

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

SF-00006-02

STATE OF MINNESOTA

Office Memorandum

DEPARTMENT EMPLOYEE RELATIONS

TO : Office of the Attorney General
Administration-Finance Division
G-25 Administration Building

DATE: March 17, 1981

FROM : Barbara L. Sundquist
Commissioner

PHONE: 296-8366

SUBJECT: In the Matter of the Adoption of Rules of the State of Minnesota, Department of Employee Relations, Governing the Restoration of Seniority and the Reimbursement for Special Expenses

A rule hearing was conducted on the above-captioned rules on December 11, 1980. The Hearing Examiner and Chief Hearing Examiner have completed their review and we are now submitting these rules to you for your review as to form and legality.

Your prompt attention would be very much appreciated.

RECEIVED
MAR 17 1981
ATTORNEY GENERAL
ADMINISTRATIVE AGENCIES

S.L.H
6-0214

Our File No. 684

RULE REVIEW CHECKLIST

DATE RULE RECEIVED 3/17
DATE FOR REVIEW 3/27
DATE DUE 4/6

Adopted w/a hearing X
Adopted w/o a hearing _____
Temporary rule _____

Approved 4/6 Disapproved _____ Returned to Agency 4/7

Resubmitted _____ Due _____
Approved _____ Disapproved _____ Returned to Agency _____

Date filed w/Secretary of State _____

✓ Rule as Adopted

✓ Rule as Proposed

✓ Order Adopting

✓ Notice of Intent to Solicit Outside Opinion

✓ Order for rulemaking
12.11.80 Date of Hearing

N/A Certificate of Board's Authorizing Resolution

✓ Notice of rulemaking
✓ Sufficiency

✓ Affidavit of Mailing Notice of rulemaking
10.21.80 At least 30 days prior to hearing/~~adoption~~
Discretionary Notice List

✓ Mailing list Certificate

✓ Publication in State Register
10.27.80 At least 30/~~20~~ days prior to hearing/~~adoption~~

✓ Hearing Examiner's Report

✓ Chief Hearing Examiner's Report(s)
1.19.81 ✓ Approving H.E.'s Report (in some respects)
3.3.81 ✓ Approving agency action

✓ Agency's Findings of Fact

N/A LCRAR Report or agency Affidavit

N/A Certificate of Board's Resolution Adopting Rules

N/A Order Approving Incorporation by Reference

✓ Statement of Need and Reasonableness

N/A Petition for Adoption of a Rule

✓ Record (includes transcript or tape, exhibits, comments received by agency, requests for a hearing, and other relevant materials)

✓ Certificate of Compliance w/Rulemaking Procedures

✓ Affidavit of Mailing Notice of Submission to Attorney General

✓ Notice of Submission to the Attorney General

SF-00006-01

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL

Office Memorandum

TO : Barbara L. Sundquist
Commissioner
Department of Employee Relations

DATE: 4/3/81

ATTN : Jean Brezinski

FROM : JERRY S. ANDERSON
Special Assistant
Attorney General

PHONE: 6-4692

SUBJECT: In the Matter of the Proposed Amendment of Rules of the Department of Employee Relations Relating to the Restoration of Seniority and the Selection of the Travel Rule Regarding Reimbursement for Special Expenses

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. Please 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 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 to the rules in the approved set.

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

JSA/gy

Enc.

cc: Duane Harves
Susan Robertson

AG Copy

STATE OF MINNESOTA

DEPARTMENT OF EMPLOYEE RELATIONS

IN THE MATTER OF THE PROPOSED AMENDMENT OF RULES OF THE DEPARTMENT OF EMPLOYEE RELATIONS RELATING TO THE RESTORATION OF SENIORITY AND THE SECTION OF THE TRAVEL RULE REGARDING REIMBURSEMENT FOR SPECIAL EXPENSES.

ORDER ADOPTING RULES

The above-entitled matter came on for hearing before Hearing Examiner Jon L. Lunde on the eleventh day of December, 1980 at 9:30 a.m., in the Department of Employee Relations, Classroom 3, Third Floor, Space Center Building, 444 Lafayette Road, St. Paul, Minnesota 55101 after proper notice required by Minn. Stat. § 15.0412 was served upon all persons, associations and other interested groups registered with the state Employee Relations Department for that purpose.

After affording interested persons an opportunity to present written and oral data, statements, and arguments, hearing all of the testimony, considering all of the evidence adduced and upon the records, files, and proceedings herein and all applicable statutory standards and criteria, and confirmed the need for an reasonableness of the above-captioned rules,

NOW, THEREFORE, IT IS ORDERED that these rules identified as to 2 MCAR § 2.119 and 2 MCAR § 2.181 D. are adopted this twentieth day of February, 1981, pursuant to authority invested in me by Minn. Stat. § 43.05, subd. 2, (1) and 43.327, subd. 2 (1).

STATE OF MINNESOTA

Barbara L. Sundquist

BARBARA L. SUNDQUIST
COMMISSIONER OF EMPLOYEE RELATIONS

Department of Employee Relations
Adopted Rules Governing Restoration of Seniority
and Special Expenses

2 MCAR § 2.119 Restoration of seniority and continuous service credit. An appointing authority, who reemploys an employee who has voluntarily left employment of the agency to enter employment in another agency and who has been employed continuously by the state, shall reinstate the seniority and continuous service credit that existed at the time the employee left the agency.

Any employee who was mandatorily retired at age 65 prior to January 1, 1979, shall have all seniority and continuous service credit existing at the time of the mandatory retirement restored upon the employee's return to state service in any employment status in which seniority is accrued.

An employee who was required to resign due to pregnancy shall have all seniority and continuous service credit existing at the time of resignation restored upon written application to her appointing authority, if:

A. The employee returned to the agency from which she resigned within one year of resignation and notifies her appointing authority within 180 days from the effective date of this rule that she wishes to have seniority and continuous service credit restored under this provision, or

B. The employee returned to state service in another agency within one year of resignation and subsequently returned to the agency from which she resigned, and the employee notifies her appointing authority within 180 days from the effective date of this rule that she wishes to have seniority and continuous service credit restored under this provision.

All changes in continuous service credit for vacation accrual purposes resulting from the application of this rule shall be effective retroactively to July 4, 1979. If the application of this provision causes an employee's vacation leave balance to exceed the established maximum, the employee shall not lose the excess vacation and shall be given one year in which to reduce her vacation balance to the maximum allowed.

All changes in seniority for purposes of lay off shall be effective 15 calendar days after the employee gives written notice to the appointing authority.

Except as provided above, seniority of a former employee who was reinstated or appointed from a reemployment list shall begin on the date of reemployment in the state service. Seniority at the time of termination may be restored by the appointing authority upon the written request of the employee.

2 MCAR § 2.181

D. Special expenses.

1. Definitions

a. For the purposes of this ~~section~~ Part, the term "employee" means all employees in the executive branch of state government; and individuals serving on statutory and non-statutory boards, councils, task forces and commissions; ~~and persons requested to attend state sponsored workshops, meetings, or conferences where the benefit of their attendance accrues primarily to the state~~ excluding consultants on contract to the state.

b. For the purposes of this ~~section~~ Part, "work area" means: (1) the seven county metropolitan area for employees regularly stationed in that

area or (2) the area within a 35 ~~road miles~~ mile radius of the employee's work station for employees regularly stationed outside the seven county metro area.

2. Reimbursements covered by this ~~section~~ Part are limited to:

a. The actual cost of a meal, notwithstanding the limits contained in Part B of this rule and without regard to the employee's assigned work area, provided the meal is on the agenda of a conference, workshop, seminar, or meeting and the employee's attendance has been approved by the appointing authority;

b. Registration fees for conferences, seminars or workshops where the employee's attendance has been approved by the appointing authority;

~~d.~~ c. Lodging within the employee's work area when the employee is actively participating in an event directly related to the employee's position requiring his/her presence overnight or weather conditions or other unforeseen occurrences prevent the employee from returning home;

~~e.~~ d. Necessary expense allowances, subject to the provisions of this rule, incurred by a handicapped employee for one attendant when the employee requires daily assistance in performing various personal tasks or who has special mobility needs;

~~f.~~ e. In addition to the expenses allowed by 2 MCAR § 2.181 A.2. and C.1., the following expenses for employees regularly stationed in the seven county metropolitan area who are assigned to work at the State Fair:

(1) fees for admission to the fairgrounds;

(2) one meal during each shift of fewer than ten hours or two meals during each shift of ten hours or more, subject to the limit set forth for in-state travel;

(3) taxi fare for handicapped employees unable to drive or use other means of public transportation between the employee's normal work station and the state fairgrounds or between the employee's residence and the state fairgrounds, whichever distance is less.

~~3. For the purpose of this section, the appointing authority shall determine (a) when the benefit of a person's attendance at a work shop, conference, meeting or seminar accrues primarily to the state; (b) when an event is directly related to the employee's position; and (c) the number of employees that may attend the same reimbursable event.~~

3. For purposes of this Part, no special expenses will be reimbursed unless the benefit of an employee's attendance at a workshop, conference, meeting, or seminar accrues primarily to the state and has been approved by the appointing authority. When an appointing authority approves such attendance, it will be presumed that it accrues primarily to the benefit of the state. The reimbursement of special expenses are subject to the approval of the Commissioner of Finance who is authorized to enforce this rule.

APPROVED AS TO FORM AND LEGALITY

4-6 1981

WARREN SPANNAUS, ATTORNEY GENERAL

BY Jerry Anderson

SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
APR - 7 1981
Joan Anderson Growe
Secretary of State

10:20 AM

STATE OF MINNESOTA

DEPARTMENT OF EMPLOYEE RELATIONS

IN THE MATTER OF THE PROPOSED AMENDMENT OF RULES OF THE DEPARTMENT OF EMPLOYEE RELATIONS RELATING TO THE RESTORATION OF SENIORITY AND THE SECTION OF THE TRAVEL RULE REGARDING REIMBURSEMENT FOR SPECIAL EXPENSES.

SUPPLEMENTAL FINDINGS OF FACT

WHEREAS, the Commissioner made Findings of Fact and Conclusions dated February 20, 1981 in support of her adoption of the above-mentioned rules, and

WHEREAS, there appears to be minor errors and inconsistencies in 2 MCAR § 2.119 and in 2 MCAR § 1.181 D.1.e.,

The Commissioner makes the following supplemental findings:

1. That the word "credit" was inadvertently omitted after the words "continuous service" in the third, fourth, fifth and sixth paragraphs of 2 MCAR § 2.119 and that it should be added for clarity and consistency;

2. That the typographical error in the reference to "2 MCAR § 2.181A., 2 and C.1." contained in 2 MCAR § 2.181 D.1.e. be corrected to read "2 MCAR § 2.181 A.2. and C.1."

3. That the supplemental findings of fact have no effect on the Commissioner's CONCLUSION dated February 20, 1981 nor on the rules as adopted.

Dated: April 3, 1981.

Barbara L. Sundquist

BARBARA L. SUNDQUIST, Commissioner
Department of Employee Relations

STATE OF MINNESOTA

DEPARTMENT OF EMPLOYEE RELATIONS

IN THE MATTER OF THE PROPOSED AMENDMENT OF RULES OF THE DEPARTMENT OF EMPLOYEE RELATIONS RELATING TO THE RESTORATION OF SENIORITY AND THE SECTION OF THE TRAVEL RULE REGARDING REIMBURSEMENT FOR SPECIAL EXPENSES.

FINDINGS OF FACT AND CONCLUSIONS

The above-entitled matter came on for hearing before Hearing Examiner Jon L. Lunde, on the 11th day of December, 1980 at 9:30 a.m. in the Department of Employee Relations, Classroom 3, Third Floor Space Center Building, 444 Lafayette Road, St. Paul, Minnesota, 55101 after proper notice required by Minn. Stat. § 15.0412 was served upon all persons, associations and other interested groups registered with the State Department of Employee Relations for that purpose.

After affording interested persons an opportunity to present written and oral data, statements and arguments, having heard all the testimony, having considered all of the evidence adduced from the records, files and proceedings herein, the Commissioner makes the following:

FINDINGS OF FACT

1. She adopts Findings 1 through 6 of the Hearing Examiner's Report, which findings relate to the procedural requirements and statutory authority for the proposed rules.

2. She adopts Findings 7 through 39 of the Report, which findings relate to the need for, the non-substantial modification of, and the reasonableness of the proposed rules with the following exceptions:

A) As to paragraph 9, the Commissioner adopts the Hearing Examiner's finding to the extent he finds the rule as written to be needed and reasonable. The Commissioner further finds that the Hearing Examiner misinterprets "continuous service", and she refers the Hearing Examiner to the definitions of "continuous service" and "seniority" found in 2 MCAR § 2.207 and 2 MCAR § 2.109. The Commissioner further finds that the Hearing Examiner has extended the application of this rule beyond her intent to restore seniority and vacation accrual to apply to severance pay which is exclusively governed by Minn. Stat. § 43.12. The Commissioner finally finds that this rule as written needs no clarification.

B) As to paragraph 15, the Commissioner finds that the rule as written needs no clarification because only female employees could have been required to resign due to pregnancy.

C) As to paragraph 16, she adopts the Hearing Examiner's finding to the extent that he finds the time periods specified in Part A of § 2.119 to be reasonable. The Commissioner finds it unnecessary to specify notice procedures in the rule. Any notice additional to that required by Chapter 15 will be accomplished administratively. The Commissioner further finds it unnecessary to state that this part applies only to current employees because throughout these rules, the word "employee/s" refers to current employees unless specified otherwise.

D) As to paragraph 17, the Commissioner finds that Part B of § 2.119 does not require the clarification suggested by the Hearing Examiner.

E) As to paragraphs 22 and 27, the Commissioner adopts the Hearing Examiner's recommendation that the reference to "Section" be changed to

"Part". The Commissioner further adopts this recommendation as it applies to this entire part and has deleted the word "section" whenever it appears and has substituted the word "part".

F) As to paragraph 28, the Commissioner adopts the Hearing Examiner's finding to the extent that it recognizes an inconsistency between Part D.2.a. and 2 MCAR § 2.181 B.1. The Commissioner finds that the language of Part D.2.a. should be retained and that Part B.1. should be amended to conform to Part D.2.a. at such time as Part B or these rules may be amended.

G) As to paragraph 29, the Commissioner finds that the rule as written needs no clarification and she adopts the findings of the Hearing Examiner to the extent the Hearing Examiner finds that the rule as written does not impose the added restrictive criterion that an employee not have the option to leave a meeting to obtain a meal elsewhere in order to qualify for this special expense reimbursement.

H) As to paragraph 31, she adopts the Hearing Examiner's finding and further finds that Part D.2. needs no further clarification.

I) As to paragraphs 36, 37 and 38, she adopts the findings of the Hearing Examiner to the extent these findings recognize that Part D.3. is unclear as to the respective roles of the appointing authority and the Commissioner of Finance in approving special expense reimbursement. The Commissioner further finds that Part D.3. should be amended as described in paragraph J herein.

J) She adopts paragraph 39 of the Hearing Examiner's Report as modified by the recommendation of the Chief Hearing Examiner in his Order dated January 19, 1981 with the exception that the word "person's" should be changed to "employee's" to maintain consistency throughout these rules. She finds that Part D.3. should be adopted as follows:

> For purposes of this Part, no special expenses will be reimbursed unless the benefit of an employee's attendance at a workshop, conference, meeting or

seminar accrues primarily to the state and has been approved by the appointing authority. When an appointing authority approves such attendance, it will be presumed that it accrues primarily to the benefit of the state. The reimbursement of special expenses is subject to the approval of the Commissioner of Finance who is authorized to enforce this rule.

CONCLUSIONS

1. She adopts the Conclusions 1 through 7 of the Hearing Examiner's Report with the exception that Conclusion No. 6 is modified to conform with the Commissioner's Finding of Fact in paragraph J herein.

Dated: February 20, 1981.

Barbara L. Sundquist

BARBARA L. SUNDQUIST, Commissioner
Department of Employee Relations

FOX RIVER BOND
25% COTTON

AG copy.
shows changes from Rules as Proposed

Department of Employee Relations
Adopted Rules Governing Restoration of Seniority
and Special Expenses

2 MCAR § 2.119 Restoration of seniority and continuous service credit. An appointing authority, who reemploys an employee who has voluntarily left employment of the agency to enter employment in another agency and who has been employed continuously by the state, shall reinstate the seniority and continuous service credit that existed at the time the employee left the agency.

