

Minnesota Attorney General: Administrative Rules Proceedings

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SF-00006-02

STATE OF MINNESOTA

Office Memorandum

DEPARTMENT PUBLIC EMPLOYMENT RELATIONS BOARD

TO : OFFICE OF THE ATTORNEY GENERAL

DATE: JUNE 13, 1983

FROM : CLAUDIA M. HENNEN
Executive Director

PHONE: 6-8947

SUBJECT: PROPOSED ADOPTION OF RULES OF THE PUBLIC EMPLOYMENT RELATIONS BOARD GOVERNING ISSUES AND APPEALS, ARBITRATION OF TERMS AND CONDITIONS OF EMPLOYMENT, ARBITRATION OF GRIEVANCES, AND INDEPENDENT REVIEW

I am hereby submitting to your office for review as to form and legality the above-captioned rules. No person or association has requested to receive notice of this submission.

Enclosures

Our File No. 604

RULE REVIEW CHECKLIST

DATE RULE RECEIVED 6-15-83
DATE FOR REVIEW 6-24
DATE DUE 6-29

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

Approved _____ Disapproved _____ Returned to Agency _____

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

Date filed w/Secretary of State _____ Revisor approved 7/5/83
disapproved _____

✓ Rule as Adopted

✓ Rule as Proposed see SR.

✓ Order Adopting 4.28.83 Date

✓ Notice of Intent to Solicit Outside Opinion 9/2/82

✓ Order for rulemaking
N/A date of Hearing

✓ Certificate of Board's Authorizing Resolution

✓ Notice of rulemaking
✓ Sufficiency

✓ Affidavit of Mailing Notice or rulemaking
2/25/83 At least 30 days prior to ~~hearing~~/adoption

✓ Mailing list Certificate

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

N/A Hearing Examiner's Report

Chief Hearing Examiner's Report(s)
_____ Approving H.E.'s Report
_____ Approving agency action

✓ Agency's Findings of Fact

N/A LCRAR Report or agency Affidavit

✓ Certificate of Board's Resolution Adopting Rules

_____ 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

N/A Affidavit of Mailing Notice of Submission to Attorney General

✓ Notice of Submission to the Attorney General

SF-00006-02

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL

Office Memorandum

TO : Claudia M. Hennen, Executive Director

DATE: June 29, 1983

Attn: CATHARINE F. HAUKEDAHL
Special Assistant Attorney General

FROM : TED A. MARTINEZ
Special Assistant
Attorney General

TAM

PHONE: 296-4692

SUBJECT: In the Matter of the Proposed Adoption of Rules of the Public Employment Relations Board Governing Issues and Appeals, Arbitration of Terms and Conditions of Employment, Arbitration of Grievances, and Independent Review.

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;

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.

Encs.
TAM/ls
cc: Ms. Kathy Burek
Mr. Duane Harves

AG copy

Public Employment Relations Board

Adopted Rules Governing Issues and Appeals, Arbitration of Terms and Conditions of Employment, Arbitration of Grievances, and Independent Review

Rules as Adopted

8 MCAR S 3.001 Application.

This chapter shall apply to:

A. Issues relating to the meaning of the terms supervisory employee, confidential employee, essential employee, or professional employee.

B. Appeals from determinations of the director relating to the appropriateness of a unit.

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

8 MCAR S 3.003 Definitions.

A. Board. "Board" means the Public Employment Relations Board or a panel of the Public Employment Relations Board.

B. Bureau. "Bureau" means the Bureau of Mediation Services.

C. Director. "Director" means the Director of the Bureau of Mediation Services.

D. Party. "Party" means any person, public employee, public employer, exclusive representative of public employees, public employee organization, or public employer organization whose legal rights, duties, or privileges will be directly determined in an appeal.

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

F. Presiding officer. "Presiding officer" means the board, one or more of its members, or a hearing examiner appointed by

the board.

G. Service; serve. "Service" or "serve" means service of a document required by this chapter, by person, or certified United States mail, with return requested, postage prepaid, and addressed to the party at its last known address, unless some other manner of service is required by law. Certified mail means mail which must be signed for by the addressee upon receipt of said mail. Unless otherwise expressly stated by this chapter, service is effective upon receipt.

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

8 MCAR S 3.004 Presiding officer.

A. Board or panel. The board, as a full body or as a panel of one or more of its members, may hear and decide an appeal. Whenever feasible, a panel shall consist of an equal number of representatives of public employees and public employers, unless otherwise agreed to by the parties.

B. Hearing examiner. The board may appoint a hearing examiner to hear an appeal. The hearing examiner shall have such authority as the board deems necessary and appropriate to hear the appeal. The hearing examiner shall submit to the board recommended findings. The final decision on the appeal shall in all cases be made by the board.

8 MCAR S 3.005 Initiating an appeal.

A. Time limits. Within ten days of the date of a determination by the director, any party, or parties, may initiate an appeal by serving a copy of a notice of appeal upon all other parties with a copy to the director and filing the original with the board.

B. Notice of appeal. A notice of appeal shall include:

1. the name and address of the appellant;

2. the names and addresses of all parties who were parties to the appeal;

3. a copy of the director's determination from which the appeal is being taken;

4. a statement of which issues the appellant seeks board review, why the issues should be resolved in the appellant's favor, and what remedy is requested;

5. a statement that the appellant understands the director's rules governing the preparation of and payment for the record and transcript on appeal and agrees to abide by those rules; and

6. the signature of the appellant or its representative.

8 MCAR S 3.006 Answer.

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

8 MCAR S 3.0061 Briefs.

The board may establish a briefing schedule as it deems appropriate.

8 MCAR S 3.007 Notice of hearing.

A. Contents of notice. At least 15 days prior to the hearing date, the board shall serve upon all parties a notice of hearing stating:

1. the date, time, and place of hearing;

2. the rights of the parties to representation (see 8 MCAR S 3.009); and

3. that failure to appear may prejudice the party's rights (see 8 MCAR S 3.011).

B. Copy of rules included. A copy of this chapter shall be included with the notice of hearing.

8 MCAR S 3.008 Continuance of hearing.

A request for continuance must be served upon the parties and filed with the board not less than seven days prior to the hearing unless exceptional circumstances are shown.

8 MCAR S 3.010 Informal and summary disposition.

A. Informal disposition. Informal disposition may be made of any appeal or any issue by stipulation, settlement, or agreement at any point in the proceedings so long as the stipulation, settlement, or agreement does not violate any law and is approved by the board.

B. Summary disposition. The board, on its own motion or on motion of any party, may:

1. dismiss an appeal if the board lacks jurisdiction;

2. summarily affirm the director's determination if the appeal presents no question of substantial merit;

3. limit the issues to be considered to those which present a question of substantial merit;

4. summarily reverse or remand in the case of obvious error; or

5. grant other appropriate relief.

8 MCAR S 3.011 Default.

The board may decide an appeal adversely to a party who fails to appear after receiving due notice and an opportunity for hearing.

8 MCAR S 3.012 Intervention.

The board may, upon timely application, allow a person to intervene in an appeal if the applicant establishes that its legal rights, duties, or privileges will be directly determined in the appeal.

8 MCAR S 3.013 Substitution of party.

Substitution of a party or its representative may be allowed only if notice of the substitution is served on all other parties and filed with the board at least five days prior to the hearing date.

8 MCAR S 3.014 Consolidation.

A. Basis. The board may consolidate cases either on its own motion or on motion of any party if it determines that:

1. separate appeals present substantially the same issues;

2. a decision in one case would affect the rights of a party in another case; and

3. consolidation would not substantially prejudice any party.

B. Stipulation. Notwithstanding the requirements of A., the parties may stipulate and agree to consolidation subject to board approval.

C. Order. The board shall serve on all parties the order of consolidation.

D. Severance from consolidation. Within five days of receipt of the order of consolidation, a party may file with the board a petition for severance from consolidation which shall include the reasons why the requirements of A. are not met.

8 MCAR S 3.015 Remand.

At any time prior to its decision, the board may remand to the director all or part of the appeal for rehearing, the taking of specified additional evidence, or other appropriate action.

8 MCAR S 3.016 Extension of time.

The parties, with the approval of the presiding officer, may stipulate and agree to extend any time period provided in this chapter.

8 MCAR S 3.017 The hearing.

A. The board record.

1. Prior to the hearing, the board shall prepare an official record in each appeal which shall contain:

a. the record of the proceedings before the director;

b. the determination of the director;

c. notice of appeal and any supporting documents;

d. if consolidation has occurred, the order of consolidation and any supporting documents;

e. notice of hearing and any supporting documents;

f. any stipulations, settlements, or agreements entered into by any of the parties; and

g. pleadings, motions, and intermediate rulings of the presiding officer.

2. Additional evidence admitted pursuant to C. shall become part of the board record.

B. Hearing procedure.

1. The presiding officer shall open the hearing and introduce the board record.

2. Unless otherwise directed by the presiding officer, the party who initiated the appeal shall begin the argument and shall be followed by the other parties in a sequence determined by the presiding officer.

3. Each party shall be allowed 30 minutes for its oral argument and an additional five minutes for its rebuttal.

4. The presiding officer may allow filing of memoranda by the parties.

C. Additional evidence.

1. The presiding officer may admit additional evidence on motion of any party if the motion is filed with the presiding officer and served on all other parties within the time limits established by the presiding officer.

2. The presiding officer may admit evidence which possesses probative value commonly accepted by reasonably prudent persons in the conduct of their affairs. The presiding officer shall give effect to any rule or privilege recognized by law.

3. The presiding officer shall direct the sequence of any argument regarding the admissibility of the proposed additional evidence.

4. When oral evidence is heard, witnesses shall testify under oath and shall be subject to cross-examination by all parties. The decision to hear oral evidence does not constitute a waiver of any evidentiary objection available to a party.

5. Upon a showing of good cause the presiding officer may

allow the taking of depositions to preserve testimony in the same manner as prescribed by the Minnesota Rules of Civil Procedure.

6. Upon admission, the additional evidence becomes part of the board record.

7. Except as otherwise provided in C., the hearing shall be conducted as provided in B.

D. Transcript of board hearing. A verbatim record shall be taken by a hearing reporter or recording equipment of any hearing conducted pursuant to B. or C.

E. Decorum.

1. The presiding officer may prohibit the operation of a television, newsreel, motion picture, still, or other camera and mechanical recording devices in the hearing room while the hearing is in progress if such operation shall be determined to have a significantly adverse ~~affect~~ effect on the hearing.

2. No person shall interfere with the free, proper, and lawful access to or egress from the hearing room. No person shall interfere or threaten interference with the hearing.

8 MCAR S 3.018 Board decisions and orders.

All decisions and orders issued by the board shall be in writing and shall be accompanied by a statement of the reasons therefor.

