

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

SF-00006-05 (4/86)

STATE OF MINNESOTA

Office Memorandum

DEPARTMENT : ATTORNEY GENERAL

DATE : April 23, 1987

TO : PAUL W. GOLDBERG
Director, Bureau of Mediation Services

FROM : MARTHA J. CASSERLY
Special Assistant
Attorney General

PHONE : 6-4692

SUBJECT : In the Matter of the Adopted Rules Relating to Grievances

The above-referenced rule has been approved as to its legality by the Attorney General on April 20, 1987.

Enclosed is the agency's copy of the approved rule. This office has already filed two copies with the Secretary of State, who will forward one copy to the Revisor of Statutes. The fourth is being retained by this division of the Attorney General's Office for its records.

Also enclosed are any petitions, requests, submission or comments received by the agency and any extra copies of documents which the agency submitted to the Attorney General.

In order for a permanent rule without a hearing to become effective, your agency must publish a notice of adoption in the State Register in accordance with Minn. Stat. § 14.27. An emergency rule becomes effective five working days after approval by the Attorney General; however, the agency must publish a notice in the State Register in accordance with Minn. Stat. § 14.34.

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

MJC:nah

Enclosures

cc: Maryanne Hruby
Executive Director
Legislative Commission to Review
Adminsitrative Rules

Duane Harves
Chief Administrative Law Judge
Office of Administrative Hearings

C

Goldberg

RULE REVIEW CHECKLIST
RESUBMITTED RULE

File No. 1347 Docket No. 05.0009.0650

RESUBMISSION DATE 4-10-87
DATE DUE 4-24-87

ADOPTED W/O HEARING —
EMERGENCY RULE

APPROVED 4.20.87 mjc
DISAPPROVED
WITHDRAWM

REVISOR APPROVED —
REVISOR DISAPPROVED
FILED W/SEC. STATE
RETURNED TO AGENCY

NO **Does the revision raise significant new legal issues?**

Review date

✓ Rule as adopted (4 copies) Y

✓ Supplemental Findings of Fact, Conclusions & Order Adopting Y

~~Board's Supplemental Resolution Adopting~~

~~Notice of submission to Attorney General~~ Y

~~Affidavit of Mailing Notice to Attorney General~~ Y

/ Notice to Solicit Outside Information/opinion

3/16/87 Date Published

None Comments

Change:
p6 lines 22+23

Bureau of Mediation Services

Adopted Permanent Rules Relating to Grievances

Rules as Adopted

5510.5110 POLICY.

Parts 5510.5110 to ~~5510.5180~~ 5510.5190 are to be liberally construed so as to effectuate the purposes of Minnesota Statutes, chapter 179A, the Public Employment Labor Relations Act.

5510.5120 APPLICATION.

Parts 5510.5110 to ~~5510.5180~~ 5510.5190 are applicable when a public employer and an exclusive representative of public employees have not reached agreement on or do not have access to a contract grievance procedure as required by Minnesota Statutes, section 179A.20, subdivision 4.

5510.5130 DEFINITIONS.

Subpart 1. **Scope.** For the purposes of parts 5510.5110 to ~~5510.5180~~ 5510.5190 the words defined in this part have the meanings given them.

Subp. 2. **Bureau.** "Bureau" means the Bureau of Mediation Services.

Subp. 3. **Days.** "Days" means calendar days.

Subp. 4. **Employee.** "Employee" means any public employee who is employed in a position that is part of an appropriate unit for which an exclusive representative has been certified under Minnesota Statutes, section 179A.12.

Subp. 5. **Grievance.** "Grievance" means a dispute or disagreement regarding the application or interpretation of any term of a contract required under Minnesota Statutes, section 179A.20, subdivision 1. If no contract exists between the exclusive representative and the employer, "grievance" means a dispute or disagreement regarding the existence of just cause in the discipline of any employee or the termination of

nonprobationary employees.

Subp. 6. **Nonprobationary.** "Nonprobationary" means an employee who has completed an initial~~,-formally-defined~~ probationary period required as a part of the public employer's ~~regular-original~~ employment process.

Subp. 7. **Party.** "Party" means either the exclusive representative and its authorized agent or the employer and its authorized representative.

Subp. 8. **Service.** "Service" means personal delivery or service by the United States Postal Service, postage prepaid and addressed to the individual or organization at its last known mailing address. Service under parts 5510.5110 to ~~5510.5180~~ 5510.5190 is effective upon ~~receipt~~ deposit with the United States Postal Service, as evidenced by a postmark or dated receipt, or upon personal delivery.

5510.5131 COMPUTATION OF TIME.

In computing any period of time prescribed or allowed by parts 5510.5110 to ~~5510.5180~~ 5510.5190, the day or act or event upon which a period of time begins to run shall not be included. The last day of the time period shall be included unless it is a Saturday, Sunday, or holiday.

5510.5140 STEP ONE.

When an employee or group of employees represented by an exclusive representative has a grievance, the employee or an agent of the exclusive representative shall attempt to resolve the matter with the employee's immediate supervisor within 21 days after the employee, through the use of reasonable diligence, should have had knowledge of the event or act giving rise to the grievance. The supervisor shall then attempt to resolve the matter and shall respond in writing to the grievant and the agent of the exclusive representative within five days after the grievance is presented.

5510.5150 STEP TWO.

If the supervisor has not been able to resolve the

grievance or has not responded in writing within the time period provided in part 5510.5140 (step one), a written grievance may be served on the next appropriate level of supervision by the exclusive representative. The written grievance shall provide a concise statement outlining the nature of the grievance, the provisions of the contract or the just cause situation in dispute, and a statement of the relief or remedy requested. The written grievance must be served on the employer's representative within ~~ten~~ 15 days after the immediate supervisor's response was due under part 5510.5140 (step one). The employer's representative shall meet with the agent of the exclusive representative within five days after service of the written grievance and both parties shall attempt to resolve the grievance. The employer's representative shall serve a written response to the grievance on the agent of the exclusive representative within five days of the meeting. The response shall contain a concise statement of the employer's position on the grievance and the remedy or relief the employer is willing to provide, if any.

5510.5160 STEP THREE.

If the grievance is not resolved under part 5510.5150 (step two), the exclusive representative may serve the written grievance upon the chief administrative agent of the employer or that person's designated representative within ~~five~~ ten days after the written response required by part 5510.5150 (step two) was due. An agent of the exclusive representative shall meet with the chief administrative officer or designee within five days of service of the written grievance and they shall attempt to resolve the matter. The chief administrative officer or designee shall serve a written response to the grievance on the agent of the exclusive representative within five days of the meeting.

5510.5170 ARBITRATION.

Subpart 1. **Referral to arbitration.** If the response of the chief administrative officer or designee is not received

within the period provided in part 5510.5160 (step three) or is not satisfactory, the exclusive representative may serve written notice on the employer of its intent to refer the case to arbitration within ten days after the response required by part 5510.5160 (step three) is due.

Subp. 2. **Selection of arbitrator.** Within ten days of the service of written notice of intent to arbitrate, the employer's chief administrative officer or designee shall consult with the agent of the exclusive representative and endeavor to mutually agree upon an arbitrator to hear and decide the grievance. If the parties do not agree upon the selection of an arbitrator, either party may request a list of impartial arbitrators from the bureau. The parties shall alternately strike names from a list of five names to be provided by the bureau until only one name remains, and the remaining name shall be the designated arbitrator. The determination of which party will commence the striking process shall be made by mutual agreement or a flip of a coin. If one party refuses to strike names from the list provided by the bureau, the other party may serve written notice of this fact upon the bureau, with a copy to the offending party. Unless it is confirmed that the parties have otherwise selected or agreed upon an arbitrator within three days of service of the notice of refusal or failure to strike names, the bureau shall designate one name from the list previously provided to the parties and the person so designated by the bureau shall have full power to act as the arbitrator of the grievance.

Subp. 3. **Arbitrator's authority.** The arbitrator shall have no authority to amend, modify, add to, or subtract from the terms of an existing contract. ~~The arbitrator shall consider and decide only the specific issue submitted in writing by the parties. The arbitrator shall give due consideration to the positions of the parties and base the award solely upon the arbitrator's interpretation and application of the written terms of the contract and the facts presented by the parties.~~ The decision and award of the arbitrator shall be final and binding

upon both parties.

Subp. 4. **Arbitration expenses.** The employer and the exclusive representative shall share equally the arbitrator's fees and necessary expenses. Cancellation fees shall be paid by the party requesting the cancellation and any fees incurred as the result of a request for clarification shall be paid by the party requesting the clarification. Each party shall be responsible for compensating its own representatives and witnesses except to the extent provided by part 5510.5180, subpart 1.

Subp. 5. **Transcripts and briefs.** Because arbitration is intended to provide a simple, speedy alternative to litigation processes, the use of transcripts and briefs should be considered only in exceptional circumstances. If a verbatim record is required, it may be prepared providing the party desiring the record pays the cost and makes a copy available to the other party and the arbitrator without charge. The arbitrator may maintain written notes of the hearing and may use an electronic recording device to supplement the note taking. These notes shall be considered the arbitrator's private and personal property and shall not be made available to the parties or another third party. If a recording device is used by the arbitrator to supplement the arbitrator's notes, the arbitrator shall retain the recording for a period of 90 days following the issuance of the award.

5510.5180 PROCESSING OF GRIEVANCES.

Subpart 1. **Release time.** To the fullest extent feasible, the processing of grievances under parts 5510.5110 to ~~5510.5180~~ 5510.5190 shall be conducted during the normal business hours of the employer. Employees designated by the exclusive representative shall be released from work without loss of regular nonovertime earnings as a result of their necessary participation in meetings or hearings held pursuant to parts 5510.5110 to ~~5510.5180~~ 5510.5190, whenever such release is consistent with the ability of the employer to conduct safe and

reasonable operations. No more than three employees shall be entitled to compensation for participation in a single meeting or hearing with respect to any one grievance.

Subp. 2. **Waiver of steps.** The parties may by written mutual agreement waive participation in the grievance steps in parts 5510.5140 to 5510.5160 and may similarly agree to extend the time limits established by parts 5510.5140 to 5510.5170.

Subp. 3. **Time limits.** A failure to raise a grievance within the time limits specified in part 5510.5140, or to initiate action at the next step of the procedure in parts 5510.5140 to 5510.5170 within the time limits in these parts shall result in forfeiture by the exclusive representative of the right to pursue the grievance. A failure of an employer representative to comply with the time periods and procedures in parts 5510.5140 to 5510.5170 shall require mandatory alleviation of the grievance as requested in the last statement by the exclusive representative.

5510.5190 EFFECTIVE DATE.

Subpart 1. **No existing agreement.** In cases where there is no current collective bargaining agreement between an exclusive representative and a public employer, parts 5510.5110 to 5510.5190 are effective five days after the date of publication of the notice of adoption in the State Register.

Subp. 2. **Existing agreement.** If an exclusive representative and a public employer have executed a collective bargaining agreement before parts 5510.5110 to 5510.5190 become effective, and the agreement relies upon the grievance procedure adopted by the director to satisfy Minnesota Statutes, section 179A.20, subdivision 4, parts 5510.5110 to 5510.5190 shall become effective only upon the termination of the agreement. During the term of any agreement executed before parts 5510.5110 to 5510.5190 become effective, the provisions of the grievance procedure contained in parts 5510.4600, 5510.4700, 5510.4800, 5510.4900, 5510.5000, and 5510.5100 shall prevail.

REPEALER. Minnesota Rules, parts 5510.4600, 5510.4700,

5510.4800, 5510.4900, 5510.5000, and 5510.5100 are repealed, except as provided by part 5510.5190.

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
APR 22 1987
Joan Anderson Growe
Secretary of State
11:20 AM

APPROVED AS TO FORM AND LEGALITY
April 20 19 87
HUBERT H. HUMPHREY, III
ATTORNEY GENERAL
BY MJ Cassady
SPECIAL ASSISTANT ATTORNEY GENERAL

BUREAU OF MEDIATION SERVICES

Notice of Supplemental Finding of Fact, Conclusions, and Order Adopting Rule.

Notice of solicitation of outside information or opinions regarding proposed rules governing grievances was published in the State Register on March 16, 1987. No comments were received during the period provided. The rules proposed and published at 11 S.R. 1066, December 15, 1986, are adopted with the following modifications.

Paul W. Goldberg
Director

April 10, 1987

BUREAU OF MEDIATION SERVICES

Notice of Solicitation of Outside Information or Opinions Regarding Proposed Rule Governing Grievances

Notice is hereby given that the State Bureau of Mediation Services is seeking information or opinions from sources outside the agency in preparing to propose the adoption of the rule governing grievances. The adoption of the rules is authorized by Minnesota Statutes Section 179.04, subdivision 3(h), which requires the agency to adopt a grievance procedure to fulfill the purposes of section 179A.20, subdivision 4.

The State Bureau of Mediation Services requests information and opinions concerning the subject matter of the rules. Interested persons or groups may submit data or views on the subject matter of concern in writing or orally. Written statements should be addressed to: Paul W. Goldberg, Director, Minnesota Bureau of Mediation Services, 205 Aurora Avenue, St. Paul, MN 55103. Oral Statements will be received during regular business hours over the telephone at (612) 296-2525 and in person at the above address.

All statements of information and opinions shall be accepted until the close of business on Monday, March 23, 1987. Any written material received by the State Bureau of Mediation Services shall become part of the rulemaking record to be submitted to the attorney general or administrative law judge in the event that the rule is adopted.

March 9, 1987

Paul W. Goldberg
Director

The public forum will be held from 5:00-9:00 p.m. in the Albert Chesley Room (#105) of the Minnesota Department of Health, 717 Delaware Street, S.E. Minneapolis, MN 55440. Comments regarding the need to regulate speech language pathologists and audiologists will be heard from 5:00-6:45 p.m. and for hearing instrument dispensers from 7:15-9:00 p.m.

State law requires that before the Department can make a determination regarding the need to regulate a human service occupation, it must consider (1) whether the public will be harmed if the occupation remains unregulated; (2) what kind of specialized skill or training is needed to assure competency, on the part of both new and experienced members of the occupation; (3) possible alternatives to state regulation of the occupation; and (4) the overall cost effectiveness and economic impact of regulating the occupation.

Written comments can be submitted on the day of the forum, or mailed by April 3 to the Occupational Analysis Section, Minnesota Department of Health. For more information contact Norm Hanson at (612) 623-5443.

Bureau of Mediation Services

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Dated: 9 March 1987

Paul W. Goldberg, Director

Regional Transit Board

Goals for Disadvantaged and Women Business Enterprise Participation in Urban Mass Transportation

The Regional Transit Board announces the following goals for federal fiscal year 1987 for disadvantaged and women business enterprise (DBE and WBE) participation in Urban Mass Transportation (UMTA) assisted projects: 10% for firms owned and controlled by socially and economically disadvantaged individuals; and 2% for women-owned and controlled firms.

The goals and a description of how they were set are available for inspection during normal business hours at the Regional Transit Board offices for 30 days following the date of this notice. Comments, which are for informational purposes only, may be sent to the Regional Transit Board, Suite 270 Metro Square Building, St. Paul, MN 55101 or the U.S. Department of Transportation, 400 7th St. SW., Washington, D.C. 20590, within 45 days from the date of this notice.

Department of Revenue
Property Tax Review Division

Notice of Intent to Solicit Outside Opinion Regarding Proposed Rules Governing Valuation and Assessment of Electric, Gas Distribution, and Pipeline Companies (Utility Companies)

Notice is hereby given that the State Department of Revenue is seeking information or opinions from sources outside the agency in preparing to promulgate revised rules governing the valuation and assessment of utility companies. The promulgation of these rules is authorized by Minnesota Statutes section 270.06 (14), which permits the agency to make rules and regulations for the administration and enforcement of the property tax law.

A. 6 Copies

4.15.87 called B. Engdahl rgstd "effective" language change - again - retain this in file

Bureau of Mediation Services

Adopted Permanent Rules Relating to Grievances

Rules as Adopted

5510.5110 POLICY.

Parts 5510.5110 to ~~5510.5180~~ 5510.5190 are to be liberally construed so as to effectuate the purposes of Minnesota Statutes, chapter 179A, the Public Employment Labor Relations Act.

5510.5120 APPLICATION.

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Subp. 5. **Grievance.** "Grievance" means a dispute or disagreement regarding the application or interpretation of any term of a contract required under Minnesota Statutes, section 179A.20, subdivision 1. If no contract exists between the exclusive representative and the employer, "grievance" means a dispute or disagreement regarding the existence of just cause in the discipline of any employee or the termination of

Approved by Revisor

nonprobationary employees.

Subp. 6. **Nonprobationary.** "Nonprobationary" means an employee who has completed an initial~~,-formally-defined~~ probationary period required as a part of the public employer's ~~regular-original~~ employment process.

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5510.5131 COMPUTATION OF TIME.

In computing any period of time prescribed or allowed by parts 5510.5110 to ~~5510.5180~~ 5510.5190, the day or act or event upon which a period of time begins to run shall not be included. The last day of the time period shall be included unless it is a Saturday, Sunday, or holiday.

5510.5140 STEP ONE.

When an employee or group of employees represented by an exclusive representative has a grievance, the employee or an agent of the exclusive representative shall attempt to resolve the matter with the employee's immediate supervisor within 21 days after the employee, through the use of reasonable diligence, should have had knowledge of the event or act giving rise to the grievance. The supervisor shall then attempt to resolve the matter and shall respond in writing to the grievant and the agent of the exclusive representative within five days after the grievance is presented.