Any employee who was mandatorily retired at age 65 prior to January 1, 1979, shall have all seniority and continuous service credit existing at the time of the mandatory retirement restored upon the employee's return to state service in any employment status in which seniority is accrued.

An employee who was required to resign due to pregnancy shall have all seniority and continuous service credit existing at the time of resignation restored upon written application to her appointing authority, if:

A. The employee returned to the agency from which she resigned within one year of resignation and notifies her appointing authority within 180 days from the effective date of this rule that she wishes to have seniority and continuous service credit restored under this provision, or

B. The employee returned to state service in another agency within one year of resignation and subsequently returned to the agency from which she resigned, and the employee notifies her appointing authority within 180 days from the effective date of this rule that she wishes to have seniority and continuous service credit restored under this provision.

All changes in continuous service credit for vacation accrual purposes resulting from the application of this rule shall be effective retroactively to July 4, 1979. If the application of this provision causes an employee's vacation leave balance to exceed the established maximum, the employee shall not lose the excess vacation and shall be given one year in which to reduce her vacation balance to the maximum allowed.

All changes in seniority for purposes of lay off shall be effective 15 calendar days after the employee gives written notice to the appointing authority.

Except as provided above, seniority of a former employee who was reinstated or appointed from a reemployment list shall begin on the date of reemployment in the state service. Seniority at the time of termination may be restored by the appointing authority upon the written request of the employee.

2 MCAR § 2.181

D. Special expenses.

1. Definitions

a. For the purposes of this ~~section~~ Part, the term "employee" means all employees in the executive branch of state government; and individuals serving on statutory and non-statutory boards, councils, task forces and commissions; ~~and persons requested to attend state sponsored workshops, meetings, or conferences where the benefit of their attendance accrues primarily to the state~~ excluding consultants on contract to the state.

b. For the purposes of this ~~section~~ Part, "work area" means: (1) the seven county metropolitan area for employees regularly stationed in that

area or (2) the area within a 35 ~~road miles~~ mile radius of the employee's work station for employees regularly stationed outside the seven county metro area.

2. Reimbursements covered by this ~~section~~ Part are limited to:

a. The actual cost of a meal, notwithstanding the limits contained in Part B of this rule and without regard to the employee's assigned work area, provided the meal is on the agenda of a conference, workshop, seminar, or meeting and the employee's attendance has been approved by the appointing authority;

b. Registration fees for conferences, seminars or workshops where the employee's attendance has been approved by the appointing authority;

~~d.~~ c. Lodging within the employee's work area when the employee is actively participating in an event directly related to the employee's position requiring his/her presence overnight or weather conditions or other unforeseen occurrences prevent the employee from returning home;

~~e.~~ d. Necessary expense allowances, subject to the provisions of this rule, incurred by a handicapped employee for one attendant when the employee requires daily assistance in performing various personal tasks or who has special mobility needs;

~~f.~~ e. In addition to the expenses allowed by 2 MCAR § 2.181A., 2 and C.1., the following expenses for employees regularly stationed in the seven county metropolitan area who are assigned to work at the State Fair:

(1) fee[redacted]or admission to the fairgrounds;

(2) one meal during each shift of fewer than ten hours or two meals during each shift of ten hours or more, subject to the limit set forth for in-state travel;

(3) taxi fare for handicapped employees unable to drive or use other means of public transportation between the employee's normal work station and the state fairgrounds or between the employee's residence and the state fairgrounds, whichever distance is less.

~~3. For the purpose of this section, the appointing authority shall determine (a) when the benefit of a person's attendance at a work shop, conference, meeting or seminar accrues primarily to the state; (b) when an event is directly related to the employee's position; and (c) the number of employees that may attend the same reimbursable event.~~

HE 39

3. For purposes of this Part, no special expenses will be reimbursed unless the benefit of an employee's attendance at a workshop, conference, meeting, or seminar accrues primarily to the state and has been approved by the appointing authority. When an appointing authority approves such attendance, it will be presumed that it accrues primarily to the benefit of the state. The reimbursement of special expenses are subject to the approval of the Commissioner of Finance who is authorized to enforce this rule.

Department of Employee Relations
Proposed Rules Governing Restoration of Seniority
and Special Expenses

2 MCAR § 2.119 Restoration of seniority and continuous service credit. An appointing authority, who reemploys an employee who has voluntarily left employment of the agency to enter employment in another agency and who has been employed continuously by the state ~~and who left the employment of the agency~~, shall reinstate the seniority and continuous service credit that existed at the time the employee left the agency.

Any employee who was mandatorily retired at age 65 prior to January 1, 1979, shall have all seniority and continuous service credit existing at the time of the mandatory retirement restored upon the employee's return to state service in any employment status in which seniority is accrued.

An employee who was required to resign due to pregnancy shall have all seniority and continuous service existing at the time of resignation restored upon written application to her appointing authority, if:

A. The employee returned to the agency from which she resigned within one year of resignation and notifies her appointing authority within 180 days from the effective date of this rule that she wishes to have seniority and continuous service restored under this provision, or

B. The employee returned to state service in another agency within one year of resignation and subsequently returned to the agency from which she resigned, and the employee notifies her appointing authority within 180 days from the effective date of this rule that she wishes to have seniority and continuous service restored under this provision.

All changes in continuous service for vacation accrual purposes resulting from the application of this rule shall be effective retroactively to July 4, 1979. If the application of this provision causes an employee's vacation leave balance to exceed the established maximum, the employee shall not lose the excess vacation and shall be given one year in which to reduce her vacation balance to the maximum allowed.

All changes in seniority for purposes of lay off shall be effective 15 calendar days after the employee gives written notice to the appointing authority.

Except as provided above, seniority of a former employee who was reinstated or appointed from a reemployment list shall begin on the date of reemployment in the state service. Seniority at the time of termination may be restored by the appointing authority upon the written request of the employee.

2 MCAR § 2.181

D. Special expenses. ~~Special expenses shall require prior approval of the appointing authority and the approval of the Commissioner of Personnel, who shall issue guidelines regarding eligible special expenses. This section also applies to any state board, council, or commission member.~~

1. Definitions

a. For the purposes of this section, the term "employee" means all employees in the executive branch of state government; individuals serving on statutory and non-statutory boards, councils, task forces and commissions; and persons requested to attend state sponsored workshops, meetings, or conferences where the benefit of their attendance accrues primarily to the state excluding consultants on contract to the state.

b. For the purposes of this section, "work area" means: (1) the seven county metropolitan area for employees regularly stationed in that area or (2) the area within 35 road miles of the employee's work station for employees regularly stationed outside the seven county metro area.

2. Reimbursements covered by this Section are limited to:

a. The actual cost of a meal, notwithstanding the limits contained in Section B and without regard to the employee's assigned work area, provided the meal is on the agenda of a conference, workshop, seminar, or meeting and the employee's attendance has been approved by the appointing authority;

b. Registration fees for conferences, seminars or workshops where the employee's attendance has been approved by the appointing authority;

c. Breakfast or dinner within the employee's work area where the employee is assigned to actively participate in state business two hours before or four hours after the assigned shift;

d. Lodging within the employee's work area when the employee is actively participating in an event directly related to the employee's position requiring his/her presence overnight or weather conditions or other unforeseen occurrences prevent the employee from returning home;

e. Necessary expense allowances, subject to the provisions of this rule, incurred by a handicapped employee for one attendant when the employee requires daily assistance in performing various personal tasks or who has special mobility needs;

f. In addition to the expenses allowed by 2 MCAR § 2.181A, 2 and C.1., the following expenses for employees regularly stationed in the seven county metropolitan area who are assigned to work at the State Fair:

(1) fees for admission to the fairgrounds;

(2) one meal during each shift of fewer than ten hours or two meals during each shift of ten hours or more, subject to the limit set forth for in-state travel;

(3) taxi fare for handicapped employees unable to drive or use other means of public transportation between the employee's normal work station and the state fairgrounds or between the employee's residence and the state fairgrounds, whichever distance is less.

3. For the purposes of this section, the appointing authority shall determine (a) when the benefit of a person's attendance at a work shop, conference, meeting or seminar accrues primarily to the state; (b) when an event is directly related to the employee's position; and (c) the number of employees that may attend the same reimbursable event.

OFFICIAL NOTICES

Pursuant to the provisions of Minn. Stat. § 15.0412, subd. 6, an agency, in preparing proposed rules, may seek information or opinion from sources outside the agency. Notices of intent to solicit outside opinion must be published in the *State Register* and all interested persons afforded the opportunity to submit data or views on the subject, either orally or in writing.

The *State Register* also publishes other official notices of state agencies, notices of meetings, and matters of public interest.

Department of Personnel

Notice of Intent to Solicit Outside Opinion Regarding Special Expense Rules of the Department of Personnel

The Department of Personnel is drafting rules to implement Minn. Stat. 1978 § 43.327, subds. 2 and 3, as amended by Laws of 1979, ch. 332 §§ 49 and 50, which requires the promulgation of rules regarding special expenses.

The subjects covered by the proposed special expense rules include the following: definitions; procedures; eligibility for reimbursement of extraordinary meal and lodging expenses, registration fees, and other expenses related to participation in conferences, seminars and workshops.

The Department also intends to revise the training standards in 2 MCAR § 2.161; the military leave provisions of 2 MCAR §§ 2.137 and 2.139 and the restoration of seniority as provided by 2 MCAR § 2.119.

The Department invites interested persons or groups to provide written information, comments and advice on these subjects to Donn Escher, Minnesota Department of Personnel, 3rd floor, Space Center Building, 444 Lafayette Road, St. Paul, Minnesota 55101.

Written statements will be made part of the public hearing record and must be submitted by October 12, 1979 to be considered in the original rules draft.

Barbara L. Sundquist
Commissioner of Personnel

Department of State Planning
Office of Local and Urban Affairs

Notice of Intent to Solicit Outside Opinion Concerning the Proposed Adoption of Rules Relating to the Administration of State Assistance to Regional Development Commissions

Notice is hereby given that the State Planning Agency is seeking information or opinions from sources outside the agency in preparing to propose the adoption of rules governing the administration of state assistance to regional development commissions. Any interested persons may submit data or views on this subject in writing or orally to:

Jane Stevenson
Office of Local & Urban Affairs
State Planning Agency
200 Capitol Square
St. Paul, MN 55101
612/296-2386

Any written material received by the agency shall become a part of the hearing record in the event rules governing this subject are promulgated.

September 21, 1979

Leland Newman, Director
Office of Local and Urban Affairs

STATE OF MINNESOTA

DEPARTMENT OF EMPLOYEE RELATIONS

In the Matter of the Proposed
Amendment of the Rules of the
Department of Employee Relations
Relating to the Restoration of
Seniority and the Section of the
Travel Rule Regarding Reimbursement
for Special Expenses

ORDER OF HEARING

IT IS HEREBY ORDERED that a public hearing on the above-captioned rules be held in the Offices of the Department of Employee Relations, Training Room #1, 3rd Floor, Space Center Building, 444 Lafayette Road, St. Paul, Minnesota 55101 commencing at 9:30 a.m. and continuing until all persons have had an opportunity to be heard. The hearing date has been set for December 11, 1980.

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

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

Barbara L. Sundquist

BARBARA L. SUNDQUIST, Commissioner
Department of Employee Relations

PROPOSED RULES PRINTED IN STATE REGISTER, OCTOBER 27, 1980

NOTICE OF HEARING ON PROPOSED RULES

Department of Employee Relations

Proposed Amendment of the Rules
Relating to the Restoration of
Seniority and the Section of the
Travel Rule Regarding Reimbursement
for Special Expenses

Notice of Hearing

Notice is hereby given that a public hearing in the above-entitled matter will be held pursuant to Minn. Stat. § 15.0412, subd. 4 (1978) as amended by Laws of 1980, ch. 615, § 6, in the Offices of the Department of Employee Relations, Training Room 1, 3rd Floor, Space Center Building, 444 Lafayette Road, St. Paul, Minnesota 55101 on Thursday, December 11, 1980 commencing at 9:30 a.m.

All interested or affected persons will have an opportunity to participate concerning the amendments to the rules captioned above. Statements may be made orally and written material may be submitted. In addition, whether or not an appearance is made at the hearing, written statements or material may be submitted to Jon Lunde, Office of Administrative Hearings, Room 300, 1745 University Avenue, St. Paul, Minnesota 55104, either before the hearing or within five (5) working days after the close of the hearing. The hearing examiner may order at the hearing that the record will remain open for a longer period, not to exceed 20 calendar days. All such statements will be entered into and become part of the record. Testimony or other evidence to be submitted for consideration should be pertinent to the matter at hand. For those wishing to submit written statements or exhibits, it is requested that at least three (3) copies be furnished. In addition, in order to save time and avoid duplication, it is suggested that those persons, organizations or assocations having a common viewpoint or interest in these proceedings join together where possible and present a single statement in behalf of such interests. The conduct of the hearing shall be governed by Minn. Stat. §§ 15.0411 - 15.0417 and 15.052 (1978) as amended by Laws of 1980, ch. 615 and by the rules of the Office of Administrative Hearings, 9 MCAR §§ 2.101 - 2.113 (Minnesota Code of Agency Rules). Questions relating to procedures may be directed to Hearing Examiner Jon Lunde.

Notice: The proposed rules may be modified as the result of the hearing process. The Department therefore strongly urges those who are potentially affected in any manner by the proposed rules to participate in the hearing process.

If adopted, the amendments proposed by the Commissioner of Employee Relations would (1) clarify the portion of the seniority rule which addresses the seniority and continuous service rights of employees who move between state agencies but never terminate from state service, (2) restore seniority and continuous service for purposes of lay-off and vacation accrual to employees required to resign due to pregnancy, and (3) list those items which are reimbursable as special expenses which would not otherwise be reimbursable under existing travel expense rules. The authority of the Commissioner to promulgate the proposed rules on restoration of seniority is contained in Minn. Stat. § 43.05, subd. 2 (1) as amended by Laws of 1980, ch. 614, § 61. The authority of the Commissioner to promulgate special expense rules is contained in Minn. Stat. § 43.327.

Copies of the proposed amendments are now available and at least one free copy may be obtained by writing to the Minnesota Department of Employee Relations, 3rd Floor, Space Center Building, 444 Lafayette Road, St. Paul, Minnesota 55101. Additional copies will be available at the door on the date of the hearing. 3b

Notice is hereby given that 25 days prior to the hearing, a Statement of Need and Reasonableness will be available for review at the agency and at the Office of Administrative Hearings. This Statement of Need and Reasonableness will include a summary of all of the evidence and argument which the agency anticipates presenting at the hearing justifying both the need for and the reasonableness of the proposed rule/rules. Copies of the Statement of Need and Reasonableness may be obtained from the Office of Administrative Hearings at a minimal charge. 9

Notice: Any person may request notification of the date on which the Hearing Examiner's Report will be available, after which date the agency may not take any final action on the rules for a period of five (5) working days. Any person may also request notification of the date on which the hearing record has been submitted (or resubmitted) to the Attorney General by the agency. If you desire to be so notified, you may so indicate at the hearing. After the hearing, you may request notification by sending a written request to the Hearing Examiner (in the case of the Hearing Examiner's Report), or to the agency (in the case of the agency's submission or resubmission to the Attorney General). 8

Minn. Stat. ch. 10A requires each lobbyist to register with the State Ethical Practices Board within five (5) days after he commences lobbying. A lobbyist is defined in Minn. Stat. § 10A.01, subd. 11 (1979 Supplement) as an individual:

(a) Engaged for pay or other consideration, or authorized by another individual or association to spend money, who spends more than five hours in any month or more than $250, not including his own travel expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials; or

(b) Who spends more than $250, not including his own traveling expenses and membership dues, in any year for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials.

Questions concerning lobbyists or their required registration should be directed to the State Ethical Practices Board, Room 41, State Office Building, Wabasha Street, St. Paul, Minnesota 55155, at telephone number (612) 296-5616. 6

Promulgation of the proposed rules will not result in the expenditures of public monies by local public bodies. (10)

September 26, 1980

Barbara L. Sundquist
Commissioner of Employee Relations

STATE OF MINNESOTA

DEPARTMENT OF EMPLOYEE RELATIONS

In the Matter of the Proposed
Rules Relating to the Restoration
of Seniority and the Section of
the Travel Rule Regarding
Reimbursement for Special Expenses

AFFIDAVIT OF MAILING OF
DISCRETIONARY NOTICE LIST

Affiant, being first duly sworn, deposes and says:

That on the 21 day of October, 1980, at the City of St. Paul, County of Ramsey, State of Minnesota, he 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 paid to all persons and associations at the addresses listed on the attached Agency Discretionary Notice List.

