

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

MINNESOTA STATE REGULATIONS

Notice of filing by the Commissioner of Administration

We have received on this date, stamped and filed 2 copies of Rules and Regulations pertaining to the Public Employment Relations Board
(Agency or Board)

Regulation No. PERB 3 thru 54 (amended)

Subject: Hearings - Decisions - Arbitration

Department of Administration
Publication, Central Services Division
Documents Section
140 Centennial Office Building
St. Paul, Minnesota 55155
Telephone: (612) 296-2874

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RICHARD L. BRUBACHER
Commissioner of Administration
MAY 8 1975 4:15 PM
BY Eda Staudenmaier
AUTH. SIGNATURE

Stamped and filed with the Secretary of State 5-8-75

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routine mental, manual, mechanical, or physical work; (ii) involving the consistent exercise of discretion and judgment in its performance; (iii) of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time; (iv) requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning or a hospital, as distinguished from a general academic education or from an apprenticeship or from training in the performance of routine mental, manual or physical processes;

(b) any employee, who (i) has completed the courses of specialized intellectual instruction and study described in clause (iv) of paragraph (a), and (ii) is performing related work under the supervision of a professional person to qualify himself to become a professional employee as defined in paragraph (a).

~~3.11--De-Novo-Hearing.--"De-Novo-hearing"-means-a-new-and-full factual-hearing-on-the-issues-stated-in-the-notice-of-appeal and-answer.--In-no-event-will-issues-be-heard-which-were-not presented-to-the-Bureau.~~

~~3.12~~ 3.11 Presiding Officer. "Presiding officer" means the Board, one or more of its members or a hearing examiner appointed by the Board who may hear the appeal.

~~3.13~~ 3.12 Service; Serve. "Service" or "serve" means service of a document required by these rules, by person or certified United States mail, with return requested, postage prepaid and addressed to the party at his last known address, unless some other manner of service is required by law. Certified mail means mail which must be signed for by the addressee upon receipt of said mail.

~~3.14~~ 3.13 Time. In computing any period of time prescribed or allowed by these rules, the day of act or event from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday or a legal holiday. For any time period of 10 days or less, Saturdays, Sundays or legal holidays shall not be included in computing the period of time.

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4.01 Conducting Hearings. The Board may hear appeals as a full body or may delegate to one or more of its members the authority

to hear an appeal. The Board may also appoint a hearing examiner to hear an appeal.

4.02 Authority of Hearing Examiner. The appointment of the hearing examiner shall, to the extent permitted by law, grant the hearing examiner such authority as the Board deems necessary and appropriate to hear the appeal. The hearing examiner shall not have authority to make the final decision on the appeal.

4.03 Function of Hearing Examiner. The hearing examiner shall hear the appeal consistent with law and the terms of his appointment. His functions shall include, but not be limited to, to hear and rule on preliminary motions, conduct the hearing and prepare findings of fact. The final decision on the appeal shall in all cases be made by the Board.

PERB 5 Initiating an Appeal. Any party, or parties, may initiate an appeal by serving a copy of a notice of appeal upon all other parties with a copy to the Director and filing the original with the Board within 10 days of a determination by the Director. A notice of appeal shall contain:

1. The name and address of the applicant;

2. A statement of the nature of the decision requested, the reasons therefor and the BMS case number;

3. The names and addresses of all parties who were parties to the determination by the Director, and all other parties known to the applicant who will be directly affected by such appeal; and

4. The signature of the applicant or his representative.

PERB 6 Answer. Within 10 days after service of a notice of appeal, all other parties may submit a concise answer to the notice of appeal. A copy of such answer shall be served on all parties to the appeal and filed with the Board. Failure to submit an answer shall not be deemed as an admission of any statement contained in the issue of appeal or waiver of any rights afforded to respondent in any statute or rule.

PERB 7 Notice of Hearing. Within 15 days following receipt of a notice of appeal the Board shall serve upon all known parties not less than 10 days prior to hearing a notice stating:

1. The date, place and time of hearing;

2. The rights of the parties to representation (see PERB 9);

3. That failure to ~~attend will~~ appear or submit positions may prejudice the party's rights (see PERB 11);

~~4.--That a de novo hearing must be requested within 5 days of receipt of this notice.~~

A copy of these rules shall be included with the notice of hearing.

PERB 8 Continuance of Hearing. No request for continuance of a scheduled hearing will be granted within 7 days of a hearing unless exceptional circumstances are shown. A request for continuance shall be made in writing and served upon the other party or parties and filed with the Board.

PERB 9 Right to Representation. Any party may be represented by a designated agent ~~throughout the proceedings~~ in an appeal before the Board.

PERB 10 Informal Disposition. Informal disposition may be made of any appeal or any issue therein by stipulation, settlement or agreement at any point in the proceedings so long as said stipulation, settlement or agreement does not violate any provisions of law and is approved by the Board.

PERB 11 Default. The Board may dispose of an appeal adverse to a party who fails to appear after receiving due notice and an opportunity for hearing.

PERB 12 Intervention. The Board may, upon timely application, allow a person or organization to intervene in an appeal upon a showing of substantial interest in the outcome of the appeal.

PERB 13 Substitution of Party. Substitution of a party or their representative may be allowed only if notice of the substitution is served on all other parties, at least 5 days prior to the hearing date, and filed with the Board.

PERB 14 Consolidation.

14.01 Basis. The Board may, prior to hearing, consolidate cases either on its own motion or upon petition by any party, if it determines (1) that separate appeals present substantially the same issues, (2) that a decision in one case would affect the rights of parties in another case, and (3) that consolidation would not substantially prejudice any party. Notwithstanding the requirements of this rule, the parties may stipulate and agree to consolidation subject to Board approval.

14.02 Notice. Within 5 days following an order for consolidation the Board shall serve on all parties a notice of consolidation.

14.03 Objection to Consolidation. Within 5 days of receipt of notice of consolidation any party may file with the Board a petition for severance from consolidation which shall include

the BMS case number and reasons for objection.

PERB 15 Remand. ~~Prior to hearing of an appeal,~~ At any time prior to its decision, the Board may remand to the Director all or part of the appeal for rehearing or the taking of specified additional evidence.

PERB 16 Extension of Time. The parties, with the approval of the Board or its designee, may stipulate and agree to extend any time period provided in these rules.

PERB 17 The Hearing.

17.01 Review Procedure. ~~Unless a de novo hearing is requested within 5 days of receipt of the notice of hearing or is so ordered by the Board, appeals shall be made upon the record of the proceeding of the Bureau. Such record may be supplemented by argument of the parites. Oral and written argument shall be allowed upon request. The presiding officer may allow or request submission of additional evidence or the taking of additional testimony. All hearings shall be public meetings provided, however, the deliberations of the Board shall be private.~~ Appeals shall be determined upon record established by the Director provided that the Board at its discretion may request additional evidence. Oral and written argument may be allowed upon request of a party.

~~17.05~~ 17.02 Hearing Procedure.

(A) The hearing ~~that is not de novo~~ shall include the following:

1. The presiding officer shall open the hearing and introduce the following exhibits:

   (a) Notice of appeal and supporting documents if any;

   (b) If consolidation has occured, notice of consolidation, supporting documents, if any;

   (c) Notice of hearing, supporting documents, if any, and affidavits of service;

   (d) Any stipulations, settlements or agreements entered into by any of the parties prior to the hearing; and

   (e) The record of the hearing held before the Director.

~~2. The presiding officer may allow additional evidence or testimony;~~

~~3.~~ 2. ~~All parties will be entitled to present~~ oOral arguments shall not ~~to~~ exceed 30

minutes~~,~~ per party; ~~beginning with the party who initiated the appeal;~~

~~4.~~ 3. ~~All parties shall be allowed 5~~ Five minutes may be allowed for rebuttal;

~~5.~~ 4. The presiding officer may allow filing of ~~typewritten memorandums~~ memoranda by by the parties ~~in support of their positions~~.