5510.5150 STEP TWO.

If the supervisor has not been able to resolve the

Approved by Revisor _____

grievance or has not responded in writing within the time period provided in part 5510.5140 (step one), a written grievance may be served on the next appropriate level of supervision by the exclusive representative. The written grievance shall provide a concise statement outlining the nature of the grievance, the provisions of the contract or the just cause situation in dispute, and a statement of the relief or remedy requested. The written grievance must be served on the employer's representative within ~~ten~~ 15 days after the immediate supervisor's response was due under part 5510.5140 (step one). The employer's representative shall meet with the agent of the exclusive representative within five days after service of the written grievance and both parties shall attempt to resolve the grievance. The employer's representative shall serve a written response to the grievance on the agent of the exclusive representative within five days of the meeting. The response shall contain a concise statement of the employer's position on the grievance and the remedy or relief the employer is willing to provide, if any.

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If the grievance is not resolved under part 5510.5150 (step two), the exclusive representative may serve the written grievance upon the chief administrative agent of the employer or that person's designated representative within ~~five~~ ten days after the written response required by part 5510.5150 (step two) was due. An agent of the exclusive representative shall meet with the chief administrative officer or designee within five days of service of the written grievance and they shall attempt to resolve the matter. The chief administrative officer or designee shall serve a written response to the grievance on the agent of the exclusive representative within five days of the meeting.

5510.5170 ARBITRATION.

Subpart 1. **Referral to arbitration.** If the response of the chief administrative officer or designee is not received

Approved by Revisor _____

within the period provided in part 5510.5160 (step three) or is not satisfactory, the exclusive representative may serve written notice on the employer of its intent to refer the case to arbitration within ten days after the response required by part 5510.5160 (step three) is due.

Subp. 2. **Selection of arbitrator.** Within ten days of the service of written notice of intent to arbitrate, the employer's chief administrative officer or designee shall consult with the agent of the exclusive representative and endeavor to mutually agree upon an arbitrator to hear and decide the grievance. If the parties do not agree upon the selection of an arbitrator, either party may request a list of impartial arbitrators from the bureau. The parties shall alternately strike names from a list of five names to be provided by the bureau until only one name remains, and the remaining name shall be the designated arbitrator. The determination of which party will commence the striking process shall be made by mutual agreement or a flip of a coin. If one party refuses to strike names from the list provided by the bureau, the other party may serve written notice of this fact upon the bureau, with a copy to the offending party. Unless it is confirmed that the parties have otherwise selected or agreed upon an arbitrator within three days of service of the notice of refusal or failure to strike names, the bureau shall designate one name from the list previously provided to the parties and the person so designated by the bureau shall have full power to act as the arbitrator of the grievance.

Subp. 3. **Arbitrator's authority.** The arbitrator shall have no authority to amend, modify, add to, or subtract from the terms of an existing contract. ~~The arbitrator shall consider and decide only the specific issue submitted in writing by the parties. The arbitrator shall give due consideration to the positions of the parties and base the award solely upon the arbitrator's interpretation and application of the written terms of the contract and the facts presented by the parties.~~ The decision and award of the arbitrator shall be final and binding

Approved by Revisor _____

upon both parties.

Subp. 4. **Arbitration expenses.** The employer and the exclusive representative shall share equally the arbitrator's fees and necessary expenses. Cancellation fees shall be paid by the party requesting the cancellation and any fees incurred as the result of a request for clarification shall be paid by the party requesting the clarification. Each party shall be responsible for compensating its own representatives and witnesses except to the extent provided by part 5510.5180, subpart 1.

Subp. 5. **Transcripts and briefs.** Because arbitration is intended to provide a simple, speedy alternative to litigation processes, the use of transcripts and briefs should be considered only in exceptional circumstances. If a verbatim record is required, it may be prepared providing the party desiring the record pays the cost and makes a copy available to the other party and the arbitrator without charge. The arbitrator may maintain written notes of the hearing and may use an electronic recording device to supplement the note taking. These notes shall be considered the arbitrator's private and personal property and shall not be made available to the parties or another third party. If a recording device is used by the arbitrator to supplement the arbitrator's notes, the arbitrator shall retain the recording for a period of 90 days following the issuance of the award.

5510.5180 PROCESSING OF GRIEVANCES.

Subpart 1. **Release time.** To the fullest extent feasible, the processing of grievances under parts 5510.5110 to ~~5510.5180~~ 5510.5190 shall be conducted during the normal business hours of the employer. Employees designated by the exclusive representative shall be released from work without loss of regular nonovertime earnings as a result of their necessary participation in meetings or hearings held pursuant to parts 5510.5110 to ~~5510.5180~~ 5510.5190, whenever such release is consistent with the ability of the employer to conduct safe and

Approved
by Revisor _____

reasonable operations. No more than three employees shall be entitled to compensation for participation in a single meeting or hearing with respect to any one grievance.

Subp. 2. **Waiver of steps.** The parties may by written mutual agreement waive participation in the grievance steps in parts 5510.5140 to 5510.5160 and may similarly agree to extend the time limits established by parts 5510.5140 to 5510.5170.

Subp. 3. **Time limits.** A failure to raise a grievance within the time limits specified in part 5510.5140, or to initiate action at the next step of the procedure in parts 5510.5140 to 5510.5170 within the time limits in these parts shall result in forfeiture by the exclusive representative of the right to pursue the grievance. A failure of an employer representative to comply with the time periods and procedures in parts 5510.5140 to 5510.5170 shall require mandatory alleviation of the grievance as requested in the last statement by the exclusive representative.

5510.5190 EFFECTIVE DATE.

Subpart 1. **No existing agreement.** In cases where there is no current collective bargaining agreement between an exclusive representative and a public employer, parts 5510.5110 to 5510.5190 are effective five days after the date of publication of the notice of adoption in the State Register.

Subp. 2. **Existing agreement.** If an exclusive representative and a public employer have executed a collective bargaining agreement before the adoption of parts 5510.5110 to 5510.5190, and the agreement relies upon the grievance procedure adopted by the director to satisfy Minnesota Statutes, section 179A.20, subdivision 4, parts 5510.5110 to 5510.5190 shall become effective only upon the termination of the agreement. During the term of any agreement executed before the adoption of parts 5510.5110 to 5510.5190, the provisions of the grievance procedure contained in parts 5510.4600, 5510.4700, 5510.4800, 5510.4900, 5510.5000, and 5510.5100 shall prevail.

Approved by Revisor _____

REPEALER. Minnesota Rules, parts 5510.4600, 5510.4700, 5510.4800, 5510.4900, 5510.5000, and 5510.5100 are repealed, except as provided by part 5510.5190.

Approved
by Revisor _____

Office of the Revisor of Statutes

Administrative Rules

TITLE: Adopted Permanent Rules Relating to Grievances

AGENCY: Bureau of Mediation Services

MINNESOTA RULES: Chapter 5510

The attached rules are approved for
filing with the Secretary of State

John C. Fuller
Assistant Deputy Revisor

STATE OF MINNESOTA

BUREAU OF MEDIATION SERVICES

205 AURORA AVENUE
SAINT PAUL 55103

PHONE 612-296-2525

TO: Martha J. Casserly
Attorney General - Department of Administration

FROM: Paul W. Goldberg, Director

DATE: April 10, 1987

RE: Rules

Attached for your review and the approval of the Attorney General are:

1. Four copies of Minnesota Rules parts 5510.5110 to 5510.5190 as adopted.

2. One copy of the Notice of Solicitation of Outside Information or Opinions Regarding Proposed Rule Governing Grievances.

3. Two copies of a Supplemental Finding of Fact, Conclusions, and Order Adopting Rule.

We have previously forwarded all other material relevant to the adoption of these rules.

You will note that, at your direction, I have further amended part 5510.5190, subpart 1, with respect to the "effective date" of these new rules. I have, however, adopted language other than that which you suggested since, no matter how correct it might be in lawyerese, it seemed foolish to say the "rules are effective the effective date of the rules."

RECEIVED
ATTORNEY GENERAL'S OFFICE

APR 10 1987

204 ADMINISTRATION BLDG.
50 SHERBURNE AVENUE
ST. PAUL, MN 55155

RULE REVIEW CHECKLIST

File No. 1347 Docket No. 05.0009.0650

DATE RECEIVED 2/13/87
REVIEW DATE 2/22/87
DUE DATE 2/27/87

APPROVED
DISAPPROVED 2-27-87
WITHDRAWN

ADOPTED W/O HEARING ✓
EMERGENCY RULE

REVISOR APPROVED 2/23/87
REVISOR DISAPPROVED
FILED W/SEC. STATE
RETURNED TO AGENCY

✓ Rule as adopted (4 copies)

___ Notice to Solicit Outside Information/Opinion — only letter sent
___ Date published in State Register
there is comments — Yes Comments

___ Petition for Adoption of a Rule

___ Board's Authorizing Resolution

✓ Proposed rule
___ Revisor's Certificate

___ Notice of Intent to Adopt Rule
___ Statutory Authority
___ Small business statement
___ Expenditure of public money statement
___ Signature
Did you send out a signed

✓ Statement of Need and Reasonableness

✓ Affidavit of Mailing Notice of Intent to Adopt Rule
~~2/12/87~~ 12/2/86 Date (30)/25 days before adoption

✓ Publication in State Register
12/15/86 Date (30)/25 days before adoption

___ Resolution Adopting

✓ Findings of Fact, Conclusions & Order Adopting
2/4/87 Date

___ Written requests, submissions or comments

✓ Declaration of attorney
Brad Engdahl Name of SAAG representing agency

✓ Notice of Submission to Attorney General

✓ Affidavit of Mailing Notice to Attorney General

✓ certification

✓ order adopting rules

SF-00006-03

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL-Administration

Office Memorandum

TO: PAUL GOLDBERG,
Director, Bureau of Mediation Services
BRAD P. ENGDAHL,
Special Assistant Attorney General

DATE: 3-4-87

FROM: MARTHA J. CASSERLY
Special Assistant
Attorney General

PHONE: 296-4692

SUBJECT: Bureau of Mediation Services Rule Relating to Grievances

The above-captioned rule has not been approved by the Attorney General for the following two reasons:

1. The Notice to Solicit Outside Opinion was not published in the State Register as required by Minn. Stat. § 14.10 (1986). Evidently, the Bureau of Mediation Services requested comments from various persons on a proposed draft of the rule in October 1986 before the Notice of Intent to Adopt the rule was published on December 15, 1986. If an agency solicits opinions or information from persons outside the agency, section 14.10 requires that a Notice to Solicit Outside Opinion be published in the State Register.

For the rule to be approved by the Attorney General, a Notice to Solicit Outside Opinion for this rule must be published in the State Register. As we discussed, if no substantive comments are received in response to this Notice for this rulemaking, and the Bureau does not substantially change the rule, the Bureau need not publish another Notice of Intent to Adopt the Rule.

2. Minn. Rule pt. 5510.5190, subpts. 1 and 2 provides that the effective date of the rule is "upon adoption." The Attorney General cannot approve this proposed effective date because it contradicts Minn. Stat. §§ 14.27 and 14.18 (1986) which provides that:

> A rule is effective after it has been subjected to all the requirements . . . and five working days after the notice of adoption is published in the State Register unless a later date is required by law or specified by rule.

Since pt. 5510.5190 provides an earlier date ("upon adoption"), it cannot be approved. To overcome this deficiency, the three phrases with the word "adoption" in subparts 1 and 2 (page 6, lines 22, 25 and 30), could be replaced with "the effective date of the rules."

After agency action, the rule may be resubmitted to the Attorney General for review. To resubmit the rule to the Attorney General, the documents listed in the Attorney General Rule pt. 2010.1300 must be submitted as well as the following:

1. Notice to Solicit Outside Opinion as published in the State Register, or a photocopy thereof.

2. All comments, requests, or submissions received in response to the Notice.

3. The second Notice of Intent to Adopt the Rule and corresponding affidavits (if applicable).

Also, please include a memorandum specifying that the rule is being resubmitted and refer to our file number 1347 so that we may obtain our initial file in this matter. If you have any questions, do not hesitate to contact me.

MJC:tt

cc: Duane Harves
Maryann Hruby
Paul Marinac

Bureau of Mediation Services

Adopted Permanent Rules Relating to Grievances

Rules as Adopted

5510.5110 POLICY.

Parts 5510.5110 to ~~5510.5180~~ 5510.5190 are to be liberally construed so as to effectuate the purposes of Minnesota Statutes, chapter 179A, the Public Employment Labor Relations Act.

5510.5120 APPLICATION.

Parts 5510.5110 to ~~5510.5180~~ 5510.5190 are applicable when a public employer and an exclusive representative of public employees have not reached agreement on or do not have access to a contract grievance procedure as required by Minnesota Statutes, section 179A.20, subdivision 4.

5510.5130 DEFINITIONS.

Subpart 1. **Scope.** For the purposes of parts 5510.5110 to ~~5510.5180~~ 5510.5190 the words defined in this part have the meanings given them.

Subp. 2. **Bureau.** "Bureau" means the Bureau of Mediation Services.

Subp. 3. **Days.** "Days" means calendar days.

Subp. 4. **Employee.** "Employee" means any public employee who is employed in a position that is part of an appropriate unit for which an exclusive representative has been certified under Minnesota Statutes, section 179A.12.

Subp. 5. **Grievance.** "Grievance" means a dispute or disagreement regarding the application or interpretation of any term of a contract required under Minnesota Statutes, section 179A.20, subdivision 1. If no contract exists between the exclusive representative and the employer, "grievance" means a dispute or disagreement regarding the existence of just cause in the discipline of any employee or the termination of

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nonprobationary employees.

Subp. 6. **Nonprobationary.** "Nonprobationary" means an employee who has completed an initial~~,-formally-defined~~ probationary period required as a part of the public employer's ~~regular-original~~ employment process.

Subp. 7. **Party.** "Party" means either the exclusive representative and its authorized agent or the employer and its authorized representative.

Subp. 8. **Service.** "Service" means personal delivery or service by the United States Postal Service, postage prepaid and addressed to the individual or organization at its last known mailing address. Service under parts 5510.5110 to ~~5510.5180~~ 5510.5190 is effective upon ~~receipt~~ deposit with the United States Postal Service, as evidenced by a postmark or dated receipt, or upon personal delivery.

subst change?

5510.5131 COMPUTATION OF TIME.

In computing any period of time prescribed or allowed by parts 5510.5110 to ~~5510.5180~~ 5510.5190, the day or act or event upon which a period of time begins to run shall not be included. The last day of the time period shall be included unless it is a Saturday, Sunday, or holiday.

5510.5140 STEP ONE.

When an employee or group of employees represented by an exclusive representative has a grievance, the employee or an agent of the exclusive representative shall attempt to resolve the matter with the employee's immediate supervisor within 21 days after the employee, through the use of reasonable diligence, should have had knowledge of the event or act giving rise to the grievance. The supervisor shall then attempt to resolve the matter and shall respond in writing to the grievant and the agent of the exclusive representative within five days after the grievance is presented.

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5510.5150 STEP TWO.

If the supervisor has not been able to resolve the

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grievance or has not responded in writing within the time period provided in part 5510.5140 (step one), a written grievance may be served on the next appropriate level of supervision by the exclusive representative. The written grievance shall provide a concise statement outlining the nature of the grievance, the provisions of the contract or the just cause situation in dispute, and a statement of the relief or remedy requested. The written grievance must be served on the employer's representative within ~~ten~~ 15 days after the immediate supervisor's response was due under part 5510.5140 (step one). The employer's representative shall meet with the agent of the exclusive representative within five days after service of the written grievance and both parties shall attempt to resolve the grievance. The employer's representative shall serve a written response to the grievance on the agent of the exclusive representative within five days of the meeting. The response shall contain a concise statement of the employer's position on the grievance and the remedy or relief the employer is willing to provide, if any.

5510.5160 STEP THREE.

If the grievance is not resolved under part 5510.5150 (step two), the exclusive representative may serve the written grievance upon the chief administrative agent of the employer or that person's designated representative within ~~five~~ ten days after the written response required by part 5510.5150 (step two) was due. An agent of the exclusive representative shall meet with the chief administrative officer or designee within five days of service of the written grievance and they shall attempt to resolve the matter. The chief administrative officer or designee shall serve a written response to the grievance on the agent of the exclusive representative within five days of the meeting.

5510.5170 ARBITRATION.

Subpart 1. **Referral to arbitration.** If the response of the chief administrative officer or designee is not received

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within the period provided in part 5510.5160 (step three) or is not satisfactory, the exclusive representative may serve written notice on the employer of its intent to refer the case to arbitration within ten days after the response required by part 5510.5160 (step three) is due.

Subp. 2. **Selection of arbitrator.** Within ten days of the service of written notice of intent to arbitrate, the employer's chief administrative officer or designee shall consult with the agent of the exclusive representative and endeavor to mutually agree upon an arbitrator to hear and decide the grievance. If the parties do not agree upon the selection of an arbitrator, either party may request a list of impartial arbitrators from the bureau. The parties shall alternately strike names from a list of five names to be provided by the bureau until only one name remains, and the remaining name shall be the designated arbitrator. The determination of which party will commence the striking process shall be made by mutual agreement or a flip of a coin. If one party refuses to strike names from the list provided by the bureau, the other party may serve written notice of this fact upon the bureau, with a copy to the offending party. Unless it is confirmed that the parties have otherwise selected or agreed upon an arbitrator within three days of service of the notice of refusal or failure to strike names, the bureau shall designate one name from the list previously provided to the parties and the person so designated by the bureau shall have full power to act as the arbitrator of the grievance.