FURTHER AFFIANT SAYETH NOT.

Subscribed and sworn to before me
this 21 day of October,
1980.

Notary Public

CHRISTINE F. GOODWILL
NOTARY PUBLIC - MINNESOTA
DAKOTA COUNTY
MY COMMISSION EXPIRES NOV. 18, 1982

Exec. Secretary
Investment Board
105 MEA Bldg.
IO

Director
Mediation Services
1st Floor, Vets Ser. Bld.
IO

Exec. Secretary
Bd. of Nursing
717 Delaware St. S.E.
IO

Public Defender Director
Law School, U of M
Mpls, MN. 55445

Revisor of Statutes
Room 3
State Capitol
IO

Supreme Court
Administrative Assistant
Rm. 317, State Capitol
IO

Law Library
Room 101
117 University Ave.
IO

Comptroller
Department of Military Aff.
6th Floor
Veterans Service Building
IO

Executive Director
Peace Officers Board
500 Metro Square Building
IO

Executive Secretary
Public Employment
Relations Board
Rm. 598, Space Ctr. Building
IO

Personnel Officer
Senate Office
Room 231, State Capitol
IO

Executive Secretary
Teachers Retirement Assoc.
Room 302, Capitol Sq. Bldg.
IO

Administrator
Dept. of Labor & Industry
5th Floor, Space Center Bldg.
IO

Executive Secretary
Bd. of Medical Exam
717 Delaware St. S.E.
IO

Ombudsman For Corr.
Rm. 101
Nat'l. Pak. Building
333 Sibley
IO

Exec. Secretary
Public Emp. Retirement
203 Capitol Sq. Bldg.
IO

Dep. Secretary of State
Secretary of State Office
180 State Office Bldg.
IO

Personnel Officer
Tax Court, 5th Floor
Space Center Building
IO

Mary Hess
Iron Range Resources
Rehabilitation Board
Box 678, Hwy 53
Eveleth, MN 55734 IO

Executive Director
Mn. Education Computing
2520 Broadway Drive
Lauderdale, MN 55113

Personnel Officer
Public Utilities Commission
780 American Center Bldg.
IO

Personnel Officer
Department of Public Saftey
210 Transportation Building
IO

Executive Director
Soil & Water Conservation Bd.
Room 300
Centennial Building
IO

Personnel Officer
Department of Transportation
315 Transportation Building
IO

Dep. Legislative Auditor
Legislative Audit Comm.
2nd Floor, Vets. Bldg.
IO

Exec. Director
MN. Wisc. Boundary Area Co
619 2nd Street
Hudson, Wisconsin 54016

Secretary, Bd. of Pharmacy
Rm. 351
717 Delaware St. S.E.
IO

Personnel Officer
Dept of Public Serv.
7th Floor, Amer. Ctr. Bldg.
IO

Administrative Assistant
Southern Mn. River Basin
600 Amer. Ctr. Bldg.
150 E. Kellogg
IO

Personnel Officer
Veterans Affairs
1st Floor
Veterans Service Building
IO

Personnel Officer
Office Lieutenant Govonor
Room 112
Capitol Square Building
IO

Personnel Officer
Dept of Natural Resources
3rd Floor
Centennial Office Building
IO

Personnel Officer
Pollution Control Agency
1935 W. County Road B-2
IO

Executive Director
Minnesota St. Retirement Sys.
529 Jackson Street
IO

Personnel Office
State Treasurer
303 Administration Building
IO

Water Planning Board
Director
Room 600
American Center Building
IO

Personnel Directors
Mailing List (This is
part of ~~Agency Rulemaking~~ Discretionary
Notice List.)

Asst. Exec. Secretary
Municipal Board
Rm. 165, Metro Sq. Bldg.
IO

Podiatry Examiners
Secretary
717 Delaware S.E.
IO

Pers. Officer 4
Dept. of Public Welfare
4th Floor, Cent. Bldg.
IO

Personnel Officer
State Planning Agency
101 Capitol Sq. Bldg.
IO

Personnel Officer
Division Voc Rehabilitation
3rd Floor
Space Center Building
IO

Executive Secretary
Livestock Sanitation Board
Lower Level 70
Metro Square Building
IO

Executive Director
Board of Nursing Home Admin.
717 Delaware St. South East
IO

Administration Director
Prof. Responsibility Board
Room 200, 200 South Robert
IO

Personnel Officer
Department of Revenue
Centennial Office Building
IO

Personnel Officer
State University Systems
407 Capitol Square Building
IO

Water Resources Board
Executive Secretary
Room 206
555 Wabasha
IO

ersonnel Office
innesota Zoological Gardens
2101 Johnny Cake Ridge
IO

ersonnel Officer
orrectional Inst. for Women
ox 47
hakopee, MN 55379

ersonnel Officer
linnesota Correctional
Facility - St. Cloud
lox B
it. Cloud, Minnesota 56301

ersonnel Officer
h Gwah Ching Nursing Home
h Gwah Ching, MN 56430

ersonnel Officer
aribault State Hospital
aribault, MN 55021

Personnel Officer
Rochester State Hospital
2110 E. Center St.
Rochester, MN 55901

Personnel Officer
Mankato State University
South 5th & Jackson
Mankato, MN 56001

Personnel Officer
Winona State Univiversity
8th & Johnson Street
Winona, MN 55987

Chief Deputy Atty. General
Room 102
State Capitol
IO

State Arts Board
Executive Secretary
2500 Park Avenue
Minneapolis, MN 55404

Board of Judicial Standards
Executive Secretary
Room 202, 200 So. Robert
IO

Board of Cosmetology
Executive Secretary
5th Floor
MEtro Square Building
IO

Executive Director
Spanish Speaking Council
504 Rice Street
IO

Personnel Officer
Metropolitan Training Center
Box L
Circle Pines, MN 55014

Superintendent
Thistledew Forestry Camp
Box W-10, Star Route
Togo, Minnesota 55788

Personnel Officer
Anoka State Hospital
Anoka, MN 55303

Personnel Officer
Fergus Falls State Hospital
Box 157
Fergus Falls, MN 56537

Personnel Officer
St. Peter State Hospital
100 Freeman Drive
St. Peter, MN 56082

Personnel Officer
Moorhead State University
1104 7th Ave. So.
Moorhead, MN 56560

Personnel Officer
Metro State University
Room 121, Metro Sq. Building
IO

Personnel Officer
Auditors Office
1st Floor
Veterans Service Building
IO

Arch. Eng. & Land Survey Bd.
Executive Secretary
5th Floor
Metro Sq. Building
IO

Board of Barber Exam
Executive Secretary
5th Floor
Metro Square Building
IO

Personnel Officer
Board of Dentistry, Room 338
717 Delaware Street S.E.
IO

Metro Transit Comm.
801 American Center Building
160 East Kellogg Blvd.
IO

Assistant. Superintendent
Minnesota Home School
Box 272
Sauk Center, MN 56378

Personnel Officer
State Training School
Box 35
Red Wing, MN 55066

Personnel Officer
Brainerd State Hospital
Box 349, Hwy 18 & 25
Brainerd, MN 56401

Personnel Officer
Glen Lake State Sanitorium
County Road 67
Minnetonka, MN 55343

Personnel Officer
Willmar State Hospital
Box 1128
Willmar, MN 56201

Personnel Officer
Southwest State University
Marshall, MN 56258

Personnel Officer
Dept. of Administration
2nd Floor, Admin. Building
IO

Board of Abstractors
Secretary Treasurer
P.O. Box 431
Anoka, MN 55303

Executive Director
State Board of Assessors
2nd Floor
Centennial Building
IO

Boxing Board
Executive Secretary
5th Floor
Metro Square Building
IO

Personnel Off. or Design.
Board of Electricity
Griggs Midway Bldg., Rm. N191
1821 University AVe.
St. Paul, MN 55104

Project Manec
Room 264
Metro Square Building
IO

Personnel Officer
Minnesota State Prison
Box 55
Stillwater, MN 55082

Superintendent
Willow River Camp
Willow River, MN 55795

Personnel Officer
Cambridge State Hospital
Cambridge, MN 55008

Personnel Officer
Moose Lake State Hospital
Box B
Moose Lake, MN 55767

Personnel Officer
Bemidji State University
14th & Birchmont Drive
Bemidji, MN 56001

Personnel Officer
St. Cloud State University
1st Ave. & 7th Street
St. Cloud, MN 56301

Personnel Officer
Department of Agriculture
90 W. Plato Blvd.
St. Paul, MN 55107

Board of Accountancy
Executive Secretary
5th Floor Metro Sq. Building
IO

Board Exam in Watchmaking
Secretary
5th Floor
Metro Square Building
IO

Board of Chiropractic
Secretary
Room 336, 717 Delaware S.E.
IO

Board of Law Examiners
Room 200A
200 So. Robert
IO

Board of Optometry
Secretary
Room 342, 717 Delaware S.E.
IO

Executive Secretary
Capitol Area
Planning Commission
400 State Office Building
IO

County Attorneys Council
Executive Director
40 North Milton St.
IO

Admin. Services Director
Department of Economic Dev.
480 Cedar Street
Hanover Building
IO

Personnel Director
Department of Finance
309 St. Administration Bldg.
IO

Executive Director
Council on Handicapped
208 Metro Square Building
IO

Executive Director
MN Higher Educ. Fac. Autho.
Metro Sq. Building, Rm. 278
IO

Deputy Commissioner
Department of Human Rights
5th Floor, Bremer Tower
7th Place and Minnesota
IO

Veterans Home - Personnel
1200 18th Street
Hastings, MN 55033

Director of Systems &
Procedures
Department of Finance
Room 309, Administration Bldg
IO

Board of Psychology
Executive Director
Rm. 343, 717 Delaware S.E.
IO

Executive Secretary
Department of Commerce
5th Floor
Metro Square Building
IO

Personnel Officer
Crime Control Planning Bd.
6th Floor, Space Ctr. Bldg.
IO

Personnel Officer
Minnesota Energy Agency
Room 980
American Center Building
IO

Office of the Governor
Albert H. Quie
130 State Capitol
IO

Personnel Officer
Department of Health
717 Delaware St. S.E.
IO

Personnel Officer
MN Housing Finance Ag.
Suite 200, Nalpak Building
IO

Deputy Director
MN Historical Society
1500 Mississippi Street
IO

Veterans Home - Personnel
51st St. & Minnehaha
Minneapolis, MN 55417

Personnel Director
Board of Investment
55 Sherburne
IO

Board of Veterinary Medicine
Executive Secretary
Rm. 337, 717 Delaware S.E.
IO

Personnel Officer
Community College Board
301 Capitol Square Building
IO

Personnel Officer
Economic Security Department
390 No. Robert
IO

Executive Director
Ethical Practices Board
410 Street Office Bldg.
IO

Personnel Officer
Govornor's Manpower Division
690 American Center Bldg.
IO

Chief Hearing Examiner
Office of Hearing Examiners
1745 University Avenue,
Room 300
IO

House of Representatives
Chief of Clerk
Room 111, State Capitol
IO

Administrative Assistant
Indian Aff. Inter. Trib. Bd.
360 N. Griggs Midway Bldg.
St. Paul, MN 55104

House Finance Office
Room 10, State Capitol
IO

Personnel Services Manager
Attorney General
102 State Capitol
IO

CETA
Central Division
215 Administration Bldg.
IO

Personnel Director
Department of Corrections
430 Metro Square Building
IO

Personnel Officer
Department of Education
7th Floor, Capitol Sq. Bldg.
IO

Director
Central Payroll Finance
5th Floor, Centennial Bldg.
IO

Gillette Childrens Hospital
200 E. University Avenue
St. Paul, MN 55104

Personnel Officer
Higher Education Coord. Board
400 Capitol Square Building
IO

President
Humane Society
500 Rice Street
IO

Commissioner
Iron Range Resource
Rehabilitation Board
Suite 263, Metro Sq. Bldg.
IO

Joint Legislative Commission
& House Finance Office
Room 10, State Capitol
IO

Waste Management Board
123 Thorson Building
7323 58th Avenue North
Crystal, Minnesota 55428

egislative Reference Library
. Dewitt
oom 111, State Capitol
IO

Paul Heckt
720 American Center Bldg.
IO

Metro Waste Control Comm.
350 Metro Square Bldg.
IO

Discretionary List
4440B/4441B/68B
(Includes names of persons formerly on Sec. of State List.)

ckland, K. Crim Just Coun.
422 City Hall Annex
t. Paul, MN 55102

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4132 88th Lane
St. Paul, MN 55112

Anothony Dick WDSM Radio
1105 E. Superior St.
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ssociation Gen Contr. of MN.
11 E. Kellogg Blvd.
t. Paul, MN 55101

Begalka D. Rev.
212 N. Elk Street
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Broeker, John
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usch, Noel
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Carver Co. Auditor
600 E. 4th Street
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St. Paul, MN 55155

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114 7th Avenue W.
Box 231
Alexandria, MN 56308

ity of Brainerd
ity Hall
rainerd, MN 56401

City of Burnsville
1313 E. Hwy 13
Burnsville, MN 55337

Anderson, Herbert
418 8th Street South
Virginia, MN 55792

Association of MN Counties
2305 Ford Parkway
St. Paul, MN 55116

est Flanagan Et. Al.
1040 IDS Center
inneapolis, MN 55402

Boyum Burdette
250 So. 4th Street
Minneapolis, MN 55415

Brooks, William F. Jr.
900 Midland Bk. Bldg.
Minneapolis, MN 55401

Minnesota Water Resources Bd.
Room 206, 555 Wabasha St.
IO

hief Editor St. Info. Unit
1231 25th Street N.W.
ashington, D.C. 20037

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Minneapolis, MN 55402

City of Anoka
City Hall
2015 1st Avenue
Anoka, Minnesota 55303

City of Breckenridge
City Hall
Breckenridge, MN 56520

ity of Cambridge
139 E. First Avenue
ambridge, MN 55008

Anderson, James
7703 Normandale Rd.
Minneapolis, MN 55435

Anderson, Stanford
14600 Minnetonka Blvd.
Minnetonka, MN 55343

Arrowhead Reg. Dev. Comm.
211 W. 2nd Street
Duluth, MN 55802

rrowhead Regional Dev. Comm.
200 Arrowhead Place
uluth, MN 55802

Minn. Pollution Control
Water Quality
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Baratto Divine M
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laha, Gerald
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Brick, Phillip D.
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W2200 1st Natl. Bk. Bldg.
St. Paul, MN 55101

Brown, D M Goodridge Pub Sch
Ind. Dist. #561
Goodhue, MN 56725

runing C.R. Dept. Clinic E.
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Minn. Council for Handicapped
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Carrison, Dale K.
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126 No. Marshall
Litchfield, MN 55355

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221 E. Clark St.
Albert Lea, MN 56007