(B) ~~If a de novo hearing is requested, the hearing shall be conducted as follows:~~ If additional oral evidence is to be taken, the hearing shall be conducted as follows:

1. The presiding officer shall open the hearing;

2. ~~All parties may present evidence and argument with respect to the issues;~~ All parties may present evidence in conformance the the Board's request for additional evidence;

3. All witnesses must be sworn and are subject to cross-examination by all parties;

4. The rules of evidence as set forth in PERB Rule ~~17.03~~ 17.05 will be followed;

5. Written matter may be marked as an exhibit and offered into evidence;

6. The presiding officer shall introduce the following exhibits:

   (a) Notice of appeal and supporting documents, if any;

   (b) If consolidation has occurred, notice of consolidation, supporting documents, if any;

   (c) Notice of hearing, supporting documents, if any, and affidavits of service;

   (d) Any stipulations, settlements or agreements entered into by any of the parties prior to the hearing;

   (e) The record established by the Director;

~~7. The record of the proceeding held by the Director may be introduced and supplemented by additional evidence and testimony;~~

~~8. The party who initiated the appeal may make an opening statement. All other parties may make such statements in a sequence determined by the presiding officer;~~

~~9.~~ 7. Unless otherwise directed by the presiding officer, ~~T~~the party who initiated the appeal shall begin the presentation of evidence and shall be followed by the other parties in a sequence determined by the presiding officer;

~~10.~~ 8. Cross-examination shall be conducted in a sequence determined by the presiding officer;

~~11.~~ 9. Rebuttal evidence and final argument shall be allowed;

~~12.~~ 10. ~~All parties will be entitled to present~~ oOral arguments shall not ~~to~~ exceed 30 minutes per party; ~~beginning with the party who initiated the appeal;~~

~~13.~~ 11. ~~All parties shall be allowed 5~~ Five minutes may be allowed for rebuttal;

~~14.~~ 12. The presiding officer may allow filing of ~~typewritten memorandums~~ memoranda by the parties ~~in support of their positions;~~.

~~15. After final argument, the hearing shall be closed or continued at the discretion of the presiding officer.~~

~~17.04~~ 17.03 The Record.

(A) Board Prepares Record. The Board shall prepare an official record in each appeal.

(B) What The Record Shall Contain. The record in an appeal shall contain:

1. All pleadings, motions and intermediate rulings;

2. Evidence received or considered;

3. A statement of matters noticed;

4. Proposed findings and exceptions;

5. Any decision, opinion or report by the presiding officer; and

6. The record ~~of proceedings held before~~ established by the Director.

(C) Transcript. A verbatim record of the hearing shall be taken by a hearing reporter and/or recording equipment.

~~17.02~~ 17.04 Witnesses. ~~In a de novo hearing any party may be a witness or may present witnesses on his behalf at a hearing. All testimony at a hearing shall be under oath.~~ When oral evidence is taken, any party may be a witness or

may present witnesses on its behalf at the hearing and such testimony shall be under oath.

~~17.03~~ 17.05 Rules of Evidence.

(A) General Rules. The presiding officer may admit and consider evidence which possesses probative value commonly accepted by reasonably prudent persons in the conduct of their affairs. The presiding officer shall give effect to the rules or privilege recognized by law. Evidence which is incompetent, irrelevant, immaterial or repetitious shall be excluded.

(B) Record of Bureau. The official record of the proceeding conducted by the Bureau shall be competent evidence.

(C) Evidence Must Be Offered To Be Considered. All evidence to be considered in the case, including all records and documents in the possession of the Board, shall be offered and made part of the record in the case. No other evidence or factual information, except as provided in (E) below, shall be considered in the determination of the case.

(D) Documentary Evidence. Documentary evidence in the form of copies or excerpts may be received or incorporated by reference in the discretion of the presiding officer or upon agreement of the parties.

(E) Notice of Facts. The presiding officer may take notice of general, technical or scientific facts within his specific knowledge. The presiding officer shall notify the parties of any facts that are to be so noticed.

(F) Depositions. Upon a showing of good cause the presiding officer may allow the taking of ~~depositions~~ depositions to preserve testimony in the same manner as prescribed by the Minnesota Rules of Civil Procedure.

17.06 Decorum.

(A) The presiding officer may prohibit the operation of a television, newsreel, motion picture, still or other camera and mechanical recording devices in the hearing room while the hearing is in progress, if such operation has a significantly adverse effect on the hearing.

(B) No person shall interfere with the free, proper and lawful access to or egress from the hearing room. No person shall interfere with the conduct of, disrupt or threaten interference with the hearing.

PERB 18 The Board Decision.

18.01 Basis for Determination. No factual information or evidence which is not part of the record shall be considered by the Board in the determination of an appeal.

18.02 Decisions and Orders.

(A) Formal Decision or Order with Reasons Required.

All decisions or orders rendered by the Board in an appeal shall be in writing and shall be accompanied by a statement of the reasons therefor.

(B) Service and Contents. All decisions or orders shall be served on all parties to the appeal and a copy filed with

the Bureau. It shall contain:

1. A statement of the decision or order in the case;

2. A statement of the reasons therefor;

3. An affidavit of service.

18.03 Default. When a party with adequate notice fails to plead or otherwise appear within the time allowed by these rules or by statute, decision by default may be entered against him.

PERB 19 Rehearing.

19.01 Board Right to Rehear. The Board may, upon request and for good cause shown or on its own motion, reopen, rehear and redetermine an appeal. The petition for rehearing must be filed with the Board within 30 days of the determination of the initial hearing.

19.02 Obtaining a Rehearing.

(A) A party to such appeal may request a rehearing by filing a petition. Such petition shall contain:

1. The name and address of the petitioner;

2. The Board designation for the case;

3. The reasons in support of the petition for rehearing.

(B) Determination. The Board shall grant or deny a petition for rehearing as a part of the record in the case. Such petition shall be granted only if the petition or the record reveals irregularities in the proceedings, errors of law occurring during the proceedings, newly discovered material evidence, a change in existing law or good cause for failure to appear or plead. Evidence and argument may be presented at the discretion of the Board in written or oral form or both by any party to the appeal with respect to the petition.

19.03 Notice of Rehearing. A notice of rehearing will be provided in the same manner prescribed for a notice of hearing.

19.04 Rehearing Procedure. A rehearing of an appeal will be conducted in the same manner prescribed for a hearing.

19.05 Decision after Rehearing. The decision after rehearing shall be made in the same manner prescribed for the decision after a hearing.

~~PERB-20--Issues-Not-Determined-By-Director.---In-the-event-an issue-relating-to-the-meaning-of-the-terms-"supervisory employee,"-"confidential-employee,"-"essential-employee"-or "professional-employee"-arises-on-which-the-Director-has-not made-a-determination,-a-request-for-determination-shall-be filed-in-lieu-of-a-notice-of-appeal,-and-the-Board-may-remand the-matter-de-novo-as-provided-herein.~~

Rules and Regulations Governing the Arbitration of Terms and Conditions of Employment Pursuant to Minnesota Statutes, Section 179.72.

PERB 30 Application. These rules shall apply to the procedures governing the creation of an arbitration panel to hear and decide disputes concerning the terms and conditions of employment.

PERB 31 Policy. These rules shall be liberally construed to effectuate the purposes and provisions of the Public Employment Labor Relations Act.

PERB 32 Definitions. The words, terms and phrases in these rules shall have the same meaning and definition as defined in PERB 3.

PERB 33 Binding Arbitration.

(A) Non-essential Employees. If the Director has received from the employer a petition for binding arbitration or a petition from the employee representative for binding arbitration and said petition has been agreed upon by the employer representative within the requisite 15 days, and the Director has certified a dispute to the Board pursuant to Minnesota Statutes, section 179.69, subds. 3 or 5, the Board shall submit to the parites a list of seven 7 arbitrators.