Subp. 3. **Arbitrator's authority.** The arbitrator shall have no authority to amend, modify, add to, or subtract from the terms of an existing contract. ~~The arbitrator shall consider and decide only the specific issue submitted in writing by the parties. The arbitrator shall give due consideration to the positions of the parties and base the award solely upon the arbitrator's interpretation and application of the written terms of the contract and the facts presented by the parties.~~ The decision and award of the arbitrator shall be final and binding

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upon both parties.

Subp. 4. **Arbitration expenses.** The employer and the exclusive representative shall share equally the arbitrator's fees and necessary expenses. Cancellation fees shall be paid by the party requesting the cancellation and any fees incurred as the result of a request for clarification shall be paid by the party requesting the clarification. Each party shall be responsible for compensating its own representatives and witnesses except to the extent provided by part 5510.5180, subpart 1.

Subp. 5. **Transcripts and briefs.** Because arbitration is intended to provide a simple, speedy alternative to litigation processes, the use of transcripts and briefs should be considered only in exceptional circumstances. If a verbatim record is required, it may be prepared providing the party desiring the record pays the cost and makes a copy available to the other party and the arbitrator without charge. The arbitrator may maintain written notes of the hearing and may use an electronic recording device to supplement the note taking. These notes shall be considered the arbitrator's private and personal property and shall not be made available to the parties or another third party. If a recording device is used by the arbitrator to supplement the arbitrator's notes, the arbitrator shall retain the recording for a period of 90 days following the issuance of the award.

5510.5180 PROCESSING OF GRIEVANCES.

Subpart 1. **Release time.** To the fullest extent feasible, the processing of grievances under parts 5510.5110 to ~~5510.5180~~ 5510.5190 shall be conducted during the normal business hours of the employer. Employees designated by the exclusive representative shall be released from work without loss of regular nonovertime earnings as a result of their necessary participation in meetings or hearings held pursuant to parts 5510.5110 to ~~5510.5180~~ 5510.5190, whenever such release is consistent with the ability of the employer to conduct safe and

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reasonable operations. No more than three employees shall be entitled to compensation for participation in a single meeting or hearing with respect to any one grievance.

Subp. 2. **Waiver of steps.** The parties may by written mutual agreement waive participation in the grievance steps in parts 5510.5140 to 5510.5160 and may similarly agree to extend the time limits established by parts 5510.5140 to 5510.5170.

Subp. 3. **Time limits.** A failure to raise a grievance within the time limits specified in part 5510.5140, or to initiate action at the next step of the procedure in parts 5510.5140 to 5510.5170 within the time limits in these parts shall result in forfeiture by the exclusive representative of the right to pursue the grievance. A failure of an employer representative to comply with the time periods and procedures in parts 5510.5140 to 5510.5170 shall require mandatory alleviation of the grievance as requested in the last statement by the exclusive representative.

5510.5190 EFFECTIVE DATE.

Subpart 1. **No existing agreement.** In cases where there is no current collective bargaining agreement between an exclusive representative and a public employer, parts 5510.5110 to 5510.5190 are effective upon adoption.

Subp. 2. **Existing agreement.** If an exclusive representative and a public employer have executed a collective bargaining agreement before the adoption of parts 5510.5110 to 5510.5190, and the agreement relies upon the grievance procedure adopted by the director to satisfy Minnesota Statutes, section 179A.20, subdivision 4, parts 5510.5110 to 5510.5190 shall become effective only upon the termination of the agreement. During the term of any agreement executed before the adoption of parts 5510.5110 to 5510.5190, the provisions of the grievance procedure contained in parts 5510.4600, 5510.4700, 5510.4800, 5510.4900, 5510.5000, and 5510.5100 shall prevail.

REPEALER. Minnesota Rules, parts 5510.4600, 5510.4700,

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5510.4800, 5510.4900, 5510.5000, and 5510.5100 are repealed, except as provided by part 5510.5190.

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Bureau of Mediation Services

Proposed Permanent Rules Relating to Grievances

Rules as Proposed (all new material)

5510.5110 POLICY.

Parts 5510.5110 to 5510.5180 are to be liberally construed so as to effectuate the purposes of Minnesota Statutes, chapter 179A, the Public Employment Labor Relations Act.

5510.5120 APPLICATION.

Parts 5510.5110 to 5510.5180 are applicable when a public employer and an exclusive representative of public employees have not reached agreement on or do not have access to a contract grievance procedure as required by Minnesota Statutes, section 179A.20, subdivision 4.

5510.5130 DEFINITIONS.

Subpart 1. **Scope.** For the purposes of parts 5510.5110 to 5510.5180 the words defined in this part have the meanings given them.

Subp. 2. **Bureau.** "Bureau" means the Bureau of Mediation Services.

Subp. 3. **Days.** "Days" means calendar days.

Subp. 4. **Employee.** "Employee" means any public employee who is employed in a position that is part of an appropriate unit for which an exclusive representative has been certified under Minnesota Statutes, section 179A.12.

Subp. 5. **Grievance.** "Grievance" means a dispute or disagreement regarding the application or interpretation of any term of a contract required under Minnesota Statutes, section 179A.20, subdivision 1. If no contract exists between the exclusive representative and the employer, grievance means a dispute or disagreement regarding the existence of just cause in the discipline or termination of nonprobationary employees.

Subp. 6. **Nonprobationary.** "Nonprobationary" means an

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employee who has completed an initial, formally defined probationary period required as a part of the public employer's regular original employment process.

Subp. 7. **Party.** "Party" means either the exclusive representative and its authorized agent or the employer and its authorized representative.

Subp. 8. **Service.** "Service" means personal delivery or service by the United States Postal Service, postage prepaid and addressed to the individual or organization at its last known mailing address. Service under parts 5510.5110 to 5510.5180 is effective upon receipt.

5510.5131 COMPUTATION OF TIME.

In computing any period of time prescribed or allowed by parts 5510.5110 to 5510.5180, the day or act or event upon which a period of time begins to run shall not be included. The last day of the time period shall be included unless it is a Saturday, Sunday, or holiday.

5510.5140 STEP ONE.

When an employee represented by an exclusive representative has a grievance, the employee or an agent of the exclusive representative shall attempt to resolve the matter with the employee's immediate supervisor within 21 days after the employee, through the use of reasonable diligence, should have had knowledge of the event or act giving rise to the grievance. The supervisor shall then attempt to resolve the matter and shall respond in writing to the grievant and the agent of the exclusive representative within five days.

5510.5150 STEP TWO.

If the supervisor has not been able to resolve the grievance or has not responded in writing within the time period provided in part 5510.5140, a written grievance may be served on the next appropriate level of supervision by the exclusive representative. The written grievance shall provide a concise statement outlining the nature of the grievance, the provisions

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of the contract or the just cause situation in dispute, and a statement of the relief or remedy requested. The written grievance must be served on the employer's representative within ten days after the immediate supervisor's response was due under part 5510.5140. The employer's representative shall meet with the agent of the exclusive representative within five days after service of the written grievance and both parties shall attempt to resolve the grievance. The employer's representative shall serve a written response to the grievance on the agent of the exclusive representative within five days of the meeting. The response shall contain a concise statement of the employer's position on the grievance and the remedy or relief the employer is willing to provide, if any.

5510.5160 STEP THREE.

If the grievance is not resolved under part 5510.5150, the exclusive representative may serve the written grievance upon the chief administrative agent of the employer or that person's designated representative within five days after the written response required by part 5510.5150 was due. An agent of the exclusive representative shall meet with the chief administrative officer or designee within five days of service of the written grievance and they shall attempt to resolve the matter. The chief administrative officer or designee shall serve a written response to the grievance on the agent of the exclusive representative within five days of the meeting.

5510.5170 ARBITRATION.

Subpart 1. **Referral to arbitration.** If the response of the chief administrative officer or designee is not received within the period provided in part 5510.5160 or is not satisfactory, the exclusive representative may serve written notice of its intent to refer the case to arbitration within ten days after the response required by part 5510.5160 is due.

Subp. 2. **Selection of arbitrator.** Within ten days of the service of written notice of intent to arbitrate, the employer's chief administrative officer or designee shall consult with the

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agent of the exclusive representative and endeavor to mutually agree upon an arbitrator to hear and decide the grievance. If the parties do not agree upon the selection of an arbitrator, either party may request a list of impartial arbitrators from the bureau. The parties shall alternately strike names from a list of five names to be provided by the bureau until only one name remains, and the remaining name shall be the designated arbitrator. The determination of which party will commence the striking process shall be made by mutual agreement or a flip of a coin. If one party refuses to strike names from the list provided by the bureau, the other party may serve written notice of this fact upon the bureau, with a copy to the offending party. Unless it is confirmed that the parties have otherwise selected or agreed upon an arbitrator within three days of service of the notice of refusal or failure to strike names, the bureau shall designate one name from the list previously provided to the parties and the person so designated by the bureau shall have full power to act as the arbitrator of the grievance.

Subp. 3. **Arbitrator's authority.** The arbitrator shall have no authority to amend, modify, add to, or subtract from the terms of an existing contract. The arbitrator shall consider and decide only the specific issue submitted in writing by the parties. The arbitrator shall be without power to make decisions contrary to or inconsistent with the laws of Minnesota or municipal charters, ordinances, resolutions, or rules adopted pursuant to law. The arbitrator shall give due consideration to the positions of the parties and base the award solely upon the arbitrator's interpretation and application of the written terms of the contract and the facts presented by the parties. The decision and award of the arbitrator shall be final and binding upon both parties.

Subp. 4. **Arbitration expenses.** The employer and the exclusive representative shall share equally the arbitrator's fees and necessary expenses. Cancellation fees shall be paid by the party requesting the cancellation and any fees incurred as

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the result of a request for clarification shall be paid by the party requesting the clarification. Each party shall be responsible for compensating its own representatives and witnesses except to the extent provided by part 5510.5180, subpart 1.

Subp. 5. **Transcripts and briefs.** No verbatim transcripts of an arbitration hearing conducted under parts 5510.5110 to 5510.5180 shall be permitted. Written briefs should be discouraged by the arbitrator. The arbitrator may maintain written notes of the hearing and may use an electronic recording device to supplement the note taking. The notes and recordings shall be considered the arbitrator's private and personal property and shall not be made available to the parties or another third party. If a recording device is used by the arbitrator to supplement the arbitrator's notes, the arbitrator shall retain the recording for a period of 30 days following the issuance of the award.

5510.5180 PROCESSING OF GRIEVANCES.

Subpart 1. **Release time.** To the fullest extent feasible, the processing of grievances under parts 5510.5110 to 5510.5180 shall be conducted during the normal business hours of the employer. Employees designated by the exclusive representative shall be released from work without loss of regular nonovertime earnings as a result of their necessary participation in meetings or hearings held pursuant to parts 5510.5110 to 5110.5180, whenever such release is consistent with the ability of the employer to conduct safe and reasonable operations. No more than three employees shall be entitled to compensation for participation in a single meeting or hearing with respect to any one grievance.

Subp. 2. **Waiver of steps.** The parties may by written mutual agreement waive participation in the grievance steps in parts 5510.5140 to 5510.5160 and may similarly agree to extend the time limits established by parts 5510.5140 to 5510.5170.

Subp. 3. **Time limits.** A failure to raise a grievance

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within the time limits specified in part 5510.5140, or to initiate action at the next step of the procedure in parts 5510.5140 to 5510.5170 within the time limits in these parts shall result in forfeiture by the exclusive representative of the right to pursue the grievance. A failure of an employer representative to comply with the time periods and procedures in parts 5510.5140 to 5510.5170 shall give the exclusive representative the right to invoke the next level of the grievance procedure.

REPEALER. Minnesota Rules, parts 5510.4600, 5510.4700, 5510.4800, 5510.4900, 5510.5000, and 5510.5100 are repealed.

APPROVED IN THE REVISOR OF STATUTES OFFICE BY:

STATE OF MINNESOTA

BUREAU OF MEDIATION SERVICES

In the Matter of the Proposed Adoption of Rules of the Bureau of Mediation Services Relating to Grievances

ORDER FOR NOTICE OF INTENT TO ADOPT RULES WITHOUT PUBLIC HEARING

IT IS ORDERED THIS 2nd day of December, 1986, 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 Bureau of Mediation Services for that purpose and be published in the State Register.

BUREAU OF MEDIATION SERVICES

Paul W. Goldberg

PAUL W. GOLDBERG, DIRECTOR

PROPOSED RULES

Pursuant to Minn. Stat. of 1982, §§ 14.22, 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 25 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 the modifications are supported by the data and views submitted.

If, during the 30-day comment period, 25 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 §§ 14.14-14.20, which state that if an agency decides to hold a public hearing, it must publish a notice of intent in the *State Register*.

Pursuant to Minn. Stat. §§ 14.29 and 14.30, agencies may propose emergency rules under certain circumstances. Proposed emergency rules are published in the *State Register* and, for at least 25 days thereafter, interested persons may submit data and views in writing to the proposing agency.

Bureau of Mediation Services

Proposed Permanent Rules Relating to Grievances

Notice of Intent to Adopt Rules without a Public Hearing

NOTICE IS HEREBY GIVEN that the Director, Bureau of Mediation Services, proposes to amend the above-entitled rules without a public hearing. The Director has determined that the proposed amendment of these rules will be noncontroversial in nature and has elected to follow the procedures set forth in Minnesota Statutes, Sections 14.22-14.28.

Persons interested in this rule are encouraged to submit comment in support of or in opposition to the proposed rule and shall have 30 days to do so. Each comment should identify the portion of the proposed rule being addressed, the reason the comment is being made, and any changes in the proposed rules which are being suggested. The proposed rule may be modified if the modifications are supported by the data and comments received by the Bureau and do not result in substantial change in the intent and purpose of the proposed rule.

Unless 25 or more persons submit written requests for a public hearing on the proposed rule within the 30-day comment period, a public hearing will not be held. Persons requesting a public hearing should state their name and address and are encouraged to identify the portion of the proposed rule addressed by their request, the reason for the request, and any changes in the proposed rule which are being suggested. In the event a public hearing is required, the Bureau will proceed pursuant to Minnesota Statutes, sections 14.11-14.20.

Comments or written requests for a public hearing on these proposed rules should be submitted to:

Paul W. Goldberg, Director
Minnesota Bureau of Mediation Services
205 Aurora Avenue
St. Paul, MN 55103
(612) 296-2525

Authority to adopt this rule is contained in Minnesota Statutes, section 179A.04, subdivision 3(f). A Statement of Need and Reasonableness that describes the need for and the reasonableness of the proposed rule and the information relied upon to support the amendment has been prepared and is available upon request from the Bureau at the above address or telephone number.

Upon adoption of the final rule without a public hearing, the proposed rule, 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 Rule as Adopted, should submit a written request to the address provided above.

A copy of the proposed rules are attached to this notice.

Copies of this notice and the proposed rule are available and may be obtained by contacting the Bureau at the above address or telephone number.

Paul W. Goldberg, Director
Bureau of Mediation Services

Rules as Proposed (all new material)

5510.5110 POLICY.

Parts 5510.5110 to 5510.5180 are to be liberally construed so as to effectuate the purposes of Minnesota Statutes, chapter 179A, the Public Employment Labor Relations Act.

5510.5120 APPLICATION.

Parts 5510.5110 to 5510.5180 are applicable when a public employer and an exclusive representative of public employees have not reached agreement on or do not have access to a contract grievance procedure as required by Minnesota Statutes, section 179A.20, subdivision 4.

5510.5130 DEFINITIONS.

Subpart 1. **Scope.** For the purposes of parts 5510.5110 to 5510.5180 the words defined in this part have the meanings given them.

Subp. 2. **Bureau.** "Bureau" means the Bureau of Mediation Services.

Subp. 3. **Days.** "Days" means calendar days.

Subp. 4. **Employee.** "Employee" means any public employee who is employed in a position that is part of an appropriate unit for which an exclusive representative has been certified under Minnesota Statutes, section 179A.12.

Subp. 5. **Grievance.** "Grievance" means a dispute or disagreement regarding the application or interpretation of any term of a contract required under Minnesota Statutes, section 179A.20, subdivision 1. If no contract exists between the exclusive representative and the employer, grievance means a dispute or disagreement regarding the existence of just cause in the discipline or termination of nonprobationary employees.

Subp. 6. **Nonprobationary.** "Nonprobationary" means an employee who has completed an initial, formally defined probationary period required as a part of the public employer's regular original employment process.

Subp. 7. **Party.** "Party" means either the exclusive representative and its authorized agent or the employer and its authorized representative.

Subp. 8. **Service.** "Service" means personal delivery or service by the United States Postal Service, postage prepaid and addressed to the individual or organization at its last known mailing address. Service under parts 5510.5110 to 5510.5180 is effective upon receipt.

5510.5131 COMPUTATION OF TIME.

In computing any period of time prescribed or allowed by parts 5510.5110 to 5510.5180, the day or act or event upon which a period of time begins to run shall not be included. The last day of the time period shall be included unless it is a Saturday, Sunday, or holiday.

5510.5140 STEP ONE.

When an employee or group of employees represented by an exclusive representative has a grievance, the employee or an agent of the exclusive representative shall attempt to resolve the matter with the employee's immediate supervisor within 21 days after the employee, through the use of reasonable diligence, should have had knowledge of the event or act giving rise to the grievance. The supervisor shall then attempt to resolve the matter and shall respond in writing to the grievant and the agent of the exclusive representative within five days after the grievance is presented.

