

Minnesota Attorney General: Administrative Rules Proceedings

Copyright Notice:

This material may be protected by copyright law (U.S. Code, Title 17). Researchers are liable for any infringement. For more information, visit www.mnhs.org/copyright.

Version 3
August 20, 2018

446 - Peddler Employment Relations Bd

RULES REVIEW CHECKLIST

DATE RULES RECEIVED 7/12/78 Temporary Rule _____

Resubmitted and Received 8/23

DUE DATE 8/2/78

a. Returned to Agency w/o filing w/Secy of State 8/(
b. Approved 8/23 Date Sent Back to Agency _____

- -

1. Rules as Adopted ✓
2. Rules as Proposed ✓
3. Certificate of Board's Authorizing Resolution, where applicable ✓
4. Order for Hearing ✓
5. Notice of Hearing ✓
   (i) Sufficiency ✓
6. Secretary of State's List ✓
7. Certificate of Acquisition of Secretary of State's List ✓
8. Affidavit of Mailing ✓
   (i) At least 30 days prior to hearing ✓
9. Statement of Need and Evidence ✓
10. Hearing Examiner's Report ✓
11. Agency's Findings of Fact ✓
12. Certificate of Board's Resolution Adopting Rules, where applicable ✓ (amended 8-23) [illegible]
13. Order Adopting ✓
14. Report of Chief Hearing Examiner ✓
    (i) Finding of No Substantial Change ✓
    (ii) Permission to Incorporate by Reference, where applicable ~~N.A.~~ ✓
15. Certificate of Compliance with Rulemaking Procedures ✓
16. Copy of Notice of Intent to Solicit Outside Opinion, where applicable N.A
17. Petition by Public, where applicable N.A.

STATE OF MINNESOTA

PUBLIC EMPLOYMENT RELATIONS BOARD

IN THE MATTER OF THE PROPOSED) AMENDMENTS OF RULES OF THE) PUBLIC EMPLOYMENT RELATIONS) BOARD

FINDINGS, CONCLUSIONS AND ORDER ADOPTING RULES

FINDINGS OF FACT

1. The Findings of the Hearing Examiner are hereby adopted and incorporated by reference except as noted below.

2. Finding No. 6 of the Hearing Examiner is hereby amended to read as follows:

> The Board contends that statutory authority to promulgate the proposed rules is contained in Minn. Stat. § 179.72, subds. 2 and 4 (1976) and Minn. Stat. § 15.0412, subd. 3 (Supp. 1977).

3. The identification of the Code of Professional Responsibility described in proposed PERB 41 and 55 is incorrect and should read as follows:

> Code of Professional Responsibility for Arbitrators of Labor-Management Disputes as approved by the National Academy of Arbitrators, American Arbitration Association, and Federal Mediation and Conciliation Service on April 28, 1975.

CONCLUSIONS

1. The Conclusions of the Hearing Examiner are hereby adopted and incorporated by reference except as noted below.

2. Conclusion No. 3 of the Hearing Examiner is amended by striking the last two sentences.

3. Conclusion No. 4 is amended by striking "with the exception noted in Conclusion 3."

4. Proposed PERB 41 and 55 should be amended to provide that the Code of Professional Responsibility is applicable "to the extent not inconsistent with the provisions of the Public

employment Labor Relations Act, PERB 50-54, or other applicable law or rule." See State v. Berthiaume, ____Minn.____, 259 N.W. 2d 904 (1977) (Uniform Arbitration Act, Minn. Stat. c. 572, applicable to public sector arbitration).

5. The practice in Minnesota is that any party who desires a transcript of the arbitration proceedings is entitled to one at its own cost. Accordingly, Part 5(B)(1)(c), paragraph 112, of the Code of Professional Responsibility should not be construed as limiting the right of the parties to order a copy of the hearing transcript.

6. The practice in Minnesota is that any party to an arbitration has the right to submit a post-hearing brief, unless otherwise agreed. Accordingly, Part 6(A) (1)(b), paragraph 124, of the Code of Professional Responsibility, should not be construed as limiting the right of the parties to submit written briefs to the arbitrator.

7. The Public Employment Labor Relations Act does not expressly describe either the conduct of arbitration or the professional standards to which arbitrators must adhere.

The statute also does not expressly vest any public body or agency with authority to regulate in these areas. However, PELRA does confer upon PERB authority to maintain a list of qualified arbitrators eligible for public sector arbitration. A majority of PERB may select or remove names from the list at any time. These provisions, together with the other provisions of PELRA which

require PERB to oversee the arbitration process, give PERB implicit authority to regulate the arbitration process. It would be an anomaly for the legislature to allow arbitrators to operate unfettered, subject only to removal from PERB's list on unspecified grounds.

PERB proposes to carry out its responsibilities by adopting the standards and procedures set forth in the Code of Professional Responsibility. Adoption of the Code of Professional Responsibility provides all participants in the arbitration process with definite guidelines for the conduct of arbitration proceedings. Moreover, it provides PERB with objective standards for judging the performance of arbitrators for the purpose of maintaining its arbitrator list.

Accordingly, PERB possesses implied authority to regulate the conduct of arbitration proceedings. Adoption of the Code of Professional Responsibility is a reasonable and necessary exercise of that authority.

8. PERB 41 is amended to read as follows:

PERB 41 Professional Responsibility. In arbitrating disputes concerning terms and conditions of employment pursuant to Minnesota Statutes, section 179.72, arbitrators shall conform to the standards and procedures set forth in the Code of Professional Responsibility for Arbitrators of Labor-Management Disputes as approved by the National Academy of Arbitrators, American Arbitration Association, and Federal Mediation and Conciliation Service on April 28, 1975, incorporated herein by reference, to the extent not inconsistent with the provisions of the Public

Employment Labor Relations Act, PERB 30-40, or other applicable law or rule, provided that:

A. Part 5(B)(1)(c), paragraph 112, of the Code of Professional Responsibility should not be construed as limiting the right of the parties to order a copy of the hearing transcript; and

B. Part 6(A)(1)(b), paragraph 124, of the Code of Professional Responsibility should not be construed as limiting the right of the parties to submit written briefs to the arbitrator.

