


# Minnesota Attorney General: Administrative Rules Proceedings

## Copyright Notice:

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

Version 3
August 20, 2018

ATTORNEY GENERAL

November 4, 1988

ANDREA MITAU KIRCHER
Special Assistant
Attorney General

JACQUELYN E. ALBRIGHT
Special Assistant
Attorney General

6-9715

In the Matter of the Adopted Rule Relating to
Negotiation, Mediation, Impasse Certification
Arbitration, and Intent to Strike Notice

The above-referenced rule has been approved as to its legality by the Attorney General on November 2, 1988.

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 accoradance 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.

JAL:rer

Enclosures

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

William Brown
Chief Administrative Law Judge
Office of Administrative Hearings

Bureau of Mediation Services

Adopted Permanent Rules Relating to Negotiation, Mediation, Impasse Certification, Arbitration, and Intent to Strike Notice

Rules as Adopted

5510.2410 APPLICATION.

Parts 5510.2410 to 5510.3210 govern the conduct of negotiations between an exclusive representative and an employer, the conduct of mediation, the certification of unresolved ~~issues~~ items to the board, the arbitration of unresolved ~~issues~~ items, and the notification of intent to strike.

5510.2905 CONFIDENTIAL INFORMATION.

Subpart 1. **Mediation information.** Information disclosed to the commissioner or an authorized agent by any party during mediation, and all files, records, reports, documents, or other papers received or prepared by the commissioner during the performance of duties and responsibilities related to mediation of a dispute are classified as protected nonpublic data with regard to data not on individuals and as confidential data on individuals, except to the extent the commissioner determines to unclassify such data in the referral of a dispute to interest arbitration or to identify the general nature of or parties to a labor dispute.

Subp. 2. **Final positions.** Final positions submitted by a party in conjunction with a dispute that has been referred to interest arbitration ~~is~~ are regarded as protected nonpublic data with regard to data not on individuals and as confidential data on individuals until both parties have filed their final positions with the commissioner under part 5510.2930, subpart 4. The commissioner may release the information to the board, and the board may release the information to the arbitration panel, to fulfill procedural requirements of the act and parts 5510.2410 to 5510.3210, but the information shall remain



Approved by Revisor

nonpublic and confidential until the commissioner has affirmed that final positions have been filed by both parties or until an interest arbitration hearing is commenced by the arbitration panel, at which time the final positions are classified as public data.

5510.2915 MEDIATION PERIOD.

For all public employees except teachers, mediation periods referred to in the act commence on the day after a request for mediation is filed with the commissioner. For teachers, mediation periods commence on the day the first mediation conference is convened.

5510.2930 REFERRAL TO ARBITRATION.

Subpart 1. **Referral.** The commissioner may refer a matter to the board for arbitration when ~~it~~ the commissioner has ~~been~~ determined that further mediation efforts would serve no purpose and:

A. in the case of essential employees, either or both parties have requested arbitration; or

B. in the case of nonessential employees, a request to arbitrate has been made by one party and has been agreed to by the other within 15 days of the request.

Requests for arbitration and agreements to arbitrate must be in writing and be served on the other party and the commissioner under part 5510.0310, subpart 19. The requests and agreements are binding on the parties except to the extent they otherwise agree in writing~~, except that~~. An offer to arbitrate for nonessential employees that has not been accepted in writing within the 15-day period shall be considered rejected and withdrawn.

Subp. 2. **Form of arbitration.** All interest arbitration shall be conventional arbitration except:

A. if the parties ~~may~~ agree in writing to limit the arbitrator's authority to final offer item-by-item or final offer total-package; or

B. if the case involves a unit of principals and



Approved
by Revisor _____

assistant principals, the panel must use final offer item-by-item arbitration.

Subp. 3. **Unresolved issues.** In requesting or agreeing to interest arbitration, each party shall list all issues, items, or matters not previously agreed upon. Based upon the submissions of the parties and prior efforts to mediate the dispute, the commissioner shall determine the unresolved ~~issues~~ items that will be submitted to arbitration.

Subp. 4. **Final positions.** When an agreement or requirement to arbitrate has been established, and the commissioner has determined the ~~issues~~ items to be submitted to arbitration, the commissioner shall certify the matters to the board and direct each party to submit their final position on the ~~issues~~ items certified by the commissioner. Final positions shall be presented in the form of the contract language desired by each party to resolve the matter in dispute. Final positions must be submitted to the commissioner within 15 days of the date when the commissioner certifies the matter to the board. The deadline for submitting final positions may be extended a reasonable period of time by the commissioner upon an adequate and timely showing of good cause by a party.

If the arbitration form is a final offer variety, the final positions of the parties may not be withdrawn or amended except by mutual written consent or to correct nonsubstantive errors of a clerical-techical nature or matters of solely form.

Subp. 5. **Forwarding to the board.** After the date for the filing of final positions has passed, the commissioner shall forward the matter and any final positions that have been received to the board. When final positions have been received from both parties, the commissioner shall provide each party with a copy of the opposing party's final positions. The board may provide copies of final positions to the arbitration panel, but part 5510.2905, subpart 2, shall govern the protected nature of the final positions.

Subp. 6. **Effect of untimely final positions.** The failure of a party to submit timely final positions on an ~~issue~~ item



Approved by Revisor _____

that has been submitted to final-offer arbitration shall be noted by the arbitration panel and shall ~~prejudice that party's interests in the issue~~ result in a default award unless the delinquent party, in the sole discretion of the panel, can demonstrate good cause for the delinquency, in which case the panel may proceed as if the delinquency had not occurred. The failure of a party to submit timely final positions in a conventional arbitration matter shall be noted by the arbitration panel and may be considered by the panel in weighing the testimony, evidence, and overall good faith behavior of that party with respect to the ~~matters~~ items before the panel.

Subp. 7. **Continued mediation.** The commissioner may continue efforts to aid the parties in resolving issues ~~even~~ after a matter has been certified for arbitration.

5510.3005 STRIKES.

Subpart 1. **Notice.** A notice of an intent to strike must be in writing and served upon the employer and the commissioner under parts 5510.2410 to 5510.3210. The notice is timely when the requirements of Minnesota Statutes, section 179A.18, have been fulfilled.

Subp. 2. **Dates right to strike matures and terminates.** The dates the right to strike matures and terminates shall be determined by the commissioner ~~pursuant to the act~~ in accordance with Minnesota Statutes, section 179A.18, and the commissioner shall provide written notice of the dates to the parties. No strike shall commence during the first ten days after receipt of a notice of intent to strike.

Subp. 3. **Renewal of intent to strike notice.** Except for teachers, a notice of intent to strike may be renewed by serving a written notice on the employer and the commissioner not sooner than five days before the termination of a right to strike. In the event the renewal is served, a new ten-day waiting period shall apply and the commissioner shall reestablish the dates when the right to strike matures and terminates. Teachers are limited to one intent to strike notice per contract negotiation



Approved by Revisor _____

period.

REPEALER. Minnesota Rules, parts 5510.2810, subpart 6; 5510.2910; 5510.3010; and 5510.3110, are repealed.

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
NOV 4 1988
Secretary of State



Approved
by Revisor _____

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED

NOV 4 1988

Joan Anderson Growe

Secretary of State

11:05 AM

APPROVED AS TO FORM AND LEGALITY

Nov 2 19 88

HUBERT H. HUMPHREY, III
ATTORNEY GENERAL

BY Jacqueline E. Albright
SPECIAL ASSISTANT ATTORNEY GENERAL

File No. 15-7 Docket No. 05-0009-0650

DATE RECEIVED 10/24/88 ADOPTED W/O HEARING X

REVIEW DATE 11/2/88 EMERGENCY RULE _____

DUE DATE 11/7/88 REVISOR APPROVED _____

APPROVED 11/2/88 qpa REVISOR DISAPPROVED _____

DISAPPROVED _____ FILED W/SEC. OF STATE 11/4/88

WITHDRAWN _____ RETURNED TO AGENCY 11/4/88

---

✓ Rule as adopted (4 copies)

_____ ~~Notice to Solicit Outside Information/Opinion (if applicable)~~

_____ ~~Date published in State Register~~

_____ ~~Comments~~

_____ ~~Petition for Adoption of a Rule (if applicable)~~

_____ ~~Board's Authorizing Resolution~~

_____ ~~Date adopted~~

✓ Proposed Rule

YES Revisor's Certificate

✓ Notice of Intent to Adopt Rule

179A.04-4f Statutory Authority

NO Small Business Statement

NO Expenditure of public money statement

YES Signature

✓ Statement of Need and Reasonableness (if applicable)

NO Small Business Statement

N/A Fees - § 16A.128

✓ Affidavit of Mailing Notice of Intent to Adopt Rule

7/18/88 Date (30)/25 days before adoption

✓ Notice attached called

_____ ~~Copy of rule or summary attached~~

✓ Publication in State Register

8/1/88 Date (30)/25 days before adoption

_____ ~~180-day deadline from~~:

_____ ~~end of comment period (§ 14.26) (rules without hearing)~~

_____ ~~effective date of statutory authority (§ 14.29) (emergency rules)~~

_____ ~~Resolution Adopting~~

_____ ~~Date adopted~~

✓ Findings of Fact, Conclusions & Order Adopting

9/9/88 Date

✓ Written requests, submissions or comments (4)

✓ Declaration of attorney

A.M. Kircher Name of SAAG representing agency

✓ Notice of Submission to Atty. Gen. (if applicable)

✓ Aff. of Mailing Notice to Atty. Gen. (if applicable)

Bureau of Mediation Services

Proposed Permanent Rules Relating to Negotiation, Mediation, Impasse Certification, Arbitration, and Intent to Strike Notice

Rules as Proposed

5510.2410 APPLICATION.

Parts 5510.2410 to 5510.3210 govern the conduct of negotiations between an exclusive representative and an employer, the conduct of mediation, the certification of ~~impasse~~ unresolved issues to the board, the arbitration of ~~impasse~~ unresolved issues, and the notification of intent to strike.