All decisions and orders shall be served on all parties and filed with the director.

8 MCAR S 3.019 Rehearing.

A. Board right to rehear. The board, on its own motion or on petition of any party and for good cause shown, may reopen, rehear, and redetermine an appeal. The petition for rehearing must be served on all parties and filed with the board within ten days of the determination of the appeal.

B. Petition for rehearing. A petition for rehearing shall contain:

1. the name and address of the petitioner;

2. the board designation of the case;

3. a statement as to which issues rehearing is sought; and

4. the reasons why the issues should be reheard.

C. Consideration. The board may consider evidence and argument in written or oral form with respect to granting or denying the petition.

D. Determination. A petition for rehearing may be granted only if the petition or the board record reveals:

1. irregularities in the board proceedings;

2. errors of law occurring during the board proceedings;

3. newly discovered material evidence;

4. a change in existing law material to the appeal; or

5. good cause for failure to appear.

E. Notice of rehearing. A notice of rehearing shall be provided in the same manner prescribed for a hearing by 8 MCAR S 3.007.

F. Rehearing procedure. A rehearing of an appeal shall be conducted in the same manner prescribed for a hearing by 8 MCAR S 3.017.

G. Decision after rehearing. The decision after rehearing shall be issued in the same manner prescribed for the decision after a hearing by 8 MCAR SS 3.010, 3.011, and 3.018.

8 MCAR S 3.030 Application.

This chapter shall apply to the procedures governing the arbitration of disputes concerning the terms and conditions of employment.

8 MCAR S 3.032 Definitions.

A. Arbitrator. "Arbitrator" means one or a panel of three arbitrators.

B. Party. "Party" means any exclusive representative and any employer or employer organization engaged in the arbitration of terms and conditions of employment.

C. Except as otherwise provided herein, the words, terms, and phrases in this chapter shall have the same meaning and definition as defined in 8 MCAR S 3.003.

8 MCAR S 3.034 Certification of impasse.

A. Contents. A certification by the director pursuant to Minnesota Statutes, section 179.69 shall contain the following:

1. the petition or petitions requesting arbitration;

2. a concise statement by the director indicating that an impasse has been reached and that the requirements of Minnesota Statutes, section 179.69 have been met;

3. a determination by the director of the matters in dispute; and

4. the final positions submitted by the parties.

B. Filing. The certification shall be filed with the board and served upon the parties by the director.

8 MCAR S 3.035 Selection of an arbitrator.

When the director has certified an impasse to the board pursuant to Minnesota Statutes, section 179.69, the board shall submit to the parties a list of seven names for the selection of an arbitrator. If a party desires a single arbitrator, it shall notify the board in writing of its request. Such request must be received by the board or postmarked within five days after the requesting party's receipt of the list of arbitrators and before striking of names commences. In selecting the single arbitrator or a three-member panel, the parties shall alternately strike names from the list until the appropriate number of names remains. If the parties are unable to agree on who shall strike the first name, the question shall be decided by the flip of a coin. In the case of a three-member panel, the parties shall designate a convenor. If the parties fail to agree upon a convenor, each party shall strike, in the continued order of striking, one name from the panel. The remaining arbitrator shall act as the convenor for the purpose of commencing the proceedings. After selection, the parties shall immediately notify the board in writing of the name of the single arbitrator or the names of the panel and convenor.

8 MCAR S 3.036 Submission to arbitrator.

The board shall submit to the arbitrator the certification

of impasse of the director.

8 MCAR S 3.037 Panel chair.

The three-member panel shall, at its initial session, select one member as chair. If the panel cannot agree, the convenor shall serve as chair.

8 MCAR S 3.038 Arbitration procedures.

The arbitration proceedings shall be conducted and the award shall be rendered pursuant to Minnesota Statutes, section 179.72. The procedures and authority of the Uniform Arbitration Act in Minnesota Statutes, sections 572.08 to 572.30 shall apply to the arbitration proceedings except as they are inconsistent with the Public Employment Labor Relations Act.

8 MCAR S 3.040 Payment of arbitrator.

The term "consideration of a dispute," as used in Minnesota Statutes, section 179.72, subdivision 6, includes, but is not limited to, time incurred in preparation, conduct of hearings, deliberations, and preparation of the decision.

8 MCAR S 3.041 Professional responsibility.

In arbitrating disputes concerning terms and conditions of employment pursuant to Minnesota Statutes, section 179.72, arbitrators shall conform to the standards and procedures set forth in the Code of Professional Responsibility for Arbitrators of Labor-Management Disputes as approved by the National Academy of Arbitrators, American Arbitration Association, and Federal Mediation and Conciliation Service on April 28, 1975, incorporated herein by reference, to the extent not inconsistent with the provisions of the Public Employment Labor Relations Act, 8 MCAR SS 3.030-3.049, or other applicable law or rule, provided that:

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

B. Part 6(A)(1)(b), paragraph 124, of the Code of

Professional Responsibility shall not be construed as limiting the right of the parties to submit written briefs to the arbitrator.

8 MCAR S 3.050 Application.

This chapter shall apply to the arbitration of grievances pursuant to Minnesota Statutes, section 179.70, subdivision 4.

8 MCAR S 3.052 Definitions.

A. Arbitrator. "Arbitrator" means a single arbitrator.

B. Party. "Party" means any person authorized by contract or law to select the arbitrator of a grievance.

C. Except as otherwise provided in this chapter, the words, terms, and phrases in this chapter shall have the same meaning and definition as defined in 8 MCAR S 3.003.

8 MCAR S 3.053 Petition.

A. Authority to petition. A party may petition the board in writing for a list of five arbitrators. The petitioner shall provide all parties a copy of the petition at the time of filing with the board.

B. Contents of petition. The petition shall include:

1. the name and address of the petitioner;

2. the names and addresses of the adverse parties;

3. a concise statement of the nature of the grievance and the relief requested; and

4. a copy of the provisions of the contract applicable to the grievance.

8 MCAR S 3.054 Selection of the arbitrator.

Upon receipt of a petition, the board shall submit to the parties a list of five names for the selection of an arbitrator. Within five days after receipt of the list of arbitrators, the parties shall alternately strike names from the list until one name remains. If the parties are unable to agree on who shall strike the first name, the question shall be decided by the flip of a coin.

After selection, the parties shall immediately notify the

board in writing of the name of the arbitrator.

8 MCAR S 3.0541 Uniform Arbitration Act.

The procedures and authority of the Uniform Arbitration Act in Minnesota Statutes, sections 572.08 to 572.30 shall apply to the arbitration proceedings except as they are inconsistent with the Public Employment Labor Relations Act.

8 MCAR S 3.055 Professional responsibility.

In arbitrating grievances pursuant to Minnesota Statutes, section 179.70, arbitrators shall conform to the standards and procedures set forth in the Code of Professional Responsibility for Arbitrators of Labor-Management Disputes as approved by the National Academy of Arbitrators, American Arbitration Association, and Federal Mediation and Conciliation Service on April 28, 1975, incorporated herein by reference, to the extent not inconsistent with the provisions of the Public Employment Labor Relations Act, 8 MCAR SS 3.050-3.059, or other applicable law or rule, provided that:

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

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

8 MCAR S 3.060 Application.

This chapter shall apply to independent review pursuant to Minnesota Statutes, section 179.76.

8 MCAR S 3.062 Definitions.

A. Party. "Party" means any person, public employee, public employer, exclusive representative of public employees, public employee organization, or public employer organization whose legal rights, duties, or privileges will be directly determined in an independent review.

B. Except as otherwise provided in this chapter, the words, terms, and phrases in this chapter shall have the same meaning and definition as defined in 8 MCAR S 3.003.

8 MCAR S 3.063 Petition.

A. Authority to petition. An employee may petition the board in writing for independent review of a grievance arising out of the interpretation of or adherence to terms and conditions of employment when no other such procedure exists to hear that grievance. The petitioner shall provide all parties a copy of the petition at the time of filing with the board.

FofF 2

B. Petition contents. The petition shall contain:

1. the name, address, and telephone number of the petitioner;

2. the name, address, and telephone number of the other parties;

3. a concise statement specifying:

a. the terms and conditions of employment claimed to be violated;

b. whether the terms and conditions of employment claimed to be violated are established by law, rule, contract, or practice;

c. the law, rule, contract provision, or practice claimed to be violated;

d. the conduct which is claimed to violate the law, rule, contract, or practice;

e. the relief requested; and

f. why independent review of the grievance is not available under any other procedure.

8 MCAR S 3.0641 Answer.

Within ten days after receipt of a petition, all other parties shall file with the board and provide to the other parties an answer to the petition. The answer shall contain a concise statement specifying whether:

1. the terms and conditions of employment claimed to be violated are established by law, rule, contract, or practice;

2. the law, rule, contract provision, or practice has been violated by the respondent;

3. if a violation is found, the relief requested is appropriate; and

4. independent review of the grievance is not available under any other procedure.

8 MCAR S 3.0651 Jurisdiction.

The board, on its own motion or on motion of any party, may dismiss a petition if the board lacks jurisdiction. The board may conduct a hearing on the question of jurisdiction.

8 MCAR S 3.0661 Presiding officers.

A. Board or panel. The board, as a full body or as a panel of one or more of its members, may hear and decide an independent review. Whenever possible, a panel shall consist of an equal number of representatives of public employees and public employers, unless otherwise agreed to by the parties.

B. Hearing examiner. The board may appoint a hearing examiner to hear the grievance. The hearing examiner shall have such authority as the board deems necessary and appropriate to hear the grievance. The hearing examiner shall submit to the board recommended findings. The final decision on the grievance shall in all cases be made by the board.

8 MCAR S 3.067 Briefs. The board may establish a briefing schedule as it deems appropriate.

8 MCAR S 3.068 Notice of hearing.

At least 15 days prior to the hearing date, the board shall serve upon all parties a notice of hearing providing:

1. the date, time, and place of hearing;

2. a statement of the grievance to be determined;

3. the rights of the parties to representation; and

4. that failure to appear may prejudice the party's rights.

A copy of this chapter shall be included with the notice of hearing.

8 MCAR S 3.069 Continuance of hearing.

A request for continuance must be served upon the parties and filed with the board within seven days of the hearing unless exceptional circumstances are shown.

8 MCAR S 3.070 Right to representation.

Any party may be represented by a designated agent in an independent review proceeding before the board.

8 MCAR S 3.071 Informal disposition.

Informal disposition may be made of any grievance or any issue by stipulation, settlement, or agreement at any point in the proceedings so long as the stipulation, settlement, or agreement does not violate any law and is approved by the board.

8 MCAR S 3.072 Default.

The board may decide a grievance adversely to a party who fails to appear after receiving due notice and an opportunity for hearing.