5510.5150 STEP TWO.

If the supervisor has not been able to resolve the grievance or has not responded in writing within the time period provided in part 5510.5140 (step one), a written grievance may be served on the next appropriate level of supervision by the exclusive representative. The written grievance shall provide a concise statement outlining the nature of the grievance, the provisions of the contract or the just cause situation in dispute, and a statement of the relief or remedy requested. The written grievance must be served on the employer's representative within ten days after the immediate supervisor's response was due under part 5510.5140 (step one). The employer's representative shall meet with the agent of the exclusive representative within five days after service of the written grievance and both parties shall attempt to resolve the grievance. The employer's representative shall serve a written response to the

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

grievance on the agent of the exclusive representative within five days of the meeting. The response shall contain a concise statement of the employer's position on the grievance and the remedy or relief the employer is willing to provide, if any.

5510.5160 STEP THREE.

If the grievance is not resolved under part 5510.5150 (step two), the exclusive representative may serve the written grievance upon the chief administrative agent of the employer or that person's designated representative within five days after the written response required by part 5510.5150 (step two) was due. An agent of the exclusive representative shall meet with the chief administrative officer or designee within five days of service of the written grievance and they shall attempt to resolve the matter. The chief administrative officer or designee shall serve a written response to the grievance on the agent of the exclusive representative within five days of the meeting.

5510.5170 ARBITRATION.

Subpart 1. **Referral to arbitration.** If the response of the chief administrative officer or designee is not received within the period provided in part 5510.5160 (step three) or is not satisfactory, the exclusive representative may serve written notice of its intent to refer the case to arbitration within ten days after the response required by part 5510.5160 (step three) is due.

Subp. 2. **Selection of arbitrator.** Within ten days of the service of written notice of intent to arbitrate, the employer's chief administrative officer or designee shall consult with the agent of the exclusive representative and endeavor to mutually agree upon an arbitrator to hear and decide the grievance. If the parties do not agree upon the selection of an arbitrator, either party may request a list of impartial arbitrators from the bureau. The parties shall alternately strike names from a list of five names to be provided by the bureau until only one name remains, and the remaining name shall be the designated arbitrator. The determination of which party will commence the striking process shall be made by mutual agreement or a flip of a coin. If one party refuses to strike names from the list provided by the bureau, the other party may serve written notice of this fact upon the bureau, with a copy to the offending party. Unless it is confirmed that the parties have otherwise selected or agreed upon an arbitrator within three days of service of the notice of refusal or failure to strike names, the bureau shall designate one name from the list previously provided to the parties and the person so designated by the bureau shall have full power to act as the arbitrator of the grievance.

Subp. 3. **Arbitrator's authority.** The arbitrator shall have no authority to amend, modify, add to, or subtract from the terms of an existing contract. The arbitrator shall consider and decide only the specific issue submitted in writing by the parties. The arbitrator shall give due consideration to the positions of the parties and base the award solely upon the arbitrator's interpretation and application of the written terms of the contract and the facts presented by the parties. The decision and award of the arbitrator shall be final and binding upon both parties.

Subp. 4. **Arbitration expenses.** The employer and the exclusive representative shall share equally the arbitrator's fees and necessary expenses. Cancellation fees shall be paid by the party requesting the cancellation and any fees incurred as the result of a request for clarification shall be paid by the party requesting the clarification. Each party shall be responsible for compensating its own representatives and witnesses except to the extent provided by part 5510.5180, subpart 1.

Subp. 5. **Transcripts and briefs.** Because arbitration is intended to provide a simple, speedy alternative to litigation processes, the use of transcripts and briefs should be considered only in exceptional circumstances. If a verbatim record is required, it may be prepared providing the party desiring the record pays the cost and makes a copy available to the other party and the arbitrator without charge. The arbitrator may maintain written notes of the hearing and may use an electronic recording device to supplement the note taking. These notes shall be considered the arbitrator's private and personal property and shall not be made available to the parties or another third party. If a recording device is used by the arbitrator to supplement the arbitrator's notes, the arbitrator shall retain the recording for a period of 90 days following the issuance of the award.

5510.5180 PROCESSING OF GRIEVANCES.

Subpart 1. **Release time.** To the fullest extent feasible, the processing of grievances under parts 5510.5110 to 5510.5180 shall be conducted during the normal business hours of the employer. Employees designated by the exclusive representative shall be released from work without loss of regular nonovertime earnings as a result of their necessary participation in meetings or hearings held pursuant to parts 5510.5110 to 5110.5180, whenever such release is consistent with the ability of the employer to conduct safe and reasonable operations. No more than three employees shall be entitled to compensation for participation in a single meeting or hearing with respect to any one grievance.

Subp. 2. **Waiver of steps.** The parties may by written mutual agreement waive participation in the grievance steps in parts 5510.5140 to 5510.5160 and may similarly agree to extend the time limits established by parts 5510.5140 to 5510.5170.

Subp. 3. **Time limits.** A failure to raise a grievance within the time limits specified in part 5510.5140, or to initiate action at the next step of the procedure in parts 5510.5140 to 5510.5170 within the time limits in these parts shall result in forfeiture by the

exclusive representative of the right to pursue the grievance. A failure of an employer representative to comply with the time periods and procedures in parts 5510.5140 to 5510.5170 shall require mandatory alleviation of the grievance as requested in the last statement by the exclusive representative.

REPEALER. Minnesota Rules, parts 5510.4600, 5510.4700, 5510.4800, 5510.4900, 5510.5000, and 5510.5100 are repealed.

ADOPTED RULES

The adoption of a rule becomes effective after the requirements of Minn. Stat. § 14.14-14.28 have been met and five working days after the rule is published in *State Register*, unless a later date is required by statutes or specified in the rule.

If an adopted rule is identical to its proposed form as previously published, a notice of adoption and a citation to its previous *State Register* publication will be printed.

If an adopted rule differs from its proposed form, language which has been deleted will be printed with strikeouts and new language will be underlined. The rule's previous *State Register* publication will be cited.

An emergency rule becomes effective five working days after the approval of the Attorney General as specified in Minn. Stat. § 14.33 and upon the approval of the Revisor of Statutes as specified in § 14.36. Notice of approval by the Attorney General will be published as soon as practicable, and the adopted emergency rule will be published in the manner provided for adopted rules under § 14.18.

Department of Health

Adopted Permanent Rules Relating to Holidays

The rule proposed and published at *State Register*, Volume 10, Number 53, pages 2611-2612, June 30, 1986 (10 S.R. 2611) is adopted as proposed.

Department of Health

Adopted Permanent Rules Relating to Merit System

The rules proposed and published at *State Register*, Volume 11, Number 13, pages 577-582, September 29, 1986 (11 S.R. 577) are adopted as proposed.

Department of Human Services

Adopted Rules Relating to Medical Assistance

The rules proposed and published at *State Register*, Volume 10, Number 52, pages 2556-2584, June 23, 1986 (10 S.R. 2556) are adopted with the following modifications:

Rules as Adopted

MEDICAL ASSISTANCE ELIGIBILITY

9505.0011 ADMINISTRATION.

Subpart 1. **Compliance with state and federal law.** The commissioner shall cooperate with the federal government in order to qualify for federal financial participation in the medical assistance program. ~~Changes to the medical assistance program required by state or federal law or by court order supersede parts 9505.0010 to 9505.0150~~ All persons should be aware that parts 9505.0010 to 9505.0150 of the medical assistance program may be superseded by a change in state or federal law or by a court order prior to the agency having an opportunity to amend these rules.

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.

Statement of Need & Reasonableness

Proposed Permanent Rules Relating to Grievances.

Statement of Need

5510.5110 to 5510.5180, are required to effectuate the provisions of Minn. Stat. § 179A.20, subd. 4 (1984).

Statement of Reasonableness

Grievance arbitration procedures have gained wide acceptability in both the private and public labor relations sectors in the U.S., appearing in an estimated 95% of all collective bargaining agreements. The exact terms and provisions of these procedures has largely been left to the parties to define and even PELRA encourages a negotiated procedure rather than suggesting a model. It is only when the parties fail to agree to their own procedure that the procedure set forth in these parts would come into play. Although the following procedure establishes a rational and fair system for the processing of grievances, it is purposefully not intended to represent the "perfect" procedure. In fact, parties are encouraged to negotiate a procedure which is tailored to their individual circumstances and interest. Should the parties be unable to do so, however, they would still have access to a procedure which is reasonable, impartial and relatively fast.

5510.5110 and 5510.5120, are normal expressions of policy and application.

5510.5130 provides definitions for various terms used in these parts. These definitions are typical within the context of grievance procedures and are, where appropriate, designed to expedite the processing of grievances.

5510.5131 provides a method for computing the passage of time which is consistent with the method used in other agency rules and in the construction of statutes.

5510.5140 provides for a reasonable time frame for the raising of a grievance and encourages informal resolution of the matter by an employee's immediate supervisor.

5510.5150 requires that an unresolved dispute must be reduced to and presented in a timely fashion to the next level of supervision. Because the matter is becoming formalized within the context of the labor contract, and not a matter of inherent individual rights and potentially involves a duty of fair representation by the exclusive representative, the exclusive representative must initiate the action at this level of the procedure.

Time limits provided are reasonable and typical, as is the requirement for a written employer response.

5510.5160 provides the right of the exclusive representative to appeal unresolved issues to the employer's top-level management in a timely fashion. The parties are required to meet and attempt to resolve the dispute and a timely written response is required.

5510.5170 allows the exclusive representative to refer unresolved issues to arbitration, sets forth a fair procedure for selection of an arbitrator, sets forth the legal limits of an arbitrator's authority to bind the parties, provides a reasonable basis for sharing the cost of arbitration, and discourages resort to legalistic rituals and procedures.

5510.5180 provides for the processing of these matters during normal work time without loss of pay or benefits, allows procedural waivers by the parties, and encourages full attention to the procedure and time lines by providing a "default" penalty upon the party which fails to respond in a timely fashion.

Statement of Need and Reasonableness

Changes Made to Proposed Rules Published on December 15, 1986.

5510.5110 Technical change to incorporate part 5510.5190.

5510.5120 Technical change to incorporate part 5510.5190.

5510.5130, Subp. 1 Technical change to incorporate part 5510.5190.

5510.5130, Subp. 5 This change is prompted by comments received and would continue the current right of exclusive representatives to grieve disciplinary action other than termination taken against probationary employees.

5510.5130, Subp. 6 This change is prompted by comments received and serves to simplify the meaning of the term.

5510.5130, Subp. 8 This change applies customary standards for service by mail and is intended to reduce potential controversy over timeliness of service.

5510.5150 This change restores the current 15 day period for serving a written grievance and is prompted by comments received.

5510.5160 This change restores the current ten day period for appealing a written grievance response and is prompted by comments received.

5510.5170, Subp. 1 This change is prompted by comments received and merely clarifies the service obligation of an exclusive representative which intends to arbitrate a matter.

5510.5170, Subp. 3 This change is prompted by comments received and restores the current scope or arbitral authority under the BMS Grievance procedure. It is appropriate to allow the desires of the parties and common professional conduct and practice in labor arbitration to govern the scope questions the deleted language attempted to set forth. No change in practice was intended in this area, yet it is arguable that a reviewing court could infer a change in authority by virtue of the new language in this area.

5510.5190 This change is prompted by comments received and is appropriate to avoid imposing changes in the terms of a contract which may not be agreed upon by the parties to that agreement. Since the parties may have negotiated their own procedure to avoid the provisions of the one being promulgated, but have no opportunity to do so during the life of an existing agreement, they should be permitted to live under the procedure in effect at the time their contract was executed.

STATE OF MINNESOTA

BUREAU OF MEDIATION SERVICES

In the Matter of the Proposed
Adoption of Rules of the Bureau
of Mediation Services Relating
To Grievances

AFFIDAVIT OF MAILING

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

Carol S. Cox being first duly sworn, deposes and says:

That on the 2nd day of December, 1986, at the City of Saint Paul, County of Ramsey, State of Minnesota, she served the attached Notice of Intent to Adopt Rules Without Public Hearing by depositing in the State of Minnesota Central Mail System for United States mail at said City of Saint Paul, 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 State Bureau of Mediation Services for the purpose of receiving notice of the proposed adoption of rules by this agency.

Subscribed and sworn to before me
this 2nd day of December, 1986.

Kenneth J. Boxell
NOTARY PUBLIC

KENNETH L. BOXELL
NOTARY PUBLIC — MINNESOTA
RAMSEY COUNTY
My commission expires April 19, 1991

Bureau of Mediation Services

Proposed Permanent Rules Relating to Grievances

Notice of Intent to Adopt Rules without a Public Hearing

NOTICE IS HEREBY GIVEN that the Director, Bureau of Mediation Services, proposes to amend the above-entitled rules without a public hearing. The Director has determined that the proposed amendment of these rules will be noncontroversial in nature and has elected to follow the procedures set forth in Minnesota Statutes, Sections 14.22-14.28.

Persons interested in this rule are encouraged to submit comment in support of or in opposition to the proposed rule and shall have 30 days to do so. Each comment should identify the portion of the proposed rule being addressed, the reason the comment is being made, and any changes in the proposed rule which are being suggested. The proposed rule may be modified if the modifications are supported by the data and comments received by the Bureau and do not result in substantial change in the intent and purpose of the proposed rule.

Unless 25 or more persons submit written requests for a public hearing on the proposed rule within the 30-day comment period, a public hearing will not be held. Persons requesting a public hearing should state their name and address and are encouraged to identify the portion of the proposed rule addressed by their request, the reason for the request, and any changes in the proposed rule which are being suggested. In the event a public hearing is required, the Bureau will proceed pursuant to Minnesota Statutes, sections 14.11-14.20.

Comments or written requests for a public hearing on these proposed rules should be submitted to:

Paul W. Goldberg, Director
Minnesota Bureau of Mediation Services
205 Aurora Avenue
St. Paul, MN 55103
(612) 296-2525

Authority to adopt this rule is contained in Minnesota Statutes, section 179A.04, subdivision 3(f). A Statement of Need and Reasonableness that describes the need for and the reasonableness of the proposed rule and the information relied upon to support the amendment has been prepared and is available upon request from the Bureau at the above address or telephone number.

Upon adoption of the final rule without a public hearing, the proposed rule, 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 Rule as Adopted, should submit a written request to the address provided above.

A copy of the proposed rules are attached to this notice.

Copies of this notice and the proposed rule are available and may be obtained by contacting the Bureau at the above address or telephone number.

Paul W. Goldberg, Director
Bureau of Mediation Services

Bureau of Mediation Services

Proposed Permanent Rules Relating to Grievances

Notice of Intent to Adopt Rules without a Public Hearing

NOTICE IS HEREBY GIVEN that the Director, Bureau of Mediation Services, proposes to amend the above-entitled rules without a public hearing. The Director has determined that the proposed amendment of these rules will be noncontroversial in nature and has elected to follow the procedures set forth in Minnesota Statutes, Sections 14.22-14.28.

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A copy of the proposed rules are attached to this notice.

Copies of this notice and the proposed rule are available and may be obtained by contacting the Bureau at the above address or telephone number.

Paul W. Goldberg, Director
Bureau of Mediation Services

STATE OF MINNESOTA

BUREAU OF MEDIATION SERVICES

In the Matter of the Proposed Adoption of Rules of the Bureau of Mediation Services Relating to Grievances

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 (1984).

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

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

II. The rules as proposed are needed and reasonable.

STATE OF MINNESOTA

February 4, 1987

Paul W. Goldberg
Director
Bureau of Mediation Services

STATEMENT OF COMPLIANCE WITH RULEMAKING PROCEDURES

In the Matter of the Proposed Adoption of Rules of the State of Minnesota Relating To Grievances

STATEMENT OF COMPLIANCE WITH RULEMAKING PROCEDURES

I, Brad Engdahl, Special Assistant Attorney General, do hereby declare that I have examined the 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.

Brad P. Engdahl
(Special Assistant Attorney General)

Dated: 2/13/87

NOTICE OF SUBMISSION TO ATTORNEY GENERAL

In the Matter of the Proposed Adoption
Of Rules of the State of Minnesota
Relating to Grievances

NOTICE OF
SUBMISSION TO
ATTORNEY GENERAL

IT IS ORDERED THIS 13th day of February, 1987, that Submission to the Attorney General be made involving the above-entitled Rules. The proposed Rules have been modified. Any interested parties may obtain a free copy of the proposed rules, as modified, upon request to this agency.

STATE OF MINNESOTA

Paul W. Goldberg
Director
Bureau of Mediation Services

February 13, 1987

AFFIDAVIT OF MAILING NOTICE OF SUBMISSION OF RULES
TO ATTORNEY GENERAL

In the Matter of the Proposed Adoption of Rules of the State of Minnesota Relating to Grievances

AFFIDAVIT OF MAILING NOTICE OF SUBMISSION TO THE ATTORNEY GENERAL

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

I, Carol S. Cox, Mediation Transcript Specialist, being first duly sworn, deposes and says:

That on the 13th day of February, 1987, in the City of St. Paul, County of Ramsey, State of Minnesota, she served the attached Notice of Submission to the Attorney General by personally delivering it, a copy thereof, properly enveloped, with postage prepaid, on all persons and associations who requested notice that the rules in the above-entitled matter have been submitted to the attorney general.

Carol S. Cox
Signed

Subscribed and sworn to before me
this 13th day of February,
1987.