5510.2905 CONFIDENTIAL INFORMATION.

Subpart 1. **Mediation information.** Information disclosed to the commissioner or an authorized agent by any party during mediation, and all files, records, reports, documents, or other papers received or prepared by the commissioner during the performance of duties and responsibilities related to mediation of a dispute are classified as protected nonpublic data with regard to data not on individuals and as confidential data on individuals, except to the extent the commissioner determines to unclassify such data in the referral of a dispute to interest arbitration or to identify the general nature of or parties to a labor dispute.

Subp. 2. **Final positions.** Final positions submitted by a party in conjunction with a dispute that has been referred to interest arbitration is regarded as protected nonpublic data with regard to data not on individuals and as confidential data on individuals until both parties have filed their final positions with the commissioner under part 5510.2930, subpart 4. The commissioner may release the information to the board, and the board may release the information to the arbitration panel, to fulfill procedural requirements of the act and parts 5510.2410 to 5510.3210, but the information shall remain nonpublic and confidential until the commissioner has affirmed



Approved by Revisor

that final positions have been filed by both parties or until an interest arbitration hearing is commenced by the arbitration panel.

5510.2915 MEDIATION PERIOD.

For all public employees except teachers, mediation periods referred to in the act commence on the day after a request for mediation is filed with the commissioner. For teachers, mediation periods commence on the day the first mediation conference is convened.

5510.2930 REFERRAL TO ARBITRATION.

Subpart 1. **Referral.** The commissioner may refer a matter to the board for arbitration when it has been determined that further mediation efforts would serve no purpose and:

A. in the case of essential employees, either or both parties have requested arbitration; or

B. in the case of nonessential employees, a request to arbitrate has been made by one party and has been agreed to by the other within 15 days of the request.

Requests for arbitration and agreements to arbitrate must be in writing and be served on the other party and the commissioner under part 5510.0310, subpart 19. The requests and agreements are binding on the parties except to the extent they otherwise agree in writing, except that an offer to arbitrate for nonessential employees that has not been accepted in writing within the 15-day period shall be considered rejected and withdrawn.

Subp. 2. **Form of arbitration.** All interest arbitration shall be conventional arbitration except:

A. the parties may agree in writing to limit the arbitrator's authority to final offer item-by-item or final offer total-package; or

B. if the case involves a unit of principals and assistant principals, the panel must use final offer item-by-item arbitration.

Subp. 3. **Unresolved issues.** In requesting or agreeing to



Approved
by Revisor _____

interest arbitration, each party shall list all issues or matters not previously agreed upon. Based upon the submissions of the parties and prior efforts to mediate the dispute, the commissioner shall determine the unresolved issues that will be submitted to arbitration.

Subp. 4. **Final positions.** When an agreement or requirement to arbitrate has been established, and the commissioner has determined the issues to be submitted to arbitration, the commissioner shall certify the matters to the board and direct each party to submit their final position on the issues certified by the commissioner. Final positions shall be presented in the form of the contract language desired by each party to resolve the matter in dispute. Final positions must be submitted to the commissioner within 15 days of the date when the commissioner certifies the matter to the board. The deadline for submitting final positions may be extended a reasonable period of time by the commissioner upon an adequate and timely showing of good cause by a party.

If the arbitration form is a final offer variety, the final positions of the parties may not be withdrawn or amended except by mutual written consent.

Subp. 5. **Forwarding to the board.** After the date for the filing of final positions has passed, the commissioner shall forward the matter and any final positions that have been received to the board. When final positions have been received from both parties, the commissioner shall provide each party with a copy of the opposing party's final positions. The board may provide copies of final positions to the arbitration panel, but part 5510.2905, subpart 2, shall govern the protected nature of the final positions.

Subp. 6. **Effect of untimely final positions.** The failure of a party to submit timely final positions on an issue that has been submitted to final-offer arbitration shall be noted by the arbitration panel and shall prejudice that party's interests in the issue. The failure of a party to submit timely final positions in a conventional arbitration matter shall be noted by



Approved
by Revisor _____

the arbitration panel and may be considered by the panel in weighing the testimony, evidence, and overall good faith behavior of that party with respect to the matters before the panel.

Subp. 7. **Continued mediation.** The commissioner may continue efforts to aid the parties in resolving issues even after a matter has been certified for arbitration.

5510.3005 STRIKES.

Subpart 1. **Notice.** A notice of an intent to strike must be in writing and served upon the employer and the commissioner under parts 5510.2410 to 5510.3210. The notice is timely when the requirements of Minnesota Statutes, section 179A.18, have been fulfilled.

Subp. 2. **Dates right to strike matures and terminates.** The dates the right to strike matures and terminates shall be determined by the commissioner pursuant to the act and the commissioner shall provide written notice of the dates to the parties. No strike shall commence during the first ten days after receipt of a notice of intent to strike.

Subp. 3. **Renewal of intent to strike notice.** Except for teachers, a notice of intent to strike may be renewed by serving a written notice on the employer and the commissioner not sooner than five days before the termination of a right to strike. In the event the renewal is served, a new ten-day waiting period shall apply and the commissioner shall reestablish the dates when the right to strike matures and terminates. Teachers are limited to one intent to strike notice per contract negotiation period.

REPEALER. Minnesota Rules, parts 5510.2810, subpart 6; 5510.2910; 5510.3010; and 5510.3110, are repealed.



Approved
by Revisor _____

# Office of the Revisor of Statutes

## Administrative Rules

**TITLE:** Proposed Permanent Rules Relating to Negotiation, Mediation, Impasse Certification, Arbitration, and Intent to Strike Notice

**AGENCY:** Bureau of Mediation Services

**MINNESOTA RULES:** Chapter 5510

The attached rules are approved for publication in the State Register

John C. Fuller
Assistant Deputy Revisor

BUREAU OF MEDIATION SERVICES

| | |
|---|---|
| In the Matter of the Proposed Adoption of the Rule of the State Bureau of Mediation Services Governing Negotiation, Mediation, Impasse Certification Arbitration and Intent to Strike Notice | NOTICE OF INTENT TO ADOPT A RULE WITHOUT A PUBLIC HEARING |

Notice is hereby given that the State Bureau of Mediation Services intends to adopt the above-entitled rule without a public hearing following the procedures set forth in the Administrative Procedure Act for adopting rules without a public hearing in Minnesota Statutes, sections 14.22 to 14.28. The statutory authority to adopt the rule is 179A.04, Subpart 4(f).

All persons have 30 days in which to submit comment in support of or in opposition to the proposed rule or any part or subpart of the rule. Comment is encouraged. Each comment should identify the portion of the proposed rule addressed, the reason for the comment, and any change proposed.

Any person may make a written request for a public hearing on the rule within the 30-day comment period. If 25 or more persons submit a written request for a public hearing within the 30-day comment period, a public hearing will be held unless a sufficient number withdraw their request in writing. Any person requesting a public hearing should state his or her name and address, and is encouraged to identify the portion of the proposed rule addressed, the reason for the request, and any change proposed. If a public hearing is required the agency will proceed pursuant to Minnesota Statutes, sections 14.131 to 14.20.

Comments or written requests for a public hearing must be submitted to:

Paul W. Goldberg, Commissioner
Bureau of Mediation Services
1380 Energy Lane, Suite Two
St. Paul, MN 55108
(612) 649-5421

The proposed rule may be modified if the modifications are supported by data and views submitted to the agency and do not result in a substantial change in the proposed rule as noticed.

A copy of the proposed rule is attached to this notice.

A Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rule and identifies the data and information relied upon to support the proposed rule has been prepared and is available from Paul W. Goldberg, Commissioner, Bureau of Mediation Services, 1380 Energy Lane, Suite Two, Saint Paul, Minnesota, 55108.

If no hearing is required, upon adoption of the rule, the rule and the required supporting documents will be submitted to the Attorney General for review as to legality and form to the extent the form related to legality. Any person may request notification of the date of submission to the Attorney General. 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 adopted rule, must submit the written request to Paul W. Goldberg, Commissioner, Bureau of Mediation Services, 1380 Energy Lane, Suite Two, Saint Paul, Minnesota, 55108.