(B) Essential Employees. If the exclusive representative to a dispute involving any essential employees has requested arbitration and the Director has so certified, the Board has jurisdiction of the matter and shall proceed in accordance with Minnesota Statutes, section 179.72, subd. 6.

(C) Statutory Time Limitations. If the parties to a dispute fail to execute a contract within the time periods prescribed by Minnesota Statutes, section 179.69, subd. 4, they must submit their final positions to the Director pursuant to Minnesota Statutes 179.69, subd. 5. Upon receipt of the final positions, the Director may then submit the final positions to the Board for binding arbitration or he may retain jurisdiction and require the parties to mediate or continue to mediate the dispute.

PERB 34 Certification of Impasse.

A certification by the Director pursuant to Minnesota Statutes, section 179.69, subds. 3 or 5, shall contain the following:

1. The petition or petitions requesting arbitration.

2. A concise written statement by the Director indicating that an impasse has been reached and that further mediation efforts would serve no purpose.

3. A determination by the Director of matters not agreed upon based upon his efforts to mediate the dispute.

4. The final positions submitted by the parties.

5. Those agreed-upon items to be excluded from arbitration.

The Director shall file the certification with the Board and notify the parties by certified mail of the said certification.

PERB 35 Selection of an Arbitrator.

(A) The Board shall maintain a master list of available arbitrators. This list shall be made up of qualified persons who have submitted an application in writing to the Board and have been approved. These applications shall be submitted to each member of the Board prior to any action being taken by the Board for approval of the applicant. A majority vote of the Board shall be required for placement or removal from the list.

(B) The Chairman of the Board or his designee shall select ~~seven~~ 7 names for consideration as the arbitrator, but the final selection of a ~~seven~~ 7-member list shall be made by at least an affirmative vote of ~~three~~ 3 members of the Board which shall include the public member, a public employee member and a public employer member. In selecting the ~~seven~~ 7 names, the Board shall endeavor whenever possible to include names of persons from the general geographic area in which the public employer is located. After the ~~seven~~ 7 arbitrators have been selected, the Board shall submit the said names to the parties. Within 5 days thereafter, the parties shall, under the direction of the Chairman of the Board or his designee, who need not be physically present, alternately strike names from the list of ~~seven~~ 7 until only ~~three~~ 3 names remain, which ~~three~~ 3 persons shall constitute the panel if there is not agreement to select a single arbitrator. If the parties are unable to agree on who shall strike the first name, the question shall be decided by the flip of a coin. Notice of the selection of the arbitrator shall be immediately transmitted to the Board by the parties. The notice shall contain the name or names of the arbitrator selected and the name of the arbitrator selected by the parties as the convenor of the panel. If the parties fail to agree upon a convenor, the parties shall each strike, in the continued order of striking, one name from the arbitration panel. The remaining arbitrator shall act as the convenor for the arbitration panel for the purpose of commencing the proceeding.

(C) The parties may, by mutual agreement, select a single arbitrator to hear the dispute. In selecting a single arbitrator, the parties may avail themselves of the procedures outlined in (B) above or mutually agree on a single arbitrator without the necessity of using the Board.

PERB 36 Submission to Arbitrator. After the arbitrator has been selected, the Board shall submit to the arbitrator the certification of impasse by the Director. The arbitrator shall then proceed to hold hearings and make deliberations necessary to render an award.

PERB 37 Panel Chairman. In the event of a ~~three~~ 3-member arbitration panel, the panel shall, at its initial session, select one member as Chairman to serve throughout.

In the event the members cannot agree, the Chairman shall be selected by the same procedure as set forth in PERB 35, subdivision (B) above.

PERB 38 Arbitration Procedures.

(A) Attendance and Testimony of Witnesses. The arbitrator may issue subpoenas requiring the attendance and testimony of witnesses and the production of evidence which relates to any matter involved in any dispute before it. Forms for subpoenas may be obtained from the Bureau of Mediation Services. The arbitrator may administer oaths and affidavits, and may examine witnesses. Attendance of witnesses and the production of evidence may be required from any place in the state at any designated place of hearing; provided, however, the arbitration meeting shall be held in the county in which the principal administrative offices of the employer are located, unless another location is selected by agreement of the parties.

(B) Guidelines in Rendering ~~a~~ an ~~Decision~~ Award. In considering a dispute and issuing its ~~order~~ award the arbitrator shall give due consideration to the statutory rights and obligations of public employers to efficiently manage and conduct its operations within the legal limitations surrounding the financing of such operations. The arbitrator's ~~orders~~ awards shall be issued by a majority vote of its members considering a given dispute. The arbitrator shall have no jurisdiction over nor authority to entertain any matter or issue not within the definition stated in section 179.63, subd. 18; provided, however, items not within terms and conditions of employment may be included in an arbitration ~~decision~~ award if such items are contained in the employer's final position. Any ~~issue or order~~ award or part thereof issued by the arbitrator determining any matter not included under section 179.63, subd. 18 or the employer's final position shall be void and of no effect.

(C) Uniform Arbitration Act. The arbitrator may avail himself of the procedures provided for in the Uniform Arbitration Act (Minnesota Statutes 572.08-.30) as long as the procedures stated therein do not conflict with any provisions of the Public Employment Labor Relations Act.

PERB 39 Arbitration ~~Decisions and Orders~~ Awards.

(A) Final and Binding. The arbitrator's ~~decision-and-order~~ award shall be final and binding upon the parties. Provided, however, that no ~~decision~~ award of the panel which violates any provision of the laws of Minnesota or rules or regulations promulgated thereunder or municipal charters or ordinances or resolutions enacted pursuant thereto, or which causes a penalty to be incurred thereunder, shall have any force or effect. Any provision of any contract required by section 179.70, which of itself or in its implementation would be in violation of or in conflict with any statute of the state of Minnesota or a municipal home rule charter or ordinance or resolution adopted pursuant thereto, or rule of any state board or agency governing licensure or registration of an employee, provided such rule, regulation, home rule charter, ordinance, or resolution is not in conflict with sections 179.61 to 179.66 and shall be returned to the arbitrator for an amendment to make the provisions consistent with the statute, rule, regulation, charter, ordinance or resolution.

(B) Procedure. The arbitrator shall render his ~~decision~~ award within 10 days from the date that all arbitration proceedings have been concluded, but in any event must issue his ~~order~~ award by the last date the employer is required by statute, charter, ordinance or resolution to submit its tax levy or budget or certify its taxes voted to the appropriate public officer, agency, public body or office, or by November 1, whichever date is earlier. The arbitrator's ~~order~~ award shall be for such period as the arbitrator shall direct, except that ~~orders~~ awards determining contracts for teacher units shall be effective to the end of the contract period as determined by section 179.70, subd. 1. Upon issuing its ~~decision involving any dispute~~ award, the arbitrator shall transmit the ~~decision-and-order~~ award and any written decision explaining the award to the Board and to the parties.

(C) Settlement. Should any issues submitted to arbitration be settled voluntarily before the arbitrator issues his award, notice of such settlement shall be made by the arbitrator in a report issued to both the Board and Director.

PERB 40 Payment of Arbitrator or Panel. The arbitrator or members of the panel shall be paid their traveling and expenses incurred in the performance of their duties plus a per diem allowance of $100 for each day or part thereof while engaged in the consideration of a dispute. All expenses and costs of the arbitrator or panel shall be shared and assessed equally to the parties to the dispute. "Consideration of a dispute" includes, but is not limited to, time incurred in preparation, conduct of hearings, deliberations and preparation of the decision.

III. Rules and Regulations Governing the Arbitration of Grievances Pursuant to Minnesota Statutes 179.70, subd. 4.

PERB 50 Application. These rules shall apply only when the parties are unable to agree upon an arbitrator as provided by contract grievance procedures or the procedures established by the Director.