Kenneth L. Boxell

KENNETH L. BOXELL
NOTARY PUBLIC — MINNESOTA
RAMSEY COUNTY
My commission expires April 19, 1991

CERTIFICATION OF MAILING LIST

STATE OF MINNESOTA
COUNTY OF RAMSEY

CERTIFICATION

In the Matter of the Proposed Adoption
of Rules of the State of Minnesota
Relating to Grievances

I hereby certify that the list of persons, associations, and other interested groups who have requested, pursuant to Minnesota Statutes, section 14.14, subdivision 1, that their names be placed on file with and maintained by the State of Minnesota for the purpose of receiving notice of the proposed adoption of rules by the Bureau of Mediation Services is accurate and complete as of 9 :00 A.M., this 2nd day of December, 19 86 .

DATED February 4, 1987

SIGNED Carol L. Cox

STATE OF MINNESOTA

BUREAU OF MEDIATION SERVICES

In the Matter of the Proposed Adoption of Rules of the Bureau of Mediation Services Relating to Grievances

ORDER ADOPTING RULES

Notice of the Bureau's intent to adopt the above-entitled rules without a public hearing was published in the State Register on December 15, 1986, and was sent by United States mail to all persons on the list maintained by the agency pursuant to Minnesota Statutes section 14.22. After affording interested and affected persons an opportunity to submit comments for 30 days after Notice, receiving no written requests for a public hearing within the 30-day comment period, and determining the need for and reasonableness of the above-captioned rules,

NOW, THEREFORE, IT IS ORDERED that these rules identified as Minnesota Rules: Parts 5510.1210 are adopted this 4th day of February, 1987, pursuant to authority vested in me by Minnesota Statutes section 179A.04, Subd. 3(f) (1984).

STATE OF MINNESOTA

PAUL W. GOLDBERG
Director of Bureau of
Mediation Services

STATE OF MINNESOTA

BUREAU OF MEDIATION SERVICES

In the Matter of the Proposed Adoption of Rules of the Bureau of Mediation Services Relating to Grievances

ORDER ADOPTING RULES

Notice of the Bureau's intent to adopt the above-entitled rules without a public hearing was published in the State Register on December 15, 1986, and was sent by United States mail to all persons on the list maintained by the agency pursuant to Minnesota Statutes section 14.22. After affording interested and affected persons an opportunity to submit comments for 30 days after Notice, receiving no written requests for a public hearing within the 30-day comment period, and determining the need for and reasonableness of the above-captioned rules,

NOW, THEREFORE, IT IS ORDERED that these rules identified as Minnesota Rules: Parts 5510.1210 are adopted this 4th day of February, 1987, pursuant to authority vested in me by Minnesota Statutes section 179A.04, Subd. 3(f) (1984).

STATE OF MINNESOTA

PAUL W. GOLDBERG
Director of Bureau of
Mediation Services

publish USO
if get rqst - then go thru
no responses
re-adopt
if different

AG

Brad Engdahl - 6-1892

Brad - for what purpose
to go thru process
- is off fruitless
excerpt

maj of mind
if sub
55
state
if responses

BMS - grievances Rule

most cmpt stage

jurisdiction

1. didn't publish solicit outside opinion
   do we force to go back?

~~2. pg 6, lines 8-17 - dismissal - exceeds auth?~~
JMM sees no problem ~~Keefe v Cargill?~~

~~3. pg 6, line 15 - what is mandatory alleviation~~

4. pg 6, line 22
   25
   30
   } Adoption? should be effective

RECEIVED
FEB 13 1987
ATTORNEY GENERAL
ADMINISTRATIVE AGENCIES

OFFICE MEMORANDUM

DEPARTMENT: BUREAU OF MEDIATION SERVICES
STATE OF MINNESOTA

TO: Rita Desmond
Attorney General's Office

DATE: February 13, 1987 PHONE: 296-2525

FROM: Paul W. Goldberg
Director
Bureau of Mediation Services

SUBJECT: Rules of the Bureau of Mediation Services Governing Grievances

Enclosed for your review are the following documents concerning the above-entitled rules:

1. Four copies of the rules as adopted (in Revisor's Format);
2. Two copies of the order adopting rules;
3. Order for notice of intent to adopt without a public hearing;
4. Notice of intent to adopt without a public hearing;
5. Certificate (regarding mailing list);
6. Affidavit of mailing;
7. Notice and rules as printed in the State Register; statement of need and reasonableness; copies of comments received and responses to those comments;
8. Notice of Submission to Attorney General;
9. Affidavit of Mailing Notice of Submission to the Attorney General;
10. Findings of fact and conclusions;
11. Certificate of compliance (signed by Special Assistant Attorney General Brad Engdahl).

The Bureau received one request from the Public Employment Relations Board to be advised of our submission of materials to the Attorney General and to receive a copy of the final rules as adopted.

Rule

Changes made on Adopted Rule

Line 7 p1, "Liberally construed"

p2 Line 23 "Reasonable diligence" - OK

p2 Line 19-27 doesn't make sense around Line 23 OK

p3 Line 29-30 "not satisfactory" - OK - up to agency to decide if not satisfy

Notice of Intent

Signed Document is forthcoming - received

However copy from State Reg does not have the Sm-Bus. Stmt, nor the Expenditure of public money Stmt.

Notice to Solicit

Is forthcoming - Only with Small Business Statement

Authority

179A.04 Subd 3(f) OK

"Post-publication comments"

LAW OFFICES
OF
DALE G. SWANSON
SUITE 210 PROFESSIONAL BUILDING
1068 SOUTH LAKE STREET
FOREST LAKE, MINNESOTA 55025

KENNETH J. JACOBS
ASSOCIATE

TELEPHONE
(612) 464-6555

December 4, 1986

Mr. Paul W. Goldberg, Director
Bureau of Mediation Services
205 Aurora Ave.
St. Paul, MN 55103

Re: Proposed Permanent Rules Relating to Grievances

Dear Paul:

I received this day a copy of the above-described proposed rules along with the form cover letter indicating your intent to pursue the rule-making process for non-controversial rules. It is my impression that a number of "controversies" do indeed appear, and I thought I would submit the following items for your consideration hopefully before you proceed with publication in the State Register. In submitting these comments, I have available only the original grievance procedure promulgated in 1971 and an undated copy of the rules formulated as Parts 5510.0100, et. seq. Some of the concerns I describe may accordingly have been dealt with in intervening rule-making actions I did not follow closely enough.

1. Scope. While the adoption of PELRA in 1971 established the director's obligation to promulgate a grievance procedure when the same was not included for some reason in a PELRA contract, the Legislature broadened the scope and application of that procedure by amendments in 1978 and 1979 to Minn. Stat. §125.12, subd. 14 and Minn. Stat. §125.17, subd. 12 in regard to records proceedings generally and those brought by principals and supervisory employees not included in an appropriate unit in particular. The application of the old procedure was always somewhat clumsy by its references to disputes over contract terms, but the new procedure renders this situation substantially worse by other limiting definitions and references to "party", "employee", "exclusive representative" and the purposes of the proposed rules. In an attempt to share these thoughts with you before publication, I do not have any specific recommendations at this time to make concerning this difficulty other than to note

that the explicit reference in both of the education laws described above to your authority under Minn. Stat. §179A.04, subd. 3, clause (h) certainly provides the authority if not the responsibility to promulgate a procedure which can be adapted to these records proceedings. With something over 300 districts not having bargaining units of principals and who knows how many supervisory school employees who are unrepresented, the application of the BMS procedure to records proceedings is obviously quite important.

2. "Party". The proposed definition of this term is restricted to the exclusive representative, the employer and their agents. For the reasons previously stated, this is problematic for individual and unrepresented employees pursuing records proceedings. I wish to also note that the vast majority of contract grievance procedures I have reviewed, as well as the existing BMS procedure, contemplate that an individual employee might not only initiate but pursue a grievance to arbitration. It has in fact long been my view, albeit somewhat controversial, based upon my experience with the authors of PELRA that what is now Minn. Stat. §179A.06, subd. 1 was intended to assure employees an individual right to pursue grievances to arbitration. Certainly after Bowen vs. United States Postal Services, 549 U.S. 212, 103 S.Ct. 588, 74 L.Ed.2d 402 (1983), the liability of an exclusive representative declining to allow arbitration can become substantial. In this regard, I note that Minn. Stat. §179A.04, subd. 3, clause (h) specifically requires your grievance procedure to be available "to any employee in a unit not covered by a contractual grievance procedure". The proposed rules appear to make only STEP I of the procedure available to an employee.

As a related consideration, I note that proposed Rules 5510.5150-5510.5170 refer only to exclusive representatives or their agents. This not only omits individual employees as previously discussed, but it also omits employee organizations voluntarily recognized without BMS certification under Minn. Stat. §179A.14, subd. 1. While it might appear absurd to most public and all private sector people experienced in this area, you would be amazed at how many times I have come across school principal/supervisory employee bargaining pairs who have successfully negotiated contracts for many years without bothering to obtain certification. It has also long been my somewhat controversial view that voluntary

recognition or failure to object under this section triggers for at least one round of bargaining all rights and obligations of PELRA otherwise applicable to public employees represented by exclusive representatives. Once again, this was not a problem under the existing procedure because of its references to simply employees and groups of employees.

As a final related matter, I note that the term "grievant" appearing in proposed Rule 5510.5140 regarding STEP I informal discussion, does not appear in any subsequent provisions of the procedure and is not defined in the proposed rules. This presents the same kind of problem for the categories of individual represented employees and individual unrepresented employees. It seems to me that for purposes of contract grievances without a negotiated procedure, the individual employee clearly has a right to take all steps necessary to pursue the grievance without limitation, and the same is certainly the case in records proceedings. It accordingly seems to me that the BMS procedure should be referring to the grievant as the employee or the representative of the employee, which might or might not be an exclusive representative.

3. "Service". Both the provisions of Rule 5510.4600, subpart 5 proposed to be repealed and Rule 5510.0100, subpart 6 require personal service or by certified mail. Proposed Rule 5510.5130, subpart 8 requires only service by U.S. Mail. Even more troublesome is the provision that service is complete upon receipt. The rules of procedure in the district and appellate courts and every other provision respecting service by mail I am familiar with makes service complete upon mailing. This is generally evidenced in legal disputes by execution of affidavits of service by mail by the person transmitting the materials, but it also can be more formally evidenced by obtaining a mailing receipt when the certified mail item is posted. The contrary provision in the proposed rules would allow if not invite mischief over when and how service is received. Mere refusal to execute a return receipt for several days could destroy the grievance of an innocent party relying upon mail service.

4. "Preserving a Record and Transcripts". Proposed Rule 5510.5170, subpart 5 discourages and extorts a party from requesting that a record of proceedings be kept by obligating that party to further order a transcript and provide copies to the opposing party and arbitrator without charge.

I obviously support the requirement that one obtaining a transcript also provide copies to the other party and the arbitrator because of the parallel found in district court transcripts and the provisions of Minn. Stat. §125.17, subd. 5 respecting termination and demotion hearings of teachers in Cities of the First Class. I do believe, however, that we should distinguish between preserving the record and ordering the transcript for obvious reasons.

5. "Arbitrator's Authority. The existing provisions of Rule 5510.5100 which would be repealed attempt to reflect and paraphrase the limitations imposed upon arbitrators under Minn. Stat. §179A.21, subd. 3 (Minn. Stat. 179A.16, subd. 5). Proposed Rule 5510.5170, subpart 3 omits this limitation. I do not believe that the director has authority to authorize an arbitrator under the BMS procedure to make final determinations of law when all other arbitrators are limited to awards which may not conflict with or cause a penalty to be incurred under State law.

6. "Waiver of Time Limits". The proposed rules at Rule 5510.5180, subpart 3 appear to preserve the equal treatment of employers and employees under the present BMS procedure in the case of untimely action or inaction. As you know and for some reason I have never understood, most exclusive representatives have agreed to contract grievance procedures which penalize only the grievant for untimely action. Nevertheless, both the old and the proposed procedure create some uncertainty for the parties when a time limit has been breached. For example, should an employee or his representative take action to proceed to the next phase of the grievance procedure when the employer has failed to act and presumably triggered the "mandatory alleviation" feature of the present and proposed procedure? The converse dilemma can also arise for the employer when the employee does not act in timely fashion. I would suggest the addition of language such as the following:

> "Any claim of forfeiture or mandatory alleviation of the grievance as a result of failure to comply with time periods and procedures shall not be waived by proceeding to the next step of this procedure unless done so in writing and may be submitted to the arbitrator for final determination."

7. "Time Periods". In connection with the foregoing item, I wonder if you have considered exercising your rule-making authority respecting this procedure to include sample forms which would set forth designated spaces not only for the information required at various steps of the procedure, but which would also focus the parties' attention to the time limits imposed and make reference to their right to modify those limits by mutual agreement. It is interesting to note that even the Supreme Court promulgates forms for attorneys to use to notify defendants they have 20 days to answer a regular civil complaint and to notify state agencies and school districts on appeal by writ of certiorari that they have 30 days to make their return of the record of proceedings. Many PELRA contracts with negotiated grievance procedures include such a sample form, although many of the forms could certainly be improved upon. You have the opportunity not only to add a form of comparable usefulness in connection with the BMS procedure, but to provide a model for improving the other forms annexed to those PELRA contracts.

As a final matter, I note with approval that the maximum processing time in the absence of waiver appears to have been reduced from 82 days to 71 days. I frankly do not know what is a good or better amount of time for either party to respond to the actions or inactions of the other, but I guess I believe that five calendar days can be cutting things rather short. This would be a particular problem if as suggested service was made complete upon mailing. In such cases, the rules of procedure in the district and appellate courts add three days to respond to service by mail. I must also note that the definition of "days" as simply calendar days allows valuable time to run over weekends and those several two day holidays to create a bit of a bind. The court rules in such cases provide that when a period of less than seven days is prescribed, intermediate Saturdays, Sundays and legal holidays are excluded from the computation.

Some of the foregoing items are obviously of less consequence than others, but some items might be important enough for us to request formal proceedings. I would accordingly appreciate your review of these thoughts before the process is triggered by publication.

Sincerely yours,

Dale G. Swanson

Dale G. Swanson
DGS:rc

STATE OF MINNESOTA
BUREAU OF MEDIATION SERVICES
205 AURORA AVENUE
SAINT PAUL 55103
PHONE 612-296-2525

December 2, 1986

Dear Friend and Colleague:

In accordance with your request to be notified regarding rules promulgation of the Bureau of Mediation Services, a copy of Proposed Permanent Rules Relating to Grievances is enclosed.

It is our intent to publish this procedure in a future issue of the State Register and to adopt these as non-controversial rules. (The procedure, of course, only applies to those situations where the parties have failed or chosen not to negotiate their own grievance procedure.)

Sincerely,

PAUL W. GOLDBERG
Director

PWG:csc

Paul-
should choice of arb- vet's preference
or if there is a civil service
hearing - that the grievant
choose one ?



STATE OF MINNESOTA
BUREAU OF MEDIATION SERVICES
205 AURORA AVENUE
SAINT PAUL 55103
PHONE 612-296-2525

November 25, 1986

James Schmid
Minnesota School Boards Association
116 South Third Street
St. Peter, Minnesota 56082

Dear Jim:

We anticipate publishing the proposed revisions to the Director's grievance procedure as non-controversial rules in a December issue of the State Register. I appreciated your pre-publishing review of our draft proposal.

The published rule will incorporate the following changes to the draft we provided you, all of which are the result of comments received:

1) Step One (5510.5140) is clarified to allow group grievances as well as individual employee grievances. The supervisor response period is tied to the presentation of the grievance.

2) The arbitrator's authority clause will remain silent regarding consistency with laws, charters, ordinances, etc.

3) The procedure will editorially discourage regular reliance upon litigious ornaments like transcripts and briefs, although no outright prohibitions are imposed. Verbatim records will be at the sole expense of the party requesting them.

4) An arbitrator's notes remain protected as personal and private property, but tapes made by the arbitrator are not necessarily protected. Tape recordings must be retained by the arbitrator for the full 90 day appeal period provided under the Uniform Arbitration Act.

5) Time limits require adherence by both parties. Failure to adhere will result in forfeiture by the Union or mandatory alleviation on the part of the Employer.

AN EQUAL OPPORTUNITY EMPLOYER

Thanks again for your prior attention to this matter. I trust that you will also review the formal proposal when it is published.

Sincerely,

Paul W. Goldberg
Director

STATE OF MINNESOTA
BUREAU OF MEDIATION SERVICES
205 AURORA AVENUE
SAINT PAUL 55103
PHONE 612-296-2525

November 25, 1986

Joe Flynn
Attorney-at-Law
345 Cedar Building, Suite 800
St. Paul, Minnesota 55101

Dear Joe:

We anticipate publishing the proposed revisions to the Director's grievance procedure as non-controversial rules in a December issue of the State Register. I appreciated your pre-publishing review of our draft proposal.

The published rule will incorporate the following changes to the draft we provided you, all of which are the result of comments received:

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AN EQUAL OPPORTUNITY EMPLOYER

Thanks again for your prior attention to this matter. I trust that you will also review the formal proposal when it is published.

Sincerely,

Paul W. Goldberg
Director

STATE OF MINNESOTA
BUREAU OF MEDIATION SERVICES
205 AURORA AVENUE
SAINT PAUL 55103
PHONE 612-296-2525

November 25, 1986

Ralph T. Smith
Beltrami County Attorney
115 5th Street
Bemidji, Minnesota 56601

Dear Ralph:

We anticipate publishing the proposed revisions to the Director's grievance procedure as non-controversial rules in a December issue of the State Register. I appreciated your pre-publishing review of our draft proposal.