City of Apple Valley
14200 Cedar Avenue So.
Apple Valley, MN 55124

ity of Blaine
150 Central Avenue N.E.
laine, MN 55434

City of Brooklyn Center
6301 Shingle Creek Pkwy
Brooklyn Center, MN 55430

City of Brooklyn Park
5800 85th Avenue North
Brooklyn Park, MN 55443

City of Champlin
12001 Hwy 52
Champlin, MN 55316

ity of Chanhassen
610 Laredo
hanhassen, MN 55317

City of Chaska
205 E. 4th Street
Chaska, MN 55318

City of Cottage Grove
7516 80th St. So.
Cottage Grove, MN 55016

City of Crystal
4141 Douglas Drive No.
Crystal, MN 55422

ity of Detroit Lakes
06 E. Holmes Street
etroit Lakes, MN 56501

City of Duluth
City Hall
Duluth, MN 55802

City of Eagan
3795 Pilot Knob Road
Eagan, MN 55122

City of East Bethel
2751 Viking Blvd. N.E.
Wyoming, MN 55092

ity of E. Grand Forks
. O. Box 453
. Grand Forks, MN 56721

City of Eden Prairie
8950 Eden Prairie Road
Eden Prairie, MN 55343

City of Edina
4801 W. 50th Street
Edina, MN 55424

City of Golden Valley
7800 Golden Valley Road
Golden Valley, MN 55427

ity of Hastings
00 Sibley Street
Hastings, MN 55033

City of Hutchinson
37 Washington Ave. West
Hutchinson, MN 55350

City of Jordan Frank House R2
10 E. 1st
Jordan, MN 55352

City of Lake Independence
Rt. 1, Box 123A
Maple Plain, MN 55359

City of Maple Grove
9401 Fernbrook Lane
Maple Grove, MN 55369

City of Maplewood
1380 Frost Avenue
Maplewood, MN 55109

City of Minneapolis
3801 66th Avenue North
Brooklyn Center, MN 55429

City of Minnetonka
74600 Minnetonka Blvd.
Minnetonka, MN 55343

City of Morris
City Hall
Morris, MN 56244

City of Moundsview
2401 Hwy 10
St. Paul, MN 55113

City of New Hope
4401 Xylon Avenue North
New Hope, MN 55428

City of Orono
P. O. Box 66
Crystal Bay, MN 55323

City of Rochester
1421 3rd Avenue S.E.
Rochester, MN 55901

City of Rosemount
Box 455
Rosemount, MN 55068

City of Roseville
2701 No. Lexington Ave.
Roseville, MN 55113

City of St. Cloud
City Hall
St. Cloud, MN 56301

City of St. Louis Park
5005 Minnetonka Blvd.
St. Louis Park, MN 55416

City of St. Paul
445 City Hall
St. Paul, MN 55102

City of Shakopee
129 E. 1st Avenue
Shakopee, MN 55379

City of Shoreview
4665 N. Victoria St.
Shoreview, MN 55112

City of Wayzata
600 Rice Street
Wayzata, MN 55391

City of White Bear Lake
250 Miller Avenue
White Bear Lake, MN 55110

Clarkson, J.B.
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Clausen, Phillip
2307 Standish St.
St. Paul, MN 55108

Cohen, Lawrence
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Minneapolis, MN 55420

Concordia College
Dean
Moorhead, MN 56560

Consumer Services Dept Comm
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St. Paul, MN 55101

County Attys. Council
40 No. Milton St., Suite #106
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Dailey Thomas Economics Lab.
370 Wabasha St.
St. Paul, MN 55102

Dakota Co. Mental Health Ctr.
744 19th Avenue North
So. St. Paul, MN 55075

Danielson, Rodney L.
411 Main St, Suite #210
St. Paul, MN 55102

Dayton, Herman, Et. Al
800 Midland Bank Bldg.
Minneapolis, MN 55401

velop Disabilities Prog.
ate Planning
0 Capitol Square
. Paul, MN 55155

fice of the Governor
om 130, State Capitol
IO

lina Health Dept.
01 W. 50th Street
lina, MN 55424

nest K. Lehmann & Assoc.
09 Willow St.
inneapolis, MN 55403

arseth Paul Food Stamps Pro
elfare Dept.
90 No. Robert
t. Paul, MN 55101

itzpatrick, Leo
138 Henslowe Avenue So.
ottage Grove, MN 55016

redin, Conrad M.
11 First Natl Bank Bldg.
uluth, MN 55802

inda Schultz
oom 328, State Capitol
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m. Mitchell College of Law
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rummert, Rev. Donald
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Haik, Raymond A.
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Haven, Robt Twin In Treatment
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Mora, MN 55051

Elmer, Edwin W.
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Harry Peterson, Commr.
Dept. of Labor & Industry
444 Lafayette Road
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5203 Leesburgpike S1201
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480 Cedar
St. Paul, MN 55101

Friesen, Miller A.
Rahr Bd - 624 13th St. South
Virginia, MN 55792

Gebert, Kenneth L.
300 Public Health Center
Minneapolis, MN 55415

Graham, Thos H.
900 Midland Bk. Bldg.
Minneapolis, MN 55401

Lee Sheehy
625 Admin. Bldg.
IO

Harry, Rick
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Moose Lake, MN 55767

Head & Truhn
1007 Soo Line Bldg.
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5720 Excelsior Blvd.
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Ebeling, Edward H.
161 W. Main
Perham, MN 56573

Enderson, William
3644 Nicollet Avenue
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Farmers Elevator Assn.
852 Grain Exchange Bldg.
Minneapolis, MN 55415

Felhaber, R. S.
W. 1st Natl Bank Bldg.
St. Paul, MN 55101

Forsberg Agency Service
518 Summit Avenue
New Ulm, MN 56073

Frison, Frank NECA
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St. Paul, MN 55107

George A. Hormel & Company
Law Department
P. O. Box 800
Austin, MN 55912

Greater Met. Area Hospitality
5152 Cedar Avenue South
Minneapolis, MN 55417

Haider, Mary Lou
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Hartfeldt, Will
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Bloomington, MN 55420

Headwaters Reg. Dev. Comm.
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Bemidji, MN 56601

Dzugan, Ken
St. Paul Planning
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STATE OF MINNESOTA

DEPARTMENT OF EMPLOYEE RELATIONS

In the Matter of the Proposed
Rules Relating to the Restoration
of Seniority and the Section of
the Travel Rule Regarding
Reimbursement for Special Expenses

AFFIDAVIT OF MAILING OF
AGENCY RULEMAKING NOTICE LIST

Affiant, being first duly sworn, deposes and says:

That on the 21 day of October, 1980, at the City of St. Paul, County of Ramsey, State of Minnesota, he 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 paid to all persons and associations at the addresses listed on the attached Agency Rulemaking Notice List.

FURTHER AFFIANT SAYETH NOT.

Jack Halleen

Subscribed and sworn to before me
this 21 day of October,
1980.

Christine L. Goodwill
Notary Public

CHRISTINE F. GOODWILL
NOTARY PUBLIC - MINNESOTA
DAKOTA COUNTY
MY COMMISSION EXPIRES NOV. 16, 1982

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3927B/68B

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STATE OF MINNESOTA

COUNTY OF RAMSEY

In the Matter of the Proposed
Rules Relating to the Restoration
of Seniority and the Section of
the Travel Rule Regarding
Reimbursement for Special Expenses

CERTIFICATION

I hereby certify that the attached 42 labels + 1 sheets constitute the complete and accurate list of persons, associations, and other interested groups who, as of 9:30 a.m., this 21 day of Oct, 1980, have requested pursuant to Minn. Stat. § 15.0412, subd. 4, (1978), as amended by Laws of 1980, ch. 615 § 6, that their names be placed on the agency Rulemaking Notice List for the purpose of receiving notice of public hearings on proposed rules on the subject captioned above.

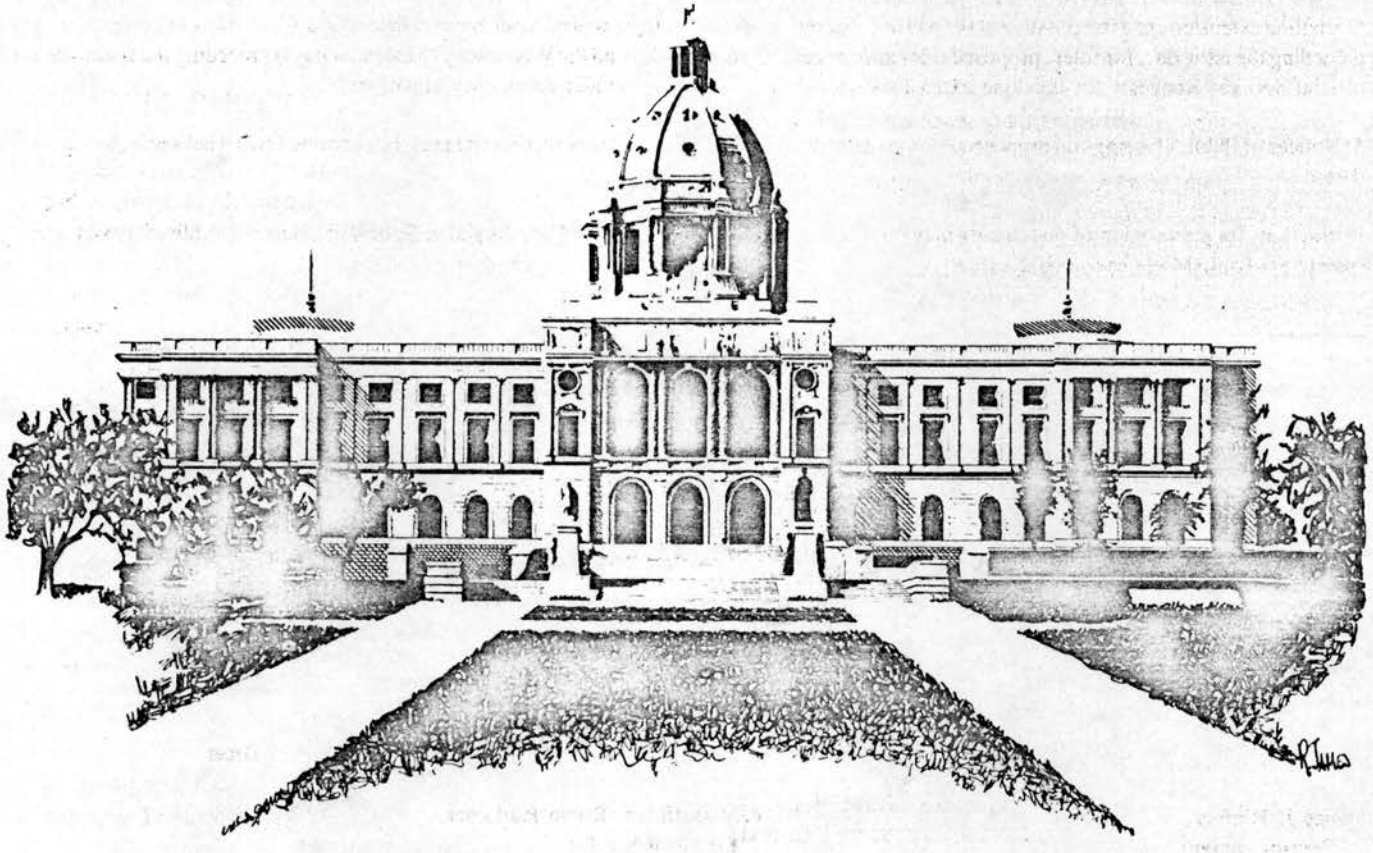
DEPARTMENT OF EMPLOYEE RELATIONS

Patrick Halvorsen

Patrick Halvorsen, Director
Evaluation and Planning

STATE REGISTER

STATE OF MINNESOTA



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Pursuant to Minn. Laws of 1980, § 15.0412, subd. 4h, an agency may propose to adopt, amend, suspend or repeal rules without first holding a public hearing, as long as the agency determines that the rules will be noncontroversial in nature. The agency must first publish a notice of intent to adopt rules without a public hearing, together with the proposed rules, in the *State Register*. The notice must advise the public:

1. that they have 30 days in which to submit comment on the proposed rules;
2. that no public hearing will be held unless seven or more persons make a written request for a hearing within the 30-day comment period;
3. of the manner in which persons shall request a hearing on the proposed rules;

and

4. that the rule may be modified if modifications are supported by the data and views submitted.

If, during the 30-day comment period, seven or more persons submit to the agency a written request for a hearing of the proposed rules, the agency must proceed under the provisions of § 15.0412, subds. 4 through 4g, which state that if an agency decides to hold a public hearing, it must publish in the *State Register* a notice of its intent to do so. This notice must appear at least 30 days prior to the date set for the hearing, along with the full text of the proposed rules. (If the agency has followed the provisions of subd. 4h and has already published the proposed rules, a citation to the prior publication may be substituted for republication.)

Pursuant to Minn. Stat. § 15.0412, subd. 5, when a statute, federal law or court order to adopt, suspend or repeal a rule does not allow time for the usual rulemaking process, temporary rules may be proposed. Proposed temporary rules are published in the *State Register*, and for at least 30 days thereafter, interested persons may submit data and views in writing to the proposing agency.

Department of Employee Relations

Proposed Amendment of Rule Relating to Restoration of Seniority and the Travel Rule Regarding Reimbursement for Special Expenses

Notice of Hearing

Notice is hereby given that a public hearing in the above-entitled matter will be held pursuant to Minn. Stat. § 15.0412, subd. 4 (1978) as amended by Laws of 1980, ch. 615, § 6, in the Offices of the Department of Employee Relations, Training Room 1, 3rd Floor, Space Center Building, 444 Lafayette Road, St. Paul, Minnesota 55101 on Thursday, December 11, 1980 commencing at 9:30 a.m.

All interested or affected persons will have an opportunity to participate concerning the amendments to the rules captioned above. Statements may be made orally and written material may be submitted. In addition, whether or not an appearance is made at the hearing, written statements or material may be submitted to Jon Lunde, Office of Administrative Hearings, Room 300, 1745 University Avenue, St. Paul, Minnesota 55104, either before the hearing or within five (5) working days after the close of the hearing. The hearing examiner may order at the hearing that the record will remain open for a longer period, not to exceed 20 calendar days. All such statements will be entered into and become part of the record. Testimony or other evidence to be submitted for consideration should be pertinent to the matter at hand. For those wishing to submit written statements or exhibits, it is requested that at least three (3) copies be furnished. In addition, in order to save time and avoid duplication, it is suggested that those persons, organizations or associations having a common viewpoint or interest in these proceedings join together where possible and present a single statement in behalf of such interests. The conduct of the hearing shall be governed by Minn. Stat. §§ 15.0411-15.0417 and 15.052 (1978) as amended by Laws of 1980, ch. 615 and by the rules of the Office of Administrative Hearings, 9 MCAR §§ 2.101-2.113 (Minnesota Code of Agency Rules). Questions relating to procedures may be directed to Hearing Examiner Jon Lunde.

Notice: The proposed rules may be modified as the result of the hearing process. The department therefore strongly urges those who are potentially affected in any manner by the proposed rules to participate in the hearing process.

If adopted, the amendments proposed by the Commissioner of Employee Relations would (1) clarify the portion of the seniority rule which addresses the seniority and continuous service rights of employees who move between state agencies but never terminate from state service, (2) restore seniority and continuous service for purposes of lay-off and vacation accrual to employees required to resign due to pregnancy, and (3) list those items which are reimbursable as special expenses which would not otherwise be reimbursable under existing travel expense rules. The authority of the commissioner to promulgate the

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." ADOPTED RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

proposed rules on restoration of seniority is contained in Minn. Stat. § 43.05, subd. 2 (1) as amended by Laws of 1980, ch. 614, § 61. The authority of the commissioner to promulgate special expense rules is contained in Minn. Stat. § 43.327.

Copies of the proposed amendments are now available and at least one free copy may be obtained by writing to the Minnesota Department of Employee Relations, 3rd Floor, Space Center Building, 444 Lafayette Road, St. Paul, Minnesota 55101. Additional copies will be available at the door on the date of the hearing.

Notice is hereby given that 25 days prior to the hearing, a Statement of Need and Reasonableness will be available for review at the agency and at the Office of Administrative Hearings. This Statement of Need and Reasonableness will include a summary of all of the evidence and argument which the agency anticipates presenting at the hearing justifying both the need for and the reasonableness of the proposed rule/rules. Copies of the Statement of Need and Reasonableness may be obtained from the Office of Administrative Hearings at a minimal charge.

Notice: Any person may request notification of the date on which the Hearing Examiner's Report will be available, after which date the agency may not take any final action on the rules for a period of five (5) working days. Any person may also request notification of the date on which the hearing record has been submitted (or resubmitted) to the Attorney General by the agency. If you desire to be so notified, you may so indicate at the hearing. After the hearing, you may request notification by sending a written request to the Hearing Examiner (in the case of the Hearing Examiner's Report), or to the agency (in the case of the agency's submission or resubmission to the Attorney General).

Minn. Stat. ch. 10A requires each lobbyist to register with the State Ethical Practices Board within five (5) days after he commences lobbying. A lobbyist is defined in Minn. Stat. § 10A.01, subd. 11 (1979 Supplement) as an individual:

(a) Engaged for pay or other consideration, or authorized by another individual or association to spend money, who spends more than five hours in any month or more than $250, not including his own travel expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials; or

(b) Who spends more than $250, not including his own traveling expenses and membership dues, in any year for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials.

Questions concerning lobbyists or their required registration should be directed to the State Ethical Practices Board, Room 41, State Office Building, Wabasha Street, St. Paul, Minnesota 55155, at telephone number (612) 296-5616.