PERB 51 Policy. These rules shall be liberally construed to effectuate the purposes and provisions of the Public Employment Labor Relations Act.

PERB 52 Definitions. The words, terms and phrases in these rules shall have the same meaning and definition as defined in PERB 3.

PERB 53 Petition. In the event the parties are unable to agree upon an arbitrator or arbitrators as provided by contract grievance procedures or the procedures established by the Director, the parties may petition, in writing, the Board for a list of five arbitrators. The petition shall contain:

1. The name and address of the petitioner;

2. The names and addresses of the adverse parties; and

3. A concise statement of the nature of the grievance, the provisions of the contract applicable to the grievance and the relief requested.

PERB 54 Selection of the Arbitrator.

(A) The Board shall maintain a master list of available arbitrators. The list shall be made up of qualified persons who have submitted an application in writing to the Board and have been approved. These applications shall be submitted to every member of the Board prior to any action being taken by the Board for approval of the applicant. A majority vote of the Board shall be required for placement or removal from the list.

(B) The Chairman of the Board, or his designee, shall select five names for consideration as the arbitrator, but final selection of the five-member list shall be made by at least an affirmative vote of three members of the Board which shall include the public member, a public employee member and a public employer member. In selecting the five names, the Board shall endeavor whenever possible to include names of persons from the general geographic area in which the public employer is located.

(C) Once the five arbitrators have been selected, the Board shall notify the parties of the names of the five arbitrators. Within 5 days the parties shall, under the direction of the

Chairman or his designee, who need not be physically present, alternately strike names from the list of five arbitrators. Until only one name remains. If the parties are unable to agree on who shall strike the first name, the question shall be decided by the flip of a coin.

(D) Notice of the selection of the arbitrator shall be immediately transmitted to the Board by the parties. The notice shall contain the name of the arbitrator selected and the date for commencement of arbitration proceedings.

(E) Upon rendering any decision, the arbitrator shall transmit both to the Board and to the Director a copy of his decision and any written explanation thereof. Should any issues submitted to arbitration be settled voluntarily before the arbitrator issues his decision, notice of such settlement shall be made by the arbitrator in a report issued both to the Board and to the Director.

APPROVED AS TO FORM AND LEGALITY

MAY 8 1975 19

WARREN SPANNAUS, ATTORNEY GENERAL

BY Michael B Muller

SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
MAY 8 - 1975 4:00 P.M.
Joan Anderson Growe
Secretary of State

FILED
RICHARD L. BRUBACHER
Commissioner of Administration
MAY 8 1975 4:15 pm
BY Eda Staudenmaier
AUTH. SIGNATURE EJ

routine mental, manual, mechanical, or physical work; (ii) involving the consistent exercise of discretion and judgment in its performance; (iii) of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time; (iv) requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning or a hospital, as distinguished from a general academic education or from an apprenticeship or from training in the performance of routine mental, manual or physical processes;

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2. The rights of the parties to representation (see PERB 9);

3. That failure to ~~attend will~~ appear or submit positions may prejudice the party's rights (see PERB 11);

~~4.--That a de novo hearing must be requested within 5 days of receipt of this notice.~~

A copy of these rules shall be included with the notice of hearing.

PERB 8 Continuance of Hearing. No request for continuance of a scheduled hearing will be granted within 7 days of a hearing unless exceptional circumstances are shown. A request for continuance shall be made in writing and served upon the other party or parties and filed with the Board.

PERB 9 Right to Representation. Any party may be represented by a designated agent ~~throughout the proceedings~~ in an appeal before the Board.

PERB 10 Informal Disposition. Informal disposition may be made of any appeal or any issue therein by stipulation, settlement or agreement at any point in the proceedings so long as said stipulation, settlement or agreement does not violate any provisions of law and is approved by the Board.

PERB 11 Default. The Board may dispose of an appeal adverse to a party who fails to appear after receiving due notice and an opportunity for hearing.

PERB 12 Intervention. The Board may, upon timely application, allow a person or organization to intervene in an appeal upon a showing of substantial interest in the outcome of the appeal.

PERB 13 Substitution of Party. Substitution of a party or their representative may be allowed only if notice of the substitution is served on all other parties, at least 5 days prior to the hearing date, and filed with the Board.

PERB 14 Consolidation.

14.01 Basis. The Board may, prior to hearing, consolidate cases either on its own motion or upon petition by any party, if it determines (1) that separate appeals present substantially the same issues, (2) that a decision in one case would affect the rights of parties in another case, and (3) that consolidation would not substantially prejudice any party. Notwithstanding the requirements of this rule, the parties may stipulate and agree to consolidation subject to Board approval.

14.02 Notice. Within 5 days following an order for consolidation the Board shall serve on all parties a notice of consolidation.

14.03 Objection to Consolidation. Within 5 days of receipt of notice of consolidation any party may file with the Board a petition for severance from consolidation which shall include

the BMS case number and reasons for objection.

PERB 15 Remand. ~~Prior to hearing of an appeal,~~ At any time prior to its decision, the Board may remand to the Director all or part of the appeal for rehearing or the taking of specified additional evidence.

PERB 16 Extension of Time. The parties, with the approval of the Board or its designee, may stipulate and agree to extend any time period provided in these rules.

PERB 17 The Hearing.

17.01 Review Procedure. ~~Unless a de novo hearing is requested within 5 days of receipt of the notice of hearing or is so ordered by the Board, appeals shall be made upon the record of the proceeding of the Bureau. Such record may be supplemented by argument of the parites. Oral and written argument shall be allowed upon request. The presiding officer may allow or request submission of additional evidence or the taking of additional testimony. All hearings shall be public meetings provided, however, the deliberations of the Board shall be private.~~ Appeals shall be determined upon record established by the Director provided that the Board at its discretion may request additional evidence. Oral and written argument may be allowed upon request of a party.

~~17.05~~ 17.02 Hearing Procedure.

(A) The hearing ~~that is not de novo~~ shall include the following:

1. The presiding officer shall open the hearing and introduce the following exhibits:

   (a) Notice of appeal and supporting documents if any;

   (b) If consolidation has occured, notice of consolidation, supporting documents, if any;

   (c) Notice of hearing, supporting documents, if any, and affidavits of service;

   (d) Any stipulations, settlements or agreements entered into by any of the parties prior to the hearing; and

   (e) The record of the hearing held before the Director.

~~2. The presiding officer may allow additional evidence or testimony;~~

~~3.~~ 2. ~~All parties will be entitled to present~~ Oral arguments shall not ~~to~~ exceed 30

minutes~~,~~ per party; ~~beginning with the party who initiated the appeal;~~

~~4.~~ 3. ~~All parties shall be allowed 5~~ Five minutes may be allowed for rebuttal;

~~5.~~ 4. The presiding officer may allow filing of ~~typewritten memorandums~~ memoranda by the parties ~~in support of their positions~~.

(B) ~~If a de novo hearing is requested, the hearing shall be conducted as follows:~~ If additional oral evidence is to be taken, the hearing shall be conducted as follows:

1. The presiding officer shall open the hearing;

2. ~~All parties may present evidence and argument with respect to the issues;~~ All parties may present evidence in conformance the the Board's request for additional evidence;

3. All witnesses must be sworn and are subject to cross-examination by all parties;

4. The rules of evidence as set forth in PERB Rule ~~17.03~~ 17.05 will be followed;

5. Written matter may be marked as an exhibit and offered into evidence;

6. The presiding officer shall introduce the following exhibits:

   (a) Notice of appeal and supporting documents, if any;

   (b) If consolidation has occurred, notice of consolidation, supporting documents, if any;

   (c) Notice of hearing, supporting documents, if any, and affidavits of service;

   (d) Any stipulations, settlements or agreements entered into by any of the parties prior to the hearing;

   (e) The record established by the Director;

~~7. The record of the proceeding held by the Director may be introduced and supplemented by additional evidence and testimony;~~

~~8. The party who initiated the appeal may make an opening statement. All other parties may make such statements in a sequence determined by the presiding officer;~~

~~9.~~ 7. Unless otherwise directed by the presiding officer, ~~T~~the party who initiated the appeal shall begin the presentation of evidence and shall be followed by the other parties in a sequence determined by the presiding officer;

~~10.~~ 8. Cross-examination shall be conducted in a sequence determined by the presiding officer;

~~11.~~ 9. Rebuttal evidence and final argument shall be allowed;

~~12.~~ 10. ~~All parties will be entitled to present~~ oOral arguments shall not ~~to~~ exceed 30 minutes per party; ~~beginning with the party who initiated the appeal;~~

~~13.~~ 11. ~~All parties shall be allowed 5~~ Five minutes may be allowed for rebuttal;

~~14.~~ 12. The presiding officer may allow filing of ~~typewritten memorandums~~ memoranda by the parties ~~in support of their positions;~~.