8 MCAR S 3.073 Intervention.

The board may, upon timely application, allow a person to intervene in an independent review proceeding if the applicant establishes that its legal rights, duties, or privileges will be directly determined in the matter.

8 MCAR S 3.074 Substitution of party.

Substitution of a party or its representative may be allowed only if notice of the substitution is served on all other parties and filed with the board at least five days prior to the hearing date.

8 MCAR S 3.075 Consolidation.

A. Basis. The board may consolidate cases either on its own motion or on motion of any party if it determines that:

1. separate grievances present substantially the same issues;

2. a decision in one case would affect the rights of a party in another case; and

3. consolidation would not substantially prejudice any party.

B. Stipulation. Notwithstanding the requirements of A., the parties may stipulate and agree to consolidation subject to board approval.

C. Order. The board shall serve on all parties the order of consolidation.

D. Severance from consolidation. Within five days of receipt of the order of consolidation, a party may file with the board a petition for severance from consolidation which shall include the reasons why the requirements of A., are not met.

8 MCAR S 3.076 Extension of time.

The parties, with the approval of the presiding officer, may stipulate and agree to extend any time period provided in this chapter.

8 MCAR S 3.077 The hearing.

A. The hearing shall be conducted as follows:

1. It shall be the duty of the presiding officer to inquire fully into the facts in dispute, to call, examine, and cross-examine witnesses and to require the production of documentary or other evidence as the presiding officer may deem necessary to be fully acquainted with all facts relating to the case.

2. Any objection with respect to the conduct of the hearing, including any objection to the introduction of evidence, shall be stated orally, together with a statement of the grounds of the objection and included in the record of the hearing. No objection shall be deemed waived by further participation in the hearing.

3. The presiding officer may admit evidence which possesses probative value commonly accepted by reasonably prudent persons in the conduct of their affairs. The presiding officer shall give effect to any rule or privilege recognized by law.

4. Witnesses shall testify under oath and shall be

subject to cross-examination by all parties.

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

B. Transcript of board hearing. A verbatim record shall be taken by a hearing reporter or recording equipment of any hearing conducted pursuant to A.

C. Decorum.

1. The presiding officer may prohibit the operation of a television, newsreel, motion picture, still, or other camera and mechanical recording devices in the hearing room while the hearing is in progress if such operation shall be determined to have a significantly adverse effect on the hearing.

2. No person shall interfere with the free, proper, and lawful access to or egress from the hearing room. No person shall interfere or threaten interference with the hearing.

8 MCAR S 3.078 Board decisions and orders.

All decisions and orders issued by the board shall be in writing and shall be accompanied by a statement of the reasons therefor. All decisions and orders shall be binding on all parties and served on all parties to the case.

Repealer. 8 MCAR SS 3.033; 3.039; 3.064; and 3.065 are repealed.

APPROVED AS TO LEGALITY

June 29 19 83

HUBERT H. HUMPHREY, III
ATTORNEY GENERAL

BY Ted A. Mondale
SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
JUL 7 - 1983
Joan Anderson Growe
Secretary of State

2:40 PM

STATE OF MINNESOTA

PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of the Proposed Adoption
of Rules of the Public Employment Relations
Board Governing Issues and Appeals,
Arbitration of Terms and Conditions of
Employment, Arbitration of Grievances,
and Independent Review

ORDER ADOPTING
RULES

Notice of the Board's intent to adopt the above-entitled rules without a public hearing was published in the State Register on March 7, 1983, and was sent by United States mail to all persons on the list maintained by the agency pursuant to Minnesota Statutes section 14.14, subdivision 1, on February 25, 1983. After affording interested and affected persons an opportunity to submit comments for 30 days after Notice, receiving fewer than seven written requests for a public hearing within the 30-day comment period, reviewing and considering the comments, and determining the need for and reasonableness of the above-captioned rules,

NOW, THEREFORE, IT IS ORDERED that these rules identified as Rules of the Public Employment Relations Board Governing Issues and Appeals, Arbitration of Terms and Conditions of Employment, Arbitration of Grievances, and Independent Review are adopted this 28th day of April, 1983, pursuant to authority vested in the Board by Minnesota Statutes section 179.72, subdivision 4.

Claudia M. Hennen

Claudia M. Hennen
Executive Director
State of Minnesota
Public Employment Relations Board

Public Employment Relations Board

Notice of Intent to Solicit Outside Opinion Regarding Proposed Amendments to Rules Governing Issues and Appeals, the Arbitration of Terms and Conditions of Employment, the Arbitration of Grievances and Independent Review

Notice is hereby given that the Minnesota Public Employment Relations Board is seeking information or opinions from sources outside the agency in preparing to promulgate amended rules governing issues and appeals presented to the Board, the arbitration of terms and conditions of employment, the arbitration of grievances, and independent review. The rules are currently codified at 8 MCAR § 3.001 et seq. The promulgation of these amendments is authorized by Minn. Stat. § 179.72, subds. 2 and 4 (1980) which require the Public Employment Relations Board to adopt reasonable and proper rules relative to and regulating its procedures and the presentation and processing of matters within its authority.

The Public Employment Relations Board requests information and comments concerning the subject matter of these rules. Interested or affected persons or groups may submit statements of information or comment orally or in writing. Written statements should be addressed to:

Claudia M. Hennen, Executive Director
Public Employment Relations Board
205 Aurora Avenue
St. Paul, Minnesota 55103

Oral statements will be received during regular business hours over the telephone at (612) 296-8947 and in person at the above address.

All statements of information and comments shall be accepted until November 1, 1982. Any written material received by the Public Employment Relations Board shall become part of the record in the event that amendments to the rules are promulgated.

Karen A. Olsen

Karen A. Olsen
Chair
Public Employment Relations Board

September 2, 1982

STATE OF MINNESOTA

PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of the Proposed Adoption of Rules of the Public Employment Relations Board Governing Issues and Appeals, Arbitration of Terms and Conditions of Employment, Arbitration of Grievances, and Independent Review

ORDER FOR NOTICE OF INTENT TO ADOPT RULES WITHOUT PUBLIC HEARING

IT IS ORDERED this 17th day of February, 1983, that a Notice of Intent to Adopt Rules Without Public Hearing in the above-entitled matter be given to all persons who have registered their names with the Public Employment Relations Board for that purpose and be published in the State Register.

PUBLIC EMPLOYMENT RELATIONS BOARD
STATE OF MINNESOTA

Claudia M. Hennen
Executive Director

CERTIFICATE OF BOARD'S

AUTHORIZING RESOLUTION

I, Karen A. Olsen, do hereby certify that I am a member and the Chair of the Public Employment Relations Board, a board duly authorized under the laws of the State of Minnesota, and that the following is a true, complete, and correct copy of a resolution adopted at a meeting of the Public Employment Relations Board duly and properly called and held on the 7th day of December, 1982, that a quorum was present at said meeting, that a majority of those present voted for the resolution and that said resolution is set forth in the minutes of said meeting and has not been rescinded or modified.

> "RESOLVED, that Claudia M. Hennen, Executive Director of the Public Employment Relations Board, be and she hereby is granted the authority and directed to sign an Order of the Board directing that Notice be given of the Board's intent to adopt without a public hearing rules governing issues and appeals, arbitration of terms and conditions of employment, arbitration of grievances, and independent review, to sign the Notice thereof, and to perform any and all acts incidental thereto. In the event a public hearing becomes necessary, she hereby is granted the authority and directed to call a hearing for the purpose of promulgating said rules as well as perform any and all acts incidental thereto, including but without being limited to signing an Order for Hearing and Notice of Hearing as well as acting as the Board's representative at all hearings."

IN WITNESS WHEREOF, I have hereunto subscribed my name this 19th day of January, 1983.

Karen A. Olsen

Chair,
Public Employment Relations Board

Karl F. Sandholm

Member,
Public Employment Relations Board

Public Employment Relations Board

Proposed Rules Governing Issues and Appeals, Arbitration of Terms and Conditions of Employment, Arbitration of Grievances, and Independent Review

Notice of Intent to Adopt Rules Without a Public Hearing

Notice is hereby given that the Public Employment Relations Board proposes to adopt the above-entitled rules without a public hearing. The Board has determined that the proposed adoption of these rules will be noncontroversial in nature and has elected to follow the procedures set forth in Minnesota Statutes sections 14.21 to 14.28 (1982).

Persons interested in these rules shall have 30 days to submit comments on the proposed rules. The proposed rules may be modified if the modifications are supported by the data and views submitted to the agency and do not result in a substantial change in the proposed language.

Unless seven or more persons submit written requests for a public hearing on the proposed rules within the 30-day comment period, a public hearing will not be held. In the event a public hearing is required, the agency will proceed according to the provisions of Minnesota Statutes sections 14.13 to 14.18 (1982).

Persons who wish to submit comments or a written request for a public hearing should submit such comments or request to:

Claudia M. Hennen, Executive Director

Public Employment Relations Board

205 Aurora Avenue

St. Paul, Minnesota 55103

(612) 296-8947

Authority for the adoption of these rules is contained in Minnesota Statutes section 179.72, subdivisions 2 and 4 (1982). Additionally, a statement of need and reasonableness that describes the need for and reasonableness of each provision of the proposed rules and identifies the data and information relied upon to support the proposed rules has been prepared and is available from Claudia M. Hennen upon request.

Upon adoption of the final rules without a public hearing, the proposed rules, this notice, the statement of need and reasonableness, all written comments received, and the final rules as adopted will be delivered to the Attorney General for review as to form and legality, including the issue of substantial change. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the final rules as proposed for adoption, should submit a written statement of such request to Claudia M. Hennen.

The rules proposed for adoption relate to the following matters: the rules governing issues and appeals, the arbitration of terms and conditions of employment, and the arbitration of grievances have been modified to provide clarification, eliminate repetition, delete duplication of statutory language, and codify existing practices; the rules governing independent review have been modified to provide clarification, codify existing practices,

and add provisions relating to the filing of a petition, an answer to a petition, hearing procedures, and the informal disposition of a petition.

Copies of this notice and the proposed rules are available and may be obtained by contacting Claudia M. Hennen.

Claudia M. Hennen
Executive Director
Public Employment Relations Board

In the Matter of the Proposed Adoption
of Rules of the Public Employment Relations
Board Governing Issues and Appeals,
Arbitration of Terms and Conditions of
Employment, Arbitration of Grievances,
and Independent Review

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

AFFIDAVIT OF
MAILING

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

That on the 25th day of February, 1983, at the City of St. Paul, County of Ramsey, State of Minnesota, she served the attached Notice of Intent to Adopt Rules Without a Public Hearing by depositing in the State of Minnesota Central Mail System for first class mailing a copy thereof, properly enveloped, with postage prepaid, on all persons and associations who have requested that their names be placed on file with the Public Employment Relations Board for the purpose of receiving notice of the proposed adoption of rules by this Board.