The published rule will incorporate the following changes to the draft we provided you, all of which are the result of comments received:

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2) The arbitrator's authority clause will remain silent regarding consistency with laws, charters, ordinances, etc.

3) The procedure will editorially discourage regular reliance upon litigious ornaments like transcripts and briefs, although no outright prohibitions are imposed. Verbatim records will be at the sole expense of the party requesting them.

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AN EQUAL OPPORTUNITY EMPLOYER

Thanks again for your prior attention to this matter. I trust that you will also review the formal proposal when it is published.

Sincerely,

Paul W. Goldberg
Director

Pre-publication comments & correspondence

STATE OF MINNESOTA
BUREAU OF MEDIATION SERVICES
205 AURORA AVENUE
SAINT PAUL 55103
PHONE 612-296-2525

November 25, 1986

Don Bye
Attorney-at-Law
700 Providence Building
Duluth, Minnesota 55802

Dear Don:

We anticipate publishing the proposed revisions to the Director's grievance procedure as non-controversial rules in a December issue of the State Register. I appreciated your pre-publishing review of our draft proposal.

The published rule will incorporate the following changes to the draft we provided you, all of which are the result of comments received:

1) Step One (5510.5140) is clarified to allow group grievances as well as individual employee grievances. The supervisor response period is tied to the presentation of the grievance.

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AN EQUAL OPPORTUNITY EMPLOYER

Thanks again for your prior attention to this matter. I trust that you will also review the formal proposal when it is published.

Sincerely,

Paul N. Goldberg
Director

MINNESOTA SCHOOL BOARDS ASSOCIATION

1987 CONVENTION JANUARY 19, 20, 21

Box 119 — St. Peter, Minnesota 56082

Tel. 507/931-2450 Metro 612/333-8577
Minnesota Only 800/642-4459

November 18, 1986

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Thief River Falls

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Mankato

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Paul Goldberg, Director
Bureau of Mediation Services
205 Aurora Avenue
St. Paul, MN 55103

Re: Proposed BMS Grievance Procedure

Dear Paul:

We have received the letter and copy of the proposed new BMS grievance procedure, and we do appreciate your sending a copy to our office. Since we have received this, we have had a number of telephone calls from various attorneys and consultants throughout the State of Minnesota representing school districts in the state.

The immediate concern almost unanimously of these people relates to Subd. 5 under Rule 5510.5170, "Transcripts and Briefs." It is the feeling that this subpart is inappropriate, and there are certain situations where transcripts are absolutely necessary and written briefs are also a part of the process.

We also reviewed the proposed grievance procedure with our legal counsel, and they do concur with these issues. It is the feeling of the Minnesota School Boards Association that the letter of November 13, 1986, from Knutson, Flynn and Hetland accurately portrays our feelings in this area. We urge the changes relating to verbatim transcripts and written briefs be deleted.

Thanks for the opportunity to give you our comments.

Yours very truly,

James R. Schmid
Director of Management Services

JRS:sh
cc: Joe Flynn

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LAW OFFICE

Knutson, Flynn & Hetland

PROFESSIONAL ASSOCIATION

345 CEDAR STREET - SUITE 800
PIONEER PRESS/DISPATCH BUILDING
ST. PAUL, MINNESOTA 55101-1062
612-222-2811

JAMES E. KNUTSON
JOSEPH E. FLYNN
PAUL W. HETLAND
PAUL C. RATWIK
JOHN M. ROSZAK
THOMAS S. DEANS
PATRICIA A. MALONEY *
ROBERT A. HUGHES
FRANCES H. GRAHAM
DAVID S. BARTEL
PATRICK J. FLYNN

STEPHEN M. KNUTSON
ANNE F. KRISNIK
CHRISTINE M. SCOTILLO
MICHAEL J. FLYNN

OF COUNSEL
FRED N. PETERSON, JR.

JOHN M. MAAS, PH.D
CONSULTANT

* ADMITTED IN WISCONSIN

November 13, 1986

Mr. Paul Goldberg
Director
Bureau of Mediation Services
205 Aurora Avenue
St. Paul, MN 55103

Dear Mr. Goldberg:

We appreciate the opportunity to react to the rewrite of the Bureau of Mediation rules in reference to the grievance procedure required under M.S. 179A.20, Subd. 4.

While for the most part we think it represents an appropriate update of the provisions, there are two particular modifications that cause us considerable concern.

The first concern is the provision which suggests that arbitrators should discourage written briefs. While we would agree that in many arbitration cases written briefs may be both unnecessary and not warranted because of cost considerations, there are numerous occasions where either one of the parties, or indeed the arbitrator, uncovers an important legal point which was not anticipated before the hearing and can only be effectively dealt with through the written brief. It is our experience that written briefs are only utilized about 15-20% of the time, and more often than not it is not a partisan issue, but rather, the choice of the parties, the arbitrator, or both. In our experience it is the union representative who more often than not insists upon the written brief, occasionally over our objections. We do consider it, however, as do most arbitrators, to be a matter of right if insisted upon by either party. It seems that the matter is presently being handled on a case by case basis by the arbitrator without any major problems, and for this reason we suggest the Bureau rules not address the issue, at least at this time.

The second area of concern relates to the rule which would prohibit the taking of a verbatim transcript during an arbitration procedure. We think this is inappropriate for the following reasons:

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1. Under present practice either party frequently wishes to have a verbatim transcript. In almost all cases the party arranging for the transcript bears the cost, unless there is an agreement by the parties to share the cost. Not infrequently both parties and the arbitrator agree that a verbatim transcript is desirable or necessary, and the proposed rule modification would seem to invade the province of the parties and the arbitrator.

2. The presence of a verbatim transcript in many cases has a salutary effect upon the proceeding whereby witnesses and representatives, as well as the arbitrator, act in a more judicious fashion, which we believe is useful to the process. It is especially important in cases where particular fact situations and disputes in fact make the exact testimony of the parties highly important. We would also suggest that it properly confines witnesses, representatives, and the arbitrator, to the facts and the record, which is so critical in a factfinding, decision-making process. We believe it also has a compelling effect on parties to be careful about telling the truth, which should be the ultimate objective of this type of a proceeding.

3. As you well know, an arbitrator's decision is occasionally subject to appeal on the motion of either party. There simply is no substitute nor effective alternative to the verbatim transcript in the appeal process.

4. The issues that are frequently determined in arbitration proceedings are of immense impact upon the parties, frequently involving the career of an employee or hundreds of thousands of dollars to the employer. It is shocking, it seems to us, that proceedings of such impact should possibly be conducted without the basic provision of a transcript of the testimony and argument. To deprive either party of a verbatim transcript as a matter of right would seem to us to be a violation of fundamental concepts of due process.

5. Frequently the nature of an arbitration proceeding will involve a history of past practice and bargaining history relationships between the parties. Not infrequently participants in the process are no longer available as witnesses because they cannot be located, or are perhaps deceased, or, occasionally we may have a witness giving conflicting testimony on a point that has been the subject of his/her prior testimony. In all such cases, both parties

deserve the right to retain the record of such important proceedings.

In summary, we believe that the maintaining of a verbatim transcript is the right of either party in an arbitration proceeding at the party's own cost and choice. We believe that a rule which would prohibit the verbatim transcript violates the fundamental rights of the party seeking to utilize it, and would serve no useful purpose. Moreover, we suggest such an encroachment on party's rights would at least diminish the confidence of the parties in the process.

For the reasons outlined herein, we urge that the two changes relating to verbatim transcripts and written briefs be deleted from the proposed rules.

Please note that this position reflects all of the attorneys in our office, many of whom are extensively involved in representing parties in the arbitration process.

Sincerely,

Joseph E. Flynn

Joseph E. Flynn

JEF:jt

HALVERSON WATTERS BYE DOWNS & MAKI, LTD.
ATTORNEYS AND COUNSELLORS
700 PROVIDENCE BUILDING
DULUTH, MINNESOTA 55802

Telephone
(218) 727-6833

GENE W. HALVERSON
WILLIAM D. WATTERS
DON L. BYE
ANTHONY S. DOWNS
STEVEN C. OVEROM
STEVEN L. REYELTS
CHARLES B. BATEMAN
M. KAYE JACOBS
STEVEN W. SCHNEIDER
MICHAEL S. HUSBY
GARY E. PETER
NIKKI M. NEWMAN

ROBERT C. MAKI
Counsel

November 7, 1986

Mr. Paul Goldberg
State of Minnesota
Bureau of Mediation Services
205 Aurora Avenue
Saint Paul, MN 55103

Dear Paul:

You recently invited reaction to your proposed changes in the grievance procedure to be promulgated by the director pursuant to the Public Employment Labor Relations Act.

Somewhat surprisingly, the grievance procedure that you promulgate is still invoked as a part of the collective bargaining process with fair frequency. Obviously, it becomes a matter of importance with any new unit, but I have also found that it is quite often referred to at anytime that there are negotiation proposals for change in existing grievance procedures. Therefore what is contained in your promulgated procedure does have continued importance.

My overall reaction, is that the old or existing grievance procedure in total is preferable to the draft proposal presently being considered. I say that primarily because of the imbalance regarding adherence to time lines which would have the effect of denying the grievance, however meritorious, if the union side misses a time line, yet when the employer misses a time line simply directing the union to proceed to the next step. A lot of time has been wasted in negotiating for that or similar procedure. I say wasted because it is seldom agreed to, and when it is agreed to it is not often followed. Plain and simple, when a grievance is won on a procedural basis nothing is resolved. What you have is a lot of fault finding, buck passing, anger, resentment and potential for getting even at some later date all without addressing and resolving the problem that created the grievance in the first instance.

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In any event, to the extent that the opinion of one practitioner might have any impact, I most strongly oppose the proposed one sided changes in time line adherence requirements. It is easy to say that unions ought to be sufficiently sophisticated to meet such time lines by now, but it is often not the union or the union representative who is familiar with the contract that might be called upon to meet such dead lines. Also, it just does not give due consideration to the realities of geography i.e., distance between employee, unit, employer offices and employee representative offices; it does not give due account to the amount of time taken up by dictating, mailing, etc; it does not take into account the demands of schedules, travel time, vacation periods, etc.

Overall, I believe the better view regarding time lines is to put them in the grievance procedure, but not make them specifically jurisdictional, then let arbitrators decide if any falure to meet such grievance time lines is so significant to justify procedural denial of the grievance or granting of the grievance depending upon who fails to meet the time lines.

In further reaction to your draft proposal, and some of these reactions are very minor and likely have already been considered by you and your offices, I will simply comment following the order of your draft.

Step One refers to employee in the singular. Does the procedure sufficiently anticipate and allow for instances where a number of employees will be filing a single grievance? Also, have you considered those cases where it might be appropriate for the exclusive representative to initiate a grievance?

I very much appreciate your language that triggers the first time line after actual knowledge or after learning "through reasonable diligence."

A very small matter, but at the end of Step One the supervisor is called upon to respond "within five days". It may be clear to readers and users, but the question may also be asked within five days of what? I assume it would be within five days of receipt of grievance, but it could also be argued that it would be within five days of the above mentioned 21.

Just as a matter of style throughout, would it be more clear and easy for using persons to follow if back references from successive steps where just to "step one" or "step two" rather than to the eight digit rule numbers?

As to Step Two, is it intentional that the written grievance may only be <u>served</u> by the exclusive representative. The draft does not appear to provide for instances when such written grievance might be served by the affected employee or employees.

Another very minor comment as to style in the second sentence in Step Two, the language reads "the provisions of the contract for

the just cause situation in dispute". Is it worth inserting the further directive by "the provisions of the contract that apply," for the just cause situation in dispute.

Are there enough situations of absolute refusal on the part of a party to strike names that justify or require all the language contained in lines 10 thru page 19 on page four of the draft? Usually, if there is a point of refusal it precedes the receipt of a list from you. Also, if there is refusal to comply with appropriate grievance and arbitration procedures that is quite clearly an unfair labor practice. Perhaps the language will move some recalcitrant party under the anticipated circumstances, but it is simply a question of whether it occurs often enough, and also whether the proposed language would really resolve the situation if and when it does occur. Also do you then select at random or does the cooperating party still get to make strikes from the list?

Next, I would raise objection and question to the second sentence in sub. part 3 under arbitrator's authority, "the arbitrators shall consider and decide only the specific issue submitted in writing by the parties." I recall a number of occasions at commencement of an arbitration hearing when the parties still could not agree upon language that would set forth the issues at hand. Often times the arbitrator is called upon to frame as well as to decide the issues. How then, can an arbitrator be limited to consider only a "specific issue" whatever that might be determined to be, as submitted in writing by the parties. I think the proposed language assumes a more ideal arbitration environment then what we have to live with. Also, I think there is a fair amount of arbitral and judicial precedent that states that grievants and parties, often not learned in law or drafting, cannot be expected to know and perfectly present all statements as to issue, contract provision or supporting positions for that matter.

Also, under arbitrator's authority, I am simply questioning whether recent legislation and precedent have probably downgraded the effect and application of municipal charters, ordinances and resolutions as compared to the provisions of PELRA, and then question whether continued reference to such documents is justified. As you might well guess, I also question whether it is necessary or appropriate to tell the arbitrator that she/he must give due consideration to the positions of the parties and can only base the award solely upon interpretation and application of the terms of the contract and facts presented. I think that is somewhat contrary to legal precedence and certainly contrary to actual practice. There are and will remain legitimate situations in which an arbitrator will go beyond the confines of the contract for direction in determination of the matter.

While I sympathize with the motivation in prohibiting verbatim transcripts at arbitration hearing and would agree as to most cases, I'd hesitate to mandate an absolute preclusion having in mind, that in some cases verbatim transcript may be the best route to follow.

I do agree that far too many briefs are submitted in arbitration matters where they are not necessary, and agree that they ought to be more limited than at present.

I do not agree that any recordings, particularly mechanical recordings which do not include any personal notes of the arbitrator, must be kept from the parties. There are times and cases where opportunity for reference or review by the parties of a mechanical transcription can be most helpful when post hearing briefs are submitted. Also, while I agree to protection of privacy and integrity of personal records of the arbitrator, I still believe that the appropriate time period for an arbitrator to keep those at hand in case future reference is required or decision is questioned should be at least as long or somewhat longer than the time period for appeal or review of the arbitrator's decision i.e. 90 days or perhaps even 120 days following issuance of the award.

I recognize that in contemplating change and redrafting documents of proposed six pages in length that you have to balance the equities, that you have to respond to the numerous complaints and suggestions that come at you from the parties and participants, but also believe that change should not be for change sake and should be to achieve a better result then existed before. I am not sure in balance that the draft proposal does that as it presently exists.

It is no secret that my reaction reflects that I represent unions and employees, and seldom management, but also reflects, I hope, a somewhat practical, and sometimes middle of the road, reaction to the language being reviewed.

For what it is worth.

Sincerely yours,

Don L. Bye

DLB/m

LAW OFFICES
SMITH, CARPENTER, BENSHOOF & KLEIN, P.A.
P.O. BOX 1420
BEMIDJI, MINNESOTA 56601

RALPH T. SMITH
RONALD K. CARPENTER
PAUL T. BENSHOOF
MARY KAY KLEIN
THOMAS T. SMITH

TELEPHONE: (218) 751-3130
STREET ADDRESS:
115 FIFTH STREET
BEMIDJI, MINNESOTA 56601

October 31, 1986

Mr. Paul W. Goldberg, Director
State of Minnesota
Bureau of Mediation Services
205 Aurora Ave.
St. Paul, Minnesota 55103

Dear Mr. Goldberg:

We thank you for a copy of the proposed Rules relating to grievance procedures to be used when parties have not reached agreement on grievance procedures.

The purpose of this letter is to register an objection to the proposed subpart 5 of Rule 5510.5170. This subpart relates to transcripts and briefs at the arbitration level. The first sentence of this subpart provides that there will be no verbatim transcripts permitted. I believe this proposed rule is objectionable for a number of reasons.

1. Occasionally there is a threshold question of whether of not a matter properly is the subject of grievance arbitration. Generally, the courts have held that the issue should be submitted first to the arbitrator subject to review by the courts. It will be impossible for the courts to review the initial determination of the arbitrator if a verbatim transcript cannot be made available to the court. The absence of a transcript also might prevent an adequate review of an arbitration award by the courts in the other limited circumstances where such an award is subject to review.

2. Many times a grievance involves a conflict in the interpretation that the parties have given to prior negotiations. The testimony quite often involves rather detailed recollections of prior negotiations and comprehensive statements relating to the understandings and beliefs of the parties. It is important to preserve these statements of interpretation and opinion not only for the particular grievance which

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presently is subject to arbitration but also for future grievances involving the same general areas of the contract. A verbatim transacript of one grievance proceedings preserves this important testimony and is very helpful in future disputes involving the same topics. This is especially true when the transcript involves testimony of the actual contract negotiators who, because of retirement, transfer, etc., become unavailable when future disputes arise.

3. In any proceedings in which the parties can be affected economically or otherwise, there is the sad but real possibility of perjury. The legal penalties for perjury tend to reduce the likelihood that perjury will occur. However, the deterrent effect of these laws is eradicated if there is no transcript of the perjured testimony upon which to base the perjury charges. The prohibition of transcripts grants a license for perjury.

4. There is no significant reason to ban transcripts. Perhaps there is the fear that the hearing will be slowed down by the formalities associated with a verbatim transcript. However, in my experiences it is not true. As a matter of fact, I believe the opposite occurs because the arbitrator does not have to maintain as detailed notes.