9. PERB 55 is amended to read as follows:

PERB 55. Professional Responsibility. In arbitrating grievances pursuant to Minnesota Statutes, section 179.70, arbitrators shall conform to the standards and procedures set forth in the Code of Professional Responsibility for Arbitrators of Labor-Management Disputes as approved by the National Academy of Arbitrators, American Arbitration Association, and Federal Mediation and Conciliation Service on April 28, 1975, incorporated herein by reference, to the extent not inconsistent with the provisions of the Public Employment Labor Relations Act, PERB 50-54, or other applicable law or rule, provided that:

A. Part 5(b)(1)(c), paragraph 112, of the Code of Professional Responsibility should not be construed as limiting the right of the parties to order a copy of the hearing transcript; and

B. Part 6(A)(1)(b), paragraph 124, of the Code of Professional Responsibility should not be construed as limiting the right of the parties to submit written briefs to the arbitrator.

ORDER

NOW, THEREFORE, IT IS ORDERED THAT PERB 1, 3, 10, 35, 40 and 50 be adopted as proposed.

IT IS FURTHER ORDERED THAT PERB 41 and 55 be adopted as hereinabove set forth.

IT IS FURTHER ORDERED that Claudia M. Hennen, Executive Secretary of PERB, in cooperation with PERB's counsel, submit these rules as adopted for such remaining actions by the Office of Hearing Examiner, Office of Attorney General, State Register, and Secretary of State as may be necessary to accomplish and finalize adoption of said rules.

Dated: April 24, 1978

George Seltzer
George Seltzer

Don Bye
Don Bye

Lorraine Clark
Lorraine Clark

Joseph Flynn
Joseph Flynn

Peter Obermeyer
Peter Obermeyer

OUR FILE NO. 446

ADMIN 1000 (Rev. 1/78)

STATE OF MINNESOTA

DEPARTMENT Attorney General

Office Memorandum

TO : Thomas Fraser
Special Assistant
Attorney General

DATE: August 23, 1978

FROM : Lee E. Sheehy
Special Assistant
Attorney General

PHONE: 296-1288

SUBJECT: Rules as Approved - P.E.R.B.

Enclosed herewith are the rules you have submitted for approval. These rules have been approved by this office and filed with the Secretary of State. Note that they have NOT been filed with the State Register; this must be done promptly by your agency.

Upon receipt and before transmittal to your agency, however, it is important that you recheck these rules as to:

1. Affixation of the stamps of the Attorney General and Secretary of State to the last page of the rules;

2. Coverage by these stamps of all rules submitted; and

3. Inclusion of all pages of the rules in the approved set.

Directly following the approved rules is a complete set of required documents and transcript which must be retained with the rules by you or your agency.

Finally, in compliance with Atty Gen 302, your agency must provide this office with one copy of the following documents which this office can retain in its files. The agency submittal did contain originals of these documents which I used for purposes of review and approval, but you or the agency must make a copy of these documents and return them to this office for retention in our permanent file on this matter:

1. Copy of Order by Chief Hearing Examiner approving Incorporation By Reference.

2. Copy of Hearing Examiner's Report.

3. Copy of Chief Hearing Examiner's Report.

4. Copy of Board Authorizing Resolution for Order for Hearing.

5. Copy of Order for Hearing.

If you have any questions on this regard, please contact me.

LES:mb

Enclosure

ADMIN 1000

STATE OF MINNESOTA

Office Memorandum

DEPARTMENT PUBLIC EMPLOYMENT RELATIONS BOARD

TO : LEE E. SHEEHY
Special Assistant Attorney General

DATE: SEPTEMBER 7, 1978

FROM : CLAUDIA M. HENNEN
Executive Secretary

PHONE: 6-8947

SUBJECT: Rules as Approved - P.E.R.B.
Your File No. 446

As per your memo to Thomas Fraser, dated August 23, 1978, I am herewith forwarding to you copies of the following:

1) Order by Chief Hearing Examiner approving Incorporation By Reference

2) Hearing Examiner's Report

3) Chief Hearing Examiner's Report

4) Board Authorizing Resolution for Order for Hearing

5) Order for Hearing

Enclosures

cc: Thomas Fraser

RECEIVED
SEP 8 1978
ATTORNEY GENERAL
ADMINISTRATIVE AGENCIES

STATE OF MINNESOTA

OFFICE OF HEARING EXAMINERS

IN THE MATTER OF THE PROPOSED AMENDMENTS OF RULES OF THE PUBLIC EMPLOYMENT RELATIONS BOARD.

ORDER OF THE CHEIF HEARING EXAMINER

WHEREAS, on October 5, 1977, the Public Employment Relations Board, by their attorney, Thomas Fraser, submitted an Order for Hearing, Notice of Hearing and Proposed Rules and simultaneously requested approval to incorporate by reference the Code of Professional Responsibility for Arbitrators of Labor-Management Disputes; and

WHEREAS, pursuant to Laws of Minnesota, 1977, Chapter 443, Section 2, agencies may incorporate by reference provisions of federal law or rule or other materials from sources which the Chief Hearing Examiner determines are conveniently available for viewing, copying and acquisition by interested persons; and

WHEREAS, the Chief Hearing Examiner has reviewed the Code of Professional Responsibility for Arbitrators of Labor-Management Disputes and has found it to be in excess of 3000 words and has determined that it would exceed five pages of publication in the State Register.

NOW, THEREFORE, IT IS ORDERED that the Public Employment Relations Board shall have approval of the Chief Hearing Examiner to incorporate by reference in proposed PERB 41 and 55 the Code of Professional Responsibility for Arbitrators of Labor-Management Disputes as approved by the Joint Steering Committee of the National Academy of Arbitrators on April 28, 1975; provided, however, that the Public Employment Relations Board shall keep and maintain a copy of the incorporated materials available at its office for review by the public.

Dated this 5th day of October, 1977.

Duane R. Harves

DUANE R. HARVES
Chief Hearing Examiner

JAN 1978
RECEIVED
PUBLIC EMPLOYMENT
RELATIONS BOARD

STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS

FOR THE PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of the Proposed
Amendments of Rules of the
Public Employment Relations
Board.

REPORT OF HEARING EXAMINER

The above-entitled matter came on for hearing before Hearing Examiner Peter C. Erickson of the State Office of Hearing Examiners at 9:30 a.m. on Friday, December 9, 1977 in Room D of the Veterans Service Building, St. Paul, Minnesota.

Stephen Befort and Thomas Fraser, Special Assistant Attorneys General, appeared as counsel for the Public Employment Relations Board (PERB). George Seltzer, Chairman of the Board, testified in support of the proposed rules on behalf of the Board. The hearing continued until all interested groups or persons had an opportunity to be heard concerning the adoption of the proposed rules.

Pursuant to Minn. Stat. § 15.0412, subd. 4, this Report shall be available for review to all affected individuals upon request for at least five days.

