of the employees employed in said unit, a time and place will be scheduled

to permit the employees to vote by secret ballot. (1-21-74)

05. Preparation of Ballot. In all cases where a secret ballot is taken, the ballot must be prepared by the Department to permit a vote for or against representation by anyone named on the ballot. In case of two (2) or more unions, a place must be provided for a vote against any union. (1-21-74)

06. Waiver of Investigation and Hearing. The investigation and hearing may be waived by consent of the parties pursuant to written stipulation by all parties involved, and a cross check may be conducted by representatives of the Department. Such cross check will be made by comparing the signatures or names appearing on the employer's payroll with signatures on authorization cards submitted by the union involved. At such cross check, no representatives will be permitted to be present except representatives of the Department. The Department may, at its discretion, also question individual employees. (1-21-74)

07. Elections. If it becomes necessary to conduct an election, such election will be held only after appropriate notice is posted by the department in a conspicuous place where the employees are employed. Whenever possible, the election will be held on the premises of the employer and at a time calculated to best permit all employees who are eligible to vote, and so far as possible at a time which will minimize the disruption of the employer's business. Such notice must be posted at least twenty-four (24) hours before the election and in those cases where, because of the nature of the shifts, a longer time is necessary, it shall be so given. Every effort will be made to hold the election reasonably soon after the twenty-four (24) hour period except in those exceptional cases. (1-21-74)

08. Observers. The parties involved may each designate and have present at the election only one (1) observer. Neither management nor union officials may act as observers. Employees having the right to hire or fire or to effectively recommend hiring or firing will be considered as management personnel of the employer and will not be permitted to vote at such election or to act as observers. No member of an employer's immediate family will be eligible to vote at such representation election or to act as an observer, or any principal stockholder owning ten percent (10%) or more of the company stock. (1-21-74)

09. Voting Eligibility. All employees in said bargaining unit on the payroll at the time the petition was received in the Department may vote. Regular part-time employees will be permitted to vote. Casual part-time employees or workers who are employed for a limited period will not be permitted to vote. (1-21-74)

10. Challenging Eligibility. Any interested party or representative of the Department may challenge the eligibility of any person to participate in the election for cause under these rules. The ballots of such challenged person will be impounded. Upon conclusion of the election and before the ballots are counted, the parties will be permitted to offer evidence in support of their contentions as to eligibility to vote, after which time a ruling will be made sustaining or overruling the objection. If overruled, the ballot will be placed in the ballot box. (1-21-74)

11. Ballots. Ballots prepared by the Department will set forth the question involved. One ballot will be given to each eligible voter. Such ballots are not to be signed by the voters. Voters will be requested to place an "X" in a square which will require only "YES" or "NO" votes. The ballot must be prepared to permit a vote against any representation. (1-21-74)

12. Deauthorization of Union Representation. A petition in a union shop for an election to determine whether there should be any union representation or not, may be filed with the Department. In such petition, it must be shown at least thirty percent (30%) or more of the employees in the unit covered by the agreement desire deauthorization. Only employees in the bargaining unit will be counted for this purpose subject to the provisions of Subsection 014.12. (1-21-74)

13. Petition for Election. The demand or petition set forth in Subsection 014.12 need not be in any particular form, but must comply with the procedural rules of the Department. No such election as set forth in Subsection 014.12 will be conducted among employees presently covered by a valid collective bargaining agreement, except when filed in accordance with the reopening or termination clause of such agreement. (1-21-74)

14. Existing Collective Bargaining Agreement. An existing collective bargaining agreement is a bar to any representation election except as provided for within Section 012. (1-21-74)

15. Frequency of Election. No election may be held in any bargaining unit or subdivision thereof within which a valid election was held in the preceding twelve (12) month period. (1-21-74)

015. -- 999. (RESERVED)

Subject Index

A

Administrative Appeals 3

E

Employee Representation 3
- Ballots 4
- Challenging Eligibility 4
- Collective Bargaining Unit 3
- Deauthorization of Union Representation 4
- Elections 4
- Existing Collective Bargaining Agreement 4
- Frequency of Election 5
- Hearings 3
- Observers 4
- Petition for Election 4
- Petition or Union Representation 3
- Preparation of Ballot 4
- Requests Made by Unions 3
- Voting Eligibility 4
- Waiver of Investigation & Hearing 4

L

Legal Authority 3

S

Strikers Deemed Employees 3

T

Title & Scope 3

U

Union Agreements & Insulated Period 3