7/14/88
Date

Paul W. Goldberg
Name

Commissioner
Title

Bureau of Mediation Services

Proposed Permanent Rules Relating to Negotiation, Mediation, Impasse Certification, Arbitration, and Intent to Strike Notice

Rules as Proposed

5510.2410 APPLICATION.

Parts 5510.2410 to 5510.3210 govern the conduct of negotiations between an exclusive representative and an employer, the conduct of mediation, the certification of ~~impasse~~ unresolved issues to the board, the arbitration of ~~impasse~~ unresolved issues, and the notification of intent to strike.

5510.2905 CONFIDENTIAL INFORMATION.

Subpart 1. **Mediation information.** Information disclosed to the commissioner or an authorized agent by any party during mediation, and all files, records, reports, documents, or other papers received or prepared by the commissioner during the performance of duties and responsibilities related to mediation of a dispute are classified as protected nonpublic data with regard to data not on individuals and as confidential data on individuals, except to the extent the commissioner determines to unclassify such data in the referral of a dispute to interest arbitration or to identify the general nature of or parties to a labor dispute.

Subp. 2. **Final positions.** Final positions submitted by a party in conjunction with a dispute that has been referred to interest arbitration is regarded as protected nonpublic data with regard to data not on individuals and as confidential data on individuals until both parties have filed their final positions with the commissioner under part 5510.2930, subpart 4. The commissioner may release the information to the board, and the board may release the information to the arbitration panel, to fulfill procedural requirements of the act and parts 5510.2410 to 5510.3210, but the information shall remain nonpublic and confidential until the commissioner has affirmed



Approved by Revisor JCF

that final positions have been filed by both parties or until an interest arbitration hearing is commenced by the arbitration panel.

5510.2915 MEDIATION PERIOD.

For all public employees except teachers, mediation periods referred to in the act commence on the day after a request for mediation is filed with the commissioner. For teachers, mediation periods commence on the day the first mediation conference is convened.

5510.2930 REFERRAL TO ARBITRATION.

Subpart 1. **Referral.** The commissioner may refer a matter to the board for arbitration when it has been determined that further mediation efforts would serve no purpose and:

A. in the case of essential employees, either or both parties have requested arbitration; or

B. in the case of nonessential employees, a request to arbitrate has been made by one party and has been agreed to by the other within 15 days of the request.

Requests for arbitration and agreements to arbitrate must be in writing and be served on the other party and the commissioner under part 5510.0310, subpart 19. The requests and agreements are binding on the parties except to the extent they otherwise agree in writing, except that an offer to arbitrate for nonessential employees that has not been accepted in writing within the 15-day period shall be considered rejected and withdrawn.

Subp. 2. **Form of arbitration.** All interest arbitration shall be conventional arbitration except:

A. the parties may agree in writing to limit the arbitrator's authority to final offer item-by-item or final offer total-package; or

B. if the case involves a unit of principals and assistant principals, the panel must use final offer item-by-item arbitration.

Subp. 3. **Unresolved issues.** In requesting or agreeing to



Approved by Revisor _____

interest arbitration, each party shall list all issues or matters not previously agreed upon. Based upon the submissions of the parties and prior efforts to mediate the dispute, the commissioner shall determine the unresolved issues that will be submitted to arbitration.

Subp. 4. **Final positions.** When an agreement or requirement to arbitrate has been established, and the commissioner has determined the issues to be submitted to arbitration, the commissioner shall certify the matters to the board and direct each party to submit their final position on the issues certified by the commissioner. Final positions shall be presented in the form of the contract language desired by each party to resolve the matter in dispute. Final positions must be submitted to the commissioner within 15 days of the date when the commissioner certifies the matter to the board. The deadline for submitting final positions may be extended a reasonable period of time by the commissioner upon an adequate and timely showing of good cause by a party.

If the arbitration form is a final offer variety, the final positions of the parties may not be withdrawn or amended except by mutual written consent.

Subp. 5. **Forwarding to the board.** After the date for the filing of final positions has passed, the commissioner shall forward the matter and any final positions that have been received to the board. When final positions have been received from both parties, the commissioner shall provide each party with a copy of the opposing party's final positions. The board may provide copies of final positions to the arbitration panel, but part 5510.2905, subpart 2, shall govern the protected nature of the final positions.

Subp. 6. **Effect of untimely final positions.** The failure of a party to submit timely final positions on an issue that has been submitted to final-offer arbitration shall be noted by the arbitration panel and shall prejudice that party's interests in the issue. The failure of a party to submit timely final positions in a conventional arbitration matter shall be noted by



Approved by Revisor _____

the arbitration panel and may be considered by the panel in weighing the testimony, evidence, and overall good faith behavior of that party with respect to the matters before the panel.

Subp. 7. **Continued mediation.** The commissioner may continue efforts to aid the parties in resolving issues even after a matter has been certified for arbitration.

5510.3005 STRIKES.

Subpart 1. **Notice.** A notice of an intent to strike must be in writing and served upon the employer and the commissioner under parts 5510.2410 to 5510.3210. The notice is timely when the requirements of Minnesota Statutes, section 179A.18, have been fulfilled.

Subp. 2. **Dates right to strike matures and terminates.** The dates the right to strike matures and terminates shall be determined by the commissioner pursuant to the act and the commissioner shall provide written notice of the dates to the parties. No strike shall commence during the first ten days after receipt of a notice of intent to strike.

Subp. 3. **Renewal of intent to strike notice.** Except for teachers, a notice of intent to strike may be renewed by serving a written notice on the employer and the commissioner not sooner than five days before the termination of a right to strike. In the event the renewal is served, a new ten-day waiting period shall apply and the commissioner shall reestablish the dates when the right to strike matures and terminates. Teachers are limited to one intent to strike notice per contract negotiation period.

REPEALER. Minnesota Rules, parts 5510.2810, subpart 6; 5510.2910; 5510.3010; and 5510.3110, are repealed.



Approved
by Revisor _____

Statement of Need & Reasonableness
Proposed Permanent Rules Relating to Negotiation, Mediation, Impasse Certification, Arbitration and Intent to Strike Notice

General. The proposed rules are essentially a recodification of rules adopted in October, 1984. A major purpose for the amendments is to reorganize the rules so that they are more understandable and less redundant. Policy changes incorporated in this revision are more specifically discussed in the discussion of the part where such changes occur.

Part 5510.2410 APPLICATION

The proposed rule substitutes the phrase "unresolved issues" for the term "impasse". Since "impasse" is a term with special meaning and significance in the field of labor relations, and it is not the practice of the Bureau to "certify" that an "impasse" exists, except under very narrow circumstances contemplated by Minnesota Statute (1987) 179A.16, Subd. 1(a), the proposed language of the rule is a more accurate depiction of the application of these parts.

5510.2905 CONFIDENTIAL INFORMATION

Current rules, at parts 5510.2810, subp. 6, 5510.2910, subp. 6C, and 5510.3010, subp. 6, classify certain data as confidential information. These parts are not drafted in a manner consistent with the Minnesota Data Practices Act, and if literally applied, would prevent the Bureau from fulfilling its statutory obligation to provide information to the Public Employment Relations Board, and subsequently an arbitration panel, pursuant to § 179A.16. Such a result is absurd and inconsistent with the basic public policy goal of chapter 179A in resolving public sector labor disputes.

The proposed rule properly describes and classifies mediation information, and the extent to which the commissioner may release such data, in a manner consistent with Minnesota Statute (1987) § 13.75, subd. 2. The rule further clarifies the confidential nature of final positions filed with the Bureau pursuant to § 179A.16. This classification is essential to prevent one party from being unfairly disadvantaged in arbitration by being

forced to disclose final positions before the other party has prepared or filed them. Such classification is consistent with § 13.37, subd. 1 (c) and § 13.43, subd. 6, as well as the public policy interests of interest arbitration. The rule further provides that such data becomes public information once the legitimate public policy purpose of such classification has been met: Both final positions have been filed; or the arbitration hearing has begun.

5510.2915 MEDIATION PERIOD

The proposed rule consolidates the definition of the term "mediation period" for all classes of public employees into a single part. Under current rules, such definition is scattered over two parts (5510.2910, subp. 1 and 5510.3110, subp. 3).

5510.2930 REFERRAL TO ARBITRATION

Subp. 1. Referral. The proposed rule consolidates the provisions of former parts 5510.2910 and 5510.3010 which deal with the referral of matters to interest arbitration into one part. The proposed rule makes no substantive change in policy or procedure.

Subp. 2. Form of Arbitration. The proposed rule reflects the statutory public policy of § 179A.16 that all interest arbitration is of a conventional nature, except that final-offer varieties may be employed by mutual agreement or where required by statute, as in the case of principals and assistant principals.

Subp. 3. Unresolved Issues. The proposed rule spells out the procedures which are followed by the agency in determining the matters or unresolved issues which are to be submitted to interest arbitration. In most instances, the parties themselves are able to list and agree upon the list of issues or matters the arbitration panel will be required to decide. The rule further provides that, pursuant to § 179A.16, subd. 3, the commissioner has the ultimate responsibility to determine the matters not agreed upon.