~~15. After final argument, the hearing shall be closed or continued at the discretion of the presiding officer.~~

~~17.04~~ 17.03 The Record.

(A) Board Prepares Record. The Board shall prepare an official record in each appeal.

(B) What The Record Shall Contain. The record in an appeal shall contain:

1. All pleadings, motions and intermediate rulings;

2. Evidence received or considered;

3. A statement of matters noticed;

4. Proposed findings and exceptions;

5. Any decision, opinion or report by the presiding officer; and

6. The record ~~of proceedings held before~~ established by the Director.

(C) Transcript. A verbatim record of the hearing shall be taken by a hearing reporter and/or recording equipment.

~~17.02~~ 17.04 Witnesses. ~~In a de novo hearing any party may be a witness or may present witnesses on his behalf at a hearing. All testimony at a hearing shall be under oath.~~ When oral evidence is taken, any party may be a witness or

may present witnesses on its behalf at the hearing and such testimony shall be under oath.

~~17.03~~ 17.05 Rules of Evidence.

(A) General Rules. The presiding officer may admit and consider evidence which possesses probative value commonly accepted by reasonably prudent persons in the conduct of their affairs. The presiding officer shall give effect to the rules or privilege recognized by law. Evidence which is incompetent, irrelevant, immaterial or repetitious shall be excluded.

(B) Record of Bureau. The official record of the proceeding conducted by the Bureau shall be competent evidence.

(C) Evidence Must Be Offered To Be Considered. All evidence to be considered in the case, including all records and documents in the possession of the Board, shall be offered and made part of the record in the case. No other evidence or factual information, except as provided in (E) below, shall be considered in the determination of the case.

(D) Documentary Evidence. Documentary evidence in the form of copies or excerpts may be received or incorporated by reference in the discretion of the presiding officer or upon agreement of the parties.

(E) Notice of Facts. The presiding officer may take notice of general, technical or scientific facts within his specific knowledge. The presiding officer shall notify the parties of any facts that are to be so noticed.

(F) Depositions. Upon a showing of good cause the presiding officer may allow the taking of ~~depositions~~ depositions to preserve testimony in the same manner as prescribed by the Minnesota Rules of Civil Procedure.

17.06 Decorum.

(A) The presiding officer may prohibit the operation of a television, newsreel, motion picture, still or other camera and mechanical recording devices in the hearing room while the hearing is in progress, if such operation has a significantly adverse effect on the hearing.

(B) No person shall interfere with the free, proper and lawful access to or egress from the hearing room. No person shall interfere with the conduct of, disrupt or threaten interference with the hearing.

PERB 18 The Board Decision.

18.01 Basis for Determination. No factual information or evidence which is not part of the record shall be considered by the Board in the determination of an appeal.

18.02 Decisions and Orders.

(A) Formal Decision or Order with Reasons Required.

All decisions or orders rendered by the Board in an appeal shall be in writing and shall be accompanied by a statement of the reasons therefor.

(B) Service and Contents. All decisions or orders shall be served on all parties to the appeal and a copy filed with

the Bureau. It shall contain:

1. A statement of the decision or order in the case;

2. A statement of the reasons therefor;

3. An affidavit of service.

18.03 Default. When a party with adequate notice fails to plead or otherwise appear within the time allowed by these rules or by statute, decision by default may be entered against him.

PERB 19 Rehearing.

19.01 Board Right to Rehear. The Board may, upon request and for good cause shown or on its own motion, reopen, rehear and redetermine an appeal. The petition for rehearing must be filed with the Board within 30 days of the determination of the initial hearing.

19.02 Obtaining a Rehearing.

(A) A party to such appeal may request a rehearing by filing a petition. Such petition shall contain:

1. The name and address of the petitioner;

2. The Board designation for the case;

3. The reasons in support of the petition for rehearing.

(B) Determination. The Board shall grant or deny a petition for rehearing as a part of the record in the case. Such petition shall be granted only if the petition or the record reveals irregularities in the proceedings, errors of law occurring during the proceedings, newly discovered material evidence, a change in existing law or good cause for failure to appear or plead. Evidence and argument may be presented at the discretion of the Board in written or oral form or both by any party to the appeal with respect to the petition.

19.03 Notice of Rehearing. A notice of rehearing will be provided in the same manner prescribed for a notice of hearing.

19.04 Rehearing Procedure. A rehearing of an appeal will be conducted in the same manner prescribed for a hearing.

19.05 Decision after Rehearing. The decision after rehearing shall be made in the same manner prescribed for the decision after a hearing.

~~PERB-20--Issues-Not-Determined-By-Director.--In-the-event-an issue-relating-to-the-meaning-of-the-terms-"supervisory employee,"-"confidential-employee,"-"essential-employee"-or "professional-employee"-arises-on-which-the-Director-has-not made-a-determination,-a-request-for-determination-shall-be filed-in-lieu-of-a-notice-of-appeal,-and-the-Board-may-remand the-matter-de-novo-as-provided-herein.~~

Rules and Regulations Governing the Arbitration of Terms and Conditions of Employment Pursuant to Minnesota Statutes, Section 179.72.

PERB 30 Application. These rules shall apply to the procedures governing the creation of an arbitration panel to hear and decide disputes concerning the terms and conditions of employment.

PERB 31 Policy. These rules shall be liberally construed to effectuate the purposes and provisions of the Public Employment Labor Relations Act.

PERB 32 Definitions. The words, terms and phrases in these rules shall have the same meaning and definition as defined in PERB 3.

PERB 33 Binding Arbitration.

(A) Non-essential Employees. If the Director has received from the employer a petition for binding arbitration or a petition from the employee representative for binding arbitration and said petition has been agreed upon by the employer representative within the requisite 15 days, and the Director has certified a dispute to the Board pursuant to Minnesota Statutes, section 179.69, subds. 3 or 5, the Board shall submit to the parites a list of seven 7 arbitrators.

(B) Essential Employees. If the exclusive representative to a dispute involving any essential employees has requested arbitration and the Director has so certified, the Board has jurisdiction of the matter and shall proceed in accordance with Minnesota Statutes, section 179.72, subd. 6.

(C) Statutory Time Limitations. If the parties to a dispute fail to execute a contract within the time periods prescribed by Minnesota Statutes, section 179.69, subd. 4, they must submit their final positions to the Director pursuant to Minnesota Statutes 179.69, subd. 5. Upon receipt of the final positions, the Director may then submit the final positions to the Board for binding arbitration or he may retain jurisdiction and require the parties to mediate or continue to mediate the dispute.

PERB 34 Certification of Impasse.

A certification by the Director pursuant to Minnesota Statutes, section 179.69, subds. 3 or 5, shall contain the following:

1. The petition or petitions requesting arbitration.
2. A concise written statement by the Director indicating that an impasse has been reached and that further mediation efforts would serve no purpose.