The Public Employment Relations Board shall, if it proposes to adopt the rules as originally proposed or amended, submit the complete hearing record, including its Findings and Order, to the Chief Hearing Examiner no earlier than five days subsequent to the receipt of this Report. This submission shall clearly indicate any changes made to the rules as originally proposed, preferably in the format that will be submitted to the State Register for publication. The Chief Hearing Examiner shall complete his review and submit his report to the Board on the issues of substantial changes in the rule and compliance with Minn. Stat. § 15.0412 within ten calendar days. Thereafter, the Board shall be responsible for filing the rules with the Attorney General and for notifying persons who have indicated that they wish to be notified of such filing.

Based upon all the records and proceedings herein, the Examiner makes the following:

FINDINGS OF FACT

1. On October 18, 1977, the Board filed the following documents with the Chief Hearing Examiner:

(a) A copy of the proposed rules;
(b) A proposed Order for Hearing;
(c) A proposed Notice of Hearing; and
(d) A Statement of the estimated length and number of people attending the hearing.

2. On October 31, 1977, a Notice of Hearing and a copy of the proposed rules were published at 2 State Register 931.

3. On November 8, 1977, the Board mailed the Notice of Hearing to all persons and associations who had registered their names with the Secretary of State for the purpose of receiving such notice.

4. On November 14, 1977, the Board filed the following documents:

(a) The Order for Hearing;
(b) The Notice of Hearing as mailed;
(c) The Affidavit of Receipt of the Secretary of State's list;
(d) The Affidavit of Mailing;
(e) The Secretary of State's Certificate and list;
(f) The Statement of Need;
(g) The Statement of Evidence, including the names of witnesses to be called; and
(h) The names of Board personnel who will represent the agency.

The documents were available for inspection at the Office of Hearing Examiners from the date of filing to the date of the hearing.

5. The record remained open through December 29, 1977, for the receipt of written comments and statements.

6. The Board contends that statutory authority to promulgate the proposed rules is contained in Minn. Stat. § 179.72, subd. 4 (1976).

7. Mr. Seltzer gave the following testimony in support of the proposed rules:

PERB 1

In 1976, the Minnesota legislature amended § 179.72, subd. 3, by adding subparagraph (d), which authorizes PERB to hear appeals from BMS regarding fair share fee challenges. A description of the fair share fee and the procedures for challenging it

is contained in § 179.65, subd. 2.

The effect of the 1976 amendments is to denote that BMS fair share fee decisions are appealable to PERB. The proposed change to PERB 1 merely gives cognizance to the statutory amendment.

PERB 3

The proposed amendment to PERB 3 is also required by the recent fair share fee legislation. The amendment simply broadens the definition of an "appeal" to include appeals from determinations of the Director relating to a fair share fee challenge. The cumulative effect of the proposed amendments to PERB 1 and 3 is to adopt the existing appeal procedure as the appropriate procedure for hearing fair share fee appeals.

PERB 10

The proposed amendment to PERB 10 authorizes summary disposition by PERB of certain appeals. As the Statement of Need and Evidence indicates, PERB is troubled by the delays inherent in the process of appealing a BMS determination to PERB. Labor-management relations are rarely promoted by delays in the dispute resolution process. PERB has found that many appeals cannot be satisfactorily processed through existing procedures which provide only for a plenary hearing.

The purpose behind the proposed amendment is to enable PERB, with the assistance of the parties, to weed out the cases, or issues in a given case, which do not warrant plenary hearing. Summary action on the insubstantial cases or issues is a necessary exercise of the Board's power to regulate its own docket. The language of the proposed amendment is borrowed from the Minnesota Supreme Court's rules, specifically Rule 133.01, Rules of Civil Appellate Procedure. Summary disposition is a traditional appellate procedure and is an appropriate authority for PERB acting in its appellate capacity.

PERB 35

The proposed amendments to PERB 35 are required by Minn. Laws 1977, ch. 284, which amends Minn. Stat. § 179.72, subd. 6 (1976). Chapter 284 requires a single arbitrator to hear the dispute if either party so requests. Formerly a single arbitrator could be

chosen only if the parties agreed.

The proposed revision of PERB 35 reflects the statutory mandate that either party may request a single arbitrator. The reference to the necessity of agreement on the issue is omitted. The revised rule provides that the single arbitrator is to be chosen by the same system of striking names as is employed for panels of three.

PERB 40

Minn. Laws 1977, ch. 284, raises the arbitrator's per diem allowance from $100 to $180. Proposed PERB 40, accordingly, is revised to make it consistent with the statute. In line with the mandate of Minn. Laws 1977, ch. 443, § 2, amending Minn. Stat. § 15.0412, subd. 1 (1976), unnecessary duplication of statutory language relating to payment of arbitrator expenses has been eliminated. The final amendment to PERB 40 simply cites the statutory origin of the phrase "consideration of a dispute" which phrase is defined in that rule.

PERB 41 and 55

PERB also proposes two new rules, PERB 41 and 55. These rules would adopt the Code of Professional Responsibility for Arbitrators of Labor-Management Disputes approved in April, 1975, by the National Academy of Arbitrators, the American Arbitration Association, and the Federal Mediation and Conciliation Service.

The proposed adoption of this Code of Professional Responsibility is the result of a continuing dialogue between PERB, its arbitrators, and parties to arbitration. Over the past several years, PERB has received inquiries and complaints regarding the conduct of arbitrators. Arbitrators, likewise, have forwarded comments regarding parties to arbitration. In short, both groups have looked to PERB for further assistance to enhance the functioning of the arbitration process.

In response, PERB has, within the last three years, held two meetings with arbitrators and two with arbitrator-users. The purpose of these discussions was to permit the parties and the arbitrators to share their experience and observations with PERB. It is evident from these discussions that both the arbitrators and the users would benefit from written guidelines regulating the

conduct of arbitration.

It is PERB's opinion that the Code of Professional Responsibility will serve this purpose. The Code is the result of years of study and revision by the three major arbitration organizations in the United States. It reflects a broad consensus on such topics as qualifications and professional responsibilities of an arbitrator, responsibilities to the parties and to administrative agencies, and pre-hearing, hearing, and post-hearing conduct. Further, the Code is not written just for the three organizations which have sponsored it. In fact, on page four of the Code, it is suggested that other arbitrators and administrative agencies may voluntarily adopt the Code and be governed by it. For example, the New Jersey Public Employment Relations Commission has also adopted the Code for its arbitrators.