Subp. 4. Final Positions. The proposed rule combines current provisions of parts 5510.2910, subp. 4a, 5510.2910, subp. 6, 5510.3010, subps. 2 and 4. It provides a

reasonable and uniform manner for the solicitation and receipt of the final positions of each party on matters subject to arbitration, and requires that they be presented in a format which is unambiguous in presenting each party's desired outcome. A deadline for the submission of final positions is specified by the rule in accordance with § 179A.16, Subd. 3, with provisions for extensions upon a showing of good cause. Because of the nature of final offer arbitration and the consequences of continued bluff behavior by negotiators facing this form of arbitration, the rule emphasizes the finality of final offer submissions under final offer arbitration.

Subp. 5. Forward to Board. The proposed rule sets forth the administrative procedures to be followed by the agency in forwarding materials to the Public Employment Relations Board pursuant to § 179A.16. The proposed rule further clarifies the procedures for providing final positions to the arbitration panel and to the opposing parties, consistent with the provisions of proposed part 5510.2905, subp. 2.

Subp. 6. Effect of Untimely Final Positions. The provisions of § 179A.16, subd. 3, parts 5510.2910, subp. 4a, and 5510.3010, subp. 2, notwithstanding a few practitioners are notoriously tardy or recalcitrant in filing final positions in a timely manner. The proposed rule seeks to emphasize the importance of timely compliance with these statutory obligations and permit the arbitration panel to take note of such timeliness questions as a part of its overall deliberations on the issues. In the case of final offer arbitration, which has a basic purpose of increasing the adverse consequences of bluff or bad faith behavior, the arbitration panel must regard an untimely final position in a manner prejudicial to that party's interests. In the case of conventional arbitration, timeliness may be considered by the panel in the context of overall behavior and evidence in the case.

Subp. 7. Continued Mediation. This proposed rule merely clarifies the ability of the agency to continue to aid the parties in reaching a mutually satisfactory resolution of a dispute, even though it may already have been referred for arbitration. Because a mutually determined resolve is preferable to the best arbitration award under the basic precepts of collective bargaining, this rule is a reasonable application of public policy.

5510.3005 STRIKES

Subp. 1. Notice. This proposed rule consolidates the provisions of 5510.2910, subparts 7 and 8, into a single subpart which is easier to understand and refers parties to appropriate statutory sources for issues of timeliness.

Supb 2. Dates. This subpart provides that the commissioner shall calculate the dates upon which a right to strike matures and terminates. Because the standards for calculating time under part 5510.0310, subpart 21, apply to the issue of the timeliness of strikes, yet are not commonly understood by all parties, this proposed rule helps guard against a strike which could be illegal in nature solely because an inexperienced person miscalculated time periods. By providing for written notice of the dates by the commissioner, the rule minimizes the potential for error.

Subp. 3. Renewal of intent to strike notice. This proposed rule rewrites parts 5510.2910, subp. 7, in a manner which is more understandable but does not change existing practice or policy.

REPEALER. The parts repealed have been incorporated into the prosed rules for purposes of clarity.

In the Matter of the Proposed Adoption of Rules of the State Bureau of Mediation Services Relating to Negotiation, Mediation, Impasse Certification, Arbitration, and Intent to Strike Notice

AFFIDAVIT OF MAILING THE NOTICE OF SUBMISSION OF RULE ADOPTED WITHOUT PUBLIC HEARING TO THE ATTORNEY GENERAL

STATE OF MINNESOTA )
)ss.
COUNTY OF RAMSEY )

Carol S. Cox, being sworn says:

That on the 20 day of Oct, 1988, in the City of Saint Paul, County of Ramsey, State of Minnesota, I mailed the attached Notice of Submission to the Attorney General by depositing in the State of Minnesota Central Mail System for United States mailing, a copy thereof, with postage prepaid, to 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
Name

Administrative Secretary
Title

Subscribed and sworn to before me this 20 day of Oct, 1988.

Kenneth L. Boxell

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

In the Matter of the Proposed Adoption of Rules of the State Bureau of Mediation Services Relating to Negotiation, Mediation, Impasse Certifition, Arbitration, and Intent to Strike Notice

AFFIDAVIT OF MAILING THE NOTICE OF INTENT TO ADOPT A RULE WITHOUT A PUBLIC HEARING AND CERTIFICATE OF MAILING LIST

STATE OF MINNESOTA )
)ss.
COUNTY OF RAMSEY )

Carol S. Cox being sworn, says:

I hereby certify that the list of persons and associations who have requested, pursuant to Minnesota Statutes, sections 14.14, subdivision 1a and 14.22 or 14.30, that their names be placed on the State Bureau of Mediation Services rulemaking mailing list is accurate, complete, and current as of this 18th day of July, 1988.

That on the 18th day of July, 1988, at the City of St. Paul, County of Ramsey, State of Minnesota, I mailed the attached Notice of Intent to Adopt A Rule Without a Public Hearing by depositing in the State of Minnesota Central Mail System for United States mailing, a copy thereof, with postage prepaid, to all persons and associations on the aforementioned mailing list.

Carol S. Cox
Name

Administrative Secretary
Title

Subscribed and sworn to before me this 9th day of Sept., 1988.

Kenneth L. Boxell

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

# Bureau of Mediation Services

## Proposed Permanent Rules Relating to Negotiation, Mediation, Impasse Certification, Arbitration, and Intent to Strike Notice

### Notice of Intent to Adopt a Rule Without a Public Hearing

NOTICE IS HEREBY GIVEN that the State Bureau of Mediation Services intends to adopt the above-entitled rule without a public hearing following the procedures set forth in the Administrative Procedure Act for adopting rules without a public hearing in *Minnesota Statutes*, sections 14.22 to 14.28. The statutory authority to adopt the rule is 179A.04, Subpart 4(f).

All persons have 30 days in which to submit comment in support of or in opposition to the proposed rule or any part or subpart of the rule. Comment is encouraged. Each comment should identify the portion of the proposed rule addressed, the reason for the comment, and any change proposed.

Any person may make a written request for a public hearing on the rule within the 30-day comment period. If 25 or more persons submit a written request for a public hearing within the 30-day comment period, a public hearing will be held unless a sufficient number withdraw their request in writing. Any person requesting a public hearing should state his or her name and address, and is encouraged to identify the portion of the proposed rule addressed, the reason for the request, and any change proposed. If a public hearing is required the agency will proceed pursuant to *Minnesota Statutes*, sections 14.131 to 14.20.

Comments or written requests for a public hearing must be submitted to:

Paul W. Goldberg, Commissioner
Bureau of Mediation Services
1380 Energy Lane, Suite Two
St. Paul, MN 55108
(612) 649-5421

The proposed rule may be modified if the modifications are supported by data and views submitted to the agency and do not result in a substantial change in the proposed rule as noticed.

A copy of the proposed rule is attached to this notice.

A Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rule and identifies the data and information relied upon to support the proposed rule has been prepared and is available from Paul W. Goldberg, Commissioner, Bureau of Mediation Services, 1380 Energy Lane, Suite Two, Saint Paul, Minnesota 55108.

If no hearing is required, upon adoption of the rule, the rule and the required supporting documents will be submitted to the Attorney General for review as to legality and form to the extent the form related to legality. Any person may request notification of the date of submission to the Attorney General. 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 adopted rule, must submit the written request to Paul W. Goldberg, Commissioner, Bureau of Mediation Services, 1380 Energy Lane, Suite Two, Saint Paul, Minnesota 55108.

Dated: 14 July 1988

Paul Goldberg
Commissioner

### Rules as Proposed

**5510.2410 APPLICATION.**

Parts 5510.2410 to 5510.3210 govern the conduct of negotiations between an exclusive representative and an employer, the conduct of mediation, the certification of ~~impasse~~ unresolved issues to the board, the arbitration of ~~impasse~~ unresolved issues, and the notification of intent to strike.

**5510.2905 CONFIDENTIAL INFORMATION.**

Subpart 1. **Mediation information.** Information disclosed to the commissioner or an authorized agent by any party during mediation, and all files, records, reports, documents, or other papers received or prepared by the commissioner during the performance of duties and responsibilities related to mediation of a dispute are classified as protected nonpublic data with regard to data not on individuals and as confidential data on individuals, except to the extent the commissioner determines to unclassify such data in the referral of a dispute to interest arbitration or to identify the general nature of or parties to a labor dispute.

Subp. 2. **Final positions.** Final positions submitted by a party in conjunction with a dispute that has been referred to interest arbitration is regarded as protected nonpublic data with regard to data not on individuals and as confidential data on individuals

until both parties have filed their final positions with the commissioner under part 5510.2930, subpart 4. The commissioner may release the information to the board, and the board may release the information to the arbitration panel, to fulfill procedural requirements of the act and parts 5510.2410 to 5510.3210, but the information shall remain nonpublic and confidential until the commissioner has affirmed that final positions have been filed by both parties or until an interest arbitration hearing is commenced by the arbitration panel.

**5510.2915 MEDIATION PERIOD.**

For all public employees except teachers, mediation periods referred to in the act commence on the day after a request for mediation is filed with the commissioner. For teachers, mediation periods commence on the day the first mediation conference is convened.

**5510.2930 REFERRAL TO ARBITRATION.**

Subpart 1. **Referral.** The commissioner may refer a matter to the board for arbitration when it has been determined that further mediation efforts would serve no purpose and:

A. in the case of essential employees, either or both parties have requested arbitration; or

B. in the case of nonessential employees, a request to arbitrate has been made by one party and has been agreed to by the other within 15 days of the request.