3. A determination by the Director of matters not agreed upon based upon his efforts to mediate the dispute.

4. The final positions submitted by the parties.

5. Those agreed-upon items to be excluded from arbitration.

The Director shall file the certification with the Board and notify the parties by certified mail of the said certification.

PERB 35 Selection of an Arbitrator.

(A) The Board shall maintain a master list of available arbitrators. This list shall be made up of qualified persons who have submitted an application in writing to the Board and have been approved. These applications shall be submitted to each member of the Board prior to any action being taken by the Board for approval of the applicant. A majority vote of the Board shall be required for placement or removal from the list.

(B) The Chairman of the Board or his designee shall select ~~seven~~ 7 names for consideration as the arbitrator, but the final selection of a ~~seven~~ 7-member list shall be made by at least an affirmative vote of ~~three~~ 3 members of the Board which shall include the public member, a public employee member and a public employer member. In selecting the ~~seven~~ 7 names, the Board shall endeavor whenever possible to include names of persons from the general geographic area in which the public employer is located. After the ~~seven~~ 7 arbitrators have been selected, the Board shall submit the said names to the parties. Within 5 days thereafter, the parties shall, under the direction of the Chairman of the Board or his designee, who need not be physically present, alternately strike names from the list of ~~seven~~ 7 until only ~~three~~ 3 names remain, which ~~three~~ 3 persons shall constitute the panel if there is not agreement to select a single arbitrator. If the parties are unable to agree on who shall strike the first name, the question shall be decided by the flip of a coin. Notice of the selection of the arbitrator shall be immediately transmitted to the Board by the parties. The notice shall contain the name or names of the arbitrator selected and the name of the arbitrator selected by the parties as the convenor of the panel. If the parties fail to agree upon a convenor, the parties shall each strike, in the continued order of striking, one name from the arbitration panel. The remaining arbitrator shall act as the convenor for the arbitration panel for the purpose of commencing the proceeding.

(C) The parties may, by mutual agreement, select a single arbitrator to hear the dispute. In selecting a single arbitrator, the parties may avail themselves of the procedures outlined in (B) above or mutually agree on a single arbitrator without the necessity of using the Board.

PERB 36 Submission to Arbitrator. After the arbitrator has been selected, the Board shall submit to the arbitrator the certification of impasse by the Director. The arbitrator shall then proceed to hold hearings and make deliberations necessary to render an award.

PERB 37 Panel Chairman. In the event of a ~~three~~ 3-member arbitration panel, the panel shall, at its initial session, select one member as Chairman to serve throughout.

In the event the members cannot agree, the Chairman shall be selected by the same procedure as set forth in PERB 35, subdivision (B) above.

PERB 38 Arbitration Procedures.

(A) Attendance and Testimony of Witnesses. The arbitrator may issue subpoenas requiring the attendance and testimony of witnesses and the production of evidence which relates to any matter involved in any dispute before it. Forms for subpoenas may be obtained from the Bureau of Mediation Services. The arbitrator may administer oaths and affidavits, and may examine witnesses. Attendance of witnesses and the production of evidence may be required from any place in the state at any designated place of hearing; provided, however, the arbitration meeting shall be held in the county in which the principal administrative offices of the employer are located, unless another location is selected by agreement of the parties.

(B) Guidelines in Rendering ~~a~~ an ~~Decision~~ Award. In considering a dispute and issuing its ~~order~~ award the arbitrator shall give due consideration to the statutory rights and obligations of public employers to efficiently manage and conduct its operations within the legal limitations surrounding the financing of such operations. The arbitrator's ~~orders~~ awards shall be issued by a majority vote of its members considering a given dispute. The arbitrator shall have no jurisdiction over nor authority to entertain any matter or issue not within the definition stated in section 179.63, subd. 18; provided, however, items not within terms and conditions of employment may be included in an arbitration ~~decision~~ award if such items are contained in the employer's final position. Any ~~issue or order~~ award or part thereof issued by the arbitrator determining any matter not included under section 179.63, subd. 18 or the employer's final position shall be void and of no effect.

(C) Uniform Arbitration Act. The arbitrator may avail himself of the procedures provided for in the Uniform Arbitration Act (Minnesota Statutes 572.08-.30) as long as the procedures stated therein do not conflict with any provisions of the Public Employment Labor Relations Act.

PERB 39 Arbitration ~~Decisions and Orders~~ Awards.

(A) Final and Binding. The arbitrator's ~~decision-and-order~~ award shall be final and binding upon the parties. Provided, however, that no ~~decision~~ award of the panel which violates any provision of the laws of Minnesota or rules or regulations promulgated thereunder or municipal charters or ordinances or resolutions enacted pursuant thereto, or which causes a penalty to be incurred thereunder, shall have any force or effect. Any provision of any contract required by section 179.70, which of itself or in its implementation would be in violation of or in conflict with any statute of the state of Minnesota or a municipal home rule charter or ordinance or resolution adopted pursuant thereto, or rule of any state board or agency governing licensure or registration of an employee, provided such rule, regulation, home rule charter, ordinance, or resolution is not in conflict with sections 179.61 to 179.66 and shall be returned to the arbitrator for an amendment to make the provisions consistent with the statute, rule, regulation, charter, ordinance or resolution.

(B) Procedure. The arbitrator shall render his ~~decision~~ award within 10 days from the date that all arbitration proceedings have been concluded, but in any event must issue his ~~order~~ award by the last date the employer is required by statute, charter, ordinance or resolution to submit its tax levy or budget or certify its taxes voted to the appropriate public officer, agency, public body or office, or by November 1, whichever date is earlier. The arbitrator's ~~order~~ award shall be for such period as the arbitrator shall direct, except that ~~orders~~ awards determining contracts for teacher units shall be effective to the end of the contract period as determined by section 179.70, subd. 1. Upon issuing its ~~decision-involving-any-dispute~~ award, the arbitrator shall transmit the ~~decision-and-order~~ award and any written decision explaining the award to the Board and to the parties.

(C) Settlement. Should any issues submitted to arbitration be settled voluntarily before the arbitrator issues his award, notice of such settlement shall be made by the arbitrator in a report issued to both the Board and Director.

PERB 40 Payment of Arbitrator or Panel. The arbitrator or members of the panel shall be paid their traveling and expenses incurred in the performance of their duties plus a per diem allowance of $100 for each day or part thereof while engaged in the consideration of a dispute. All expenses and costs of the arbitrator or panel shall be shared and assessed equally to the parties to the dispute. "Consideration of a dispute" includes, but is not limited to, time incurred in preparation, conduct of hearings, deliberations and preparation of the decision.

III. Rules and Regulations Governing the Arbitration of Grievances Pursuant to Minnesota Statutes 179.70, subd. 4.

PERB 50 Application. These rules shall apply only when the parties are unable to agree upon an arbitrator as provided by contract grievance procedures or the procedures established by the Director.

PERB 51 Policy. These rules shall be liberally construed to effectuate the purposes and provisions of the Public Employment Labor Relations Act.

PERB 52 Definitions. The words, terms and phrases in these rules shall have the same meaning and definition as defined in PERB 3.

PERB 53 Petition. In the event the parties are unable to agree upon an arbitrator or arbitrators as provided by contract grievance procedures or the procedures established by the Director, the parties may petition, in writing, the Board for a list of five arbitrators. The petition shall contain:

1. The name and address of the petitioner;

2. The names and addresses of the adverse parties; and

3. A concise statement of the nature of the grievance, the provisions of the contract applicable to the grievance and the relief requested.

PERB 54 Selection of the Arbitrator.

(A) The Board shall maintain a master list of available arbitrators. The list shall be made up of qualified persons who have submitted an application in writing to the Board and have been approved. These applications shall be submitted to every member of the Board prior to any action being taken by the Board for approval of the applicant. A majority vote of the Board shall be required for placement or removal from the list.