Of course, transcripts are not needed in all cases and are not requested by the parties in a majority of cases. However, the right to have a verbatim transcript in the appropriate cases should be maintained.

My second objection to this subpart 5 relates to the second sentence which provides that the arbitrator should discourage written briefs. There are, of course, many cases in which written briefs are not of value to the arbitrator and serve only to result in an escalation of costs to the parties and delay in the issuance of the award. However, there are many other cases in which written briefs are of indispensible value to the arbitrator. It has been my experience that arbitrators sometimes have discouraged briefs but in other cases have encouraged briefs. I believe that this is a function which should be left strictly to the arbitrator. The rules should be neutral on this subject and should provide neither for the encouragement or discouragement of written briefs.

The grievance procedures adopted by the Bureau of Mediation Services are used to a wide extent and particularly by the smaller municipalities and school districts. Numerous contracts have been negotiated which rely either directly or indirectly upon the rules of the Bureau of Mediation Services. Therefore, it is important that these rules not be changed unless an important public need is fulfilled by the change. The two changes discussed in this letter do not satisfy any public need and, in fact, are detrimental to the public needs. Accordingly, I urge you to delete the two first sentences of subpart 5 when the final rules are promulgated.

Yours very truly,

Ralph T. Smith

RTS/lo

STATE OF MINNESOTA
BUREAU OF MEDIATION SERVICES
205 AURORA AVENUE
SAINT PAUL 55103
PHONE 612-296-2525

December 2, 1986

Dear Friend and Colleague:

In accordance with your request to be notified regarding rules promulgation of the Bureau of Mediation Services, a copy of Proposed Permanent Rules Relating to Grievances is enclosed.

It is our intent to publish this procedure in a future issue of the State Register and to adopt these as non-controversial rules. (The procedure, of course, only applies to those situations where the parties have failed or chosen not to negotiate their own grievance procedure.)

Sincerely,

PAUL W. GOLDBERG
Director

PWG:csc

AN EQUAL OPPORTUNITY EMPLOYER

PAUL W. GOLDBERG
Director, Bureau of Mediation Services
296-1496

EO Bolstad 11/13

Doesn't see how we can preclude a transcript if both parties desire one.

Have reviewed proposed draft & sees no problems.

Lacy Johnson —

Cancellation fee paid by party requesting

same w/ clarification

11/13

BMS PROPOSED RULE CHANGES FOR GRIEVANCE PROCEDU
MINNESOTA EDUCATION ASSOCIATION COMMENTS
JANUARY 12, 1987

CITATION	PROPOSAL	COMMENT
l. 11-15	New BMS grievance procedure will replace former procedure	Several questions arise: 1.) Will new BMS grievance procedu replace former BMS procedure where parties do n attempt to negotiate or attempt a fail to agree on a procedure 2.) If parties attempt and fail to ag on proposals to current negotiated grievance procedure, will the new BMS grievance procedure take eff 3.) Will parties wishing to maintain ol BMS procedure have to "negotiat"; 4.) When would new BMS grievance procedure become effective
, l. 22	Eliminate Saturday, Sunday and legal holidays.	This drastically reduces th time grievance has to respon which could be troublesome i the education industry.
, l. 30-33	Where no contract exist, probationary employees would have no access to grieve any disciplinary action. allow on	Understandably, you may w to prevent probationary empl ees from grieving dismissal b not all forms of discipline.
, l. 3	"Regular original" are part of a new sentence to discribe non-probationary employee	The words "regular" and "original" and unnecessa and only confuse the meaning of this sentenc

TATION	PROPOSAL	COMMENT
2, l. 23	Requires the employee to initiate a grievance within 21 days of event.	The proposal would not permit the exclusive representative to grie when the employee fails or choo not to grieve. This can be reme by add "or the exclusive represe tive after employee.
-, l. 5	Written grievance must be served within 10 days rather than 15 days in the previous procedure	It is often difficult for grievan exclusive rep to meet and 10 day may not be sufficient; particular since saturday, sunday and leg holidays have been eliminated Return to former 15 days.
3, l. 20	Requires grievance to be advanced within 5 days of employer's response.	This time period is to short. I many cases it will be extremely ficult for grievant to meet with clusive representative to make decision. Many legitimate griev would be forfeited on timelin Return to former language
-, l. 33-34	The exclusive representative may serve written notice of its intent to refer the case to arbitration	"On the other party" should be inserted between notice and of to make it more clear w is being given notice.
l. 26-28	Limits the arbitrators authority to the specific written statement	The parties are often times in dis gree as to the issue before the arbitrator. In such cases the arbitrator has the discretion and authority to frame the issue The proposed language would n permit this which would be a

tation	PROPOSAL	COMMENT
		lost to the arbitration process. This sentence should be eliminat
, l.28-31	The award must be based solely upon the arbitrator's interpretation and application of the written terms of the contract and the facts presented by the parties.	This provision would eliminate all implied terms of the contract a any employment condition cover under employer policy or rul This sentence should be elimina
, l.31-34	Release time for employees is limited to three.	In a class action grievance mo than three representatives from each party may be necessary. Return to previous language.

Bureau of Mediation Services

Proposed Permanent Rules Relating to Grievances

Rules as Proposed (all new material)

5510.5110 POLICY.

Parts 5510.5110 to 5510.5180 are to be liberally construed so as to effectuate the purposes of Minnesota Statutes, chapter 179A, the Public Employment Labor Relations Act.

5510.5120 APPLICATION.

Parts 5510.5110 to 5510.5180 are applicable when a public employer and an exclusive representative of public employees have not reached agreement on or do not have access to a contract grievance procedure as required by Minnesota Statutes, section 179A.20, subdivision 4.

5510.5130 DEFINITIONS.

Subpart 1. **Scope.** For the purposes of parts 5510.5110 to 5510.5180 the words defined in this part have the meanings given them.

Subp. 2. **Bureau.** "Bureau" means the Bureau of Mediation Services.

Subp. 3. **Days.** "Days" means calendar days.

Subp. 4. **Employee.** "Employee" means any public employee who is employed in a position that is part of an appropriate unit for which an exclusive representative has been certified under Minnesota Statutes, section 179A.12.

Subp. 5. **Grievance.** "Grievance" means a dispute or disagreement regarding the application or interpretation of any term of a contract required under Minnesota Statutes, section 179A.20, subdivision 1. If no contract exists between the exclusive representative and the employer, grievance means a dispute or disagreement regarding the existence of just cause in the discipline or termination of nonprobationary employees.

Subp. 6. **Nonprobationary.** "Nonprobationary" means an

re application of written personnel policies;

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employee who has completed an initial, formally defined probationary period required as a part of the public employer's regular original employment process.

Subp. 7. **Party.** "Party" means either the exclusive representative and its authorized agent or the employer and its authorized representative.

Subp. 8. **Service.** "Service" means personal delivery or service by the United States Postal Service, postage prepaid and addressed to the individual or organization at its last known mailing address. Service under parts 5510.5110 to 5510.5180 is effective upon receipt.

5510.5131 COMPUTATION OF TIME.

In computing any period of time prescribed or allowed by parts 5510.5110 to 5510.5180, the day or act or event upon which a period of time begins to run shall not be included. The last day of the time period shall be included unless it is a Saturday, Sunday, or holiday.

5510.5140 STEP ONE.

When an employee or group of employees represented by an exclusive representative has a grievance, the employee or an agent of the exclusive representative shall attempt to resolve the matter with the employee's immediate supervisor within 21 days after the employee, through the use of reasonable diligence, should have had knowledge of the event or act giving rise to the grievance. The supervisor shall then attempt to resolve the matter and shall respond in writing to the grievant and the agent of the exclusive representative within five days after the grievance is presented.

5510.5150 STEP TWO.

If the supervisor has not been able to resolve the grievance or has not responded in writing within the time period provided in part 5510.5140 (step one), a written grievance may be served on the next appropriate level of supervision by the exclusive representative. The written grievance shall provide a

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concise statement outlining the nature of the grievance, the provisions of the contract or the just cause situation in dispute, and a statement of the relief or remedy requested. The written grievance must be served on the employer's representative within ten days after the immediate supervisor's response was due under part 5510.5140 (step one). The employer's representative shall meet with the agent of the exclusive representative within five days after service of the written grievance and both parties shall attempt to resolve the grievance. The employer's representative shall serve a written response to the grievance on the agent of the exclusive representative within five days of the meeting. The response shall contain a concise statement of the employer's position on the grievance and the remedy or relief the employer is willing to provide, if any.

5510.5160 STEP THREE.

If the grievance is not resolved under part 5510.5150 (step two), the exclusive representative may serve the written grievance upon the chief administrative agent of the employer or that person's designated representative within five days after the written response required by part 5510.5150 (step two) was due. An agent of the exclusive representative shall meet with the chief administrative officer or designee within five days of service of the written grievance and they shall attempt to resolve the matter. The chief administrative officer or designee shall serve a written response to the grievance on the agent of the exclusive representative within five days of the meeting.

5510.5170 ARBITRATION.

Subpart 1. **Referral to arbitration.** If the response of the chief administrative officer or designee is not received within the period provided in part 5510.5160 (step three) or is not satisfactory, the exclusive representative may serve written notice of its intent to refer the case to arbitration within ten days after the response required by part 5510.5160 (step three)

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is due.

Subp. 2. **Selection of arbitrator.** Within ten days of the service of written notice of intent to arbitrate, the employer's chief administrative officer or designee shall consult with the agent of the exclusive representative and endeavor to mutually agree upon an arbitrator to hear and decide the grievance. If the parties do not agree upon the selection of an arbitrator, either party may request a list of impartial arbitrators from the bureau. The parties shall alternately strike names from a list of five names to be provided by the bureau until only one name remains, and the remaining name shall be the designated arbitrator. The determination of which party will commence the striking process shall be made by mutual agreement or a flip of a coin. If one party refuses to strike names from the list provided by the bureau, the other party may serve written notice of this fact upon the bureau, with a copy to the offending party. Unless it is confirmed that the parties have otherwise selected or agreed upon an arbitrator within three days of service of the notice of refusal or failure to strike names, the bureau shall designate one name from the list previously provided to the parties and the person so designated by the bureau shall have full power to act as the arbitrator of the grievance.

Subp. 3. **Arbitrator's authority.** The arbitrator shall have no authority to amend, modify, add to, or subtract from the terms of an existing contract. The arbitrator shall consider and decide only the specific issue submitted in writing by the parties. The arbitrator shall give due consideration to the positions of the parties and base the award solely upon the arbitrator's interpretation and application of the written terms of the contract and the facts presented by the parties. The decision and award of the arbitrator shall be final and binding upon both parties.

Subp. 4. **Arbitration expenses.** The employer and the exclusive representative shall share equally the arbitrator's fees and necessary expenses. Cancellation fees shall be paid by

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the party requesting the cancellation and any fees incurred as the result of a request for clarification shall be paid by the party requesting the clarification. Each party shall be responsible for compensating its own representatives and witnesses except to the extent provided by part 5510.5180, subpart 1.

Subp. 5. **Transcripts and briefs.** Because arbitration is intended to provide a simple, speedy alternative to litigation processes, the use of transcripts and briefs should be considered only in exceptional circumstances. If a verbatim record is required, it may be prepared providing the party desiring the record pays the cost and makes a copy available to the other party and the arbitrator without charge. The arbitrator may maintain written notes of the hearing and may use an electronic recording device to supplement the note taking. These notes shall be considered the arbitrator's private and personal property and shall not be made available to the parties or another third party. If a recording device is used by the arbitrator to supplement the arbitrator's notes, the arbitrator shall retain the recording for a period of 90 days following the issuance of the award.

Yours cost

5510.5180 PROCESSING OF GRIEVANCES.

Subpart 1. **Release time.** To the fullest extent feasible, the processing of grievances under parts 5510.5110 to 5510.5180 shall be conducted during the normal business hours of the employer. Employees designated by the exclusive representative shall be released from work without loss of regular nonovertime earnings as a result of their necessary participation in meetings or hearings held pursuant to parts 5510.5110 to 5110.5180, whenever such release is consistent with the ability of the employer to conduct safe and reasonable operations. No more than three employees shall be entitled to compensation for participation in a single meeting or hearing with respect to any one grievance.

Subp. 2. **Waiver of steps.** The parties may by written

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mutual agreement waive participation in the grievance steps in parts 5510.5140 to 5510.5160 and may similarly agree to extend the time limits established by parts 5510.5140 to 5510.5170.

Subp. 3. **Time limits.** A failure to raise a grievance within the time limits specified in part 5510.5140, or to initiate action at the next step of the procedure in parts 5510.5140 to 5510.5170 within the time limits in these parts shall result in forfeiture by the exclusive representative of the right to pursue the grievance. A failure of an employer representative to comply with the time periods and procedures in parts 5510.5140 to 5510.5170 shall require mandatory alleviation of the grievance as requested in the last statement by the exclusive representative.

See 5510.5150

REPEALER. Minnesota Rules, parts 5510.4600, 5510.4700, 5510.4800, 5510.4900, 5510.5000, and 5510.5100 are repealed.

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Carol - File

MINNESOTA EDUCATION ASSOCIATION

Forty-One Sherburne Avenue
St. Paul, Minnesota 55103
612-227-9541

A POWERFUL FORCE FOR BETTER EDUCATION

February 3, 1987

Mr. Paul Goldberg, Director
Bureau of Mediation Services
205 Aurora Avenue
St. Paul, MN 55103

RE: BMS Grievance Procedure Proposal

Dear Mr. Goldberg:

Please find enclosed a typed copy of the MEA comments regarding the proposed changes in the BMS grievance procedure. The enclosed comments represent areas where MEA finds objections to the proposed procedure. As stated to you in your office, MEA finds most of the changes beneficial to expediting and reducing the cost of the arbitration process.

Paul, you are to be commended for your efforts on this project. Do not hesitate calling on our office if you believe we can assist you in any way to complete this work.

Sincerely,

David Moracco

David Moracco
Director of Arbitration Services

DM/cf
Enc.

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4 FEB 87

President Robert E. Astrup, Columbia Heights
Vice President Walter H. Munsterman, Anoka
Secretary-Treasurer Larry B. Koenck, Rochester
Acting Executive Director William E. Blick

MEA is an equal opportunity/affirmative action employer and organization and is in compliance with all state and federal laws prohibiting discrimination.

BMS PROPOSED RULE CHANGES FOR GRIEVANCE PROCEDURES

MINNESOTA EDUCATION ASSOCIATION COMMENTS

FEBRUARY 3, 1987

CITATION	PROPOSAL	COMMENT
p.1, l.11-15	New BMS grievance procedure will replace former procedure	Several questions arise: 1) Will new BMS grievance procedures replace former BMS procedures where parties do not attempt to negotiate or attempt and fail to agree on a procedure? 2) If parties attempt and fail to agree on proposals to current negotiated grievance procedures, will the new BMS grievance procedure take effect? 3) Will parties wishing to maintain old BMS procedures have to "negotiate" them? 4) When would new BMS grievance procedures become effective?
p.1,l.22	Eliminate Saturday, Sunday and legal holidays.	This drastically reduces the time the grievant has to respond, which could be troublesome in the education industry where holiday breaks are common.
p.1,l.30-33	Where no contract exists, probationary employees would have no access to grieve any disciplinary action.	Understandably, you may wish to prevent probationary employees from grieving dismissal but not all forms of discipline.
p.2,l.3	"Regular and original" are terms used to describe non-probationary employees.	The words "regular" and "original" are unnecessary and only confuse the meaning of this sentence.

CITATION	PROPOSAL	COMMENT
p.2,l.23	Requires the employee to initiate a grievance within 21 days of event.	The proposal would not permit the exclusive representative to grieve when the employee fails or chooses not to grieve. This can be remedied by adding "or the exclusive representative" after employee.
p.3,l.5	Written grievance must be served within 10 days rather than 15 days in the previous procedure.	It is often difficult for grievant and exclusive representative to meet and 10 days may not be sufficient particularly since Saturday, Sunday and legal holidays have been eliminated. Return to former 15 days.
p.3,l.20	Requires grievance to be advanced within five days of employer's response.	This time period is too short. In many cases it will be extremely difficult for grievant to meet with exclusive representative to make a decision. Many legitimate grievances would be forfeited on timeliness. Return to former language.
p.3,l.33-34	The exclusive representative may serve written notice of its intent to refer the case to arbitration.	"On the other party" should be inserted between notice and to make it more clear who is being given notice.
p.4,l.26-28	Limits the arbitrator's authority to the specific written statement.	The parties are oftentimes in disagreement as to the issue before the arbitrator. In such cases, the arbitrator has the discretion and authority to frame the issue. The proposed language would not permit this which would be a loss to the arbitration process. This sentence should be eliminated.
p.4,l.28-31	The award must be based solely upon the arbitrator's interpretation and application of the written terms of the contract and the facts presented by the parties.	This provision would eliminate all implied terms of the contract and any employment condition covered under employer policy or rules. This sentence should be eliminated.

CITATION	PROPOSAL	COMMENT
p.5.1.31-34	Release time for employees is limited to three.	In a class action grievance more than three representatives from each party may be necessary. Return to previous language.

Doc. 0898V

STATE OF MINNESOTA

BUREAU OF MEDIATION SERVICES

205 AURORA AVENUE
SAINT PAUL 55103

PHONE 612-296-2525

February 4, 1987

Dr. Ron Madsen
P. O. Box 8
Emmons, MN 56024

Dear Dr. Madsen:

Enclosed per your telephone request on January 15, 1987, is a copy of the revised rules promulgating the grievance procedure required under Minn. Stat. § 179A.20, Subd. 4.