Requests for arbitration and agreements to arbitrate must be in writing and be served on the other party and the commissioner under part 5510.0310, subpart 19. The requests and agreements are binding on the parties except to the extent they otherwise agree in writing, except that an offer to arbitrate for nonessential employees that has not been accepted in writing within the 15-day period shall be considered rejected and withdrawn.

Subp. 2. **Form of arbitration.** All interest arbitration shall be conventional arbitration except:

A. the parties may agree in writing to limit the arbitrator's authority to final offer item-by-item or final offer total-package; or

B. if the case involves a unit of principals and assistant principals, the panel must use final offer item-by-item arbitration.

Subp. 3. **Unresolved issues.** In requesting or agreeing to interest arbitration, each party shall list all issues or matters not previously agreed upon. Based upon the submissions of the parties and prior efforts to mediate the dispute, the commissioner shall determine the unresolved issues that will be submitted to arbitration.

Subp. 4. **Final positions.** When an agreement or requirement to arbitrate has been established, and the commissioner has determined the issues to be submitted to arbitration, the commissioner shall certify the matters to the board and direct each party to submit their final position on the issues certified by the commissioner. Final positions shall be presented in the form of the contract language desired by each party to resolve the matter in dispute. Final positions must be submitted to the commissioner within 15 days of the date when the commissioner certifies the matter to the board. The deadline for submitting final positions may be extended a reasonable period of time by the commissioner upon an adequate and timely showing of good cause by a party.

If the arbitration form is a final offer variety, the final positions of the parties may not be withdrawn or amended except by mutual written consent.

Subp. 5. **Forwarding to the board.** After the date for the filing of final positions has passed, the commissioner shall forward the matter and any final positions that have been received to the board. When final positions have been received from both parties, the commissioner shall provide each party with a copy of the opposing party's final positions. The board may provide copies of final positions to the arbitration panel, but part 5510.2905, subpart 2, shall govern the protected nature of the final positions.

Subp. 6. **Effect of untimely final positions.** The failure of a party to submit timely final positions on an issue that has been submitted to final-offer arbitration shall be noted by the arbitration panel and shall prejudice that party's interests in the issue. The failure of a party to submit timely final positions in a conventional arbitration matter shall be noted by the arbitration panel and may be considered by the panel in weighing the testimony, evidence, and overall good faith behavior of that party with respect to the matters before the panel.

Subp. 7. **Continued mediation.** The commissioner may continue efforts to aid the parties in resolving issues even after a matter has been certified for arbitration.

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.

**5510.3005 STRIKES.**

Subpart 1. **Notice.** A notice of an intent to strike must be in writing and served upon the employer and the commissioner under parts 5510.2410 to 5510.3210. The notice is timely when the requirements of *Minnesota Statutes*, section 179A.18, have been fulfilled.

Subp. 2. **Dates right to strike matures and terminates.** The dates the right to strike matures and terminates shall be determined by the commissioner pursuant to the act and the commissioner shall provide written notice of the dates to the parties. No strike shall commence during the first ten days after receipt of a notice of intent to strike.

Subp. 3. **Renewal of intent to strike notice.** Except for teachers, a notice of intent to strike may be renewed by serving a written notice on the employer and the commissioner not sooner than five days before the termination of a right to strike. In the event the renewal is served, a new ten-day waiting period shall apply and the commissioner shall reestablish the dates when the right to strike matures and terminates. Teachers are limited to one intent to strike notice per contract negotiation period.

**REPEALER.** *Minnesota Rules*, parts 5510.2810, subpart 6; 5510.2910; 5510.3010; and 5510.3110, are repealed.

# Pollution Control Agency

## Proposed Permanent Rules Relating to Individual Sewage Treatment Systems Design Criteria

### Notice of Hearing

NOTICE IS HEREBY GIVEN that the Minnesota Pollution Control Agency (Agency) will hold a public hearing in the above-entitled matter at the following dates, times and locations:

Tuesday, September 6, 1988 — 2:30 p.m. and 7:00 p.m.
Fine Arts Building Auditorium
Hibbing Community College
1515 East 25th Street
Hibbing, Minnesota

Wednesday, September 7, 1988 — 2:30 p.m. and 7:00 p.m.
Council Chambers
City Administration Building
1025 Roosevelt Avenue
Detroit Lakes, Minnesota

Thursday, September 8, 1988 — 1:30 p.m. and 7:00 p.m.
City Council Chambers
100 Northeast Seventh Ave.
Little Falls, Minnesota

Monday, September 19, 1988 — 2:30 p.m. and 7:00 p.m.
Food Service West
Southwest State University
North Highway 23
Marshall, Minnesota

Tuesday, September 20, 1988 — 2:30 p.m. and 7:00 p.m.
State Room
Olmsted County Campus Center Building
2116 Campus Drive, S.E.
Rochester, Minnesota

Thursday, September 22, 1988 — 1:30 p.m. and 7:00 p.m.
Board Room
Minnesota Pollution Control Agency
520 Lafayette Road
St. Paul, Minnesota

STATE OF MINNESOTA

BUREAU OF MEDIATION SERVICES

| | |
|---|---|
| In the Matter of the Proposed Adoption of Rules of the State Bureau of Mediation Services Relating to Negotiation, Mediation, Impasse Certification, Arbitration, and Intent to Strike Notice | FINDINGS OF FACT, CONCLUSIONS, AND ORDER ADOPTING RULE WITHOUT PUBLIC HEARING |

Notice of the Commissioner's intent to adopt the above-entitled rules was published in the State Register on August 1, 1988, and was sent by United States mail to all persons on the list maintained by the agency pursuant to Minnesota Statutes section 14.14, subdivision 1a and 14.22 on July 18, 1988. The statement of need and reasonableness was prepared before the notice of intent to adopt a rule without a public hearing was mailed to all persons on the rulemaking mailing list and published in the State Register and was available to the public.

All persons were given the opportunity to submit comment on the rule for 30 days after notice of proposed rulemaking. Two requests for a public hearing on the rule were received by the the agency.

Based on the comments and evidence in the record before the agency, I find the following:

1. The proposed rules as published on August 1, 1988, consolidates and clarifies rules relating to negotiation, mediation, certification and referral of interest disputes to arbitration, and the processing of intent to strike notices. The rules as adopted clarify procedural matters, including the protected status of final positions, and provides for default awards in the event of untimely filing of final positions in certain interest arbitration situations.

2. The terms "matters", "issues", and "items" are used interchangeably in Minnesota Statutes, section 179A.16 and in the proposed rules to refer to the enumeration of subjects to be submitted to interest arbitration. The term "items" conveys the most precise sense in the context of interest arbitration and this term will be substituted for the terms "issues" or "matters" throughout the rules as adopted.

3. Although the proposed rules were intended to clarify the public/nonpublic status of final positions, part 5510.2905, subpart 2, did not explicitly convey the public nature of final positions once either both parties have filed them or an arbitration hearing has been commenced. The rules as adopted make this explicit.

4. The finality of "final positions" under a final offer form of arbitration is essential to the theory of this form of arbitration and the proposed rules reiterated current rules in prohibiting amendment or withdrawal of such final positions in the absence of mutual written consent. It's not, however, inconsistent with the theory of final offer arbitration or the proposed rules to permit single-party amendments which are matters of pure form or nonsubstantive corrections of a clerical/technical nature. The rules as adopted make the propriety of nonsubstantive changes clear.

5. The underlying premise of final-offer arbitration is to increase the adverse consequences of bad faith or "bluff" behavior at the conclusion of pre-arbitration negotiations. A refusal to identify one's final position in a timely fashion prior to final-offer arbitration is behavior of the character this form of arbitration is intended to eliminate. The proposed rules noted that the untimely filing of final positions in final-offer arbitration would prejudice that party's interests in the issue. The rules as adopted make explicit that such prejudice is in the form of a default award. The rules as adopted further allow the arbitration panel to exercise the discretion inherent in its arbitral function in determining whether or not the delinquent party can establish good cause for the delinquency and allows the arbitration process to proceed in those situations where good cause can be established.

6. The adopted rules are not a substantial change from the rules as proposed because:

    a) The classes of persons who might be expected to comment on the proposed rules would be employers, exclusive representatives, and affected public employees. No new class of persons are affected by the adopted rules.

b) The subject matter covered by the proposed and adopted rules is the same.

c) The changes made in the rules as adopted merely clarify policies and avoid unintended results. The proposed rules were adequately noticed and invited comments as to its technical aspects. No person or class of persons affected by the rules is disadvantaged by the change in the adopted rules.

7. The above-captioned rules are needed and reasonable.

NOW, THEREFORE, IT IS ORDERED that the rules identified as Minnesota Rules: Parts 5510.2410 and 5510.3210, as modified, are adopted this 9th day of September, 1988, pursuant to authority vested in me by Minnesota Statutes section 179A.04, Subd. 3(f) (1984).