(B) The Chairman of the Board, or his designee, shall select five names for consideration as the arbitrator, but final selection of the five-member list shall be made by at least an affirmative vote of three members of the Board which shall include the public member, a public employee member and a public employer member. In selecting the five names, the Board shall endeavor whenever possible to include names of persons from the general geographic area in which the public employer is located.

(C) Once the five arbitrators have been selected, the Board shall notify the parties of the names of the five arbitrators. Within 5 days the parties shall, under the direction of the

Chairman or his designee, who need not be physically present, alternately strike names from the list of five arbitrators. Until only one name remains. If the parties are unable to agree on who shall strike the first name, the question shall be decided by the flip of a coin.

(D) Notice of the selection of the arbitrator shall be immediately transmitted to the Board by the parties. The notice shall contain the name of the arbitrator selected and the date for commencement of arbitration proceedings.

award

(E) Upon rendering any ~~decision~~, the arbitrator shall transmit both to the Board and to the Director a copy of his ~~decision~~ award and any written explanation thereof. Should any issues submitted to arbitration be settled voluntarily before the arbitrator issues his ~~decision~~, notice of such settlement shall be made by the arbitrator in a report issued both to the Board and to the Director.

award

STATE OF MINNESOTA

COUNTY OF RAMSEY

BEFORE THE PUBLIC

EMPLOYMENT RELATIONS BOARD

STATEMENT OF COMPLIANCE WITH
MANUAL OF RULE MAKING PROCEDURES

I, Assistant Solicitor General Richard G. Mark, do hereby declare that I have examined the proposed rules and all related documents and that, based on them and my personal familiarity with the applicable procedures, the Manual of Rule Making Procedures has been followed. Any exceptions are noted below.

Richard G. Mark
Assistant Solicitor General

Dated: 4/23/75

STATE OF MINNESOTA
PUBLIC EMPLOYMENT RELATIONS BOARD
SAINT PAUL 55155

STATE OF MINNESOTA
COUNTY OF RAMSEY

BEFORE THE PUBLIC
EMPLOYMENT RELATIONS BOARD

In the Matter of the Proposed Amendments of Rules and Regulations of the Public Employment Relations Board

ORDER FOR HEARING

To effectively implement the Public Employment Labor Relations Act of 1971 as amended, the Public Employment Relations Board deems it necessary to consider amendment of the existing rules and regulations governing (1) issues and appeals, (2) arbitration of terms and conditions of employment, and (3) arbitration of grievances, pursuant to the authority vested in this Board by the Public Employment Labor Relations Act of 1971 (as amended).

NOW, THEREFORE, IT IS ORDERED this 18th day of December, 1974, that a public hearing on the amended rules and regulations captioned above be held in the Veterans Service Building, Saint Paul, Minnesota, Conference Room D, on January 29, 1975, commencing at 9:30 a.m. and continuing until all representatives of associations or other interested groups or persons have had an opportunity to be heard.

IT IS FURTHER ORDERED, that notice of said hearing be given to all representatives of associations or other interested groups or persons who have registered their names with the secretary of state for that purpose.

John J. McGirl, Jr.
Chairman
Public Employment Relations Board

STATE OF MINNESOTA
PUBLIC EMPLOYMENT RELATIONS BOARD
Veterans Service Building
SAINT PAUL 55155

NOTICE OF HEARING ON THE PROPOSED AMENDMENTS
TO THE RULES AND REGULATIONS OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

Please take notice that a public hearing will be conducted by the Public Employment Relations Board regarding the amendments to the Board's Rules and Regulations prepared to implement the Public Employment Labor Relations Act as amended.

The hearing will be held:

DATE: January 29, 1975

TIME: 9:30 a.m.

PLACE: Conference Room "D" (5th Floor)
Veterans Service Building
St. Paul, Minnesota

Copies of the proposed amendments to the Rules and Regulations are available at the Veterans Service Building (first floor, east wing), St. Paul, Minnesota 55155.

Since it is the intent of the Board for all interested parties to be heard at the hearing:

1) Parties desiring oral comment on the proposed amendments to the rules and regulations are requested to contact Frank Madden at 612-296-2525 prior to the hearing so that a time for the comments may be scheduled. It is the intent of the Board to limit each party's comments to 15 minutes.

2) Parties desiring oral comment, who do not arrange scheduling prior to the hearing, will be heard in such order as the hearing officer shall designate.

3) A party may submit written comments relating to the proposed amendments to the rules and regulations prior to the hearing. Such comments will be made part of the record and considered for Board deliberation.

PUBLIC EMPLOYMENT RELATIONS BOARD
STATE OF MINNESOTA

John J. McGirl, Jr.

JJM/lk
Dated at St. Paul, Minnesota,

STATE OF MINNESOTA
PUBLIC EMPLOYMENT RELATIONS BOARD
SAINT PAUL 55155

AFFIDAVIT

Shirley Brogger, being duly sworn on oath, deposes and says:

1. Frank Madden is the Executive Secretary for the Public Employment Relations Board. That on the 4th day of December, 1974, he requested from the Secretary of State a current list of all representatives of associations or other interested groups or persons who have registered their names with the Secretary of State for the purposes of obtaining notices of public hearings relating to the promulgation of rules and regulations pursuant to Minn. Stat. § 15.0412.

2. That on the 11th day of December, 1974, in response to the above request, the Secretary of State provided me with such a list, a copy of which is attached hereto and incorporated by reference.

Further affiant sayeth not.

Shirley Brogger
Shirley Brogger

Subscribed and sworn to before me
this 6 day of April, ~~1974~~ 1975.

Verne Buck
Notary Public

VERNE E. BUCK
Notary Public, Hennepin County, Minn.
My Commission Expires Oct. 26, 19[illegible]

55

STATE OF MINNESOTA

COUNTY OF RAMSEY

In the Matter of the Proposed Amendments of Rules and Regulations of the Public Employment Relations Board

CERTIFICATE

I hereby certify that the attached 395 labels ~~sheets~~ constitute the complete list of persons, associations, and other interested groups who as of 3:00 o'clock P.M., this 6th day of December, 1974, have requested pursuant to Minn. Stat. § 15.0421 (1971) that their names be placed on file with the Secretary of State for the purpose of receiving notice of public hearing on proposed rules on the subject captioned above.

Arlen I. Erdahl
Secretary of State

By Neil Dunn

STATE OF MINNESOTA
PUBLIC EMPLOYMENT RELATIONS BOARD
SAINT PAUL 55155

STATE OF MINNESOTA)
)ss.
COUNTY OF RAMSEY)

Shirley Broggesi, being first duly sworn, hereby deposes and says:

That at the City of Saint Paul, county and state aforementioned, on the 18 day of December, 1974, she/he deposited in the United States mail at said City of Saint Paul, true and correct copies of a Notice of Hearing on the proposed amendments to the rules and regulations of the Public Employment Relations Board, pursuant to Minn. Stat. § 15.0412, subd. 4, properly enveloped, with first class postage prepaid, and addressed to representatives of associations or other interested groups or persons who had registered their names with the Secretary of State for that purpose.

Shirley Broggesi

Subscribed and sworn to before me
this 8 day of Dec., ~~1974~~ 1975.

Vern Buck
Notary Public

VERN E. BUCK
Notary Public, Hennepin County, Minn.
My Commission Expires Oct. 26, [redacted]
1977

STATE OF MINNESOTA

STATE OF MINNESOTA
PUBLIC EMPLOYMENT RELATIONS BOARD
SAINT PAUL 55155

STATE OF MINNESOTA
COUNTY OF RAMSEY

BEFORE THE PUBLIC
EMPLOYMENT RELATIONS BOARD

In the Matter of the Proposed Amendments of Rules and Regulations of the Public Employment Relations Board

Statement of Need

The need to amend these regulations arises because the Minnesota Legislature, during the 1974 Session, amended the Public Employment Labor Relations Act. In the past, the Public Employment Relations Board had heard de novo all appeals from unit determinations made by the Director. The Legislature amended the Act so as to limit the review to the record before the Director rather than a de novo review. Many of the other amendments to the regulations are merely so-called housekeeping changes which render the rules consistent with statutory language.