Claudia M. Hennen

Subscribed and sworn to before me
this 28th day of February, 1983.

Ramona M Anderson

Ramona Marie Anderson
NOTARY PUBLIC—MINNESOTA
RAMSEY COUNTY
MY COMMISSION EXPIRES NOV. 14, 1984

Public Employment Relations Board

Proposed Rules Governing Issues and Appeals, Arbitration of Terms and Conditions of Employment, Arbitration of Grievances, and Independent Review

Notice of Intent to Adopt Rules Without a Public Hearing

Notice is hereby given that the Public Employment Relations Board proposes to adopt the above-entitled rules without a public hearing. The Board has determined that the proposed adoption of these rules will be noncontroversial in nature and has elected to follow the procedures set forth in Minnesota Statutes sections 14.21 to 14.28 (1982).

Persons interested in these rules shall have 30 days to submit comments on the proposed rules. The proposed rules may be modified if the modifications are supported by the data and views submitted to the agency and do not result in a substantial change in the proposed language.

Unless seven or more persons submit written requests for a public hearing on the proposed rules within the 30-day comment period, a public hearing will not be held. In the event a public hearing is required, the agency will proceed according to the provisions of Minnesota Statutes sections 14.13 to 14.18 (1982).

Persons who wish to submit comments or a written request for a public hearing should submit such comments or request to:

Claudia M. Hennen, Executive Director

Public Employment Relations Board

205 Aurora Avenue

St. Paul, Minnesota 55103

(612) 296-8947

Authority for the adoption of these rules is contained in Minnesota Statutes section 179.72, subdivisions 2 and 4 (1982). Additionally, a statement of need and reasonableness that describes the need for and reasonableness of each provision of the proposed rules and identifies the data and information relied upon to support the proposed rules has been prepared and is available from Claudia M. Hennen upon request.

Upon adoption of the final rules without a public hearing, the proposed rules, this notice, the statement of need and reasonableness, all written comments received, and the final rules as adopted will be delivered to the Attorney General for review as to form and legality, including the issue of substantial change. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the final rules as proposed for adoption, should submit a written statement of such request to Claudia M. Hennen.

The rules proposed for adoption relate to the following matters: the rules governing issues and appeals, the arbitration of terms and conditions of employment, and the arbitration of grievances have been modified to provide clarification, eliminate repetition, delete duplication of statutory language, and codify existing practices; the rules governing independent review have been modified to provide clarification, codify existing practices,

and add provisions relating to the filing of a petition, an answer to a petition, hearing procedures, and the informal disposition of a petition.

Copies of this notice and the proposed rules are available and may be obtained by contacting Claudia M. Hennen.

Claudia M. Hennen
Executive Director
Public Employment Relations Board

STATE OF MINNESOTA

COUNTY OF RAMSEY

CERTIFICATE

In the Matter of the Proposed Adoption
of Rules of the Public Employment Relations
Board Governing Issues and Appeals,
Arbitration of Terms and Conditions of
Employment, Arbitration of Grievances,
and Independent Review

I hereby certify that the list of persons, associations, and other interested groups who have requested, pursuant to Minn. Stat. § 14.14, subd. 1 (1982), that their names be placed on file with and maintained by the Public Employment Relations Board for the purpose of receiving notice of the proposed adoption of rules by this Board is accurate and complete as of 2:00 p.m., this 25th day of February, 1983.

Claudia M. Hennen

Claudia M. Hennen
Executive Director
Public Employment Relations Board

PROPOSED RULES

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 20 days thereafter, interested persons may submit data and views in writing to the proposing agency.

Public Employment Relations Board

Proposed Rules Governing Issues and Appeals, Arbitration of Terms and Conditions of Employment, Arbitration of Grievances, and Independent Review

Notice of Intent to Adopt Rules without a Public Hearing

Notice is hereby given that the Public Employment Relations Board proposes to adopt the above-entitled rules without a public hearing. The board has determined that the proposed adoption of these rules will be noncontroversial in nature and has elected to follow the procedures set forth in Minnesota Statutes sections 14.21 to 14.28 (1982).

Persons interested in these rules shall have 30 days to submit comments on the proposed rules. The proposed rules may be modified if the modifications are supported by the data and views submitted to the agency and do not result in a substantial change in the proposed language.

Unless seven or more persons submit written requests for a public hearing on the proposed rules within the 30-day comment period, a public hearing will not be held. In the event a public hearing is required, the agency will proceed according to the provisions of Minnesota Statutes sections 14.13 to 14.18 (1982).

Persons who wish to submit comments or a written request for a public hearing should submit such comments or request to:

Claudia M. Hennen, Executive Director
Public Employment Relations Board
205 Aurora Avenue
St. Paul, Minnesota 55103
(612) 296-8947

Authority for the adoption of these rules is contained in Minnesota Statutes section 179.72, subdivisions 2 and 4 (1982). Additionally, a statement of need and reasonableness that describes the need for and reasonableness of each provision of the proposed rules and identifies the data and information relied upon to support the proposed rules has been prepared and is available from Claudia M. Hennen upon request.

Upon adoption of the final rules without a public hearing, the proposed rules, this notice, the statement of need and reasonableness, all written comments received, and the final rules as adopted will be delivered to the Attorney General for review as to form and legality, including the issue of substantial change. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the final rules as proposed for adoption, should submit a written statement of such request to Claudia M. Hennen.

The rules proposed for adoption relate to the following matters: the rules governing issues and appeals, the arbitration of terms and conditions of employment, and the arbitration of grievances have been modified to provide clarification, eliminate repetition, delete duplication of statutory language, and codify existing practices; the rules governing independent review have been modified to provide clarification, codify existing practices, and add provisions relating to the filing of a petition, an answer to a petition, hearing procedures, and the informal disposition of a petition.

Copies of this notice and the proposed rules are available and may be obtained by contacting Claudia M. Hennen.

Claudia M. Hennen
Executive Director
Public Employment Relations Board

Rules as Proposed

8 MCAR § 3.001 Application.

~~These rules~~ This chapter shall apply to:

A. Issues relating to the meaning of the terms supervisory employee, confidential employee, essential employee, or professional employee.

B. Appeals from determinations of the director relating to the appropriateness of a unit ~~or determination of supervisory employee~~.

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

8 MCAR § 3.003 Definitions.

A. Board. "Board" means the Public Employment Relations Board or a panel of the Public Employment Relations Board.

B. Bureau. "Bureau" means the Bureau of Mediation Services.

C. Director. "Director" means the Director of the Bureau of Mediation Services.

D. Party. "Party" means any person, public employee, public employer, exclusive representative of public employees, public employee organization, or public employer organization whose legal rights, duties, or privileges will be directly determined in an appeal.

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

~~F. Arbitrator. "Arbitrator," when referred to in 8 MCAR §§ 3.030-3.040 means one or a panel of three arbitrators.~~

~~G. Supervisory employee. "Supervisory employee," as defined in Minn. Stat. § 179.63, subd. 9, means:~~

~~1. when the reference is to other than essential employees:~~

~~Any person having authority in the interests of the employer to hire, transfer, suspend, promote, discharge, assign, reward or discipline other employees or responsibly to direct them or adjust their grievances on behalf of the employer, or to effectively recommend such action, if in connection with the foregoing the exercise of such authority is not merely routine or clerical in nature but requires the use of independent judgment. Any determination of "supervisory employee" may be appealed to the public employment relations board.~~

~~2. when the reference is to essential employees:~~

~~The administrative head and his assistant of a municipality, municipal utility, police or fire department, or any person having authority in the interests of the employer to hire, transfer, suspend, promote, discharge, assign, reward, or discipline other employees or responsibly to direct them or adjust their grievances on behalf of the employer, if in connection with the foregoing the exercise of such authority is not merely routine or clerical in nature but requires the use of independent judgment. Any determination of "supervisory employee" may be appealed to the public employment relations board.~~

~~H. Confidential employee. "Confidential employee," as defined in Minn. Stat. § 179.63, subd. 8, means:~~

~~Any employee who works in the personnel offices of a public employer or who has access to information subject to use by the public employer in meeting and negotiating or who actively participates in the meeting and negotiating on behalf of the public employer.~~

~~I. Essential employee. "Essential employee," as defined in Minn. Stat. § 179.63, subd. 11, means:~~

~~Any person within the definition of subdivision 7 whose employment duties involve work or services essential to the health or safety of the public and the withholding of such services would create a clear and present danger to the health or safety of the public.~~

~~J. Professional employee. "Professional employee," as defined in Minn. Stat. § 179.63, subd. 10, means:~~

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.

~~1. any employee engaged in work (i) predominantly intellectual and varied in character as opposed to routine mental, manual, mechanical, or physical work; (ii) involving the consistent exercise of discretion and judgment in its performance; (iii) of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time; (iv) requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning or a hospital, as distinguished from a general academic education or from an apprenticeship or from training in the performance of routine mental, manual or physical processes;~~

~~2. any employee, who (i) has completed the courses of specialized intellectual instruction and study described in clause (iv) of paragraph 1., and (ii) is performing related work under the supervision of a professional person to qualify himself to become a professional employee as defined in paragraph 1.~~

~~K.~~ F. Presiding officer. "Presiding officer" means the board, one or more of its members, or a hearing examiner appointed by the board ~~who may hear the appeal~~.

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

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

8 MCAR § 3.004 Presiding officer.

~~A. Conducting hearings. The Board may hear appeals as a full body or may delegate to one or more of its members the authority to hear an appeal. The Board may also appoint a hearing examiner to hear an appeal.~~

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

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

A. Board or panel. The board, as a full body or as a panel of one or more of its members, may hear and decide an appeal. Whenever feasible, a panel shall consist of an equal number of representatives of public employees and public employers, unless otherwise agreed to by the parties.

B. Hearing examiner. The board may appoint a hearing examiner to hear an appeal. The hearing examiner shall have such authority as the board deems necessary and appropriate to hear the appeal. The hearing examiner shall submit to the board recommended findings. The final decision on the appeal shall in all cases be made by the board.

8 MCAR § 3.005 Initiating an appeal.

A. Time limits. Within ten days of the date of a determination by the director, any party, or parties, may initiate an appeal by serving a copy of a notice of appeal upon all other parties with a copy to the director and filing the original with the board ~~within 10 days of a determination by the Director~~.