PERB 50

The last amendment proposed is to PERB 50. The amendment is necessary to clarify the scope of PERB 50 in light of proposed PERB 55. PERB 50-54 specify the procedure for selecting an arbitrator or arbitrators in the event the parties have been unable to agree.

The proposed amendment makes it clear that PERB 50-54 are so limited in their application. By omitting reference to PERB 55, the amendment provides that PERB 55 is applicable to arbitrations conducted under the auspices of PERB regardless of the method used to select the arbitrator.

8. On October 5, 1977, Chief Hearing Examiner Duane Harves issued an Order to PERB pursuant to Minn. Laws 1977, Chapter 443, § 2, approving incorporation by reference as proposed in PERB 41 and 55.

Based on the foregoing Findings of Fact, the Examiner makes the following:

CONCLUSIONS

1. Due, timely and adequate legal notice of the hearing was properly served and filed by the Public Employment Relations Board. All other substantive and procedural requirements of statute or rule have been complied with.

2. Pursuant to Minn. Stat. § 15.052, subd. 3 (1976), it is the duty of the Hearing Examiner to: ". . . (4) make a report on each proposed agency action . . . taking notice of the degree to which the agency has (i) documented its statutory authority to take the proposed action, (ii) fulfilled all relevant, substantive and procedural requirements of law or rule, and (iii) demonstrated the need for and reasonableness of its proposed action with an affirmative presentation of facts."

3. Minn. Stat. § 179.72, subd. 2-5, read as follows:

> Subd. 2. The board shall adopt its own rules governing its procedure and shall hold regular and special meetings as are prescribed in such rules. The chairman shall preside at meetings of the board.
>
> Subd. 3. In addition to the other powers and duties given it by law, the board has the following powers and duties:
>
> (a) to hear and decide issues relating to the meaning of the terms "supervisory employee", "confidential employee", "essential employee" or "professional employee", as defined by section 179.63;
>
> (b) to hear and decide appeals from determinations of the director relating to the appropriateness of a unit under section 179.67;
>
> (c) to approve or disapprove the rules and regulations promulgated by the director under section 179.71, subdivision 5, clause (g);
>
> (d) to hear and decide on the record from determination of the director relating to a fair share fee challenge decided under section 179.71, subdivision 2.
>
> Subd. 4. 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.
>
> Subd. 5. The board shall maintain a list of names of arbitrators qualified by experience and training in the field of labor management negotiations and arbitration. Names on the list may be selected and removed at any time by a majority of the board. In maintaining the list of such persons the board shall, to the maximum extent possible, select persons from varying geographical areas of the state.

The Board has a statutory duty to maintain a list of arbitrators; however, there is no apparent or implied authority for the Board to set standards of conduct for arbitrators in the arbitration process. The Examiner concludes that the Board has

not documented its statutory authority to promulgate new rules PERB 41 or 55.

4. The Examiner concludes that the Board has documented its statutory authority to promulgate the proposed rules, with the exception noted in Conclusion 3.

5. The Examiner concludes that the need for and reasonableness of the proposed rules have been demonstrated by an affirmative presentation of facts.

Based upon the foregoing Conclusions, the Hearing Examiner makes the following:

RECOMMENDATION

That the Public Employment Relations Board adopt the proposed rules with the exception of PERB 41 and 55.

Dated this 25 day of January, 1978.

Peter C. Erickson

PETER C. ERICKSON
Hearing Examiner

STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS
ROOM 300 – 1745 UNIVERSITY AVENUE
ST. PAUL, MINNESOTA 55104
(612) 296-6910

JAN 1978
RECEIVED
PUBLIC EMPLOYMENT
RELATIONS BOARD

January 25, 1978

Ms. Claudia M. Hennen
Executive Secretary
Public Employment Relations Board
598 Space Center Building
444 Lafayette Road
St. Paul, Minnesota - 55101

RE: In the Matter of the Proposed Amendments of Rules of the Public Employment Relations Board.
Our File No. PERB-78-003-PE

Dear Ms. Hennen:

I enclose herewith and serve upon you by mail the Report of the Hearing Examiner in the above-entitled matter, together with the official record, and I am closing our file in this case.

Yours very truly,

Peter C. Erickson

PETER C. ERICKSON
Hearing Examiner

PCE/eag
Encs.
CC:1 - Mr. Stephen F. Befort
Special Assistant Attorney General
CC:2 - Mr. Thomas Fraser
Special Assistant Attorney General
CC:3 - Mr. Charles Lentz

STATE OF MINNESOTA)
(ss.
COUNTY OF RAMSEY)

AFFIDAVIT OF SERVICE

Eileen A. Gaiovnik, being first duly sworn, deposes and says that on the 25th day of January 1978, at the City of St. Paul, County of Ramsey, State of Minnesota, she served the attached Report of Hearing Examiner PERB-78-003-PE

unstamped, by placing in the designated tray to be collected by messenger for delivery to the central mailing station as required by Minn. Stat., § 16.54 (1974), a true and correct copy thereof on all persons at the addresses shown on the attached mailing list.

Eileen A. Gaiovnik

Subscribed and sworn to before me
this 25th day of January, 1978.

Sandra A. Haven

SANDRA A. HAVEN
NOTARY PUBLIC-MINNESOTA
RAMSEY COUNTY
My Comm. Expires July 29, 1983

Ms. Claudia Hennen
Executive Secretary
Public Employment Relations Board
598 Space Center Building
444 Lafayette Road
St. Paul, Minnesota - 55101

Mr. Stephen F. Befort
Special Assistant Attorney General
515 Transportation Building
St. Paul, Minnesota - 55155

Mr. Thomas Fraser
Special Assistant Attorney General
515 Transportation Building
St. Paul, Minnesota - 55155

Mr. Charles Lentz
Minnesota Education Association
41 Sherburne Avenue
St. Paul, Minnesota - 55103

PERB-78-003-PE

STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS

FOR THE PUBLIC EMPLOYMENT RELATIONS BOARD



IN THE MATTER OF THE PROPOSED)
AMENDMENTS OF RULES OF THE)
PUBLIC EMPLOYMENT RELATIONS)
BOARD.)