Promulgation of the proposed rules will not result in the expenditures of public monies by local public bodies.

September 26, 1980

Barbara L. Sundquist
Commissioner of Employee Relations

2 MCAR § 2.119 Restoration of seniority and continuous service credit. An appointing authority, who reemploys an employee who has voluntarily left employment of the agency to enter employment in another agency and who has been employed continuously by the state ~~and who left the employment of the agency~~, shall reinstate the seniority and continuous service credit that existed at the time the employee left the agency.

Any employee who was mandatorily retired at age 65 prior to January 1, 1979, shall have all seniority and continuous service credit existing at the time of the mandatory retirement restored upon the employee's return to state service in any employment status in which seniority is accrued.

An employee who was required to resign due to pregnancy shall have all seniority and continuous service existing at the time of resignation restored upon written application to her appointing authority, if:

A. The employee returned to the agency from which she resigned within one year of resignation and notifies her appointing authority within 180 days from the effective date of this rule that she wishes to have seniority and continuous service restored under this provision, or

B. The employee returned to state service in another agency within one year of resignation and subsequently returned to the agency from which she resigned, and the employee notifies her appointing authority within 180 days from the effective date of this rule that she wishes to have seniority and continuous service restored under this provision.

All changes in continuous service for vacation accrual purposes resulting from the application of this rule shall be effective retroactively to July 4, 1979. If the application of this provision causes an employee's vacation leave balance to exceed the established maximum, the employee shall not lose the excess vacation and shall be given one year in which to reduce her vacation balance to the maximum allowed.

All changes in seniority for purposes of lay off shall be effective 15 calendar days after the employee gives written notice to the appointing authority.

Except as provided above, seniority of a former employee who was reinstated or appointed from a reemployment list shall begin on the date of reemployment in the state service. Seniority at the time of termination may be restored by the appointing authority upon the written request of the employee.

2 MCAR § 2.181 D. Special expenses. ~~Special expenses shall require prior approval of the appointing authority and the approval of the Commissioner of Personnel, who shall issue guidelines regarding eligible special expenses. This section also applies to any state board, council, or commission member.~~

1. Definitions.

a. For the purpose of this section, the term "employee" means all employees in the executive branch of state government; individuals serving on statutory and non-statutory boards, councils, task forces and commissions; and persons requested to attend state sponsored workshops, meetings, or conferences where the benefit of their attendance accrues primarily to the state excluding consultants on contract to the state.

b. For the purposes of this section, "work area" means: (1) the seven county metropolitan area for employees regularly stationed in that area or (2) the area within 35 road miles of the employee's work station for employees regularly stationed outside the seven county metro area.

2. Reimbursements covered by this section are limited to:

a. The actual cost of a meal, notwithstanding the limits contained in B. and without regard to the employee's assigned work area, provided the meal is on the agenda of a conference, workshop, seminar, or meeting and the employee's attendance has been approved by the appointing authority;

b. Registration fees for conferences, seminars or workshops where the employee's attendance has been approved by the appointing authority;

c. Breakfast or dinner within the employee's work area where the employee is assigned to actively participate in state business two hours before or four hours after the assigned shift;

d. Lodging within the employee's work area when the employee is actively participating in an event directly related to the employee's position requiring his/her presence overnight or weather conditions or other unforeseen occurrences prevent the employee from returning home;

e. Necessary expense allowances, subject to the provisions of this rule, incurred by a handicapped employee for one attendant when the employee requires daily assistance in performing various personal tasks or who has special mobility needs;

f. In addition to the expenses allowed by 2 MCAR § 2.181 A.2. and C.1., the following expenses for employees regularly stationed in the seven county metropolitan area who are assigned to work at the State Fair;

(1) fees for admission to the fairgrounds;

(2) one meal during each shift of fewer than ten hours or two meals during each shift of ten hours or more, subject to the limit set forth for in-state travel;

(3) taxi fare for handicapped employees unable to drive or use other means of public transportation between the employee's normal work station and the state fairgrounds or between the employee's residence and the state fairgrounds, whichever distance is less.

3. For the purposes of this section, the appointing authority shall determine (a) when the benefit of a person's attendance at a work shop, conference, meeting or seminar accrues primarily to the state; (b) when an event is directly related to the employee's position; and (c) the number of employees that may attend the same reimbursable event.

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STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE DEPARTMENT OF EMPLOYEE RELATIONS

In the Matter of the Proposed Amendment of the Rules of the Department of Employee Relations Relating to the Restoration of Seniority and the Section of the Travel Rule Regarding Reimbursement for Special Expenses.

REPORT OF THE HEARING EXAMINER

The above-entitled matter came on for hearing before Jon L. Lunde, duly appointed Hearing Examiner, on Thursday, December 11, 1980 at 9:30 a.m. in Training Room 1, Third Floor, Space Center Building, 444 Lafayette Road, St. Paul, Minnesota, 55101, pursuant to a Notice of Hearing dated September 26, 1980. This is a rulemaking proceeding conducted pursuant to Minn. Stat. Ch. 15 to determine whether the Department of Employee Relations has authority to adopt the rules proposed and whether they are necessary and reasonable and may be adopted.

Sharon L'Herault, Special Assistant Attorney General, Fifth Floor, Space Center Building, 444 Lafayette Road, St. Paul, Minnesota, 55101, appeared as counsel for the Department of Employee Relations, (hereinafter the "Department"). In addition, appearing as witnesses for the Department were James W. Fritze, Assistant Commissioner; Patrick Halvorsen, Director, Planning and Evaluation; and James Lee, Assistant Manager, Classification and Compensation Division.

The hearing continued throughout the morning and until all persons present had had an opportunity to be heard. Subsequent to the hearing, and prior to the expiration of the designated comment period, five public comments and one Departmental comment on the proposed rules were filed with the Hearing Examiner.

The Commissioner must wait at least five working days before taking any final action on the rules; during that period, this Report must be made available to all interested persons upon request.

Pursuant to the provisions of Minn. Laws 1980, Ch. 615, § 6, subd. 4d, this Report has been submitted to the Chief Hearing Examiner for his approval. If the Chief Hearing Examiner approves the findings of this Report, he will advise the Commissioner of actions which will correct the defects and the Commissioner may not adopt the rule until the Chief Hearing Examiner determines that the defects have been corrected. However, in the cases where the Chief Hearing Examiner identifies defects which relate to the issues of need or reasonableness, the Commissioner may either adopt the Hearing Examiner's recommendations to cure the defects or, in the alternative, if the Commissioner does not elect to adopt the recommendations, she may submit the proposed rule to the Legislative Commission to Review Administrative Rules for the Commission's advice and comment. Provisions relating to this submission to the Commission may be found in Minn. Laws 1980, Ch. 615, § 6, subd. 4d.

If the Commissioner elects to adopt the recommendations of the Hearing Examiner and makes no other changes and the Chief Hearing Examiner determines

that the defects have been corrected, then the Commissioner shall submit the rule to the Attorney General for review of form and legality. If the Commissioner makes changes in the rule other than those recommended by the Hearing Examiner, then she shall submit the rule, with the complete record, to the Chief Hearing Examiner for a review of the changes before adopting it and submitting it to the Attorney General. Procedures relating to this subsequent review by the Chief Hearing Examiner are set forth in Minn. Laws 1980, Ch. 615, § 6, subd. 4e.

When the Commissioner submits the rule to the Attorney General, she shall give notice on the day of submission to all persons who requested that they be informed of the submission to the Attorney General.

FINDINGS OF FACT

Procedural Requirements

1. On September 26, 1980, the Department filed the following documents with the Chief Hearing Examiner:

(a) A copy of the proposed rules.
(b) The Order for Hearing.
(c) The Notice of Hearing proposed to be issued.
(d) A Statement of the number of persons expected to attend the hearing and estimated length of the Agency's presentation.

2. On Monday, October 27, 1980, a Notice of Hearing and a copy of the proposed rules were published at 5 State Register 659-661.

3. On October 21, 1980, more than 30 days prior to hearing, the Department mailed the Notice of Hearing to all persons and associations who had registered their names with the Department for the purpose of receiving such notice.

4. On October 29, 1980, more than 25 days prior to hearing, the Department filed the following documents:

(a) The Notice of Hearing as mailed.
(b) The Agency's certification that its mailing list was accurate and complete.
(c) The Affidavit of Mailing the Notice to all persons on the Agency's list.
(d) The Statement of Need and Reasonableness.
(e) The names of Departmental and Attorney General personnel who will represent the Agency at the hearing together with the names of any other witnesses solicited by the Agency to appear on its behalf.
(f) A copy of the State Register containing the proposed rules.
(g) An Affidavit of Additional Notice.
(h) All materials received following a Notice of Intent to Solicit Outside Opinion published at 4 State Register 530, Monday, October 1, 1979.

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

5. The record remained open for five working days following the hearing for the receipt of written comments and statements.

Statutory Authority

6. As authority for its adoption of the rules proposed, the Department cited Minn. Stat. § 43.05, subd. 2(1), as renumbered by Minn. Laws 1980, Chapter 614, § 61, which provides:

> (1) Promulgate personnel rules for the purpose of carrying out the provisions of this chapter; these rules shall provide, among other things, for current records of efficiency, and standards of performance, for all employees subject to the provisions of this chapter; the manner of completing appointments and promotions; rejection of eligible candidates; examinations; retention

of examination records under the provisons of section 138.163; creation of eligible lists, with successful candidates ranked according to their ratings in the examinations; leaves of absence with and without pay; transfers, reinstatements, layoffs, vacations, and hours of work; public notice of examinations; procedure for changes in rates of pay; compulsory retirement at fixed ages; and other conditions of employment. If a rule is made concerning sick leave for illness in the immediate family of an employee, the term "immediate family" shall be limited to the spouse, minor or dependent children, or parent where the parent has no other person to provide the necessary nursing care, living in the household of the employee; [Emphasis added]

In addition, it cited Minn. Stat. § 43.327, subd. 2 (1978) which provides:

> Subd. 2. Commissioner to make rules on travel. (1) The commissioner shall promulate personnel rules relating to special expenses and travel of state employees on state business. For purposes of this subdivision, "special expense" means a necessary reimbursable expense for meals, lodging, registration, conference fees or other expenses incurred in connection with assigned official duties of a state employee and where the employee's attendance or participation will accrue primarily to the state.
>
> (2) When unusual difficulty in recruiting qualified applicants is being encountered, the commissioner may authorize the appointing authority to pay travel expenses incurred by applicants invited for oral examinations or for employment interviews in the same manner and amounts authorized by personnel rules for state employees.

Except as is hereinafter qualified, these statutory provisions and others cited in this Report, provide sufficient authority for the adoption of the rules proposed by the Department. Responsibility for the enforcement of special expense rules is, pursuant to Minn. Stat. § 43.327, subd. 3 (1978), imposed upon the Commissioner of Finance.

7. The proposed rules, amending 2 MCAR §§ 2.119 and 2.181, pertain to the restoration of seniority and continuous service credit to certain employees who are re-employed by an appointing authority, and to special expenses authorized for certain "employees" for expenses incurred within their normal work area while they are not in travel status. The rules are necessary and reasonable in their entirety.

2 MCAR § 2.119

8. 2 MCAR § 2.119 currently pertains to the restoration of seniority to employees but it contains ambiguities with respect to the restoration of seniority to employees who have left state service and have been re-employed by an agency in contrast to those who have not left state service and have been re-employed by an agency. This ambiguity made some clarification necessary. The first paragraph of § 2.119 makes the necessary clarification respecting the rights of these two different classes of persons.

9. Section 2.119 is to be further amended by providing that, in addition to the restoration of seniority to individuals continuously employed by the State, and to certain individuals reemployed after mandatory retirement, continuous service credit is to be restored to them.[1] While "continuous service credit" is not defined, it clearly means that the prior period(s) of employment recognized for purposes of seniority will also be recognized for purposes of computing time on the job and the employee will receive "credit" for that time

see FoF 2A

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See Footnotes on page 17

for purposes of computing annual leave allowances and other applicable benefits such as severance pay. Restoration of such credit to thse employees specified is necessary and reasonable.

10. The section is proposed to be further amended by all new language providing for the restoration of seniority and continuous service credit to an employee "required to resign due to pregnancy" if the employee returned to the agency from which "she" resigned within one year and notifies the agency that "she" desires to have seniority and continuous service restored.[2] The Department proposes to permit employees who were required to resign due to pregnancy to have their seniority and continuous service credit restored in order to redress the prior effects of sex discrimination in the State's personnel policies and to provide equal treatment for employees who are unrepresented by collective bargaining agents with those employees who have the rights currently proposed under existing collective bargaining agreements. To that extent, of course, the rule is necessary and reasonable.

11. The Statement of Need and Reasonableness submitted by the Department (hereinafter the "Statement") notes that the pregnancy provision will be for the benefit of those employees who were required to resign because of pregnancy before July 2, 1969 when the State first began providing for maternity leaves.[3]

12. The rule apparently means that women who, because of pregnancy, were required to resign because they were unable to work and had no sick leave available are entitled to reinstatement of their seniority and continuous service under the conditions stated. This is a disability concept consistent with the historical approach of treating a pregnancy-related inability to work as a disability.[4] In addition, it is consistent with the rule that women who are absent from work because of pregnancy-related disabilities should have seniority credits and continuous service credits restored to them on their return to work.[5]

13. The rule permits reinstatement of credits without regard to the employee's actual period of disability, however, so long as the return to work with the state was within one year. To that extent, the rule departs from a strict disability concept. The Department adopted the one-year period because that was the period designated in various collective bargaining agreements, and while the Statement does not mention any other reasons for the one-year period, there is no doubt some problem in determining the actual period of one's disability occurring over ten years ago, and perhaps some unfairness in limiting the period to one of actual disability where no particular reemployment rights or duties existed.

The Department did not discuss the disability benefits available to male employees during the periods of the proposed rule's retroactive affect, but such a demonstration was unnecessary since the rule is not discriminatory as written. It is immaterial to consider whether or not male employees who may have been previously required to resign because of a disability should retroactively be entitled to a reinstatement of seniority and continuous service credit, also. The rule has been stated as follows:

> [I]t should not be necessary to extrapolate the provisions of maternity leave back to male employees by giving them sick leave benefits as extended as maternity benefits.[6]

14. The Department's current rule relating to pregnancy-related leaves (see Fn. No. 3) is not based on a disability concept but rather on a child-care concept and is available for periods of up to one year. Consequently, the leaves are properly made available to parents of both sexes. The Department did not explain why this approach was not followed in its proposed rule. While the proposed rule is different in approach, it is not forbidden for that reason since it is not a discriminatory practice to grant disability-related leaves to women who are pregnant while denying such leaves to spouses who are not so disabled. Thus, as Professor Larson stated:

> [I]t is sex differentiation not to offer to women a benefit denied to men - maternity leave. The reason is that this "inequality" is necessary to provide substantial equality of employment opportunity.[7]

15. Since the purpose of § 2.119 is to provide reinstatement of seniority and continuous service credit to women only, the first sentence of the third paragraph of that section could be amended to eliminate any ambiguities regarding its availability to male employees by being changed to read as follows: no change F of F 2B

> Any female employee who was required to resign due to pregnancy shall have all seniority and continuous service credit existing at the time of resignation restored upon written application to her appointing authority, if:

* * *

16. Part A of § 2.119 provides that seniority and continuous service credit is restored to the female employee who returned to the agency from which she resigned within one year and notifies her appointing authority within 180 days from the effective date of this rule that she wishes to have seniority and continuous service credit restored. This is a reasonable period of time and is consistent with the time frame contained in various collective bargaining agreements negotiated by the State. Although the rule contemplates that employees who might be affected by the rule receive notice of its adoption so that these rights might be claimed, nothing in the rule requires that such notice be given by the Department or the relevant appointing authority. The rule could be amended to require that such notice be given to all persons who might be affected.[8] no change F of F 2C

17. In addition to the ambiguity regarding the necessity of being currently employed when claiming rights under the proposed rule, Part B raises another issue. That is, where an employee returned to state service with another agency within one year of resignation, and subsequently returned to the agency from which she resigned, but only after a break in state service, the question arises as to whether or not that employee is entitled to benefits under the rule. Some other portions of the rule require continuous employment by the State but no such requirement exists with respect to pregnancy separations or the credits claimed under this Part. If this is not the intention of the rule, it should be clarified. no change F of F 2D

18. The second paragraph of Part B provides that all changes in continuous service for vacation accrual purposes only shall be effective retroactively to July 4, 1979. And provision is made so that the rights so obtained are not forfeited pursuant to rules regarding maximum vacation accruals. This retroactive provision is consistent with some existing collective bargaining agreements and makes the continuous service provisions uniform throughout the state. As such, it is a necessary and reasonable provision and should be adopted.