B. Notice of appeal. A notice of appeal shall ~~contain~~ include:

~~A.~~ 1. the name and address of the ~~applicant~~ appellant;

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

~~C.~~ 2. the names and addresses of all parties who were parties to the ~~determination by the Director, and all other parties known to the applicant who will be directly affected by such~~ appeal; ~~and~~

3. a copy of the director's determination from which the appeal is being taken;

4. a statement of which issues the appellant seeks board review, why the issues should be resolved in the appellant's favor, and what remedy is requested;

5. a statement that the appellant understands the director's rules governing the preparation of and payment for the record and transcript on appeal and agrees to abide by those rules; and

~~D.~~ 6. the signature of the ~~applicant~~ appellant or ~~his~~ its representative.

8 MCAR § 3.006 Answer.

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

8 MCAR § 3.0061 Briefs.

The board may establish a briefing schedule as it deems appropriate.

8 MCAR § 3.007 Notice of hearing.

A. Contents of notice. ~~Within~~ At least 15 days ~~following receipt of a notice of appeal~~ prior to the hearing date, the board shall serve upon all ~~known~~ parties ~~not less than 10 days prior to hearing~~ a notice of hearing stating:

~~A.~~ 1. the date, ~~place~~ time, and ~~time~~ place of hearing;

~~B.~~ 2. the rights of the parties to representation (see 8 MCAR § 3.009); and

~~C.~~ 3. that failure to appear ~~or submit positions~~ may prejudice the party's rights (see 8 MCAR § 3.011).

B. Copy of rules included. A copy of ~~these rules~~ this chapter shall be included with the notice of hearing.

8 MCAR § 3.008 Continuance of hearing.

~~No request for continuance of a scheduled hearing will be granted within 7 days of a hearing unless exceptional circumstances are shown.~~ A request for continuance ~~shall be made in writing and~~ must be served upon the ~~other party or~~ parties and filed with the board not less than seven days prior to the hearing unless exceptional circumstances are shown.

8 MCAR § 1.010 Informal and summary disposition.

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

B. Summary disposition. The board, on its own motion or on motion of any party, may:

1. dismiss an appeal~~, or may~~ if the board lacks jurisdiction;

2. summarily affirm the ~~order or decision below if the Board lacks jurisdiction or if it clearly appears that~~ director's determination if the appeal presents no question of substantial merit~~, or may~~;

3. limit the issues to be considered ~~on appeal~~ to those which present a ~~substantial~~ question~~.~~ of substantial merit;

4. ~~In case of obvious error the Board may~~ summarily reverse or remand ~~for additional proceedings~~ in the case of obvious error; or

5. grant other appropriate relief.

8 MCAR § 3.011 Default.

The board may ~~dispose of~~ decide an appeal ~~adverse~~ adversely to a party who fails to appear after receiving due notice and an opportunity for hearing.

8 MCAR § 3.012 Intervention.

The board may, upon timely application, allow a person ~~or organization~~ to intervene in an appeal ~~upon a showing of substantial interest in the outcome of~~ if the applicant establishes that its legal rights, duties, or privileges will be directly determined in the appeal.

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8 MCAR § 3.013 Substitution of party.

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

8 MCAR § 3.014 Consolidation.

A. Basis. The board may~~, prior to hearing,~~ consolidate cases either on its own motion or ~~upon petition by~~ on motion of any party~~,~~ if it determines ~~(1)~~ that:

1. separate appeals present substantially the same issues~~, (2) that~~;

2. a decision in one case would affect the rights of ~~parties~~ a party in another case~~, and (3) that~~; and

3. consolidation would not substantially prejudice any party.

B. Stipulation. Notwithstanding the requirements of ~~this rule~~ A., the parties may stipulate and agree to consolidation subject to board approval.

~~B. Notice.~~ C. Order. ~~Within 5 days following an order for consolidation~~ The board shall serve on all parties ~~a notice~~ the order of consolidation.

~~C. Objection to~~ D. Severance from consolidation. Within ~~5~~ five days of receipt of ~~notice~~ the order of consolidation ~~any~~, a party may file with the board a petition for severance from consolidation which shall include the ~~BMS case number and~~ reasons ~~for objection~~ why the requirements of A. are not met.

8 MCAR § 3.015 Remand.

At any time prior to its decision, the board may remand to the director all or part of the appeal for rehearing ~~or~~, the the taking of specified additional evidence, or other appropriate action.

8 MCAR § 3.016 Extension of time.

The parties, with the approval of the ~~Board or its designee~~ presiding officer, may stipulate and agree to extend any time period provided in ~~these rules~~ this chapter.

8 MCAR § 3.017 The hearing.

~~A. Review procedure. Appeals shall be determined upon record established by the Director provided that the Board at its discretion may request additional evidence. Oral and written argument may be allowed upon request of a party.~~

A. The board record.

1. Prior to the hearing, the board shall prepare an official record in each appeal which shall contain:

a. the record of the proceedings before the director;

b. the determination of the director;

c. notice of appeal and any supporting documents;

d. if consolidation has occurred, the order of consolidation and any supporting documents;

e. notice of hearing and any supporting documents;

f. any stipulations, settlements, or agreements entered into by any of the parties; and

g. pleadings, motions, and intermediate rulings of the presiding officer.

2. Additional evidence admitted pursuant to C. shall become part of the board record.

B. Hearing procedure.

~~1. The hearing shall include the following:~~

~~a.~~ 1. The presiding officer shall open the hearing and introduce the ~~following exhibits:~~ board record.

~~(1) Notice of appeal and supporting documents if any;~~

~~(2) If consolidation has occurred, notice of consolidation, supporting documents, if any;~~

~~(3) Notice of hearing, supporting documents, if any, and affidavits of service;~~

~~(4) Any stipulations, settlements or agreements entered into by any of the parties prior to the hearing; and~~

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

b. Oral arguments shall not exceed 30 minutes per party;

c. Five minutes may be allowed for rebuttal;

2. Unless otherwise directed by the presiding officer, the party who initiated the appeal shall begin the argument and shall be followed by the other parties in a sequence determined by the presiding officer.

3. Each party shall be allowed 30 minutes for its oral argument and an additional five minutes for its rebuttal.

d. 4. The presiding officer may allow filing of memoranda by the parties.

2. If additional oral evidence is to be taken, the hearing shall be conducted as follows:

a. The presiding officer shall open the hearing;

b. All parties may present evidence in conformance with the Board's request for additional evidence;

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

d. The rules of evidence as set forth in 8 MCAR § 3.017 E. will be followed;

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

f. The presiding officer shall introduce the following exhibits:

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

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

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

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

(5) The record established by the Director;

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

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

i. Rebuttal evidence and final argument shall be allowed;

j. Oral arguments shall not exceed 30 minutes per party;

k. Five minutes may be allowed for rebuttal;

l. The presiding officer may allow filing of memoranda by the parties.

C. The record.

1. Board prepares record. The Board shall prepare an official record in each appeal.

2. What the record shall contain. The record in an appeal shall contain:

a. All pleadings, motions and intermediate rulings;

b. Evidence received or considered;

c. A statement of matters noticed;

d. Proposed findings and exceptions;

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

f. The record established by the Director.

C. Additional evidence.

1. The presiding officer may admit additional evidence on motion of any party if the motion is filed with the presiding officer and served on all other parties within the time limits established by the presiding officer.

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2. The presiding officer may admit evidence which possesses probative value commonly accepted by reasonably prudent persons in the conduct of their affairs. The presiding officer shall give effect to any rule or privilege recognized by law.

3. The presiding officer shall direct the sequence of any argument regarding the admissibility of the proposed additional evidence.

4. When oral evidence is heard, witnesses shall testify under oath and shall be subject to cross-examination by all parties. The decision to hear oral evidence does not constitute a waiver of any evidentiary objection available to a party.

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

6. Upon admission, the additional evidence becomes part of the board record.

7. Except as otherwise provided in C., the hearing shall be conducted as provided in B.

~~3.~~ D. Transcript of board hearing. A verbatim record ~~of the hearing~~ shall be taken by a hearing reporter ~~and/or~~ or recording equipment of any hearing conducted pursuant to B. or C.

~~D. Witnesses. When oral evidence is taken, any party may be a witness or may present witnesses on its behalf at the hearing and such testimony shall be under oath.~~

~~E. Rules of evidence.~~

~~1. General rules. The presiding officer may admit and consider evidence which possesses probative value commonly accepted by reasonably prudent persons in the conduct of their affairs. The presiding officer shall give effect to the rules or privilege recognized by law. Evidence which is incompetent, irrelevant, immaterial or repetitious shall be excluded.~~

~~2. Record of Bureau. The official record of the proceeding conducted by the Bureau shall be competent evidence.~~

~~3. Evidence must be offered to be considered. All evidence to be considered in the case, including all records and documents in the possession of the Board, shall be offered and made part of the record in the case. No other evidence or factual information, except as provided in 5. below, shall be considered in the determination of the case.~~

~~4. Documentary evidence. Documentary evidence in the form of copies or excerpts may be received or incorporated by reference in the discretion of the presiding officer or upon agreement of the parties.~~

~~5. Notice of facts. The presiding officer may take notice of general, technical or scientific facts within his specific knowledge. The presiding officer shall notify the parties of any facts that are to be so noticed.~~

~~6. Depositions. Upon a showing of good cause the presiding officer may allow the taking of depositions to preserve testimony in the same manner as prescribed by the Minnesota Rules of Civil Procedure.~~

~~F.~~ E. Decorum.

1. The presiding officer may prohibit the operation of a television, newsreel, motion picture, still, or other camera and mechanical recording devices in the hearing room while the hearing is in progress, if such operation ~~has~~ shall be determined to have a significantly adverse affect on the hearing.

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

8 MCAR § 3.018 The Board ~~decision~~ decisions and orders.

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

~~B. Decisions and orders.~~

~~1. Formal decision or order with reasons required.~~ All decisions ~~or~~ and orders ~~rendered~~ issued by the board ~~in an appeal~~ shall be in writing and shall be accompanied by a statement of the reasons therefor.

~~2. Service and contents.~~ All decisions ~~or~~ and orders shall be served on all parties ~~to the appeal~~ and ~~a copy~~ filed with the ~~Bureau~~ director. ~~It shall contain:~~

~~a. A statement of the decision or order in the case;~~

~~b. A statement of the reasons therefor;~~

~~c. An affidavit of service.~~

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

8 MCAR § 3.019 Rehearing.

A. Board right to rehear. The board ~~may, upon request~~, on its own motion or on petition of any party and for good cause shown ~~or on its own motion~~, may reopen, rehear, and redetermine an appeal. The petition for rehearing must be served on all parties and filed with the board within ~~30~~ ten days of the determination of the ~~initial hearing~~ appeal.

B. ~~Obtaining a~~ Petition for rehearing.

~~1. A party to such appeal may request a rehearing by filing a petition. Such~~ A petition for rehearing shall contain:

~~a.~~ 1. the name and address of the petitioner;

~~b.~~ 2. the board designation ~~for~~ of the case;

~~c.~~ 3. ~~The reasons in support of the petition for rehearing.~~ a statement as to which issues rehearing is sought; and

4. the reasons why the issues should be reheard.