REPORT OF THE
CHIEF HEARING EXAMINER

WHEREAS, a hearing was held on December 9, 1977, before Peter C. Erickson, a Hearing Examiner of the State Office of Hearing Examiners, on the above-entitled matter in compliance with Minn. Stat. § 15.0412, Subd. 4; and

WHEREAS, the Report of Hearing Examiner made pursuant to Minn. Stat. § 15.052, Subd. 3, was issued to the Public Employment Relations Board on January 25, 1978; and

WHEREAS, the Public Employment Relations Board has now determined to adopt rules pursuant to Minn. Stat. § 15.0412, Subd. 4; and

WHEREAS, the Public Employment Relations Board has submitted said rules to the Chief Hearing Examiner for review pursuant to Minn. Stat. § 15.052, Subd. 4, and Rule HE 107; and

WHEREAS, the Chief Hearing Examiner finds that the final proposed rules are not substantially different from those proposed at the public hearing and that the Public Employment Relations Board has met all requirements of Minn. Stat. § 15.0412, Subd. 4.

NOW, THEREFORE, upon receipt of this Report, the Public Employment Relations Board has the responsibility of submitting the complete hearing record and the rules as adopted by the Board to the Attorney General and to publish in the State Register, all pursuant to Minn. Stat. § 15.0412, Subd. 4.

Dated this 27th day
of April, 1978.

Duane R. Harves

DUANE R. HARVES
Chief Hearing Examiner

CERTIFICATE OF BOARD'S
AUTHORIZING RESOLUTION

I, Claudia M. 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 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 27th day of June, 1977, 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 Don L. Byc, Chairman of the Public Employment Relations Board, be and hereby is granted the authority and is directed to call a hearing for the purpose of amending the rules of the Public Employment Relations Board relating to the procedures governing the determination of issues and appeals by the Board and the procedures governing the arbitration of terms and conditions of employment, as well as to perform any and all acts incidental thereto, including, but without being limited thereto, signing an order for hearing and notice of hearing.

IN WITNESS WHEREOF, I have hereunto subscribed my name this 23rd day of September, 1977.

Claudia M. Hennen

CLAUDIA M. HENNEN
Executive Secretary
Public Employment Relations Board

ATTORNEY GENERAL
SOLICITOR GENERAL
RECEIVED
A.M. OCT 3 1977
7 8 9 10 11 12 3 4 5 6 7 P.M.

STATE OF MINNESOTA

PUBLIC EMPLOYMENT RELATIONS BOARD

IN THE MATTER OF THE PROPOSED)
AMENDMENTS OF RULES AND)
REGULATIONS OF THE PUBLIC)
EMPLOYMENT RELATIONS BOARD)

ORDER FOR HEARING

IT IS HEREBY ORDERED that a public hearing on the proposed amendments of the rules and regulations of the Public Employment Relations Board be held in the Veterans Service Building, Saint Paul, Minnesota, Conference Room D, on December 9, 1977, commencing at 9:30 a.m. and continuing until all persons have had an opportunity to be heard.

IT IS FURTHER ORDERED that a Notice of Hearing be mailed to all persons or representatives of associations or other interested groups who have registered their names with the Secretary of State for that purpose.

IT IS FURTHER ORDERED that the Notice of Hearing be published in the State Register.

DATE: September 30, 1977

Don L. Bye
DON L. BYE
Member
Public Employment Relations Board

STATE OF MINNESOTA

PUBLIC EMPLOYMENT RELATIONS BOARD

RULES AS ADOPTED

PERB 1 Application. These rules shall apply to:

[(1)] A. Issues relating to the meaning of the terms supervisory employee, confidential employee, essential employee or professional employee [, and].

[(2)] B. Appeals from determinations of the Director relating to the appropriateness of a unit or determination of supervisory employee.

C. Appeals from determinations of the Director relating to a fair share fee challenge.

PERB 3 Definitions.

Paragraphs (a)-(d) remain the same.

(e) Appeal. "Appeal" means (1) issues relating to the meaning of the terms supervisory employee, confidential employee, essential employee or professional employee, [and] (2) appeals from determinations of the Director relating to the appropriateness of a unit or determination of supervisory employee[.], and (3) appeals from determinations of the Director relating to a fair share fee challenge.

Paragraphs (f)-(m) remain the same.

PERB 10 Informal and Summary Disposition

A. Informal disposition. Informal disposition may be made of any appeal of 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.

B. Summary disposition. The Board, on its own motion or on motion of any party, may dismiss an appeal, or may summarily affirm the order or decision below if the Board lacks jurisdiction or if it clearly appears that the appeal presents no question of substantial merit, or may limit the issues to be considered on appeal to those which present a substantial question. In case of obvious error the Board may summarily reverse or remand for additional proceedings or grant other appropriate relief.

PERB 35 Selection of an Arbitrator.

[(a)] 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)] 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. 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 five [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 7] If either

party requests a single arbitrator, the parties shall alternately strike names from the list until only one name remains. If neither party requests a single arbitrator, the parties shall alternately strike names from the list until three [only 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 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. The term "consideration of a dispute," as used in Minnesota Statutes,

section 179.72, subd. 6, includes, but is not limited to, time incurred in preparation, conduct of hearings, deliberations and preparation of the decision.

PERB 41 Professional Responsibility. In arbitrating disputes concerning terms and conditions of employment pursuant to Minnesota Statutes, section 179.72, arbitrators shall conform to the standards and procedures set forth in the Code of Professional Responsibility for Arbitrators of Labor-Management Disputes as approved by the National Academy of Arbitrators, American Arbitration Association, and Federal Mediation and Conciliation Service on April 28, 1975, incorporated herein by reference, to the extent not inconsistent with the provisions of the Public Employment Labor Relations Act, PERB 30-40, or other applicable law or rule, provided that:

A. Part 5(B)(1)(c), paragraph 112, of the Code of Professional Responsibility should not be construed as limiting the right of the parties to order a copy of the hearing transcript; and

B. Part 6(A)(1)(b), paragraph 124, of the Code of Professional Responsibility should not be construed as limiting the right of the parties to submit written briefs to the arbitrator.

PERB 50 Application. [These rules] PERB 50-54 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 55 Professional Responsibility. In arbitrating grievances pursuant to Minnesota Statutes, section 179.70, arbitrators shall conform to the standards and procedures set forth in the Code of Professional Responsibility for Arbitrators of Labor-Management Disputes as approved by the National Academy of Arbitrators, American Arbitration Association, and Federal Mediation and Conciliation Service on April 28, 1975, incorporated herein by reference, to the extent not inconsistent with the provisions of the Public Employment Labor Relations Act, PERB 50-54, or other applicable law or rule, provided that:

A. Part 5(B)(1)(c), paragraph 112, of the Code of Professional Responsibility should not be construed as limiting the right of the parties to order a copy of the hearing transcript; and

B. Part 6(A)(1)(b), paragraph 124, of the Code of Professional Responsibility should not be construed as limiting the right of the parties to submit written briefs to the arbitrator.