Name Paul W. Holden

Title Commissioner

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

July 25, 1988

Commissioner Paul W. Goldberg
Bureau of Mediation Services
1380 Energy Lane, Suite 2
St. Paul, MN 55108

Re: Proposed Rules Governing Arbitration

Dear Mr. Goldberg:

In response to the Notice of Intent to Adopt a Rule dated July 14, 1988 respecting the above-referenced matter, I would like to submit the following remarks and suggestions.

1. Proposed Part 5510.2930, Subp. 3 provides that a party requesting arbitration "shall list all issues or matters not previously agreed upon" and for the commissioner to "determine the unresolved issues" based on the submissions and prior efforts to mediate. As you are aware, school principal arbitrations are conducted upon "items" rather than "issues", and Minn. Stat. §179A.04, subd. 3(c) specifically contemplates and authorizes the director to certify "items of dispute". The significance of understanding and applying this distinction can be extremely important. You may recall the Minneapolis police or firefighter award in which the arbitrator noted that "wages" for a two year period had been submitted as a single item rather than two items and stated he was reluctantly bound to award the employer's position in spite of desiring a somewhat more lucrative result for the employees. While the representatives of the employees frankly should have understood this distinction, their reaction to this result led to their requesting and receiving a PELRA amendment taking them out of mandatory final offer arbitration. The opportunity to decide how many "items" a particular issue might be divded into is an important part of the planning and tactics in principal arbitrations. I believe there are three regards in which the proposed rule might be improved. First, the language might be made more specific to indicate that formulation initially by the parties and later by the commissioner may be of issues, "items" or, by written agreement of the parties, total packages. Secondly, I believe that some form of notice

or modification to the forms used by BMS should inform parties upon the considerations involved in selecting "items" and perhaps by way of example the consequences of particular selections. Finally, it has been my impression confirmed from time to time by various mediators that BMS has followed an unwritten policy of agreeing to certify any item requested by either party. For example, if one party requests "wages" for two years as one item and the other party requests wages for year one and wages for year two as two items, the requested formulation with more particular items has been certified. I believe this is an appropriate practice and recognizes some discretion in the parties to lessen some of the harshness of final offer arbitration by permitting a greater variety of awards for the arbitrator to make. I also believe this would be the perfect opportunity to codify this practice.

2. Part 5510.2930, Subp. 4 parallels Minn. Stat. §179A.16, subd. 3 in requiring submission of final positions within 15 days from the time of certification to PERB. Proposed subp. 6 relates to the failure to submit "timely final positions". Please again note that subps. 4 through 6 also fail to make reference to "items", and the foregoing discussion applies similarly to including this reference in those provisions. In specific regard to subp. 6, the proposed language simply states that an untimely final position "shall prejudice that party's interests in the issue" without describing the nature of the prejudice. It would seem to me that the limitation imposed by Minn. Stat. §179A.16, subd. 7 restricting an arbitrator to selecting between the final offers of the parties on each impasse item would require an award by default under all circumstances of an untimely submission or failure to submit a position upon a certified item. If that is the appropriate result, I believe it should be clearly described in subp. 6. Furthermore, in light of what may be the perceived harshness of this result, I believe the commissioner in directing submission of final positions under subp. 4 should provide notice that a failure to submit timely positions will produce this result.

3. As a final matter, part 5510.2930, Subp. 4 prohibits the amendment generally of a final position. It is my understanding that at least some jurisdictions providing for final offer arbitration distinguish between substantive amendments and those which are simply technical, corrections of typographical error or obvious mistake or matters of purely form. In order that the purposes and intended pressures of final offer arbitration can be realized, it is obvious that substantive amendments cannot be allowed. I believe

this may not be the case with respect to the other kind of amendments. Furthermore, allowance for non-substantive amendments could reduce or eliminate other controversies arising from these rules. For example, subp. 4 purports to require that final positions be submitted in the form of the contract language desired. I am aware of no statutory requirement in this particular regard. A party simply submitting a final position of, for example, six percent across the board salary increase for year one could find itself subject to a claim its final position was defective in the absence of a salary schedule illustrating the resulting salaries thereby produced. A non-substantive amendment including such a schedule would not impair the operation of final offer arbitration nor produce any surprise for the other party to the controversy.

It is not clear to me at the present time whether the foregoing matters require a request for public hearings. It is also unclear whether the modifications described would result in a substantial change in the rules as proposed. I would appreciate if possible some response in regard to the latter in order to guide a final decision whether to request a public hearing.

Sincerely yours,

Dale G. Swanson

Dale G. Swanson

DGS:rc

cc: Mr. Robert Arnold
Exec. Dir., MESPA

BMS

August 12, 1988

Dale G. Swanson
Attorney at Law
1068 South Lake Street
Forest Lake, Minnesota 55025

Dear Mr. Swanson:

Thank you for your comments regarding our July 14, 1988, notice of intent to adopt rules regarding negotiation, mediation, impasse certification, arbitration and intent to strike notice. I am appreciative of your comments and provide the following response:

1. We have always regarded the terms "matters," "issues," and "items" to be synonymous in the context of how many elements an arbitrator must consider in rendering an interest award. Indeed, PELRA seems to wander back and forth in its use of the terms. (See §§ 179A.04, subd. 3(c), 179A.16, subds. 1, 2, 3, 5, and 7.) I think you raise a valid concern, however, and we will take this opportunity to attempt more precision in the meaning of these rules. The term "item" seems most descriptive in this regard. We will, thus, make a non-substantive amendment to these rules during final adoption, substituting the term "items" for "issues" in part 5510.2930, subparts 4 and 6.

While it is not correct to characterize our procedures for certifying items in dispute as a policy of "agreeing to certify any item requested by either party," you are generally correct in concluding that it is our practice to defer to agreements by the parties on how to particularize their issues and to favor the position which formulates a greater number of items rather than coupling them. It would not be appropriate, however, to modify these rules to codify that practice at this time, as that would be a substantive change to non-controversial rules. We will consider a separate rule change for this purpose.

2. I agree with you concern over the vagueness of the phrase "shall prejudice that party's interest in the issue." The intent was to make clear that a failure to submit a timely final position in final offer arbitration means "you lose!" We will modify this language in final adoption to incorporate your suggestion that if we mean a default award must be entered, say so. Concomitantly, we will modify this provision to allow the arbitration panel to take note of the reasons for delinquency, to eliminate a harsh result from unavoidable delays with a good cause foundation.

(612) 649-5421
1380 Energy Lane • Suite #2 • St. Paul, MN 55108-5253
An Equal Opportunity Employer

Our notice of certification and request for final positions will be modified to alert parties as to the importance of timeliness.

3. I also agree with your concerns over the potential adverse consequences of an inability to correct clerical or other obvious error of a non-substantive nature in a final offer arbitration situation. We will, therefore, make our intent clear by modify the second paragraph of 5510.2930, subpart 4, by adding the phrase: "or to correct non-substantive errors of a clerical or technical nature or matters of purely form."

Again, thank you for your detailed attention to these matters and your helpful comments.

Sincerely,

PAUL W. GOLDBERG
Commissioner

cc:
Robert Arnold

associated professional advisors, inc.

7001 Orchard Lake Road
Suite 210 A
West Bloomfield, Michigan 48322
(313) 855-0401

2700 University Avenue, West
Suite 50
St. Paul, Minnesota 55114
(612) 646-1306

reply to: Minnesota

August 11, 1988

Mr. Paul W. Goldberg, Commissioner
Bureau of Mediation Services
State of Minnesota
1380 Energy Lane, Suite Two
Saint Paul, Minnesota 55108

Dear Mr. Goldberg:

I am writing on behalf of the Minnesota Licensed Practical Nurses Association (MLPNA), with regard to the Bureau's proposed rules, parts 5510.2410 to 5510.3005.

It appears that part 5510.2930, subpart 3 contains a substantial change from the present rule. At present, the Commissioner may certify issues to be at impasse and those issues may then be the subject of arbitration. The proposed rule provides that the "commissioner shall determine the unresolved issues that will be submitted to arbitration". (page 3, lines 4-5)

This change would allow a commissioner to decide which issues could and could not be arbitrated. Additionally, a commissioner could potentially prohibit the arbitration of items which are at impasse and for which the parties to the dispute desire arbitration.

MLPNA is opposed to the inclusion of this change for these reasons. We request that the Bureau hold a public heraing to further consider this portion of the proposed rule.

Should the Bureau not hold a hearing, would you please advise me of the submission of the rule to the Attorney General?

Sincerely,

Scott C. Kleckner
Labor Relations Consultant

cc: Judy L. Domning, Executive Director, MLPNA
Helen Henning, President, MLPNA

RECEIVED BLS-

12 AUG 03 1 3 13

BMS

BUREAU OF MEDIATION SERVICES

August 12, 1988

Mr. Scott Kleckner
Labor Relations Consultant
Associated Professional Advisors, Inc.
2700 University Avenue West, Suite 50
St. Paul, Minnesota 55114

Dear Mr. Kleckner:

Thank you for your correspondence of August 11, 1988, concerning the proposed rules governing negotiations, mediation and arbitration (parts 5510.2410 to 5510.3005).

I have reviewed your concerns about the provisions of part 5510.2930, subpart 3, but suggest that your anxieties may be misplaced. The proposed rule is not a substantive change in current policy and practice and is, in fact, necessary to comply with the express provisions of the statute.