C. Consideration. The board may consider evidence and argument in written or oral form with respect to granting or denying the petition.

~~2.~~ D. Determination. ~~The Board shall grant or deny a petition for rehearing as a part of the record in the case. Such~~ A petition ~~shall~~ for rehearing may be granted only if the petition or the board record reveals:

1. irregularities in the board proceedings~~,~~;

2. errors of law occurring during the board proceedings~~,~~;

3. newly discovered material evidence~~,~~;

4. a change in existing law material to the appeal; or

5. good cause for failure to appear ~~or plead~~.

~~Evidence and argument may be presented at the discretion of the Board in written or oral form or both by any party to the appeal with respect to the petition.~~

~~C.~~ E. Notice of rehearing. A notice of rehearing ~~will~~ shall be provided in the same manner prescribed for a ~~notice of~~ hearing by 8 MCAR § 3.007.

~~D.~~ F. Rehearing procedure. A rehearing of an appeal ~~will~~ shall be conducted in the same manner prescribed for a hearing by 8 MCAR § 3.017.

~~E.~~ G. Decision after rehearing. The decision after rehearing shall be ~~made~~ issued in the same manner prescribed for the decision after a hearing by 8 MCAR §§ 3.010, 3.011, and 3.018.

8 MCAR § 3.030 Application.

~~These rules~~ This chapter shall apply to the procedures governing the ~~creation of an arbitration panel to hear and decide~~ arbitration of disputes concerning the terms and conditions of employment.

8 MCAR § 3.032 Definitions.

A. Arbitrator. "Arbitrator" means one or a panel of three arbitrators.

B. Party. "Party" means any exclusive representative and any employer or employer organization engaged in the arbitration of terms and conditions of employment.

C. Except as otherwise provided herein, the words, terms, and phrases in ~~these rules~~ this chapter shall have the same meaning and definition as defined in 8 MCAR § 3.003.

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.

8 MCAR § 3.034 Certification of impasse.

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

~~A.~~ 1. the petition or petitions requesting arbitration~~.~~;

~~B.~~ 2. a concise ~~written~~ statement by the director indicating that an impasse has been reached and that ~~further mediation efforts would serve no purpose.~~ the requirements of Minnesota Statutes, section 179.69 have been met;

~~C.~~ 3. a determination by the director of the matters ~~not agreed upon based upon his efforts to mediate the~~ in dispute~~.~~; and

~~D.~~ 4. the final positions submitted by the parties.

~~E. Those agreed upon items to be excluded from arbitration.~~

B. Filing. ~~The Director shall file the certification with the Board and notify the parties by certified mail of the said certification.~~ The certification shall be filed with the board and served upon the parties by the director.

8 MCAR § 3.035 Selection of an arbitrator.

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

~~B. The Chairman of the Board or his designee shall select seven names for consideration as the arbitrator, but the final selection of a seven member list shall be made by at least an affirmative vote of three members of the Board which shall include the public member. In selecting the seven names, the Board shall endeavor whenever possible to include names of persons from the general geographic area in which the public employer is located. After the seven arbitrators have been selected, the Board shall submit the said names to the parties. Within five days thereafter, the parties shall, under the direction of the Chairman of the Board or his designee, who need not be physically present, alternately strike names from the list. If either party requests a single arbitrator, the parties shall alternately strike names from the list until only one name remains. If neither party requests a single arbitrator, the parties shall alternately strike names from the list until three names remain, which three persons shall constitute the panel. If the parties are unable to agree on who shall strike the first name, the question shall be decided by the flip of a coin. Notice of the selection of the arbitrator shall be immediately transmitted to the Board by the parties. The notice shall contain the name or names of the arbitrator selected and the name of the arbitrator selected by the parties as the convenor of the panel. If the parties fail to agree upon a convenor, the parties shall each strike, in the continued order of striking, one name from the panel. The remaining arbitrator shall act as the convenor for the arbitration panel for the purpose of commencing the proceeding.~~

When the director has certified an impasse to the board pursuant to Minnesota Statutes, section 179.69, the board shall submit to the parties a list of seven names for the selection of an arbitrator. If a party desires a single arbitrator, it shall notify the board in writing within five days after receipt of the list of arbitrators and before striking of names commences. In selecting the single arbitrator or a three-member panel, the parties shall alternately strike names from the list until the appropriate number of names remains. If the parties are unable to agree on who shall strike the first name, the question shall be decided by the flip of a coin. In the case of a three-member panel, the parties shall designate a convenor. If the parties fail to agree upon a convenor, each party shall strike, in the continued order of striking, one name from the panel. The remaining arbitrator shall act as the convenor for the purpose of commencing the proceedings. After selection, the parties shall immediately notify the board in writing of the name of the single arbitrator or the names of the panel and convenor.

8 MCAR § 3.036 Submission to arbitrator.

~~After the arbitrator has been selected,~~ The board shall submit to the arbitrator the certification of impasse ~~by~~ of the director. ~~The arbitrator shall then proceed to hold hearings and make deliberations necessary to render an award.~~

8 MCAR § 3.037 Panel ~~chairman~~ chair.

~~In the event of a 3 member arbitration panel,~~ The three-member panel shall, at its initial session, select one member as ~~Chairman~~ chair ~~to serve throughout. In the event the members~~ If the panel cannot agree, ~~the Chairman shall be selected by the same procedure as set forth in 8 MCAR § 3.035, subd. B. above~~ the convenor shall serve as chair.

8 MCAR § 3.038 Arbitration procedures.

~~A. Attendance and testimony of witnesses. The arbitrator may issue subpoenas requiring the attendance and testimony of~~

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

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

~~C. Uniform arbitration act. The arbitrator may avail himself of the procedures provided for in the Uniform Arbitration Act (Minnesota Statutes, 572.08-30) as long as the procedures stated therein do no conflict with any provisions of the Public Employment Labor Relations Act.~~

The arbitration proceedings shall be conducted and the award shall be rendered pursuant to Minnesota Statutes, section 179.72. The procedures and authority of the Uniform Arbitration Act in Minnesota Statutes, sections 572.08 to 572.30 shall apply to the arbitration proceedings except as they are inconsistent with the Public Employment Labor Relations Act.

8 MCAR § 3.040 Payment of arbitrator ~~or panel~~.

~~All expenses and costs of the arbitrator or panel shall be shared and assessed equally to the parties to the dispute.~~ The term "consideration of a dispute," as used in Minnesota Statutes, section 179.72, subdivision 6, includes, but is not limited to, time incurred in preparation, conduct of hearings, deliberations, and preparation of the decision.

8 MCAR § 3.041 Professional responsibility.

In arbitrating disputes concerning terms and conditions of employment pursuant to Minnesota Statutes, section 179.72, arbitrators shall conform to the standards and procedures set forth in the Code of Professional Responsibility for Arbitrators of Labor-Management Disputes as approved by the National Academy of Arbitrators, American Arbitration Association, and Federal Mediation and Conciliation Service on April 28, 1975, incorporated herein by reference, to the extent not inconsistent with the provisions of the Public Employment Labor Relations Act, 8 MCAR §§ 3.030~~-3.040~~ 3.049, or other applicable law or rule, provided that:

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

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

8 MCAR § 3.050 Application.

~~8 MCAR §§ 3.050-3.054~~ This chapter shall apply ~~only when the parties are unable to agree upon an arbitrator as provided by contract grievance procedures or the procedures established by the Director~~ to the arbitration of grievances pursuant to Minnesota Statutes, section 179.70, subdivision 4.

8 MCAR § 3.052 Definitions.

A. Arbitrator. "Arbitrator" means a single arbitrator.

B. Party. "Party" means any person authorized by contract or law to select the arbitrator of a grievance.

C. Except as otherwise provided in this chapter, the words, terms, and phrases in ~~these rules~~ this chapter shall have the same meaning and definition as defined in 8 MCAR § 3.003.

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.

8 MCAR § 3.053 Petition.

~~In the event the parties are unable to agree upon an arbitrator or arbitrators as provided by contract grievance procedures or the procedures established by the Director, the parties~~ A. Authority to petition. A party may petition~~,~~ the board in writing~~,~~ ~~the Board~~ for a list of five arbitrators. The petitioner shall provide all parties a copy of the petition at the time of filing with the board.

B. Contents of petition. The petition shall ~~contain~~ include:

~~A.~~ 1. the name and address of the petitioner;

~~B.~~ 2. the names and addresses of the adverse parties; ~~and~~

~~C.~~ 3. a concise statement of the nature of the grievance~~,~~ ~~the provisions of the contract applicable to the grievance~~ and the relief requested; and

4. a copy of the provisions of the contract applicable to the grievance.

8 MCAR § 3.054 Selection of the arbitrator.

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

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

~~C. Once the five arbitrators have been selected, the Board shall notify the parties of the names of the five arbitrators. Within 5 days the parties shall, under the direction of the Chairman or his designee, who need not be physically present,~~

Upon receipt of a petition, the board shall submit to the parties a list of five names for the selection of an arbitrator. Within five days after receipt of the list of arbitrators, the parties shall alternately strike names from the list ~~of five arbitrators.~~ until ~~only~~ one name remains. If the parties are unable to agree on who shall strike the first name, the question shall be decided by the flip of a coin.

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

~~E. Upon rendering any award, the arbitrator shall transmit both to the Board and to the Director a copy of his award and any written explanation thereof. Should any issues submitted to arbitration be settled voluntarily before the arbitrator issues his award, notice of such settlement shall be made by the arbitrator in a report issued both to the Board and to the Director.~~ After selection, the parties shall immediately notify the board in writing of the name of the arbitrator.

8 MCAR § 3.0541 Uniform Arbitration Act.

The procedures and authority of the Uniform Arbitration Act in Minnesota Statutes, sections 572.08 to 572.30 shall apply to the arbitration proceedings except as they are inconsistent with the Public Employment Labor Relations Act.

8 MCAR § 3.055 Professional responsibility.

In arbitrating grievances pursuant to Minnesota Statutes, section 179.70 arbitrators shall conform to the standards and procedures set forth in the Code of Professional Responsibility for Arbitrators of Labor-Management Disputes as approved by the National Academy of Arbitrators, American Arbitration Association, and Federal Mediation and Conciliation Service on April 28, 1975, incorporated herein by reference, to the extent not inconsistent with the provisions of the Public Employment Labor Relations Act, 8 MCAR §§ 3.050~~-3.054~~ 3.059, or other applicable law or rule, provided that:

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

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

8 MCAR § 3.060 Application.

~~The rules and regulations governing independent review and the establishment of a Public Employment Relations Panel~~

~~shall apply only when no other procedure exists for the independent review for a public employee of a grievance or grievances arising out of the interpretation of or adherence to terms and conditions of employment.~~ This chapter shall apply to independent review pursuant to Minnesota Statutes, section 179.76.