APPROVED AS TO FORM AND LEGALITY

Aug. 23 1978 JUL 31 1979

_____ 19____

WARREN SPANNAUS, ATTORNEY GENERAL

BY Lee E. Sheehy

SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
AUG 23 1978
Joan Anderson Growe
Secretary of State

3:50 PM

CERTIFICATE OF BOARD'S
AUTHORIZING RESOLUTION

I, Claudia M. 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 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 14th day of April, 1978; 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 Claudia M. Hennen, Executive Secretary of the Public Employment Relations Board, be and hereby is granted the authority and is directed to perform any and all acts incidental to the adoption of the proposed amendments to the rules of the Public Employment Relations Board relating to the procedures governing the determination of issues and appeals by the Board and the procedures governing the arbitration of terms and conditions of employment, including, but without being limited thereto, signing the findings, conclusion and order adopting rules.

IN WITNESS WHEREOF, I have hereunto subscribed my name this 21st day of August, 1978.

Claudia M. Hennen

CLAUDIA M. HENNEN
Executive Secretary
Public Employment Relations Board

STATE OF MINNESOTA
PUBLIC EMPLOYMENT RELATIONS BOARD
Room 598 Space Center Building
444 Lafayette Road
Saint Paul 55101
PHONE: 612-296-8947

Mike Miller

May 23, 1978

KEN R.

The Honorable Warren Spannaus
Attorney General
State of Minnesota
Office of the Attorney General
Room 102 State Capitol
St. Paul, Minnesota 55155

RE: In the Matter of the
Proposed Amendments of Rules
of the Public Employment
Relations Board

Dear Warren:

The complete documentation has today been delivered to your office, and we hope it will receive your direct consideration.

With every best wish,

Respectfully yours,

George S.

George Seltzer, Chairman

PUBLIC EMPLOYMENT RELATIONS BOARD
STATE OF MINNESOTA

GS:ch

STATE OF MINNESOTA
PUBLIC EMPLOYMENT RELATIONS BOARD
Room 598 Space Center Building
444 Lafayette Road
Saint Paul 55101
PHONE: 612-296-8947

May 23, 1978

The Honorable Warren Spannaus
Attorney General
State of Minnesota
Office of the Attorney General
Room 102 State Capitol
St. Paul, Minnesota 55155

RE: In the Matter of the
Proposed Amendments of Rules
of the Public Employment
Relations Board

Dear Mr. Attorney General:

Enclosed for your review pursuant to Minn. Stat. § 15.0412, subd. 4 (1976) is the complete hearing record in the above-entitled matter and the Rules As Adopted by the Public Employment Relations Board.

Sincerely,

Claudia M. Hennen

Claudia M. Hennen
Executive Secretary

PUBLIC EMPLOYMENT RELATIONS BOARD
STATE OF MINNESOTA

Enclosure

RECEIVED
MAY 23 1978
ATTORNEY GENERAL
102 STATE CAPITOL
ST. PAUL, MINN. 55155

IN THE MATTER OF THE PROPOSED AMENDMENTS OF RULES OF THE PUBLIC EMPLOYMENT RELATIONS BOARD	))))	STATEMENT OF COMPLIANCE WITH MANUAL OF RULE MAKING PROCEDURES

I, Special Assistant Attorney General Thomas Fraser, 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.

Dated: May 4, 1978.

Thomas Fraser

THOMAS FRASER
Special Assistant
Attorney General

STATE OF MINNESOTA
PUBLIC EMPLOYMENT RELATIONS BOARD

IN THE MATTER OF THE PROPOSED AMENDMENTS OF RULES OF THE PUBLIC EMPLOYMENT RELATIONS BOARD	STATEMENT OF NEED AND EVIDENCE

The above-captioned proposed rules are amendments to existing rules of the Public Employment Relations Board ("PERB"). PERB rules were last amended in 1975.

The need and authority for these proposed rules arises from Minn. Stat. § 179.72, subd. 4 (1976) which requires PERB to adopt rules pursuant to Chapter 15 relating to its powers and duties described in § 179.72, subd. 3. In addition, Minn. Stat. § 179.72, subd. 2 (1976) requires PERB to adopt rules governing its procedures. Finally, Minn. Laws 1977, ch. 443, § 2, subd. 3, requires agencies to adopt rules setting forth the nature and requirements of all procedures related to the administration of official agency duties. The proposed rules are presented as reasonable and necessary in light of these statutory mandates.

PERB will be represented at the hearing by Chairman George Seltzer, Peter Obermeyer, Lorraine Clark, Joseph E. Flynn, and Don L. Bye, PERB members; Claudia M. Hennen, Executive Secretary of PERB; and Stephen F. Befort and Thomas Fraser, Special Assistant Attorneys General.

PERB does not plan to call any outside experts or witnesses.

PERB intends to introduce the Code of Professional Responsibility for Labor-Management Disputes and may introduce the

minutes, or a summary thereof, of conferences with arbitrators and "arbitrator-users." PERB may also introduce letters, and records of oral communications, or a tabulation thereof, concerning arbitrator conduct.

PERB will be citing the following statutes and rules:

Minn. Stat. § 179.61-179.76 (1976);
Minn. Laws 1976, ch. 102;
Minn. Laws 1977, ch. 284;
Minn. Laws 1977, ch. 443, § 2, subd. 3;
Rule 133.01, Minnesota Rules of Civil Appellate Procedure.

INTRODUCTION

Six years ago, the Minnesota legislature passed the Public Employment Labor Relations Act of 1971 ("PELRA"), presently codified as Minn. Stat. §§ 179.61-179.76 (1976). Section 179.72 established PERB as a five-member board appointed by the Governor with the advice and consent of the Senate. Public employees and employers each are represented by two members and the fifth seat is held by a representative of the public at large.

Section 179.72 also sets forth the powers and duties of PERB. The proposed rules relate to two of PERB's functions: the resolution of appeals from determinations of the Director of Mediation Services, see § 179.72, subds. 3 and 4, and oversight of the process of arbitrating grievances and other disputes. See §§ 179.72, subds. 5-12, 179.69 and 179.70. Proposed PERB 1, 3, and 10 relate to the powers and duties of PERB in its appellate capacity. Proposed PERB 35, 40, 41, 50, and 55 relate to PERB's responsibilities regarding arbitration. Several of the proposed rules simply reflect recent amendments to PELRA.