While the rule has retroactive operation in this and other respects, it is not impermissible on that basis. In Mason v. Farmers Insurance Companies, 281 N.W.2d 344, 348 (Minn. 1979), the Minnesota Supreme Court held that rules may be made retroactive if it is reasonable to do so. In this case, the attempt to correct past discriminatory policies and to make uniform the rights of State employees affords a reasonable basis for the adoption of rules with a retroactive effect.

Section 2.181

19. Section 2.181 provides for the payment of "special expenses" incurred by "employees" who are not in a normal travel status.[9] This rule, which was the subject of public comment, is proposed to replace guidelines authorized under the currently existing rule. Since such guidelines must be adopted as rules, pursuant to Minn. Stat. § 15.0412, subd. 1 (1978), the section is necessary to delineate those special expenses authorized and to make specific the laws administered by it as required by Minn. Stat. § 15.0411, subd. 3 (1978).

20. For purposes of this section, two special definitions are proposed. The word "employee" is defined in the proposed rule as follows:

> a. For the purposes of this section, the term "employee" means all employees in the executive branch of state government; individuals serving on statutory and non-statutory boards, councils, task forces and commissions; and persons requested to attend state-sponsored workshops, meetings, or conferences where the benefit of their attendance accrues primarily to the state excluding consultants on contract to the state.

The travel expenses of the members and staff of certain boards and commissions, advisory task forces, advisory councils and committees, and state employees on state business are all specifically authorized by statute. The various statutes involved limit expenses to those available to state employees under rules adopted by the Department. Those various provisions provide in relevant part as follows:

Minn. Stat. § 43.327, subd. 2 (1978) provides:

> (1) The commissioner shall promulgate personnel rules relating to special expenses and travel of state employees on state business. For purposes of this subdivision, "special expenses" means a necessary reimbursable expense for meals, lodging, registration, conference fees or other expenses incurred in connection with assigned official duties of a state employee and where the employee's attendance or participation will accrue primarily to the state. [Emphasis added]

With respect to the members of advisory councils and committees, Minn. Stat. § 15.059, subd. 3 (1978), provides in part as follows:

> Members of the advisory councils and committees shall be compensated at the rate of $35 per day spent on council or committee activities, when authorized by the council or committee, plus expenses in the same manner and amount as state employees. . . .

With respect to advisory task forces created after July 1, 1975, Minn. Stat. § 15.059, subd. 6 (1978), provides in part:

> Subd. 6. . . . Members shall not receive the $35 per diem specified in this section but shall receive expenses in the same manner and amount as state employees. . . .

With respect to the members and staffs of state boards, councils and commissions in the executive branch, Minn. Stat. § 43.329 provides in part as follows:

> Notwithstanding the provisions of any other law, the members and staff of all state boards, councils, and commissions in the executive branch, established by state law or otherwise, shall only be reimbursed for travel expenses both in-state and out-of-state in accordance with the rules and regulations promulgated by the commissioner of personnel governing the travel of state officers and employees.

Some statutory councils and departments have separate authorization for paying expenses incurred which are separate from and in addition to those expenses specifically authorized by the Department of Employee Relations. Thus, Minn. Stat. § 17.06 authorizes expenses of the Commissioner of Agriculture and his subordinates upon approval of the Commissioner or Deputy Commissioner of the Department of Agriculture. In addition, Minn. Stat. § 17.60 (1978), authorizes reimbursement of the expenses of members of the council for agricultural commodity research and promotion, apparently apart from rules of the Department.

21. That portion of the definition which includes as an "employee" those "persons requested to attend state-sponsored workshops, meetings or conferences where the benefit of their attendance accrues primarily to the State, excluding consultants on contract to the State" was not shown to be authorized under existing law. The usual rule of statutory construction is that where a legislative body specifies those things covered by law, those which are unspecified are not authorized. In this case, the expenses of boards, councils, task forces, commissions and employees on state business are specifically authorized to be regulated by the Department. However, no law was cited and none could be found by the Hearing Examiner authorizing reimbursement of the expenses of persons not attached with any of these bodies but merely who are requested to attend state-sponsored activities. The only expenses of non-employees authorized by law are those of certain job applicants specified in Minn. Stat. § 43.327, subd. 2(2) (1978). No other expenses can be authorized by Department for non-employees and the proposed rule is, to that extent, in violation of Minn. Stat. § 15.0412, subd. 1 (1978) which permits rules only pursuant to delegated authority. That violation constitutes a failure to comply with a substantive provision of law within the meaning of Minn. Stat. § 15.0412, subd. 4c, enacted by Laws of Minn., Ch. 615, Section 6.

To cure this defect, the Department must delete those persons from the proposed definition of employees under Part D.1. They are not employees in any sense of that word and the Department may not, without proper authority include them as employees under its rules merely by defining them as such. While it is no doubt necessary and reasonable to reimburse these individuals where their attendance accrues primarily or even exclusively to the state, the authority to do so is lacking. In its statement, the Department admitted as much (p. 2), stating:

> It is necessary to broaden the definition of the term "employee" to include individuals serving on various boards, councils and task forces and other individuals who provide services to the state through their attendance at meetings, conferences and workshops because the term [employee] as used elsewhere in these

rules and in Minnesota Statutes applies to a more limited groups of persons having closer ties to the state service.

In Wallace v. Commissioner of Taxation, 289 Minn. 220, 184 N.W.2d 588 (1971), the Minnesota Supreme Court noted (p. 594) that Courts cannot supply that which the Legislature purposely omits or inadvertently overlooks. Where the Legislature fails to provide for the expenses of persons who are not state employees or who are not associated with various boards, commissions and councils, the Department may not do so. Since the payment of expenses to these individuals was not shown to be authorized by law, that portion of the definition pertaining to them must be deleted, even though it has been the long-standing practice of the Department to pay these expenses. That does not mean, however, that the Departments, themselves, are precluded from paying expenses of this nature if they have other specific authority to do so.

complied p. 2

22. Both Part D.1.a. and D.1.b. in the definitions of "employee" and "work area" contain the limiting language "For purposes of this section." Since the word "section" refers to 2 MCAR § 2.181 in its entirety, and since the definitions are applicable only to Part D and not to the entire section, this language should be amended to state "For purposes of Part D." or "for purposes of this Part" to properly state its applicability.

complied p. 2.

23. Part D.1.b. defines "work area" for purposes of the proposed rule as"

> (1) The seven-county metropolitan area for employees regularly stationed in that area or (2) the area within 35 road miles of the employees' work station for employees regularly stationed outside the seven-county metro area.

These criteria for the reimbursement of special expenses have been used by the Department for several years although not contained in a rule. They supplement the Department's rule for the reimbursement of regular expenses of employees in "travel status" which are contained in other parts of § 2.181. Thus, employees who travel outside their work area would be reimbursed under the other parts of the section.

24. As a result of comments submitted by Mark W. Seetin, Commissioner of Agriculture, and John P. Sopsic, Commissioner of Public Safety, the Department proposes to amend Part D.1.b. by substituting the words "35 road miles" with the words "a 35-mile radius." This change in language would make the rule easier to administer and would make it consistent with the language used in the collective bargaining agreement negotiated with AFSCME, Council No. 6, in 1979. The Department did not adopt Commissioner Sopsic's further suggestion that the words "by the shortest regular route" also be added. The latter language appears to be unnecessary if the area is limited to a 35-mile radius because the radius is fixed and independent of any actual mileage calculation. Thus, even if an employee did not take the shortest possible route, his entitlement to reimbursement would be established by the radius and not be the miles driven. The amendment to this section, as proposed by the Department, is necessary and reasonable and does not constitute a substantial change for purposes of 9 MCAR § 2.111 (1980 Ed.).

changed p. 2, 3

25. The Department's Statement did not address the reasons for the distinction made between employees within the seven-county metropolitan area and those employees outside that area. However, the Hearing Examiner finds that such a distinction is reasonable because it is consistent with the different treatment accorded to those two groups of employees under existing rule 2 MCAR

§ 2.181 B.1.c. Furthermore, no affected group or individual had any adverse comments with respect to this rule as proposed.

26. Part D.2.a.-f. of the proposed rule specifies those special expenses for which reimbursement will be made. Wayne S. Burggraaff, Commissioner of Finance, in his posthearing comments, supported the Department's attempt to clarify those special expenses allowable, and he, like others, generally endorsed the expenses authorized. The Hearing Examiner finds the reimbursements covered by this section to be necessary and reasonable.

27. Part D.2.a. contains an inaccurate reference to "Section B." which governs the limitation on meal allowances. That language should be changed to "Part B." because there is no "Section B." changed p. 3

28. Part D.2.a. authorizes reimbursement for the actual cost of meals when "the meal is on the agenda of a conference, workshop, seminar, or meeting, and the employee's attendance has been approved by the appointing authority." This language is different from that used for the reimbursement of meals of a similar nature by employees on regular travel status which is found in 2 MCAR § 2.181 B.1. ¶ 4, which provides: "Reimbursement for an official breakfast, luncheon, dinner or banquet meeting shall be the actual cost of the meal." The Department did not explain the purpose or intent of the different language used for similar meals in differing locations, or while employees were in different travel statuses. To be consistent and uniform, the Hearing Examiner suggests that Part B.1. be amended to read like Part D.2.a., or, conversely. no change F&F. F.

29. In its Statement regarding Part D.2.a., the Department argued that it was reasonable to reimburse for these types of meals when their cost "is additional to the registration fee" and when the "employee does not have the option of leaving the meeting to obtain a meal elsewhere." The latter criterion, however, is not required by the language of the rule, itself, and in fact, is much more restrictive. If the Department intends that it be a requirement, it should have been included in the rule as written to "make specific" the rule on reimbursement as required by Minn. Stat. § 15.0411, subd. 3 (1978). However, the reasonableness of adding the additional criterion mentioned in the Statement was not established by the Department and it should not, therefore, be added to the current rule. No reasons were given, for instance, for requiring a state employee to leave an official luncheon on the agenda of a conference or meeting merely because the employee has the option to leave to eat elsewhere. The benefits to the state were not shown to be dissimilar merely because of one's option to leave. In many cases where an employee may have the option to leave, it might not be appropriate, convenient or beneficial for him or the state to do so. So long as the appointing authority approves attendance at the meal, it should be reimbursed in most cases and no reasons or facts were presented showing that it must not or that this type of expense within an employee's work area should be more restrictively limited than a similar expense for employees in normal travel status which are not, by rule, so restricted. Thus, the Hearing Examiner would recommend that criterion not be adopted in subsequent rule-making proceedings.

30. Part D.2.c., as originally proposed, permitted reimbursement to employees for meals where the employee was assigned to actively participate in state business two hours before or four hours after the employee's assigned

shift. Eleanor Hoover, Personnel Director for the Department of Public Welfare, objected to the rule as ambiguous, and, if mandatory, as too expensive to implement. Consequently, in its posthearing comments, the Department proposed to delete the rule in its entirety. The Department has the authority and the discretion to withdraw rules proposed for adoption at any time prior to their adoption without demonstrating the need or reasonableness of such action. Since it believes the rule to be ambiguous, both in scope and nature (as permissive or mandatory), its decision to do so is appropriate, and as a result of that decision, the need and reasonableness of the provision as proposed will not be considered.

withdraw p.3

31. The Department's comment explaining the basis for the deletion of Part D.2.c. provided as follows:

> "When this Proposed Rule was drafted, it was assumed that all items contained therein would be discretionary subject to the approval of the appointing authority. The Department of Public Welfare's point on whether or not such discretion extends to the provisions of 2 MCAR § 2.181 D.(2)(c) (sic) is significant. In view of the unclear nature of Proposed Rule 2 MCAR § 2.181 D.(2)(c) (sic) and the large cost involved in making this rule mandatory, we respectfully suggest that the deletion of 2 MCAR § 21.181 D.(2)(c) [sic]."

This comment, concerning appointing authority discretion, is apparently limited to the special expense rule 2 MCAR § 2.181 and is not applicable to § 2.119 which is binding on the various appointing authorities.

As the Hearing Examiner reads the rule, the discretion alluded to means, that for purposes of § 2.181 D.2.a., b. and e., an employee is not entitled to reimbursement unless the appointing authority approves both the employee's attendance and expenses. This permits optional attendance by the employee without a state obligation to finance it. On the other hand, events which an employee is required to attend must be reimbursed by the appointing authority as well as those expenses incurred in Parts D.2.d. and f. if the conditions of those parts are met. If the Department's intent is different from that construed herein, the Department should clarify the matter in its Order adopting the rules or in the rules themselves.

no change p.3

32. 2 MCAR § 2.181 D.2.c.-f., relating to lodging expenses and the special expenses incurred by handicapped employees and State Fair employees, were not subject to adverse public comment and are found to be necessary and reasonable as proposed. However, the citation to 2 MCAR § 2.181 A.2. should be corrected by deleting the common after "A" and replacing it with a period.

still needs correction p.3

33. The special expense rules proposed by the Department were challenged not so much because of the expenses which were authorized, but because of those which were not. Mr. Komro, on behalf of Commissioner Seetin, suggested, for example, that the special expense rule should contain provisions for the reimbursement of international traval expenses and the expenses incurred by state employees in entertaining foreign trade delegations and the like.

The adoption of special expense rules for international travel is a logical extension of the current rules which provide reimbursement for in-state travel (either within or without one's work area) and out-of-state travel, and which authorize different levels of reimbursement for the different kinds of travel involved. The amount of such travel by state employees is unknown, but the need for realistic reimbursement of those expenses which are incurred by state

employees during international travel was clearly established at the hearing by Komro and Barrett Shlenk, an international marketing representative for the Department of Agriculture. In its posthearing comment on Mr. Komro's proposal, the Department declined to adopt special rules for international travel at this time. Commissioner Sundquist's statement to that effect was as follows:

> It is inappropriate for this rule to exempt one state agency. We suggest the Department of Agriculture seek legislation similar to that given the Department of Economic Development (Minn. Stat. § 362.125). This legislation exempts any expenditures for tourism and economic development from the food, lodging or travel regulations of the Department of Employee Relations.

The Department of Agriculture can, as Commissioner Sundquist stated, seek special legislation for its expenses relating to necessary international travel but Laws 1980, § 61, subd. 2(1), and Minn. Stat. § 43.327, subd. 2, require the Department to promulgate rules relating to travel expenses and other conditions of employment. Therefore, it appears to the Hearing Examiner that the Department should reconsider its position on this point, and in the future, consider rules relating to international travel expenses. However, the Department is not required to promulgate such rules at this point since international travel expenses were not the subject of the rules proposed by the Department. While a rule can, in some circumstances, be considered unreasonable because of what is omitted, that determination cannot be made in this case because the rule, as proposed, pertains to special expenses incurred while an employee is working within his designated work area and not when he is on international travel. International travel expenses would be covered by out-of-state reimbursements authorized under other Parts of the existing Departmental rules, which Parts have been found reasonable in other proceedings.

34. George Fortmeyer, Director of Administrative Services for the Department of Education, and John P. Sopsic, Commissioner of the Department of Public Safety, both requested that the Department consider rule language which would permit reimbursement to employees for expenses incurred in purchasing coffee, rolls, soft drinks and related refreshments for meetings conducted by state agencies which include public participants. This is similar to Mr. Shlenk's suggestions for rules relating to the hosting of international trade delegations and foreign visitors. Commissioner Sundquist, in her posthearing comment regarding Mr. Fortmeyer's suggestion, felt that, at least with respect to the Department of Education, with its 49 advisory councils, commissions and task forces, that no special personnel rules should be implemented for those expenses. Since these items are paid for by some existing agencies from the Commissioner's discretionary expense accounts, Commissioner Sundquist felt that the Department of Employee Relations should not expand the expense account concept beyond that conceived by the Legislature. Apparently, she feels that these kinds of expenditures are not within the traditional concept of employee expenses under existing law and require special legislative authorization which should be sought by each individual department.