8 MCAR § 3.062 Definitions.

A. Party. "Party" means any person, public employee, public employer, exclusive representative of public employees, public employee organization, or public employer organization whose legal rights, duties, or privileges will be directly determined in an independent review.

B. Except as otherwise provided in this chapter, the words, terms, and phrases in ~~these rules~~ this chapter shall have the same meaning and definition as defined in 8 MCAR § 3.003.

8 MCAR § 3.063 Petition.

~~Any public~~ A. Authority to petition. An employee may petition the ~~Public Employment Relations Panel~~ board in writing for independent review of a grievance ~~arising out of the interpretation of or adherence to terms and conditions of employment when no other such procedure exists to hear that grievance~~. The petitioner shall provide all parties a copy of the petition at the time of filing with the board.

B. Petition contents. The petition shall contain:

~~A.~~ 1. the name, address, and telephone number of the petitioner;

~~B.~~ 2. the name, address, and telephone number of the ~~public employer~~ other parties;

~~C. A certification that independent review of the grievance is not available under any other procedure; and~~

~~D. A concise written statement of the grievance or grievances arising out of the interpretation of or adherence to terms and conditions of employment and the relief requested.~~

3. a concise statement specifying:

a. the terms and conditions of employment claimed to be violated;

b. whether the terms and conditions of employment claimed to be violated are established by law, rule, contract, or practice;

c. the law, rule, contract provision, or practice claimed to be violated;

d. the conduct which is claimed to violate the law, rule, contract, or practice;

e. the relief requested; and

f. why independent review of the grievance is not available under any other procedure.

8 MCAR § 3.0641 Answer.

Within ten days after receipt of a petition, all other parties shall file with the board and provide to the other parties an answer to the petition. The answer shall contain a concise statement specifying whether:

1. the terms and conditions of employment claimed to be violated are established by law, rule, contract, or practice;

2. the law, rule, contract provision, or practice has been violated by the respondent;

3. if a violation is found, the relief requested is appropriate; and

4. independent review of the grievance is not available under any other procedure.

8 MCAR § 3.0651 Jurisdiction.

The board, on its own motion or on motion of any party, may dismiss a petition if the board lacks jurisdiction. The board may conduct a hearing on the question of jurisdiction.

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8 MCAR § 3.0661 Presiding officers.

A. Board or panel. The board, as a full body or as a panel of one or more of its members, may hear and decide an independent review. Whenever possible, a panel shall consist of an equal number of representatives of public employees and public employers, unless otherwise agreed to by the parties.

B. Hearing examiner. The board may appoint a hearing examiner to hear the grievance. The hearing examiner shall have such authority as the board deems necessary and appropriate to hear the grievance. The hearing examiner shall submit to the board recommended findings. The final decision on the grievance shall in all cases be made by the board.

8 MCAR § 3.067 Briefs. The board may establish a briefing schedule as it deems appropriate.

8 MCAR § 3.068 Notice of hearing.

At least 15 days prior to the hearing date, the board shall serve upon all parties a notice of hearing providing:

1. the date, time, and place of hearing;
2. a statement of the grievance to be determined;
3. the rights of the parties to representation; and
4. that failure to appear may prejudice the party's rights.

A copy of this chapter shall be included with the notice of hearing.

8 MCAR § 3.069 Continuance of hearing.

A request for continuance must be served upon the parties and filed with the board within seven days of the hearing unless exceptional circumstances are show.

8 MCAR § 3.070 Right to representation.

Any party may be represented by a designated agent in an independent review proceeding before the board.

8 MCAR § 3.071 Informal disposition.

Informal disposition may be made of any grievance or any issue by stipulation, settlement, or agreement at any point in the proceedings so long as the stipulation, settlement, or agreement does not violate any law and is approved by the board.

8 MCAR § 3.072 Default.

The board may decide a grievance adversely to a party who fails to appear after receiving due notice and an opportunity for hearing.

8 MCAR § 3.073 Intervention.

The board may, upon timely application, allow a person to intervene in an independent review proceeding if the applicant establishes that its legal rights, duties, or privileges will be directly determined in the matter.

8 MCAR § 3.074 Substitution of party.

Substitution of a party or its representative may be allowed only if notice of the substitution is served on all other parties and filed with the board at least five days prior to the hearing date.

8 MCAR § 3.075 Consolidation.

A. Basis. The board may consolidate cases either on its own motion or on motion of any party if it determines that:

1. separate grievances present substantially the same issues;
2. a decision in one case would affect the rights of a party in another case; and
3. consolidation would not substantially prejudice any party.

B. Stipulation. Notwithstanding the requirements of A., the parties may stipulate and agree to consolidation subject to board approval.

C. Order. The board shall serve on all parties the order of consolidation.

D. Severance from consolidation. Within five days of receipt of the order of consolidation, a party may file with the board a petition for severance from consolidation which shall include the reasons why the requirements of A., are not met.

8 MCAR § 3.076 Extension of time.

The parties, with the approval of the presiding officer, may stipulate and agree to extend any time period provided in this chapter.

8 MCAR § 3.077 The hearing.

A. The hearing shall be conducted as follows:

1. It shall be the duty of the presiding officer to inquire fully into the facts in dispute, to call, examine, and cross-examine witnesses and to require the production of documentary or other evidence as the presiding officer may deem necessary to be fully acquainted with all facts relating to the case.

2. Any objection with respect to the conduct of the hearing, including any objection to the introduction of evidence, shall be stated orally, together with a statement of the grounds of the objection and included in the record of the hearing. No objection shall be deemed waived by further participation in the hearing.

3. The presiding officer may admit evidence which possesses probative value commonly accepted by reasonably prudent persons in the conduct of their affairs. The presiding officer shall give effect to any rule or privilege recognized by law.

4. Witnesses shall testify under oath and shall be subject to cross-examination by all parties.

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

B. Transcript of board hearing. A verbatim record shall be taken by a hearing reporter or recording equipment of any hearing conducted pursuant to A.

C. Decorum.

1. The presiding officer may prohibit the operation of a television, newsreel, motion picture, still, or other camera and mechanical recording devices in the hearing room while the hearing is in progress if such operation shall be determined to have a significantly adverse effect on the hearing.

2. No person shall interfere with the free, proper, and lawful access to or egress from the hearing room. No person shall interfere or threaten interference with the hearing.

8 MCAR § ~~3.066~~ 3.078 Board ~~or panel~~ decisions and orders.

~~Every~~ All ~~decision~~ decisions and orders ~~rendered~~ issued by the board ~~or~~ ~~Panel~~ shall be in writing and shall be accompanied by a statement of the reasons therefor. ~~Every~~ All ~~decision~~ decisions and orders shall be binding on ~~both~~ all parties and served on all parties to the case. ~~It shall contain:~~

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

~~B. A statement of the reasons therefor; and~~

~~C. An affidavit of service.~~

~~A majority vote of the Board or Panel shall constitute a decision of the Board or Panel.~~

Repealer. 8 MCAR §§ 3.033; 3.039; 3.064; and 3.065 are repealed.

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STATE OF MINNESOTA

PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of the Proposed Adoption of Rules of the Public Employment Relations Board Governing Issues and Appeals, Arbitration of Terms and Conditions of Employment, Arbitration of Grievances, and Independent Review

FINDINGS OF FACT AND CONCLUSIONS

The above-entitled matter has been considered without a public hearing in accordance with Minn. Stat. §§ 14.21 to 14.26 (1982).

After affording interested persons an opportunity to present data, statements and arguments, having heard all of the testimony, having considered all of the evidence adduced upon the records, files and proceedings herein, the Board finds the following:

1. The Statement of Need and Reasonableness demonstrates the need for and reasonableness of the proposed rules.

2. Two comments received by the Board requested clarification of 8 MCAR § 3.063A to ensure that independent review of a grievance by the Board is not available where the petitioning employee is covered under a collective bargaining agreement. One comment received by the Board requested clarification of 8 MCAR § 3.063A to ensure that independent review of a grievance by the Board is not available where the grievance has no basis in law or contract. Such clarification is consistent with Minn. Stat. § 179.76

(1982) which provides that independent review is available only where no other procedure exists to hear the grievance and the grievance has a basis in law, rule, contract provision or practice. Therefore, the rule as proposed should be amended accordingly.

3. The Board's experience indicates that 8 MCAR § 3.034 should be clarified to indicate whether notice to the Board of a party's desire to select a single arbitrator is effective upon mailing or receipt. To accomplish this, the rule as proposed should be amended to expressly provide that a request for a single arbitrator must be postmarked or received within the five-day period.

4. The rules as proposed, together with the above-described amendments, are needed and reasonable.

STATE OF MINNESOTA

Claudia M. Hennen

Executive Director
Public Employment Relations Board

CERTIFICATE OF BOARD'S

RESOLUTION ADOPTING RULES

I, Karen A. Olsen, do hereby certify that I am a member and the Chair of the Public Employment Relations Board, a board duly authorized under the laws of the State of Minnesota, and that the following is a true, complete, and correct copy of a resolution adopted at a meeting of the Public Employment Relations Board duly and properly called and held on the 28th day of April, 1983, that a quorum was present at said meeting, that a majority of those present voted for the resolution, and that said resolution is set forth in the minutes of said meeting and has not been rescinded or modified.

> "RESOLVED, that the rules relating to issues and appeals, the arbitration of terms and conditions of employment, the arbitration of grievances, and independent review be and they hereby are approved and adopted, pursuant to authority vested in us by Minnesota Statutes section 179.72, subdivision 4, and that Claudia M. Hennen, the Executive Director of the Public Employment Relations Board, be and hereby is authorized to sign an order adopting these rules and further is authorized to perform the necessary acts to provide that these rules shall have the force and effect of law."

IN WITNESS WHEREOF, I have hereunto subscribed my name this 28th day of April, 1983.

Karen A. Olsen

Chair,
Public Employment Relations Board

Karl F. Sandholm

Member,
Public Employment Relations Board

STATE OF MINNESOTA
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of the Proposed Adoption of Rules of the Public Employment Relations Board Governing Issues and Appeals, Arbitration of Terms and Conditions of Employment, Arbitration of Grievances, and Independent Review

STATEMENT OF NEED AND REASONABLENESS

8 MCAR § 3.001 Application

Adds punctuation and eliminates repetition.

8 MCAR § 3.003 Definitions

Adds punctuation, eliminates repetition, provides clarification and deletes duplication of statutory language.

Definition of "arbitrator" is deleted since it is not applicable to appeals. Instead, the definition of "arbitrator" appears in the rules governing the arbitration of terms and conditions of employment and the arbitration of grievances.