John J. McGirl, Jr.
Chairman
Public Employment Relations Board

Dated:

STATE OF MINNESOTA

COUNTY OF RAMSEY

BEFORE THE PUBLIC

EMPLOYMENT RELATIONS BOARD

In the Matter of the Proposed Adoption of Rules and Regulations for the Public Employment Relations Board Governing Implementation of the Public Employment Labor Relations Act (as amended).

FINDINGS OF FACT

The above-entitled matter came on for hearing before the Public Employment Relations Board of the State of Minnesota on the 29th day of January, 1975, at 9:30 a.m., in the Veterans Service Building, Conference Room B, St. Paul, Minnesota, after proper notice required by Minn. Stat. § 15.0412 (1974) was served upon all persons, associations and other interested groups registered with the Secretary of State for that purpose.

After affording interested persons an opportunity to present written and oral data, statements and arguments, and having heard and considered all of the testimony and evidence presented, the Public Employment Relations Board makes and enters the following findings:

1. The Public Employment Relations Board is specifically authorized, pursuant to Minn. Stat. § 179.72, subd. 4, to adopt rules and regulations pursuant to chapter 15 governing the presentation of issues and the taking of appeals to the Board. The amended rules and regulations as approved are in the public interest, and they provide a comprehensive set of guidelines and procedures which will effectively implement the Public Employment Relations Act (as amended).

2. A definite need exists for these rules and regulations. The 1974 Minnesota legislature, by amending the Public Employment Labor Relations Act of 1971, established different procedures which require amendments to existing rules and regulations. Clearly, these amended rules and regulations are necessary to effectively implement the Act. The rules and regulations as approved fulfill that need.

3. A majority of those who testified supported the rules and regulations as they were presented at the public hearing.

4. The only substantive issue raised at the public hearing was whether the Board should continue to hear appeals de novo. The Board had in the past reviewed almost all of the decisions of the Director de novo. The reason being that Minn. Stat. § 179.72, subd. 4 (1971) provided:

> The board shall adopt rules pursuant to chapter 15 governing the presentation of issues relating to matters included in subdivision 3; and the taking of such appeals. All issues and appeals presented to the board shall be construed to be a contested case as defined by section 15.0411, subdivision 4, and shall be subject to all the provisions of chapter 15 relating to contested cases.

This provision was amended in the 1974 Session of the Legislature so that it now provides:

> The board shall adopt rules pursuant to chapter 15 governing the presentation of issues relating to matters included in subdivision 3; and the taking of such appeals. All issues and appeals presented to the board shall be determined upon the record established by the director of mediation, except that the board at its discretion may request additional evidence when necessary or helpful.

The regulations were accordingly amended to reflect this

significant change in the review process by the Public Employment Relations Board.

5. These amended rules and regulations will help fulfill the State's policy as expressed in Minn. Stat. § 179.61 and will help effectively implement the Public Employment Labor Relations Act as amended.

Chairman
Public Employment Relations Board

Dated: April 10, 1975.

STATE OF MINNESOTA

COUNTY OF RAMSEY

BEFORE THE PUBLIC

EMPLOYMENT RELATIONS BOARD

In the Matter of the Proposed Adoption of Rules and Regulations for the Public Employment Relations Board Governing Implementation of the Public Employment Labor Relations Act of 1971 (as amended).

CERTIFICATE OF BOARD'S ADOPTION OF RULES RESOLUTION

I, Claudia Hennen, do hereby certify that I am Secretary of the Public Employment Relations Board, a Board duly authorized under the laws of the State of Minnesota, and that the following is a true, complete and correct copy of a resolution adopted at a meeting of the Public Employment Relations Board duly and properly called and held on the 7th day of April, 1975; that a quorum was present at said meeting; that a majority of those present voted for the resolution; that said resolution is set forth in the minutes of said meeting and has not been rescinded or modified:

> RESOLVED, that the amended rules relating to Rules And Regulations Governing Issues and Appeals, Rules And Regulations Governing The Arbitration Of Terms And Conditions Of Employment, Rules And Regulations Governing The Arbitration Of Grievances and Rules And Regulations Governing Independent Review be and they are hereby approved and adopted pursuant to authority vested in us by Minn. Stat. § 179.72, subd. 3 (1974), and that John J. McGirl, Jr., the Chairman of the Public Employment Relations Board, be and hereby is authorized to sign an order adopting those rules.

IN WITNESS WHEREOF, I have unto subscribed my name this 7th day of April, 1975.

Claudia Hennen
Secretary

STATE OF MINNESOTA

COUNTY OF RAMSEY

BEFORE THE PUBLIC

EMPLOYMENT RELATIONS BOARD

CERTIFICATE OF BOARD'S
AUTHORIZING RESOLUTION

I, Claudia Hennen, do hereby certify that I am the executive secretary of the Public Employment Relations Board, a Board duly authorized under the laws of the state of Minnesota, and that the following is a true, complete and correct copy of a resolution adopted at a meeting of the Board duly and properly called and heard on the 30th day of October, 1974; a quorum was present at said meeting; a majority of those present voted for the resolution; and that said resolution is set forth in the minutes of said meeting and has not been rescinded or modified.

> The Board resolved, that John J. McGirl, Jr., chairman of the Public Employment Relations Board, be and hereby is granted the authority and directed to call a hearing for the purpose of amending rules of the Public Employment Relations Board so that the Board may properly implement the amendments of the Public Employment Labor Relations Act as well as perform any and all acts incidental thereto, including, but without being limited thereto, signing an order for hearing and notice of hearing, and appointing a hearing officer.

IN WITNESS WHEREOF, I have hereunto subscribed my name this 22 day of April, 1975.

Claudia Hennen
Executive Secretary
Public Employment Relations Board

STATE OF MINNESOTA

COUNTY OF RAMSEY

BEFORE THE PUBLIC

EMPLOYMENT RELATIONS BOARD

In the Matter of the Proposed Adoption of Rules and Regulations for the Public Employment Relations Board Governing Implementation of the Public employment Labor Relations Act of 1971 (as amended).

ORDER ADOPTING RULES

The above-entitled matter came on for hearing before the Public Employment Relations Board of the State of Minnesota on the 29th day of January, 1975, at 9:30 a.m., in the Veterans Service Building, Conference Room B, St. Paul, Minnesota, after proper notice required by Minn. Stat. § 15.0412 (1974) was served upon persons, associations and other interested groups registered with the Secretary of State for that purpose.

After affording interested persons an opportunity to present written and oral data, statements and arguments, having heard all of the testimony, having considered all of the evidence adduced and upon the records, files, written arguments filed with the Board and the proceedings herein, and applicable statutory standards or criteria, and having confirmed the need for the above-captioned rules:

NOW, THEREFORE, IT IS ORDERED that these amended rules identified as Rules And Regulations Governing Issues And Appeals, Rules And Regulations Governing The Arbitration Of Terms And Conditions Of Employment, Rules And Regulations Governing The Arbitration Of Grievances and Rules And Regulations

Governing Independent Review are adopted this _____ day of

_____, 1975, pursuant to authority vested in this Board.

Chairman
Public Employment Relations Board

STATE OF MINNESOTA

COUNTY OF RAMSEY

BEFORE THE PUBLIC

EMPLOYMENT RELATIONS BOARD

STATEMENT OF COMPLIANCE WITH
MANUAL OF RULE MAKING PROCEDURES

I, Assistant Solicitor General Richard G. Mark, do hereby declare that I have examined the proposed rules and all related documents and that, based on them and my personal familiarity with the applicable procedures, the Manual of Rule Making Procedures has been followed. Any exceptions are noted below.

Richard G. Mark
Assistant Solicitor General

Dated: 4/23/75