The whole issue of expenses incurred in entertaining third parties is one that raises serious and delicate problems and requires tight supervision and regulation. The Hearing Examniner has found (supra) that the expenses of third parties not employees of the state or on any board, commission or task force,

in attending conferences and workshops to be unauthorized. The question whether those expenses can be paid indirectly where incurred by a state employee on behalf of the third party, while not directly to the third party, is an interesting one. While the Hearing Examiner believes that those expenses may be properly reimbursable by the Department, the Department need not authorize those expenses and its refusal to do so in the absence of specific legislative authority is within its discretion and is reasonable.

35. Equally reasonable is the Department's refusal to implement any of the two suggestions made by Wayne S. Burggraaff, Commissioner of Finance, who suggested that the rules authorize emergency items of expense not otherwise specified and that the rules reference Minn. Stat. § 43.327, subd. 3 (1978) which requires the Commissioner of Finance to approve any special expenses incurred or to delegate that approval to an appointing authority. While the rule could reference that statutory provision, the Department's decision not to repeat statutory language is within its discretionary authority and is reasonable, as is the decision not to allow other unspecified expenses.

36. 2 MCAR § 2.181 D.3., which was not subject to adverse public comment, nonetheless raises a serious issue. Minn. Stat. § 43.327, subd. 2, requires the Department to adopt rules and requires the Commissioner of Finance to enforce them. In addition, it authorizes the Commissioner of Finance to delegate enforcement to each appointing authority as was previously stated. However, Part D.3. requires the appointing authority to

> determine (a) when the benefit of a person's attendance at a workshop, conference, meeting or seminar accrues primarily to the State; (b) when an event is directly related to the employee's position; and (c) the number of employees who may attend the same reimbursable event.

Apparently, this Part D.3. is intended to vest complete authority for approval in the appointing authorities.

The issue raised by this Part is whether the Department, which is required to adopt rules relating to special expenses, may "delegate" to the appointing authority the exclusive power to make the determinations specified, and instead of having a rule prescribing when a conference or other meeting accrues primarily to the benefit of the State, the rule leaves that determination to the appointing authority involved and eliminates any participation by the Department or the Commissioner of Finance. To the extent that the rule is intended to place absolute discretion in the matter of the reimbursement of expenses for attendance at these conferences, it abdicates the powers of the Department of Employee Relations and does not "make specific" the law enforced as required by Minn. Stat. § 15.0411, subd. 3 (1978), but permits the agencies to do whatever they wish. This constitutes an unauthorized delegation of discretionary power and a substantive violation of law within the meaning of Minn. Laws 1980, Ch. 615, § 6, subd. 4c, to be codified as Minn. Stat. § 15.0412, subd. 4c.

The basis for this Part D.3. was explained in the Department's Statement (p. 4), as follows:

> The last sentence of the proposed rule which places certain decision-making authority in the hands of the appointing authority is reasonable because the appointing authority is the person best able to decide the needs of that particular agency. The

> decisions contemplated by this sentence require the use of judgment and knowledge of the priorities of the state agency involved. It would not be appropriate for employees of the Departments of Finance and/or Employee Relations to substitute their judgment for that of the appointing authority in these instances.

It is true that an agency or appointing authority whose employees attend these conferences or seminars is usually the one best able to decide the need for such attendance. However, in a particular case, it is not certain that it would be inappropriate for the Department or the Commissioner of Finance to disapprove the attendance or that a "check" on the exercise of the appointing authorities' discretion is not needed. Moreover, where an employee's attendance at a particular seminar or conference is clearly not related to that employee's position and when attendance does not accrue primarily, or even remotely, to the State, such a check is required.

37. With respect to the delegation of power, the Minnesota Supreme Court in Muehling v. School District No. 31 of Stearns County, 224 Minn. 432, 436, 28 N.W.2d 655, 658 (1947), stated:

> It is elementary that a public corporation, agency, or officer to whom governmental power has been delegated by statute cannot redelegate such delegated power. Delegation of governmental power is a manifestation of legislative intention that only the public authority to which the delegation is made, and not some agency or person of its choosing, shall exercise such power. The power of choice is in the legislature, which it has exercised by the very act of delegation. . . .

In this case, the Department has not, as such, delegated its specific authority to adopt rules but it has delegated to the appointing authorities the discretion to determine when these kinds of expenses will be approved. It seems clear that the law intended the Department of Employee Relations to adopt rules pertaining to this type of expenditure and for the Commissioner of Finance to enforce them. However, this Part gives that power to the various appointing authorities without stated criteria and apparently without the authority of review by the Commissioner of Finance.

38. The delegation of authority within an administrative agency is no doubt a practical and necessary administrative device and its use has been generally advocated. See, 1 Davis Administrative Law Treatise, §§ 9.01-9.07 (1958). However, some delegations, especially those involving discretionary power, have been rejected by the courts. See, 2 Am.Jur.2d., Administrative Law, § 222; Ledgering v. State, 63 Wash. 2d. 94, 385 P.2d 522 (1963); Bungler v. Iowa High School Athletic Ass'n., 197 N.W.2d 555 (Iowa 1972) (holding that rule-making power may not be redelegated).[10]

This rule, prohibiting the delegation of discretionary power, has been applied in personnel matters. Thus, in Schecter v. Los Angeles County, 65 Cal. Rptr. 739, 258 C.A.2d 391 (1968), the California court held that where a charter gave the power to classify civil service positions to the civil service commission, commission rules delegating that classification power to a secretary and chief examiner and which retained only ministerial power with the commission to approve or disapprove of the decisions made was unauthorized. Similarly, in Mercer Council No. 4, New Jersey Civil Service Ass'n., v. Alloway, 119 N.J. Super. 94, 290 A.2d 300, aff'd. 61 N.J. 516, 296 A.2d 305, the

Court found that a chief examiner and the secretary of a civil service commission who were vested with authority to classify employees and create promotional lists and other powers could not delegate that power to a department outside the civil service. See, also, Civil Service Commission v. McDougal, 198 Ark. 388, 129 S.W.2d 589 (1939). While subdelegations within an agency have been sustained as a necessary administrative device, redelegations of authority outside the agency vested with authority have been rejected. The reason for this is that a subdelegation within the agency still subjects the decision-maker to the ultimate authority of the one vested with judgment or discretion, while redelegation, along horizontal lines, totally divests the one vested with authority of this power. Thus, horizontal redelegations are scrutinized much more closely than vertical subdelegations. See, Commonwealth Edison Co. v. Pollution Control Bd., 25 Ill. App. 3rd 271, 323 N.E.2d 84 (1974).

In Wallace v. Commissioner of Taxation, 289 Minn. 221, 84 N.W.2d 588 (1971), the Minnesota Supreme Court held that it was an unauthorized delegation of legislative power for the state legislature to incorporate federal laws or regulations by reference as those statutes and regulations were adopted in the future. Similarly, in Hutchins v. Mayo, 143 Fla. 707, 197 So. 495, 133 A.L.R. 394 (1940), the Florida Supreme court held that a state agency empowered to establish standards in a particular industry may not delegate such power by promulgating a rule that the standards shall be those established by a federal administrative agency. In this case, the Department of Employee Relations is empowered to establish standards regarding the approval of expenses incurred by employees in attending various workshops, seminars and conferences. It would appear to be an unauthorized delegation of its authority to promulgate the rule in question which says that the standards shall be those established by the appointing authority. This is a complete abdication of its discretion and its judgment which is contrary to the provisions of law previously cited.

39. To correct this defect, the last Part should be amended to specify those standards or criteria necessary for approval of the expenses related to an employee's attendance. Since each appointing authority does have a better idea of what kinds of attendance are necessary, the criteria could be phrased in broad strokes but should leave room for review by the Commissioner of Finance so that no abuses can occur. Normally, the Commissioner of Finance will no doubt accept the determination of the appointing authority, but in a particular case, he should not be bound by that determination.

A simple way to correct the defect in the rule as written would be to rewrite it to read as follows:

> 3. For purposes of this Part, no special expenses will be reimbursed unless the benefit of a person's attendance at a workshop, conference, meeting, or seminar accrues primarily to the state and has been approved by the appointing authority. When an appointing authority approves such attendance, it will be presumed that it accrues primarily to the benefit of the state.

See new language p. 4

Conditioning reimbursement on the appointing authority's approval does not constitute an unauthorized delegation. Clark Distilling Co. v. Western Maryland R. Co., 37 S.Ct. 180, 242 U.S. 311, 61 L.Ed 326 (1917); Gauley Mountain Coal Co. v. Director of U.S.B. of Mines, 224 F.2d 887 (4th Cir. 1977); United States v. Matherson, 367 F.Supp. 779 (E.D.N.Y. 1973), aff'd. 493 F.2d 1399. Furthermore, making the appointing authority's determination presumptively

correct leaves discretion with it without abdicating the responsibilities of the Department and the Commissioner of Finance. Such an amendment would not constitute a substantial change in the rules under 9 MCAR § 2.111 (1980 Ed.)

CONCLUSIONS

1. That due, timely and adequate notice of the hearing in this matter was properly published and served by the Department pursuant to Minn. Stat. § 15.0412, subd. 4 (1978), as amended by Minn. Laws 1980, Ch. 615, § 6.

2. That the Department has complied with the applicable procedural requirements of Minn. Laws 1980, Ch. 615, § 6, subds. 4-4f (to be codified as Minn. Stat. § 15.0412, subds. 4-4f); Minn. Stat. § 15.0412, subd. 6 (1978); and all other procedural requirements of law and rule.

3. That the Department has demonstrated its authority to adopt the proposed rules and has fulfilled all other substantive requirements of law or rule within the meaning of Minn. Laws 1980, Ch. 615, § 3, subd. 1a and § 6, subd. 4c (to be codified as Minn. Stat. § 15.0412, subds. 1a and 4c (1980)), and Minn. Stat. § 15.0412, subd. 1 (1978) except as noted in Findings 21 and 36.

4. That the Department has demonstrated the need for and the reasonableness of the proposed rules as amended by it prior to the close of the record within the meaning of Laws 1980, Ch. 615, § 6, subd. 4c., and Minn. Stat. § 15.0412, subd. 1 (1978).

5. That the proposed changes in the rules as originally published do not constitute substantial changes within the meaning of Laws 1980, Ch. 615, § 6, subd. 4d (to be codified as Minn. Stat. § 15.0412, subd. 4d).

6. That suggested action to cure the defects mentioned in Conclusion No. 3 have been made in Findings 21 and 39.

7. That due to Conclusion 3, this Report shall be submitted to the Chief Hearing Examiner for his approval pursuant to Minn. Laws 1980, Ch. 615, § 6, subd. 4d, to be codified as Minn. Stat. § 15.0412, subd. 4d.

RECOMMENDATION

That the rules as finally proposed be adopted except where they exceed the authority of the Department as noted in Conclusion No. 3, and with respect to that Conclusion, the defects be cured as suggested in the Report.

Dated this 8th day of January, 1981.

JON L. LUNDE
Hearing Examiner

FOOTNOTES

[1] Continuous service is defined in 2 MCAR § 2.207 as "the amount of time since the employee begins [sic] state service."

[2] The first four paragraphs of § 2.119 use the words "continuous service credit" and the words "continuous service" although the meaning of the two terms is apparently synonymous. Merely for the sake of consistency, the agency could consider using the words "continuous service credit" throughout the rule. no change - see my comment.

[3] The current rule pertaining to maternity leaves is found at 2 MCAR § 2.141. It provides:

> A maternity/paternity or adoption leave of absence shall be granted to a permanent, probationary or unclassified natural parent or adoptive parent in the classified or unclassified service for a period not to exceed six months, when requested in conjunction with the birth or adoption of a child. Maternity/Paternity or adoption leave may be extended up to a total maximum of one year by mutual consent between the employee and the appointing authority.

[4] 1 A. Larson, Employment Discrimination, § 38.21(b), p. 8-19 (1980). Under the Minnesota Human Rights Act, Minn. Stat. § 363.01, subd. 29 (1978), sex includes but is not limited to pregnancy, childbirth and disabilities related thereto and, under § 363.03, subd. 1(5), it is a discriminatory practice for an employer not to treat women affected by pregnancy, childbirth or disabilities related thereto the same as other persons who are not so affected but who are similar in their ability or inability to work.

[5] 1 A. Larson, §§ 38.23 to 38.24, pp. 8-35 through 8-29 and cases cited therein.

[6] Id, § 38.22, p. 8-35 where Professor Larson discusses the application of Title VII of the Civil Rights Act of 1964.

[7] Id. at § 38.22, p. 8-31.

[8] The rule is unclear as to its applicability to former female employees who may, by virtue of its provisions, be entitled to a greater amount of vacation pay or severance pay. If the rule is intended to only cover current employees of the State, it should so specify. If it is not so intended, some means of getting notice of its adoption to former employees should be devised. This could be particularly important to those employees who are on lay-off and who might be entitled to greater seniority and an earlier recall to work or other rights.

The rule does not appliy to some future employees of an appointing authority. Since a female employee must notify her appointing authority within 180 days of the effective date of the amendment of her desire for reinstatement of credit, employees who are reemployed by the appointing authority after the expiration of that 180-day period will not be entitled to the credit even though they were required to resign because of pregnancy prior to July 2, 1969, they returned to state service with another agency within one year and they have had no break in state service. On the other hand, employees meeting these criteria who are reemployed within the 180-day period should qualify for the credit.

[9] If in travel status, employees are reimbursed for their qualifying expenses under different parts of this section.

[10] In some cases, the subdelegation of rule-making power has been upheld. See, e.g., Automotive Parts & Accessories Ass'n., Inc. v. Boyd, 407 F.2d 330, 132 U.S. App. D.C. 200 (1968) (subdelegation authorized by statute); Warren v. Marion County, 222 OR. 307 353 P.2d 257 (1960) (subdelegation of power to adopt procedural rules by a County Board to a Board of Appeals was held impliedly authorized by statute). In other caes, such delegations have been held unauthorized. See, e.g., Relco, Inc. v. Consumer Product Safety Commission, 391 F.Supp. 841 (S.D. Tex. 1975). The Muehring case places Minnesota with those states who do not authorize subdelegations or redelegation of discretionary power.

DOER-81-001-JL

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE DEPARTMENT OF EMPLOYEE RELATIONS

In the Matter of the Proposed Amendment of the Rules of the Department of Employee Relations Relating to the Restoration of Seniority and the Section of the Travel Rule Regarding Reimbursement for Special Expenses.

ORDER OF THE CHIEF HEARING EXAMINER

The above-entitled matter came on for review by the Chief Hearing Examiner pursuant to the provisions of Minn. Stat. § 15.0412, subd. 4d (1980) which provides in part:

> If the [hearing examiner's] report contains a finding that the proposed rule is substantially different from that which was proposed at the public hearing, or that the agency has not met the requirements of section 15.0412, subdivisions 4 through 4f, it shall be submitted to the chief hearing examiner for approval. If the chief hearing examiner approves the finding of the hearing examiner, he shall advise the agency of actions which will correct the defects, and the agency shall not adopt the rule until the chief hearing examiner determines that the defects have been corrected. If the chief hearing examiner determines that the need for and reasonableness of the rule has not been established pursuant to subdivision 4, clause (c), and if the agency does not elect to follow the suggested actions of the hearing examiner to correct that defect, then the agency shall submit the proposed rule to the legislative commission to review administrative rules for the commission's advice and comment. The agency shall not proceed to adopt the rule until it has received and considered the advice of the commission; provided, that the agency is not required to delay adoption longer than 30 days after the commission's receipt of the agency's submission.

Based upon a review of the record in this proceeding, the Chief Hearing Examiner hereby approves the Report of the Hearing Examiner in all respects except as hereinbelow discussed, and specifically as to any finding of substantial change or of failure to comply with Minn. Stat. § 15.0412, subd. 4-4f (1980) or of failure to establish need for and reasonableness of the proposed rule.