These rules were promulgated in the State Register on December 15, 1986, and public comment was solicited by virtue of that promulgation. The deadline for comment on these rules was January 15, 1987. Because we did not receive a request for public hearing on these rules from 25 or more persons, and because I regard the proposed changes as non-controversial, no public hearing was necessary prior to their adoption.

Please feel free to contact me if there are any questions concerning the new rule.

Sincerely,

PAUL W. GOLDBERG
Director

PWG:csc

Enclosure

AN EQUAL OPPORTUNITY EMPLOYER

STATE OF MINNESOTA
BUREAU OF MEDIATION SERVICES
205 AURORA AVENUE
SAINT PAUL 55103
PHONE 612-296-2525

October 29, 1986

Dear Friend and Colleague:

During a review of BMS Rules, we realized that in the 1984 re-write of our public sector rules we failed to include or update the grievance procedure required under M.S. § 179A.20, subd. 4. It is our intention to recodify that procedure and to incorporate it into the booklet of public sector BMS rules which we publish through the State Documents Division.

A draft of the proposed rules in this regard are enclosed for your review and comment. It is our intent to publish this procedure in a future issue of the State Register and to adopt these as non-controversial rules. (The procedure, of course, only applies to those situations where the parties have failed or chosen not to negotiate their own grievance procedure.)

We would appreciate receiving any suggestions or comments you might have prior to November 14, 1986.

Sincerely,

PAUL W. GOLDBERG
Director

PWG:rg

Bureau of Mediation Services

Proposed Permanent Rules Relating to Grievances

Rules as Proposed (all new material)

5510.5110 POLICY.

Parts 5510.5110 to 5510.5180 are to be liberally construed so as to effectuate the purposes of Minnesota Statutes, chapter 179A, the Public Employment Labor Relations Act.

5510.5120 APPLICATION.

Parts 5510.5110 to 5510.5180 are applicable when a public employer and an exclusive representative of public employees have not reached agreement on or do not have access to a contract grievance procedure as required by Minnesota Statutes, section 179A.20, subdivision 4.

5510.5130 DEFINITIONS.

Subpart 1. Scope. For the purposes of parts 5510.5110 to 5510.5180 the words defined in this part have the meanings given them.

Subp. 2. Bureau. "Bureau" means the Bureau of Mediation Services.

Subp. 3. Days. "Days" means calendar days.

Subp. 4. Employee. "Employee" means any public employee who is employed in a position that is part of an appropriate unit for which an exclusive representative has been certified under Minnesota Statutes, section 179A.12.

Subp. 5. Grievance. "Grievance" means a dispute or disagreement regarding the application or interpretation of any term of a contract required under Minnesota Statutes, section 179A.20, subdivision 1. If no contract exists between the exclusive representative and the employer, grievance means a dispute or disagreement regarding the existence of just cause in the discipline or termination of nonprobationary employees.

Subp. 6. Nonprobationary. "Nonprobationary" means an

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employee who has completed an initial, formally defined probationary period required as a part of the public employer's regular original employment process.

Subp. 7. **Party.** "Party" means either the exclusive representative and its authorized agent or the employer and its authorized representative.

Subp. 8. **Service.** "Service" means personal delivery or service by the United States Postal Service, postage prepaid and addressed to the individual or organization at its last known mailing address. Service under parts 5510.5110 to 5510.5180 is effective upon receipt.

5510.5131 COMPUTATION OF TIME.

In computing any period of time prescribed or allowed by parts 5510.5110 to 5510.5180, the day or act or event upon which a period of time begins to run shall not be included. The last day of the time period shall be included unless it is a Saturday, Sunday, or holiday.

5510.5140 STEP ONE.

When an employee represented by an exclusive representative has a grievance, the employee or an agent of the exclusive representative shall attempt to resolve the matter with the employee's immediate supervisor within 21 days after the employee, through the use of reasonable diligence, should have had knowledge of the event or act giving rise to the grievance. The supervisor shall then attempt to resolve the matter and shall respond in writing to the grievant and the agent of the exclusive representative within five days.

5510.5150 STEP TWO.

If the supervisor has not been able to resolve the grievance or has not responded in writing within the time period provided in part 5510.5140, a written grievance may be served on the next appropriate level of supervision by the exclusive representative. The written grievance shall provide a concise statement outlining the nature of the grievance, the provisions

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of the contract or the just cause situation in dispute, and a statement of the relief or remedy requested. The written grievance must be served on the employer's representative within ten days after the immediate supervisor's response was due under part 5510.5140. The employer's representative shall meet with the agent of the exclusive representative within five days after service of the written grievance and both parties shall attempt to resolve the grievance. The employer's representative shall serve a written response to the grievance on the agent of the exclusive representative within five days of the meeting. The response shall contain a concise statement of the employer's position on the grievance and the remedy or relief the employer is willing to provide, if any.

5510.5160 STEP THREE.

If the grievance is not resolved under part 5510.5150, the exclusive representative may serve the written grievance upon the chief administrative agent of the employer or that person's designated representative within five days after the written response required by part 5510.5150 was due. An agent of the exclusive representative shall meet with the chief administrative officer or designee within five days of service of the written grievance and they shall attempt to resolve the matter. The chief administrative officer or designee shall serve a written response to the grievance on the agent of the exclusive representative within five days of the meeting.

5510.5170 ARBITRATION.

Subpart 1. Referral to arbitration. If the response of the chief administrative officer or designee is not received within the period provided in part 5510.5160 or is not satisfactory, the exclusive representative may serve written notice of its intent to refer the case to arbitration within ten days after the response required by part 5510.5160 is due.

Subp. 2. Selection of arbitrator. Within ten days of the service of written notice of intent to arbitrate, the employer's chief administrative officer or designee shall consult with the

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agent of the exclusive representative and endeavor to mutually agree upon an arbitrator to hear and decide the grievance. If the parties do not agree upon the selection of an arbitrator, either party may request a list of impartial arbitrators from the bureau. The parties shall alternately strike names from a list of five names to be provided by the bureau until only one name remains, and the remaining name shall be the designated arbitrator. The determination of which party will commence the striking process shall be made by mutual agreement or a flip of a coin. If one party refuses to strike names from the list provided by the bureau, the other party may serve written notice of this fact upon the bureau, with a copy to the offending party. Unless it is confirmed that the parties have otherwise selected or agreed upon an arbitrator within three days of service of the notice of refusal or failure to strike names, the bureau shall designate one name from the list previously provided to the parties and the person so designated by the bureau shall have full power to act as the arbitrator of the grievance.

Subp. 3. **Arbitrator's authority.** The arbitrator shall have no authority to amend, modify, add to, or subtract from the terms of an existing contract. The arbitrator shall consider and decide only the specific issue submitted in writing by the parties. The arbitrator shall be without power to make decisions contrary to or inconsistent with the laws of Minnesota or municipal charters, ordinances, resolutions, or rules adopted pursuant to law. The arbitrator shall give due consideration to the positions of the parties and base the award solely upon the arbitrator's interpretation and application of the written terms of the contract and the facts presented by the parties. The decision and award of the arbitrator shall be final and binding upon both parties.

Subp. 4. **Arbitration expenses.** The employer and the exclusive representative shall share equally the arbitrator's fees and necessary expenses. Cancellation fees shall be paid by the party requesting the cancellation and any fees incurred as

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OFFICE BY:

the result of a request for clarification shall be paid by the party requesting the clarification. Each party shall be responsible for compensating its own representatives and witnesses except to the extent provided by part 5510.5180, subpart 1.

Subp. 5. **Transcripts and briefs.** No verbatim transcripts of an arbitration hearing conducted under parts 5510.5110 to 5510.5180 shall be permitted. Written briefs should be discouraged by the arbitrator. The arbitrator may maintain written notes of the hearing and may use an electronic recording device to supplement the note taking. The notes and recordings shall be considered the arbitrator's private and personal property and shall not be made available to the parties or another third party. If a recording device is used by the arbitrator to supplement the arbitrator's notes, the arbitrator shall retain the recording for a period of 30 days following the issuance of the award.

5510.5180 PROCESSING OF GRIEVANCES.

Subpart 1. **Release time.** To the fullest extent feasible, the processing of grievances under parts 5510.5110 to 5510.5180 shall be conducted during the normal business hours of the employer. Employees designated by the exclusive representative shall be released from work without loss of regular nonovertime earnings as a result of their necessary participation in meetings or hearings held pursuant to parts 5510.5110 to 5110.5180, whenever such release is consistent with the ability of the employer to conduct safe and reasonable operations. No more than three employees shall be entitled to compensation for participation in a single meeting or hearing with respect to any one grievance.

Subp. 2. **Waiver of steps.** The parties may by written mutual agreement waive participation in the grievance steps in parts 5510.5140 to 5510.5160 and may similarly agree to extend the time limits established by parts 5510.5140 to 5510.5170.

Subp. 3. **Time limits.** A failure to raise a grievance

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within the time limits specified in part 5510.5140, or to initiate action at the next step of the procedure in parts 5510.5140 to 5510.5170 within the time limits in these parts shall result in forfeiture by the exclusive representative of the right to pursue the grievance. A failure of an employer representative to comply with the time periods and procedures in parts 5510.5140 to 5510.5170 shall give the exclusive representative the right to invoke the next level of the grievance procedure.

REPEALER. Minnesota Rules, parts 5510.4600, 5510.4700, 5510.4800, 5510.4900, 5510.5000, and 5510.5100 are repealed.

APPROVED IN THE REVISOR OF STATUTES OFFICE BY:

George Bloom
Industrial Relations Association
2909 Wayzata Boulevard
Minneapolis, MN 55405

James M. Dawson
580 Galaxy Building
330 Second Avenue South
Minneapolis, MN 55401

Dennis Goldberg
Industrial Relations Association
2909 Wayzata Boulevard
Minneapolis, MN 55405

Dave Hols
580 Galaxy Building
330 Second Avenue South
Minneapolis, MN 55401

Howard Hoy Assn., Inc.
Shelard Plaza S., Suite 415
400 South County Road 18
Minneapolis, MN 55426

Derald D. Jones
Industrial Relations Council
2001 London Road
Duluth, MN 55812

Thomas Keller
O'Conner & Hannan
38th Floor IDS Center
Minneapolis, MN 55402

David J Koskinen
700 Torrey Building
Duluth, MN 55802

Ivars Krafts
Attorney at Law
17 South First Street
Suite A-206
Minneapolis, MN 55401

Frank Madden
Attorney at Law
204 East Parkdale Plaza
1660 S. Highway 100
Minneapolis, MN 55416

John McGirl
Doherty, Rumble & Butler
80 South Eighth Street

Minneapolis, MN 55402

Raymond Ondov
Attorney at Law
P.O. Box 366
Austin, MN 55912

Charles Swanson
Industrial Relations Association
2909 Wayzata Boulevard
Minneapolis, MN 55405

General Brad Engdahl
Assistant Attorney
515 Transportation Building
St. Paul, MN 55103

Peter Bergstrom
Assocation of Minnesota Counties
555 Park Street
Suite 300
St. Paul, MN 55103

Dennis Bible
Minneapolis City Hall
A-308
Minneapolis, MN 55415

Phyllis Byers
St. Paul Public Schools
360 Colborne
St. Paul, MN 55102

Director of Labor Relations
Department of Employee Relations
444 Lafayette Road
St. Paul, MN 55101

Director of Labor Relations
League of Minnesota Cities
183 University Avenue East
St. Paul, MN 55101

Director of Labor Relations
Metro Airports Commission
6040 28th Avenue South
Minneapolis, MN 55417

Director of Labor Relations
Hennepin County
A-308 Hennepin County
Government Center
Minneapolis, MN 55487

David Dombrowski
Metro Airports Commission
P.O. Box 1700
Minneapolis, MN 55440

Steven C Fecker
Lano, Nelson, O'Toole Fecker
115 NE 5th Street
P.O. Box 20
Grand Rapids, MN 55744

Joseph E Flynn
Knutson, Flynn & Hetland
345 Cedar Street
Suite 800
St. Paul, MN 55101

Terrence J. Foy
Association of Minnesota Counties
555 Park Street 300
St. Paul, MN 55103

Frances H. Graham
Knutson, Flynn & Hetland
345 Cedar Street
Suite 800
St. Paul, MN 55101

Jeffrey Haberkorn
122 Second Street Northwest
Aitkin, MN 56431

Paul Hetland
Knutson, Flynn & Hetland
345 Cedar Street
Suite 800
St. Paul, MN 55101

James Knutson
345 Cedar Building
Suite 800
St. Paul, MN 55101

Loren L. Law
Loren L. Law & Associates
7300 France Avenue South
Suite 420
Edina, MN 55435

Minnesota Association
School Administrators
1910 West County Road B
Suite 105
Roseville, MN 55113

David Naughtin
Naughtin, Mulvahill & Minton
2007 Forth Avenue East
Hibbing, MN 55746

State Labor Negotiator
Doer, Third Floor Space Center Building
444 Lafayette Road
St. Paul, MN 55101

Carol O'Toole
Attorney at Law
4717 IDS Center
Minneapolis, MN 55402

John M. Roszak
Knutson, Flynn & Hetland
345 Cedar Street
Suite 800
St. Paul, MN 55101

Jim Schmid
Minnesota School Board
116 South Third Street
St. Peter, MN 56082

Ralph T. Smith
Smith, Carpenter & Benshoof
P.O. Box 1420
Bemidji, MN 56601

Cy Smythe
Labor Relations Association
7501 Golden Valley Road
Second Floor
Golden Valley, MN 55427

Bernard Steffen
Suite 301
403 Jackson Street
Anoka, MN 55303

Lynelle Wood
Perla Editor
Doer - 444 Lafayette Road
St. Paul, MN 55101

Claudia Hennen
Perb
205 Aurora Avenue
St. Paul, MN 55103

Jermaine Foslein
LCER

Room 85 State Office Building
St. Paul, MN 55155

Susan Ode
Midway District 11 Coalition
1558 W. Minnehaha Avenue
St. Paul, MN 55104

Area Director
AFSCME
265 Lafayette Road
South Room
St. Paul, MN 55107

Director
AFSCME Council 65
1716 Fifth Avenue East
Hibbing, MN 55746

John H Allers
School Service Emp. 284
7529 Lyndale Avenue South
Richfield, MN 55423

Larry Bastian
IBT Locat 320
3001 University Avenue
Minneapolis, MN 55414

Edward Bolstad
MFT
168 Aurora Avenue
St. Paul, MN 55103

Ron Carlstrom
Minnesota Federation of Teachers
2121 First Avenue West
Hibbing, MN 55746

Pat Churchill
MEA
41 Sherburne Avenue
St. Paul, MN 55103

Charles Cole
Minnesota Federation of Teachers
168 Aurora Avenue
St. Paul, MN 55103

Sandra Fields
MEA Region II Manager
41 Sherburne Avenue
St. Paul, MN 55103

Carol Freeman
MFT
168 Aurora Avenue
St. Paul, MN 55103

Wayne Hyland
MEA Region III Manager
1600 Madison Avenue
Suite 104
Mankato, MN 56001

Charles Kehrberg
MEA Staff
P.O. Box 95
Worthington, MN 56187

Law Enforcement
Labor Services
10800 Lyndale Avenue South
Suite 120
Bloominton, Minnesota 55420

David Moracco
MEA
41 Sherburne Avenue
St. Paul, MN 55103

Minnesota Schools Employees Association
555 Wabasha
St. Paul, MN 55102

Chuck Purfeerst
MEA Region I Manager
41 Sherburne Avenue
St. Paul, MN 55103

Stephen F Befort
229 19th Avenue South
Minneapolis, MN 55455

Betty Bednarczyk
Hospital & Nursing Home #113
3001 University Avenue Southeast
Minneapolis, Minnesota 55414

Bernard Brommer
AFL-CIO
175 Aurora Avenue
St. Paul, MN 55103

Don L. Bye
Halverson, Watters, Bye
700 Providence Building

Duluth, MN 55802

Gregg Corwin
548 West Parkdale Plaza
1660 South Highway 100
St. Louis Park, MN 55416

Robert DeRoy
IAMAW District 77
1399 Eustis
St. Paul, MN 55108

Bruce Finzen
Robins, Zelle, Larson & Kaplan
1210 Minnesota Building
St. Paul, MN 55101

Michael Freeman
Suite 1240 Amhoist Tower
345 St. Peter Street
St. Paul, MN 55102

Steve Gordon
Gordon, Miller & O'Brien
12 South Sixth Street
Suite 1208
Minneapolis, MN 55402

Bruce P. Grostephen
Peterson, Engberg, Peterson
700 Title Insurance Building
Minneapolis, MN 55487

Dan Gustafson
MN. AFLCIO FED. OF LABOR
175 Aurora Avenue
St. Paul, MN 55103

Roger Jensen
Peterson, Bell & Converse
1800 American National Bank
St. Paul, MN 55101

Duane Johnson
IBT Joint Council 32
3001 University Avenue S.E.
Minneapolis, Minnesota 55414

Eugene Keating
4200 IDS Center
80 South Eighth Street
Minneapolis, MN 55402

Roger Peterson

Peterson, Engberg & Peterson
Title Insurance Building
Minneapolis, MN 55401

Chip Reveal
Robins, Zelle, Larson & Kaplan
1210 Minnesota Building
St. Paul, MN 55401

Ron Rollins
Krause, Rollins, Piper & Alvey
310 Groveland Avenue
Minneapolis, MN 55430