8 MCAR § 3.004 Presiding officer

Provides clarification and codifies existing practice regarding the establishment of a Board panel to hear an appeal. The Board has found this practice beneficial in executing its duties in an orderly fashion.

8 MCAR § 3.005 Initiating an appeal

Adds requirement that appellant provide copy of the director's determination with its notice of appeal so that the Board has sufficient information to respond expeditiously to an appeal.

Adds requirement that appellant include a statement that it understands the director's rules regarding the purchase of the record and transcript. This will ensure that an appellant is aware of its responsibility to purchase the record and eliminate delay in processing an appeal.

In addition, provides clarification.

8 MCAR § 3.006 Answer

Provides clarification.

8 MCAR § 3.0061 Briefs

Codifies existing practice which the Board has found beneficial in executing its duties in an orderly fashion.

8 MCAR § 3.007 Notice of hearing

Eliminates requirement that the Board set a hearing date within 15 days after receipt of an appeal. This requirement is inoperative, since not every appeal requires a hearing. (For instance, the Board may summarily dispose of an appeal without a hearing.) Further, an appeal is ready to be scheduled for hearing upon transmittal of the record and transcript and at the conclusion of the filing of briefs, which necessitates a time period greater than 15 days.

Also extends the notice requirement for a hearing from 10 to 15 days to increase the likelihood of the parties' availability.

In addition, provides clarification.

8 MCAR § 3.008 Continuance of hearing

Provides clarification.

8 MCAR § 3.010 Informal and summary disposition

Adds punctuation, provides clarification, and adds lack of jurisdiction as a basis for dismissal of an appeal. Removes lack of jurisdiction as a basis for summary affirmance since this particular provision is inappropriate.

8 MCAR § 3.011 Default

Provides clarification.

8 MCAR § 3.012 Intervention

Provides clarification.

8 MCAR § 3.013 Substitution of party

Provides clarification.

8 MCAR § 3.014 Consolidation

Eliminates requirement that the Board issue a notice of consolidation within 5 days following an order for consolidation.

The Board has found this time requirement impractical and of an uncritical nature so that deleting it will not result in harm or delay.

In addition, provides clarification.

8 MCAR § 3.015 Remand

Provides clarification.

8 MCAR § 3.016 Extension of time

Provides clarification.

8 MCAR § 3.017 The hearing

Eliminates repetition, provides clarification and codifies existing practice which the Board has found beneficial in executing its duties in an orderly fashion.

8 MCAR § 3.018 Board decisions and orders

§ 3.018A is eliminated because the statute expressly states the basis upon which the Board must decide an appeal.

§ 3.018C is eliminated because it is already provided for under § 3.011.

In addition, eliminates repetition and provides clarification.

8 MCAR § 3.019 Rehearing

Time period for the filing of a petition has been shortened from 30 to 10 days after the date of the Board's decision. This change is made to conform with the 10-day time period for the filing of an appeal under § 3.005 and because the Board believes 10 days will be an adequate amount of time.

In addition, adds punctuation and provides clarification.

8 MCAR § 3.030 Application

Provides clarification.

8 MCAR § 3.032 Definitions

Adds definitions of "arbitrator" and "party" which are applicable specifically to the arbitration of terms and conditions of employment.

In addition, adds punctuation and provides clarification.

8 MCAR § 3.034 Certification of impasse

Deletes reference to subdivisions 3 and 5 of section 179.69. This change is made to reflect the repeal of subdivision 5 (Minn. Laws 1980, ch. 617, § 45) and to broaden the scope of the rule to encompass certifications of impasse issued under all subdivisions of section 179.69.

In addition, provides clarification and codifies existing practice which the Board has found beneficial in executing its duties in an orderly fashion.

8 MCAR § 3.035 Selection of an arbitrator

§ 3.035A has been deleted to eliminate duplication, since these procedures are contained in the statute.

In addition, provides clarification and codifies existing practice which the Board has found beneficial in executing its duties in an orderly fashion.

8 MCAR § 3.036 Submission to arbitrator

Eliminates repetition and provides clarification.

8 MCAR § 3.037 Panel chair

Provides clarification and codifies existing practice which the Board has found beneficial in executing its duties in an orderly fashion.

8 MCAR § 3.038 Arbitration procedures

Deletes duplication of statutory language and provides clarification.

8 MCAR § 3.040 Payment of arbitrator

Adds punctuation, eliminates repetition and deletes duplication of statutory language.

8 MCAR § 3.041 Professional responsibility

Corrects citation and provides clarification.

8 MCAR § 3.050 Application

Provides clarification.

8 MCAR § 3.052 Definitions

Adds definitions of "arbitrator" and "party" which are applicable specifically to the arbitration of grievances.

In addition, adds punctuation and provides clarification.

8 MCAR § 3.053 Petition

Adds requirement that petitioner supply all other parties with a copy of its petition to ensure that other parties receive adequate notice that a petition has been filed.

In addition, provides clarification.

8 MCAR § 3.054 Selection of the arbitrator

Deletes duplication of statutory language, provides clarification and codifies existing practice which the Board has found beneficial in executing its duties in an orderly fashion.

8 MCAR § 3.055 Professional responsibility

Corrects citation and provides clarification.

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8 MCAR §§ 3.060-3.078

These are procedures which have not been codified in rules and are now being promulgated. The Board believes promulgation is necessary to ensure that the public is informed as to these procedures. The majority of these procedures are based upon the existing practices governing appeals.

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8 MCAR § 3.060 Application

Provides clarification and deletes duplication of statutory language.

8 MCAR § 3.062 Definitions

Adds definition of "party" which is applicable specifically to independent review.

In addition, adds punctuation and provides clarification.

8 MCAR § 3.063 Petition

Expands the requirements for a petition so that the petition will provide more specific information which will enable the Board to determine its jurisdiction in accordance with the decision rendered in Boe v. Polk County Library Board, 299 Minn. 226, 217 N.W.2d 208 (1974).

In addition, adds punctuation and deletes duplication of statutory language.

8 MCAR § 3.0641 Answer

Adds requirement of other parties to file an answer to petition and provides what answer shall contain. This change codifies an existing practice which the Board has found beneficial in deciding an independent review matter. This procedure is also similar to the procedure under 8 MCAR § 3.006 allowing for the filing of an answer to an appeal. Because that procedure has functioned satisfactorily, it is proposed to be used as part of the independent review procedure.

8 MCAR § 3.0651 Jurisdiction

Provides that Board may dismiss a petition for lack of jurisdiction and may conduct a hearing to determine its jurisdiction. This change codifies an existing practice which the Board has found beneficial in determining its jurisdiction to grant independent review. This procedure is also similar to the procedure under 8 MCAR § 3.010 allowing for the dismissal of an appeal for lack of jurisdiction. Because that procedure has functioned satisfactorily, it is proposed to be used as part of the independent review procedure.

8 MCAR § 3.0661 Presiding officers

Codifies an existing practice which the Board has found beneficial in executing its duties in an orderly fashion. The procedure proposed is similar to the procedure proposed under 8 MCAR § 3.004.

8 MCAR § 3.067 Briefs

Codifies an existing practice which the Board has found beneficial in executing its duties in an orderly fashion. The procedure proposed is similar to the procedure proposed under 8 MCAR § 3.0061.

8 MCAR § 3.068 Notice of hearing

Codifies an existing practice which the Board has found beneficial in executing its duties in an orderly fashion. The procedure proposed is similar to the procedure proposed under 8 MCAR § 3.007.

8 MCAR § 3.069 Continuance of hearing

Adds provision to request continuance of hearing. This procedure is similar to an existing practice which the Board has followed for appeals, which is codified at 8 MCAR § 3.008. Because that procedure has functioned satisfactorily, it is proposed to be used as part of the independent review procedure.

8 MCAR § 3.070 Right to representation

Codifies an existing practice which the Board has found beneficial in executing its duties in an orderly fashion. This procedure is similar to the procedure for right to representation in appeals under 8 MCAR § 3.009. Because that procedure has functioned satisfactorily, it is proposed to be used as part of the independent review procedure.

8 MCAR § 3.071 Informal disposition

Adds provision for informal disposition. This procedure is similar to the procedure for informal disposition of appeals under 8 MCAR § 3.010. Because that procedure has functioned satisfactorily, it is proposed to be used as part of the independent review procedure.

8 MCAR § 3.072 Default

Adds provision for default. This procedure is similar to the procedure for default in appeals under 8 MCAR § 3.010. Because that procedure has functioned satisfactorily, it is proposed to be used as part of the independent review procedure.

8 MCAR § 3.073 Intervention

Adds provision for intervention. This procedure is similar to an existing practice which the Board has followed for appeals, which is codified at 8 MCAR § 3.012. Because that procedure has functioned satisfactorily, it is proposed to be used as part of the independent review procedure.

8 MCAR § 3.074 Substitution of party

Adds provision for substitution of party. This procedure is similar to the procedure for substitution of party in appeals under 8 MCAR § 3.013. Because that procedure has functioned satisfactorily, it is proposed to be used as part of the independent review procedure.

8 MCAR § 3.075 Consolidation

Adds provision for consolidation. This procedure is similar to an existing practice which the Board has followed for appeals, which is codified at 8 MCAR § 3.014. Because that procedure has functioned satisfactorily, it is proposed to be used as part of the independent review procedure.

8 MCAR § 3.076 Extension of time

Adds provision for extension of time. This procedure is identical to the procedure for extension of time for appeals under 8 MCAR § 3.016. Because that procedure has functioned satisfactorily, it is proposed to be used as part of the independent review procedure.

8 MCAR § 3.077 The hearing

Adds provision for conduct of hearing and codifies an existing practice which the Board has found beneficial in executing its duties in an orderly fashion. This procedure is similar to an existing practice which the Board has followed for appeals, which is codified at 8 MCAR § 3.017. Because that procedure has functioned satisfactorily, it is proposed to be used as part of the independent review procedure.

8 MCAR § 3.078 Board decisions and orders

Eliminates repetition and provides clarification.

Repeals:

8 MCAR § 3.033 Binding arbitration

Deletes practices no longer in effect due to statutory amendments.

8 MCAR § 3.039 Arbitration awards

Deletes duplication of statutory language.

8 MCAR § 3.064 Public Employment Relations Panel

For clarification, placed under new proposed rule 3.0661.

8 MCAR § 3.065 Hearing

For clarification, placed under new proposed rules 3.0661, 3.068 and 3.070.

STATEMENT OF COMPLIANCE WITH

RULEMAKING PROCEDURES

I, Special Assistant Attorney General Catharine F. Haukedahl, 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.

Catharine F. Haukedahl

CATHARINE F. HAUKEDAHL
Special Assistant
Attorney General

Dated: June 14, 1983.