RULE JUSTIFICATION

Proposed PERB 1 and 3

These amendments are needed to implement recent legislation enlarging the appellate jurisdiction of PERB. Minn. Laws 1976, ch. 102, allowed public employees to petition the Director of Mediation Services for the purpose of determining their rights and obligations with respect to the circumstances or amount of a fair share fee assessment authorized by Minn. Stat. § 179.65, subd. 2 (1976). Chapter 102 also enlarged the powers and duties of PERB by authorizing it to hear and decide on the record appeals from determinations of the director relating to a fair share fee challenge.

The proposed amendments to PERB 1 and 3 simply adopt the existing appeal procedure provided by PERB 1-20 as the appropriate procedure for hearing fair share fee appeals.

Proposed PERB 10

PERB has become increasingly troubled by the delays inherent in the process of appealing a determination of the Director of Mediation Services to PERB. For those appeals involving jurisdictional disputes and other matters requiring an expeditious resolution, PERB has found that existing procedures for a plenary hearing are cumbersome and otherwise inappropriate. In an effort to provide PERB with greater flexibility in disposing of appeals, the proposed amendment to PERB 10 authorizes summary disposition of certain cases. On its own motion or on motion of any party, PERB would be able to dismiss an appeal, summarily affirm the decision below, or limit the issues to be considered

on appeal to questions of substantial merit. These actions, however, are reserved for cases where PERB lacks jurisdiction or where the appeal involves questions that are not of substantial merit. Conversely, proposed PERB 10 would authorize PERB to summarily reverse, remand, or grant other appropriate relief in cases of obvious error. The language of proposed PERB 10 is borrowed from Rule 133.01, Minnesota Rules of Civil Appellate Procedure, and reflects traditional appellate procedure. PERB believes that summary disposition is a reasonable and necessary exercise of the appellate powers and duties vested in it by Minn. Stat. § 179.72, subds. 3 and 4.

Proposed PERB 35

The proposed amendments to PERB 35 are also required by recent legislation. Minn. Laws 1977, ch. 284, modified the statutory provisions for selection and compensation of arbitrators selected through PERB. Chapter 284, amending Minn. Stat. § 179.72, subd. 6 (1976), requires a single arbitrator to hear the dispute if either party so requests. Formerly, a single arbitrator could be chosen only if the parties agreed.

The proposed amendment to PERB 35 reflects the statutory mandate that either party may request a single arbitrator and eliminates the reference to the necessity of mutual agreement. Proposed PERB 35 continues the practice of selecting single arbitrators by alternately striking names from the PERB list until only one name remains.

Proposed PERB 40

The chief amendment to PERB 40 reflects recent legislation. Minn. Laws 1977, ch. 284, raises the arbitrator's per diem allowance from $100 to $180. Proposed PERB 40 thus omits the reference to the $100 per diem allowance. The proposed rule also deletes unnecessary duplication of statutory language relating to payment of arbitrator expenses. The final amendment to PERB 40 simply denotes the statutory origin of the phrase "consideration of a dispute," which phrase is defined in that rule.

Proposed PERB 41 and 55

As indicated above, PERB is required by statute to establish and maintain a list of qualified arbitrators and to oversee the selection and conduct of arbitration panels. See Minn. Stat. § 179.72, subds. 5-12 (1976). Over the past few years, PERB has received numerous oral and written inquiries and complaints regarding the conduct of arbitration proceedings. Typical complaints revolve around such topics as ex parte contacts between a party and an arbitrator, the behavior of arbitrators during the hearings, and the method of obtaining a clarification or interpretation of an award. PERB has held periodic conferences with arbitrators and "arbitrator-users" in an effort to evaluate the arbitration process.

Proposed PERB 41 and 55 are a result of this continuing dialogue. These rules would require arbitrators selected through PERB to conform to the standards and procedures set forth in the Code of Professional Responsibility for Arbitrators of Labor-Management Disputes as approved by the Joint Steering Committee of the National Academy of Arbitrators on April 28, 1975. The proposed

rules would thus provide both the parties and the arbitrator with a written code regulating professional behavior. PERB anticipates that the Code of Professional Responsibility will eliminate much of the uncertainty on the part of both parties and the arbitrators as to the appropriate conduct in arbitration proceedings. PERB believes that adoption of the Code of Professional Responsibility is a reasonable and necessary exercise of its statutory duty to oversee the arbitration process, including the obligation to provide public employers and employees with qualified arbitrators.

Proposed PERB 50

The proposed amendment to PERB 50 clarifies the scope of that rule in light of proposed PERB 55. PERB 50-54 specify the procedure for selecting an arbitrator or arbitrators in the event the parties have not been able to agree. The proposed amendment makes it clear that PERB 50-54 are so limited in their application. By omitting reference to PERB 55, the amendment allows that rule to operate in all grievance arbitrations, regardless of how the arbitrator is selected.

Dated: 11/10/77

Don L. Bye

DON L. BYE
Member
Public Employment Relations Board

STATE OF MINNESOTA
PUBLIC EMPLOYMENT RELATIONS BOARD

IN THE MATTER OF THE PROPOSED AMENDMENTS OF RULES OF THE PUBLIC EMPLOYMENT RELATIONS BOARD	AFFIDAVIT OF RECEIPT OF THE SECRETARY OF STATE'S LIST

Claudia M. Hennen, being duly sworn on oath deposes and says:

1) That she is Executive Secretary of the Public Employment Relations Board.

2) That on the 17th day of October, 1977, she went to the Secretary of State's office for the State of Minnesota and requested a current list of all representatives of associations or other interested groups or persons who had registered their names with the Secretary of State for the purpose of obtaining notices of public hearings relating to the promulgation of rules pursuant to Minn. Stat. § 15.0412.

3) That on the 17th day of October, 1977, in response to the above request, the Secretary of State provided her with such a list, a copy of which is attached hereto and incorporated by reference.

Further affiant sayeth not.

Claudia M. Hennen
Claudia M. Hennen

Subscribed and sworn to before me this 17th day of October, 1977.

JACALYN K. BRUEGGEMAN
NOTARY PUBLIC-MINNESOTA
RAMSEY COUNTY
My Comm. Expires Mar. 19, 1983

Jacalyn K. Brueggeman
Notary Public

STATE OF MINNESOTA
PUBLIC EMPLOYMENT RELATIONS BOARD

IN THE MATTER OF THE PROPOSED AMENDMENTS OF RULES OF THE PUBLIC EMPLOYMENT RELATIONS BOARD	CERTIFICATE OF DELIVERY OF THE SECPETARY OF STATE'S LIST

I hereby certify that the attached 489 labels 2 sheets constitute the complete list of persons, associations, and other interested groups who as of 1:00 o'clock P.M., this 17th day of October, 1977, have requested pursuant to Minn. Stat. § 15.0412, subd. 4, 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.