Minn. Stat. (1988) § 179A.16, subdivision 3, provides, in part: "The [commissioner] shall determine the matters not agreed upon based on the positions submitted by the parties and the [commissioner's] efforts to mediate the dispute...." Additionally, the current rules provide: "The notice [of impasse] will include a list of the issues determined by the [commissioner] to be at impasse..."(Minn. Rules part 5510.2910, subp. 5), and "the notice of impasse shall contain...a list of the issues or impasse items determined by the [commissioner] to be at impasse..."(part 5510.3010, subp. 5).

Thus, under current law and rules, the commissioner does "decide which issues could and could not be arbitrated." The proposed rules merely provide an administrative procedure for this purpose, in a manner which is obviously more clear and evident than are existing rules. There is no substantive change in the authority of the Commissioner or the Bureau which results from the provisions of proposed part 5510.2930, subpart 3.

Accordingly, we would intend no change as a result of your inquiry and will not request that a public hearing be convened on the basis of your letter. We will, however, notify you when this rule is submitted to the Attorney General.

Sincerely,

PAUL W. GOLDBERG
Commissioner

cc: Judy L. Domning, Helen Henning

(612) 649-5421
1380 Energy Lane • Suite #2 • St. Paul, MN 55108-5253
An Equal Opportunity Employer




# Anoka-Hennepin Independent School District No. 11

SCHOOL BOARD

Larry Ragland, Chairman
Susan Anderson, Vice Chairman
Jon Stonecash, Treasurer
Betty Hardle, Clerk
Karen Irvin, Director
Denis Kelly, Director

Dr. Lewis Finch, Superintendent

EDUCATIONAL SERVICE CENTER
11299 Hanson Boulevard N.W. • Coon Rapids, Minnesota 55433
612/422-5500

August 22, 1988

Paul W. Goldberg, Commissioner
Bureau of Mediation Services
1380 Energy Lane, Suite 2
St. Paul, MN 55108

Dear Mr. Goldberg:

I write in response to the proposed permanent rules relating to negotiation, mediation, impass certification, arbitration, and intent to strike notice, which were published in the State Register on Monday 1 August, 1988, and which invited comment from the public on those proposed rules. I speak specifically to Rule 5510.2410 Application, as proposed, in which the words "unresolved issues" have been substituted for the term "impasse." In my opinion and experience, there is a difference between those two terms. Impasse carries with it a specific historical and legal meaning within both statute and case law. It is more targeted, more precise than "unresolved issues" and requires, I believe, a higher standard. Since the body of interpretation of this concept carries with it a specific understanding, it would seem that the Bureau would adhere to that term rather than to simply state in the Statement of Need and Reasonableness that "it is not the practice" of the Bureau to certify that an impasse exists. The very narrow circumstances contemplated by the statute (and there is more than one such under Minnesota Statute 179A.16, Subd. 1(a)) arguably envision impasse in all its labor relations meaning rather than generalized unresolved issues.

I would propose retaining the present language in that part and would request a public hearing.

Sincerely yours,

Cathryn T. Olson
Director, Employee Relations

CTO/db/DsD2

cc: MSBA
Lewis Finch

BMS

BUREAU OF MEDIATION SERVICES

State of Minnesota

September 1, 1988

Ms. Cathryn T. Olson
Director, Employee Relations
Anoka-Hennepin Independent School District No. 11
11299 Hanson Boulevard N.W.
Coon Rapids, MN 55433

Dear Ms. Olson:

Thank you for your comments regarding the proposed rules relating to mediation, etc., which were published in the August 1, 1988, issue of the State Register. Your comment focused upon proposed Rule 5510.2410, which shifts focus from the certification and arbitration of "impasses" to the certification and arbitration of "unresolved issues".

I agree with your conclusion that the term "impasse" has particular significance in the area of labor law and collective bargaining. This is a major reason behind our desire to avoid a more cavalier use of the term within our rules.

The Hormel and Sauk Center episodes of unilateral implementation of an employer's last offer have heightened awareness of the significance of the existence of an "impasse" in bargaining. As a matter of professional and public policy, it is inconsistent with the Bureau's role as a neutral in the resolution of disputes for us to take a formal role in declaring impasses, except in the very narrow context contemplated by Minn. Stat. § 179A.16, subd. 1(a). (See Case No. C-88-039 for discussion by the Minnesota Court of Appeals which affirms our stance in this regard.) Accordingly, it is more appropriate and accurate to describe our role under parts

(612) 649-5421
1380 Energy Lane • Suite #2 • St. Paul, MN 55108-5253
An Equal Opportunity Employer

5510.2410 to 5510.3210 in the fashion proposed in the new rule than it is to suggest that we regularly certify "impasses". For this reason, I am unable to accede to your request to retain the current language in this rule.

Sincerely,

PAUL W. GOLDBERG,
Commissioner

PWG:csc

cc: John Sylvester
Lewis Finch

P.S. Another writer has further suggested that we utilize the term "items" rather than "issues" in recognition of the similarly precise meaning of the term "items" in the context of interest arbitration. It is our intent to incorporate this suggestion when adopting the new rule.

STATE OF MINNESOTA

IN COURT OF APPEALS

C2-88-227

OFFICE OF
APPELLATE COURTS
FEB 3 1988
FILED

Minnesota Bureau of
Mediation Services,

Petitioner,

vs. ORDER

The Honorable John Spellacy,

Respondent.

Considered and decided by Wozniak, Chief J., Sedgwick, J., and Schumacher, J.

Based upon the file, records and proceedings herein, and because:

1. Petitioner seeks a writ of prohibition directed at the trial court's January 29 order refusing to quash a subpoena compelling a mediator to testify; and

2. In the underlying suit, AFSCME Council No. 65 seeks damages and injunctive relief from the decision of Koochiching County to unilaterally impose its last contract offer; and

3. The union claims the parties have not reached an impasse in their negotiations, and the trial court has described this as "the singular issue" in the pending trial; and

4. The trial court subpoenaed the mediator, with the announced intention of giving him "the legal definition of impasse" and then asking him "whether he believes there is such a legal impasse at the present time so as to justify the employer's action," and further permitting cross-examination of

the mediator on his understanding of the legal definition of impasse, his acceptance of the definition, and whether his opinion is based upon the definition; and

5. The basis for the mediator's opinion on the ultimate issue before the court would, presumably, be the communications of the parties; and

6. Communications and documents made or used in mediation are privileged, Minn. Stat. § 595.02, subd. 1(k) (Supp. 1987); and

7. A mediator cannot be subpoenaed to testify on the conduct of the parties during negotiations, even where that is the ultimate issue for the trial court, Sonenstahl v. L.E.L.S., Inc., 372 N.W.2d 1 (Minn. Ct. App. 1985) (mediator could not testify whether union fairly represented members during negotiations, which was issue before trial court); and

8. Similarly, the issue before the trial court in this case requires a determination whether the employer has bargained in good faith and exhausted the prospects of agreement; and

9. Solicitation of the mediator's opinion on that issue is no more appropriate than if the trial court in Sonenstahl had instructed the mediator on the definition of fair representation and then questioned whether the mediator believed the definition had been met; and

10. The trial court has also indicated it considers the mediator to be an expert witness, although an expert witness may not be appointed by the court unless he or she consents, Minn. R. Evid. 706, and the mediator in this case has not consented;

IT IS HEREBY ORDERED:

1. The petition is granted.

2. The trial court's subpoena, directed at mediator W.C. Anderson, is quashed.

Dated: February 2, 1988.

BY THE COURT

Chief Judge

CLL/cjs

STATE OF MINNESOTA

IN COURT OF APPEALS

American Federation of State, County and Municipal Employees, Council No. 65,

Plaintiff,

vs.

Koochiching County,

Defendant.

PETITION FOR WRIT OF PROHIBITION

TRIAL COURT CASE NUMBER: C-88-039

APPELLATE COURT CASE NUMBER: _____

TO: The Court of Appeals of the State of Minnesota:

Petitioner, the Minnesota Bureau of Mediation Services (hereinafter "BMS") is not a party in the above-entitled action. It is a state agency established pursuant to Minn. Stat. ch. 179A (1986), the Public Employees Labor Relations Act (hereinafter "PELRA"). The BMS employs mediators who assist parties to a labor dispute in settling their differences. One of these mediators, W. C. Anderson, was subpoenaed on the evening of January 28, 1988 by the Honorable John A. Spellacy, Judge of Koochiching County District Court to testify the following day at a trial which is underway in Grand Rapids, Minnesota. In an oral request to Judge Spellacy, the BMS sought to quash that subpoena. By his order of January 29, 1988 Judge Spellacy denied BMS' motion to quash the subpoena and required Anderson's attendance and testimony at trial. Petitioner requests a writ prohibiting Judge Spellacy from requiring Anderson to testify at the trial on February 2, 1988 at 2:00 p.m.