In Findings 36 through 39, the Hearing Examiner discusses the proposed new language for Rule 2 MCAR § 2.181 D.3. and finds that the Rule, as proposed, fails to make the Rule specific as required by Minn. Stat. § 15.0411, subd. 3, and in addition, that it constitutes an unauthorized delegation of discretionary power which is a substantive violation of law within the meaning of Minn. Stat. § 15.0412, subd. 4c. In so doing, the Examiner has made certain inferences. First, the Examiner infers that the Rule is intended to place absolute discretion in the matter of the reimbursement of expenses with the Agency, while Minn. Stat. § 43.327, subd. 3, requires the Commissioner of Finance to enforce the Department of Employee Relations Rules. The Chief Hearing Examiner is unable to read anything into this section of the Rule which would foreclose the Commissioner of Finance from carrying out his ultimate statutory responsibility of enforcing the rules. Thus, the Rule cannot be read as placing "absolute discretion" in the Agency. The record would seem to indicate, as the Hearing Examiner discussed, that it was the intent of the Department to place

the ultimate determination in the Agency which is the reason for the concern expressed. The Department may not adopt a rule which would remove the statutory authority of the Commissioner of Finance for enforcing the rules and approving expenses as listed in Minn. Stat. § 43.327, subd. 3 (1980). Therefore, while the Chief Hearing Examiner is unable to read that intent into the language of the Rule as proposed, the Rule should be amended, and the Chief Hearing Examiner hereby strongly recommends that it be so amended, by adding language to the Rule to make it clear that the appointing authority's determination is still subject to the authority of the Commissioner of Finance to enforce and approve. amended p. 4

In order to correct the defects enumerated by the Hearing Examiner, the agency shall either take the action recommended by the Hearing Examiner or reconvene the rule hearing if appropriate. If the agency chooses to reconvene the rule hearing, it shall do so as if it is initiating a new rule hearing, complying with all substantive and procedural requirements imposed on the agency by law or rule.

If the agency chooses to take the action recommended by the Hearing Examiner, it shall, prior to submitting the rules to the Attorney General for review, submit to the Chief Hearing Examiner a copy of the rules as initially published in the State Register, a copy of the rules as proposed for final adoption in the form required by the State Register for final publication, and a copy of the agency's Findings of Fact and Order Adopting Rules. The Chief Hearing Examiner will then make a determination as to whether the defect in regard to substantial change and the requirements of Minn. Stat. § 15.0412, subd. 4-4f (1980) have been corrected.

Should the agency make changes in the rules other than those recommended by the Hearing Examiner, it shall also, prior to submitting the rule to the Attorney General, submit the complete record to the Chief Hearing Examiner for a review in regard to substantial changes.

Dated this 19th day of January, 1981.

Duane R. Harves

DUANE R. HARVES
Chief Hearing Examiner

DOER-81-001-JL

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE DEPARTMENT OF EMPLOYEE RELATIONS

IN THE MATTER OF THE PROPOSED AMENDMENT OF RULES OF THE DEPARTMENT OF EMPLOYEE RELATIONS RELATING TO THE RESTORATION OF SENIORITY AND THE SECTION OF THE TRAVEL RULE REGARDING REIMBURSEMENT FOR SPECIAL EXPENSES.

ORDER OF THE CHIEF HEARING EXAMINER

WHEREAS, a hearing was held on December 11, 1980, before Jon L. Lunde, a Hearing Examiner of the State Office of Administrative Hearings, 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 Department of Employee Relations and;

WHEREAS, the Department of Employee Relations has now determined to adopt rules pursuant to Minn. Stat. § 15.0412, subd. 4-4f; and

WHEREAS, the Department of Employee Relations has submitted said rules to the Chief Hearing Examiner for review pursuant to Minn. Stat. §§ 15.0412, subd. 4e and 15.052, subd. 4, and 9 MCAR § 2.111; 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 Department of Employee Relations has met all requirements of Minn. Stat. § 15.0412, subd. 4-4f.

NOW, THEREFORE, upon receipt of this Order, the Department of Employee Relations has the responsibility of submitting the complete hearing record and the rules as adopted by the Department to the Attorney General and to publish in the State Register, all pursuant to Minn. Stat. § 15.0412, subd. 4e and 4f.

Dated: March 3, 1981.

Duane R. Harves

DUANE R. HARVES
Chief Hearing Examiner

DEPARTMENT OF EMPLOYEE RELATIONS

IN THE MATTER OF THE PROPOSED AMENDMENT OF THE RULE REGARDING RESTORATION OF SENIORITY AND THE SECTION OF THE TRAVEL RULE REGARDING REIMBURSEMENT FOR SPECIAL EXPENSES.

STATEMENT OF NEED AND REASONABLENESS

The above captioned rules amend existing sections of the rule regarding restoration of seniority and the travel expense rule of the Department of Employee Relations. The amended travel rule adds an entirely new section regarding the reimbursement of special expenses and replaces the special expense guidelines published by the Commissioner of Personnel on May 1, 1976, pursuant to 2 MCAR § 2.181D.

Authority to promulgate rules on restoration of seniority is in Minn. Stat. § 43.05, Subd. 2(1) as amended by Laws of 1980, Chapter 614, Section 61. The authority of the Department of Employee Relations to promulgate a rule on special expenses is Minn. Stat. § 43.327. This Section requires the Commissioner to determine those necessary expenses which are reimbursable to an employee because the expenses are incurred in connection with the employee's official duties or other activities accruing primarily to the benefit of the state and which would not otherwise be reimbursable under the existing travel expense rules.

Specifically;

2 MCAR § 2.119 is amended to reword the first paragraph in order to clarify that this portion of the rule addresses the seniority and continuous service rights of employees who move between state agencies but never terminate from state service. This change in wording is necessitated by the confusion which is occuring between this paragraph and the last paragraph of the rule which applies to former employees who terminated from state service and are subsequently reinstated or reemployed by the state. It is necessary and reasonable to include the term "continuous service credit" in order to distinguish between "seniority" which applies to time employed in a given job classification and "continuous service" which is defined in 2 MCAR § 2.2072 as the amount of time since the employee began state employment.

2 MCAR § 2.119 is further amended to provide for the restoration of continuous service credit and seniority for purposes of vacation accrual and layoff for employees who were required to resign due to pregnancy at the time when the state did not have a provision for maternity leave of absence. Similar language is found in some collective bargaining agreements.

This rule is necessary (1) to restore seniority for purposes of determining the order of layoff and (2) to provide for no interruption in the calculation of continuous service for purposes of accruing vacation and severance pay for those employees who were forced to resign due to pregnancy.

This rule is reasonable since it proposes to redress the effects of prior sex discrimination and further achieves equity between those employees who are represented by labor organizations and those employees who are unrepresented. The state did not provide for maternity leaves of absence until July 2, 1969.

The rule provides for a lead time of 180 days from the effective date of the rule for the employee to notify her appointing authority of her desire to have seniority and continuous service credit restored. This deadline is reasonable as it allows sufficient time for state agencies to post notices of this rule and receive requests from employees. It also is consistent with the option time allowed in a collective bargaining agreement.

It is reasonable to restore a higher rate of vacation accrual retroactively to July 4, 1979, because this is the date to which retroactivity was granted by a collective bargaining agreement to employees similarly situated. It thus places similarly situated employees in the same position with respect to vacation accrual. The provision that seniority for purposes of layoff shall be effective 15 calendar days after the employee gives written notice is a reasonable period for administrative purposes and also is the period prescribed in a collective bargaining agreement.

It is necessary to establish a category entitled "special expenses" to permit reimbursement of expenses not qualifying as ordinary travel expenses because the employee is not in travel status but which are reimbursable because they are incurred in the performance of assigned official duties or because the attendance or participation of the employee accrues to the benefit of the state.

2 MCAR § 2.181 (D) is amended to delete the existing rule and to add a new section defining two terms, "employee" and "work area", for the purposes of the special expense section. The proposed amendment also lists those items which are reimbursable as special expenses.

It is necessary to broaden the definition of the term "employee" to include individuals serving on various boards, councils and task forces and other individuals who provide services to the state through their attendance at meetings, conferences and workshops because the term as used elsewhere in these rules and in Minnesota Statutes applies to more limited groups of persons having closer ties to the state service. It is reasonable to do so as it would not be equitable to expect these individuals to absorb certain necessary costs incurred in the process of providing a service to the state and the public with little or no compensation when state employees serving in similar capacities would be eligible for reimbursement of similar expenses. It has been a long standing past practice of the state to reimburse these individuals for incurred expenses on the same basis as state employees. It is reasonable to continue this past practice. Eligibility of board and commission members for reimbursement of special expenses is authorized by Minn. Stat. § 43.329. Expense reimbursement of members of councils and committees is authorized by Minn. Stat. § 15.059, Subd. 3. Expense reimbursement of task force members is authorized by Minn. Stat. § 15.04, Subd. 2.

It is necessary to define the term "work area" to provide a basis for differentiating between special expense reimbursements and reimbursements under the regular travel rules. The proposed definition is reasonable since it assures consistent treatment of employees across agency lines. "Work area" is defined as (1) the seven-county metropolitan area and (2) 35 road miles from the work station for employees outside the metropolitan area. This definition is consistent with a past practice of several years standing designed to distinguish between travel status and non-travel status for purposes of expense reimbursement.

It is necessary and reasonable to list those items considered reimbursable as special expenses so that there will be interagency consistency in special expense use and equal treatment of employees across agency lines.

The individual items have been selected as eligible for reimbursement on the following bases:

2.181D 2.a. It is reasonable to reimburse the employee for the actual cost of a meal if (1) the meal is a scheduled part of a conference, workshop, seminar or meeting, (2) the cost of the meal is additional to the registration fee charged for the event, if any, and (3) the employee does not have the option of leaving the meeting to obtain a meal elsewhere.

2.181D 2.b. It is reasonable to reimburse the cost of registration when the employee's attendance is to the benefit of the state and the fee cannot be paid under the provisions of 2 MCAR § 2.161 as a training expense because the employee is representing the agency and participating in the seminar, conference or workshop for purposes other than training.

2.181D 2.c. It is reasonable to reimburse the cost of breakfast or dinner within the employee's work area when the employee's regular breakfast or supper routine is disturbed because of the agency's operational needs. Buying these meals away from home requires a much larger expenditure than does the same meal at home. The requirement that the employee report to work two hours early or stay four hours late is reasonable as a shorter duration of time would not necessarily disrupt an employee's breakfast and supper schedules to the extent that a meal would have to be purchased. Also, these time limits have long been standard practice in state service.

2.181D 2.d. It is reasonable to reimburse the employee for lodging expenses when (1) the employer requires the employee to remain away from home late into the night for any work related purpose, (2) weather conditions threaten the employee's safe return or (3) a state agency holds evening meetings or hearings that may not end until very early in the morning and may even continue the next morning. It is reasonable that the employer reimburse the employee for lodging expenses when the employee's return home is impractical because of late hours or hazardous because of weather conditions even though the meeting is conducted within the employee's work area.

2.181D 2.e. Section 504 of the Rehabilitation Act of 1973 provides that employers must make "reasonable accommodations" to restructure jobs and working environments to make it possible for the handicapped to compete for and hold jobs. It is a "reasonable accommodation" as defined under 504 to make it possible for handicapped employees to perform the entire range of responsibilities of the position for which they were hired. If the employee must travel in order to perform all assigned duties and if in order to travel the employee must be assisted by an attendant, it is reasonable for the state to pay the expenses of one attendant when the employee is traveling for state business. It is reasonable to limit such reimbursement to those employees who require assistance in bathing, dressing and other personal activities and to limit reimbursement to the personal attendant's travel expenses, not his/her salary as the employee has personal services in his/her own home and the only additional cost should be the travel expenses. Thus, this rule is intended only to cover the cost of travel for the attendant who provides the assistance needed at all times by the employee and for whom salary arrangements have been established elsewhere.

2.181D 2.f. It has been a long standing practice to reimburse employees for certain unavoidable expenses connected with the assignment of an employee to work at the State Fair. State Fair management for many years has maintained a strict policy of charging admission to all persons entering the grounds. It is not reasonable that employees should bear the admission charge as an out-of-pocket expense without reimbursement. It is also reasonable to reimburse these employees for meals because the alternative would be to leave the grounds and thus incur another admission charge when returning. It is further necessary to recognize that some handicapped employees may incur additional and somewhat different expenses in traveling to the fair grounds.

The last sentence of the proposed rule which places certain decision making authority in the hands of the appointing authority is reasonable because the appointing authority is the person best able to decide the needs of that particular agency. The decisions contemplated by this sentence require the use of judgment and knowledge of the priorities of the state agency involved. It would not be appropriate for employees of the Departments of Finance and/or Employee Relations to substitute their judgment for that of the appointing authority in these instances.

STATE OF MINNESOTA

DEPARTMENT OF EMPLOYEE RELATIONS

In the Matter of the Adoption of the Rules of the State of Minnesota, Department of Employee Relations Governing the Restoration of Seniority and the Section of the Travel Rule Regarding Reimbursement for Special Expenses.

STATEMENT OF COMPLIANCE WITH RULEMAKING PROCEDURES

I, Special Assistant Attorney General, Sharon L'Herault, do hereby declare that I have examined the proposed rules and all related documents and that based on my examination and my personal familiarity with the applicable procedures, the Administrative Procedure Act, the Rules of the Office of Administrative Hearings, and the Rules of the Attorney General have been followed. Any exceptions are noted below.

Sharon L. Herault

SHARON L'HERAULT

STATE OF MINNESOTA

DEPARTMENT OF EMPLOYEE RELATIONS

In the Matter of the Adoption of
Rules of the State of Minnesota, Department
of Employee Relations, Governing the Restoration
of Seniority and the Section of the Travel Rule
Regarding Reimbursement for Special Expenses.

AFFIDAVIT OF MAILING,
NOTICE OF SUBMISSION
TO THE ATTORNEY GENERAL

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

Jean Brezinski, being first duly sworn, deposes and says, that on the 17th day of March, 1981 in the City of St. Paul, County of Ramsey, State of Minnesota, she served the attached notice of submission to the Attorney General by depositing in the State of Minnesota, Central Mail system for first class mailing, a copy thereof properly enveloped with postage prepaid to all persons and associations at the addresses listed on the attached list of persons who requested notice that the hearing record has been submitted to the Attorney General.

Jean Brezinski
Jean Brezinski

Subscribed and sworn to before me
this 17th day of March, 1981.

Lorraine C Pfeiffer
Notary Public

LORRAINE C. PFEIFFER
NOTARY PUBLIC—MINNESOTA
DAKOTA COUNTY
My Commission Expires Sept. 28, 1986

PERSONS REQUESTING NOTICE OF SUBMISSION
TO ATTORNEY GENERAL

Donn H. Escher
Department of Education
755 Capitol Square Bldg.
St. Paul, MN 55101

Joe Komro
Department of Agriculture
90 W. Plato Blvd.
St. Paul, MN 55107

George Fortmeyer
Department of Education
740 Capitol Square Bldg.
St. Paul, MN 55101

Kathy Zieminski
Department of Revenue
150 Centennial Bldg.
St. Paul, MN 55145

G. Wedel
1821 University Ave., Rm. 371
St. Paul, MN 55104

Al Yozamp
Department of Finance
309 Administration Bldg.
St. Paul, MN 55155

Cheryl Furrer
MEA, Inter Faculty Org.
41 Sherburne Avenue
St. Paul, MM 55103

Bob Mooney
MAPE/PEM
41 Sherburne Avenue
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STATE OF MINNESOTA

DEPARTMENT OF EMPLOYEE RELATIONS

NOTICE OF SUBMISSION TO THE ATTORNEY GENERAL

In the Matter of the Adoption of the Rules of the State of Minnesota, Department of Employee Relations Governing the Restoration of Seniority and the Section of the Travel Rule Regarding Reimbursement for Special Expenses.

Pursuant to your request and in accordance with Minnesota Statutes, section 15.0412:

PLEASE TAKE NOTICE that the above-captioned rules have been submitted to the Office of the Attorney General on this date, the 17th day of March, 1981, for review as to form and legality. Pursuant to 1 MCAR § 1.306B., the Attorney General will retain the rules for at least ten days after receipt to allow any person or association to comment on the legality of the rules, after which that Office will conduct its review. If you desire to comment on the legality of the above-captioned rules, you should direct your comments to the Office of the Attorney General, G-25 State Administration Building, 50 Sherburne Avenue, St. Paul, Minnesota 55155, Telephone (612) 296-7030. Please note that the above-cited rule of the Attorney General also provides that a copy of any written comments submitted to the Attorney General must be submitted simultaneously to this agency. If you are interested in determining what changes, if any, were made in the proposed rules after the hearing and before submission to the Attorney General, you may contact Patrick Halvorsen, Minnesota Department of Employee Relations, Third Floor, Space Center Building, 444 Lafayette Road, St. Paul, Minnesota 55101.

Patrick Halvorsen

PATRICK HALVORSEN