SECRETARY OF STATE

Joan Anderson Growe

By Cheri L. Mattson

STATE OF MINNESOTA
PUBLIC EMPLOYMENT RELATIONS BOARD

IN THE MATTER OF THE PROPOSED AMENDMENTS OF RULES OF THE PUBLIC EMPLOYMENT RELATIONS BOARD

AFFIDAVIT OF MAILING

Claudia M. Hennen, being first duly sworn, deposes and says:

That on the 8th day of November, 1977, at the City of St. Paul, County of Ramsey, State of Minnesota, she served the attached Notice of Hearing by depositing in the United States mail at said City of St. Paul, a true and correct copy thereof, properly enveloped, with postage prepaid, to all persons and associations at the addresses listed on the attached Certificate of the Secretary of State.

Claudia M. Hennen

Subscribed and sworn to before me this 8th day of November, 1977.

JACALYN K. BRUEGGEMAN
NOTARY PUBLIC-MINNESOTA
RAMSEY COUNTY
My Comm. Expires March 16 1983

Jacalyn K. Brueggeman
Notary Public

RECEIVED
NOV 9 1977
OFFICE OF HEARING
EXAMINERS

STATE OF MINNESOTA

PUBLIC EMPLOYMENT RELATIONS BOARD

IN THE MATTER OF THE PROPOSED)
AMENDMENTS OF RULES OF THE)
PUBLIC EMPLOYMENT RELATIONS)
BOARD)

NOTICE OF HEARING

NOTICE IS HEREBY GIVEN that a public hearing in the above-entitled matter will be held in the Veterans Service Building, Saint Paul, Minnesota, Conference Room D, on December 9, 1977, commencing at 9:30 a.m. and continuing until all persons have had an opportunity to be heard.

All interested or affected persons will have an opportunity to participate. Statements may be made orally and written materials may be submitted at the hearing. In addition, written materials may be submitted by mail to Peter C. Erickson, Office of Hearing Examiners, Room 300, 1745 University Avenue, St. Paul, Minnesota 55104, either before the hearing or within five working days after the close of the hearing, or for a period not to exceed 20 calendar days if ordered by the Hearing Examiner.

The proposed amendments, if adopted, would (a) render existing appeal procedure applicable to fair share fee appeals, (b) reflect statutory changes concerning arbitrator selection and compensation resulting from the adoption of House File 921 during the 1977 legislative session, (c) incorporate by reference the Code of Professional Responsibility for Arbitrators of

Labor-Management Disputes for arbitrators selected through the Board, and (d) give the Board greater flexibility in terms of summarily disposing of certain appeals.

A free copy of the proposed rules may be obtained by writing to the Public Employment Relations Board, Room 598, Space Center Building, 444 LaFayette Road, Saint Paul, Minnesota 55101. Additional copies will be available at the door on the date of the hearing.

The Board's authority to adopt the proposed rules is contained in Minn. Stat. § 179.72, subd. 4 (1976). A "statement of need" explaining why the Board feels the proposed rules are necessary and a "statement of evidence" outlining the testimony it will be introducing will be filed with the Office of Hearing Examiners at least 25 days prior to the hearing and will be available there for public inspection.

Please be advised that pursuant to Minn. Stat. § 10A.01, subd. 11 (1976) any individual engaged for pay or other consideration for the purpose of representing persons or associations attempting to influence administrative action, such as the promulgation of these rules, must register with the State Ethics Commission as a lobbyist within five days of the commencement of such activity by the individual.

Date: September 30, 1977

Don L. Bye

DON L. BYE
Member
Public Employment Relations Board

STATE OF MINNESOTA

PUBLIC EMPLOYMENT RELATIONS BOARD

RULES AS PROPOSED

PERB 1 Application. These rules shall apply to:

[(1)] A. Issues relating to the meaning of the terms supervisory employee, confidential employee, essential employee or professional employee [, and].

[(2)] B. Appeals from determinations of the Director relating to the appropriateness of a unit or determination of supervisory employee.

C. Appeals from determinations of the Director relating to a fair share fee challenge.

PERB 3 Definitions.

Paragraphs (a)-(d) remain the same.

(e) Appeal. "Appeal" means (1) issues relating to the meaning of the terms supervisory employee, confidential employee, essential employee or professional employee, [and] (2) appeals from determinations of the Director relating to the appropriateness of a unit or determination of supervisory employee[.], and (3) appeals from determinations of the Director relating to a fair share fee challenge.

Paragraphs (f)-(m) remain the same.

PERB 10 Informal and Summary Disposition

A. 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.

B. Summary disposition. The Board, on its own motion or on motion of any party, may dismiss an appeal, or may summarily affirm the order or decision below if the Board lacks jurisdiction or if it clearly appears that the appeal presents no question of substantial merit, or may limit the issues to be considered on appeal to those which present a substantial question. In case of obvious error the Board may summarily reverse or remand for additional proceedings or grant other appropriate relief.

PERB 35 Selection of an Arbitrator.

[(a)] 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)] 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. 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 five [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 7] If either

party requests a single arbitrator, the parties shall alternately strike names from the list until only one name remains. If neither party requests a single arbitrator, the parties shall alternately strike names from the list until three [only 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 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. The term "consideration of a dispute," as used in Minnesota Statutes,

section 179.72, subd. 6, includes, but is not limited to, time incurred in preparation, conduct of hearings, deliberations and preparation of the decision.

PERB 41 Professional Responsibility. In arbitrating disputes concerning terms and conditions of employment pursuant to Minnesota Statutes, section 179.72, arbitrators shall conform to the standards and procedures set forth in the Code of Professional Responsibility for Arbitrators of Labor-Management Disputes as approved by the Joint Steering Committee of the National Academy of Arbitrators on April 28, 1975, incorporated herein by reference, to the extent not inconsistent with the provisions of the Public Employment Labor Relations Act and PERB 30-40.

PERB 50 Application. [These rules] PERB 50-54 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 55 Professional Responsibility. In arbitrating grievances pursuant to Minnesota Statutes, section 179.70, arbitrators shall conform to the standards and procedures set forth in the Code of Professional Responsibility for Arbitrators of Labor-Management Disputes as approved by the Joint Steering Committee of the National Academy of Arbitrators on April 28, 1975, incorporated herein by reference, to the extent not inconsistent with the provisions of the Public Employment Labor Relations Act and PERB 50-54.