1. Statement of facts necessary to an understanding of the issues presented.

At the present time a public sector labor contract dispute exists between Koochiching County, as an employer, and the union representing certain county employees, American Federation of State, County and Municipal Employees, Council No. 65 (hereinafter "union"). Koochiching County (hereinafter "employer") has concluded that the parties have reached an impasse in their negotiations for a new collective bargaining agreement and consequently has decided to implement its last offer which has been rejected by the union. The union, on the other hand, contends that no impasse has occurred. It seeks a temporary injunction pursuant to Minn. Stat. § 179A.13 (1986) claiming that the employer is refusing to negotiate in good faith.

The BMS was established for the purpose of, among other things, assisting parties to a labor dispute in settling their differences. Minn. Stat. § 179A.04, subd. 3 (1986). In this case, the parties had petitioned the BMS some time ago for mediation services. Consequently, Anderson was assigned by the Commissioner of the BMS to mediate the dispute. Anderson has met with the parties over a period of months in his role as a neutral facilitator attempting to assist the parties to resolve their differences.

On the evening of January 28, 1988 Anderson was served with two subpoenaes requiring his appearance at 1:30 p.m. in Grand Rapids the following day to testify at the trial in the above-entitled case. Neither of the parties to the action sought

his testimony. The subpoenaes were issued at the request of Judge Spellacy. By telephone on January 29, counsel for the BMS moved to quash the subpoenas on the ground that it would be contrary to the public interest to compel a mediator for the BMS to testify about the positions of the parties based on communications he received in confidence in his role as a neutral during the mediation process.

Judge Spellacy denied the motion, stating that he intends to call Anderson as a witness at 2:00 p.m. on February 2, 1988; to qualify him as an expert; and to ask him his opinion on the ultimate issue in the case, i.e., whether the positions of the parties are and have been so inflexible that the parties have reached an impasse. He further intends to allow counsel for both parties to cross-examine the mediator. Judge Spellacy stated that he is aware of the statutory privilege protecting communications made in the course of mediation, Minn. Stat. § 595.02, subd. 1(k) (1986) and believes that he will somehow be able to limit the mediator's testimony so that the statutory prohibition will be effectively maintained.

2. Statement of the issues.

I. Can the trial court compel a mediator of the BMS to testify regarding the positions of the parties during the mediation process?

II. Is a trial court judge authorized to require the testimony of a witness by subpoena when the witness does not consent to act as an expert and neither of the parties seek the witness' testimony?

3. Argument and statement of the reasons extraordinary relief necessary.

Extraordinary relief is necessary because the trial court which requested the subpoena denied the motion to quash. If the mediator is required to comply with the subpoena and testify at the trial on February 2, 1988, the practical effect would be that the claimed privilege would be lost and the harm done to the public interest in an effective mediation process would be irredeemable.

There is a well established exception to the general rule that denial of a motion to quash a subpoena is not appealable, and the person whose testimony is sought must first litigate his claim in contempt proceedings. The exception permits immediate review when a person who is not a party and who claims a privilege is subpoenaed. A third party cannot be expected to risk contempt to secure review. In re Grand Jury Proceedings (Malone), 655 F.2d 882, 884 (8th Cir. 1981).

The attached memorandum of law contains the argument in support of this petition.

WHEREFORE, the petitioner requests an order granting the petition for a writ of prohibition and the issuance of the writ. Alternatively, petitioner requests issuance of a temporary writ

enjoining the trial court from enforcing the subpoena pending an appeal to and disposition of that appeal by the Minnesota Supreme Court.

Dated: February 1, 1988.

HUBERT H. HUMPHREY, III
Attorney General



ANDREA MITAU KIRCHER
Special Assistant
Attorney General
Attorney Registration No. 56042

1100 Bremer Tower
Seventh Place & Minnesota Street
St. Paul, Minnesota 55155
Telephone: (612) 296-7860

Attorneys for Minnesota
Bureau of Mediation Services

STATE OF MINNESOTA

BUREAU OF MEDIATION SERVICES

In the Matter of the Proposed Adoption Of Rules of the State Bureau of Mediation Services Relating to Negotiation, Mediation, Impasse Certification, Arbitration, and Intent to Strike Notice

NOTICE OF SUBMISSION OF RULE ADOPTED WITHOUT PUBLIC HEARING TO THE ATTORNEY GENERAL

Pursuant to your request and in accordance with Minnesota Statues, section 14.26:

PLEASE TAKE NOTICE that the above-captioned rule as adopted has been submitted to the Office of the Attorney General on the date of this notice, Oct 20, 1988, for review as to legality and form to the extent form relates to legality. The proposed rule, the rule as adopted, all the notices, the Statement of Need and Reasonableness, all written comments and requests for a hearing received, and other required documents also have been submitted to the Attorney General.

The proposed rule which was published in the State Register and made available to the public on August 1, 1988, has been modified. A free copy of the rule as modified as well as the findings of fact, conclusions, and order explaining the amendments and adopting the rules is available upon request from the State Bureau of Mediation Services.

The rule must be approved or disapproved by the Attorney General within 14 calendar days of the date of submission to the attorney general. You may submit written comments to the attorney general on the legality of the rule or the legality of any rule. Any written comments must be submitted within eight calendar days of the date of the submission of the rule to the Attorney General. Your comments must address only the issue of legality of the rule or the legality of the specific parts or subparts of the rule. The attorney general standards for review are set forth in Minnesota Rules, part 2010.1000. You may receive a copy of the attorney general decision upon written request to the attorney general. Your comments or requests for the decision must be directed to:

The Office of the Attorney General
204 Administration Building
50 Sherburne Avenue
Saint Paul, Minnesota 55155
Telephone Number: (612) 296-1288

Any written comments submitted to the Attorney General must be submitted simultaneously to:

Paul W. Goldberg, Commissioner
State Bureau of Mediation Services
1380 Energy Lane, Suite Two
Saint Paul, Minnesota 55108
Telephone Number: (612) 649-5421

Name Paul W Goldberg

Title Commissioner

Dated: 10-20-88

In the Matter of the Adoption of Rules of the State Bureau of Mediation Services Relating to Negotiation, Mediation, Impasse Certification, Arbitration, and Intent to Strike Notice

**DECLARATION OF COUNSEL**

I, Andrea Mitau Kircher, Special Assistant Attorney General, do hereby declare that I have examined the above-captioned rule, and the supporting rulemaking record, and that, based on my examination, the Administrative Procedure Act and Minnesota Rules, chapter 2010 have been followed. Any exceptions are listed below. For Attorney General billing purposes, the four-digit docket client code is 0160.

A M Kircher

Andrea Kircher
Special Assistant
Attorney General

Dated: 10-20-88

10/28 Rule

p1 line 22

Will the Commissioner make the exception in all cases or only in certain cases?

p4 Lines 3-6

X Substantial change?

"Result in Default"

Broad, Discretionary Authority?

"in sole discretion of the panel"

"may"

p4 Lines 5-6

"in which case the panel may proceed as if the del. had not occurred."

Does it mean:

a. the panel will proceed & will forget that the del. occurred (then lines 6-11 are not applicable).

b. The panel will proceed, but may or may not forget that the del. occurred. (which if "may not" is the case, then lines 6-11 apply).

Cite

179A.04 subd 4(f) should have been 179A.04 subd 3(f) no such cite

OFFICE MEMORANDUM

DEPARTMENT: BUREAU OF MEDIATION SERVICES
STATE OF MINNESOTA

TO: Rita Desmond
Attorney General's Office

DATE: October 20, 1988 PHONE: 649-5421

FROM: Paul W. Goldberg, Commissioner
Bureau of Mediation Services

SUBJECT: Rules of the Bureau of Mediation Services Relating to Negotiation, Mediation, Impasse Certification, Arbitration, and Intent to Strike Notice Notice

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

1. A copy of the proposed rules with a certificate of approval as to form by the revisor of statutes attached.

2. The notice of intent to adopt a rule without a public hearing as mailed.

3. The statement of need and reasonableness in support of the proposed rule complying with part 2010.0700.

4. The affidavit of mailing the notice of intent to adopt a rule without a public hearing.

5. A copy of the notice of intent to adopt the rule without a public hearing as published in the state register.

6. Four copies of the rule as adopted.

7. The findings of fact, conclusions, and order adopting the rule.

8. All written requests, submissions, or comments on the rule received by the agency.

9. The declaration of the attorney in the attorney general's office who represents the agency.

10. The notice of submission of the rule to the attorney general.

11. The affidavit of mailing notice of submission of the rule to the attorney general.

SF-00006-05 (4/86)

STATE OF MINNESOTA

# Office Memorandum

DEPARTMENT : **ATTORNEY GENERAL/BREMER TOWER**

DATE : October 20, 1988

TO : **RITA DESMOND**
Attorney General's Office
515 Transportation Building

FROM : **ANDREA MITAU KIRCHER** AMK
Special Assistant
Attorney General

PHONE : 296-7860

SUBJECT : **Rules of the Bureau of Mediation Services Relating to Negotiation, Mediation, Impasse Certification, Arbitration, and Intent to Strike Notice Notice.**

Enclosed for your review are rules of the Bureau of Mediation Services.

AMK:kkw
KIRC/.be9

cc: Carol Cox

Enclosure

RECEIVED
OCT 24. 88
ATTORNEY GENERAL'S OFFICE
515 TRANSPORTATION BLDG.
ST PAUL, MN 55155