

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

DEPARTMENT: Office of the Attorney General

STATE OF MINNESOTA

OFFICE MEMORANDUM

DATE: October 31, 1990

TO: PAUL W. GOLDBERG
Commissioner
Bureau of Mediation Services

FROM: CHARLENE HATCHER
Special Assistant
Attorney General

PHONE: 296-9422

SUBJECT: In the Matter of the Adopted Rule Relating to Public Employee Labor Relations

The above-referenced rule has been approved as to its legality by the Attorney General on October 29, 1990.

Enclosed is your 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, submissions or comments along with any extra copies of documents which you submitted to the Attorney General.

Your next step is to arrange for publication of the Notice of Adoption in the State Register. In a day or two, you should receive from the Revisor's Office three copies of the notice of adoption of your rule. You should submit two copies of the Notice of Adoption to the State Register for publication. A permanent rule without a hearing does not become effective until five days after a notice of adoption is published 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:sc

cc: Andrea Kircher
William Brown, Chief Judge
MaryAnn Hruby

Bureau of Mediation Services

Adopted Permanent Rules Relating to Public Employee Labor Relations

Rules as Adopted

5510.0510 LIMITATION ON FILING PETITION. [Withdrawn at 15 SR 452]

5510.1410 FAIR SHARE FEE REQUIREMENTS.

Subpart 1. **Advance notice of fair share fee assessment.** The exclusive representative must provide written notice of the amount of the fair share fee assessment to the employer and each employee assessed: upon initial implementation of the fair share fee assessment; to employees hired after the original notice has been issued; and upon a change in the amount of the fair share fee assessment. The notice must contain:

[For text of items A to C, see M.R.]

D. sufficient information to identify expenditures for benefits available only to members of the exclusive representative and sufficient information to identify expenditures for collective bargaining and contract administration services that have been provided for bargaining unit employees without regard to membership status. This information shall include the most recent documentation of the preceding year's actual expenditures and of the current year's projected expenditures;

[For text of items E and F, see M.R.]

[For text of subps 2 and 3, see M.R.]

Subp. 4. **Assessment.** On the effective day of the fair share fee assessment and thereafter, the amount of the assessment shall be deducted by the employer from the pay of the employee. The initial amounts deducted must be held in escrow by the employer and not remitted to the exclusive representative for a period of 30 calendar days from the date notice is provided under subpart 1.

Approved by Revisor

If at the end of the 30-day period an employee has not challenged the fair share fee assessment, subsequent assessments shall be promptly remitted to the exclusive representative.

If an employee challenges the fair share fee assessment, the assessment for that employee shall continue to be deducted, but must be held in escrow by the employer until otherwise ordered by the commissioner.

5510.1510 FAIR SHARE FEE CHALLENGE PETITION.

Subpart 1. **Filing petition.** A petition challenging a fair share fee assessment may be filed by individual employees and must include:

[For text of items A to C, see M.R.]

D. the amount of regular membership dues in the unit;

E. the amount of the fair share fee assessment;

F. the specific activities or expenditures of the exclusive representative which the petitioner believes are not in conformance with the statutory prerequisites of Minnesota Statutes, section 179A.06, subdivision 3; and

G. the date on which the petitioner received notice of the fair share fee assessment.

[For text of subp 2, see M.R.]

Subp. 3. **Filing fee.** The challenge petition must be accompanied by a certified check or other guaranteed form of payment in the amount of $10, made payable to "Bureau of Mediation Services." A challenge petition filed without the proper filing fee shall be returned to the individual filing the petition.

Subp. 4. **Receipt of petition.** Upon receipt of the challenge petition and fee, the commissioner shall provide the petitioner with an acknowledgment and receipt, along with a copy of the rules governing such challenge.

[For text of subps 5 and 6, see M.R.]

5510.1910 HEARINGS OR INVESTIGATIONS.

[For text of subps 1 to 9, see M.R.]

Subp. 10. **The record.** The commissioner shall maintain the

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by Revisor _____

record in each case. The record shall contain:

[For text of items A to D, see M.R.]

E. an audiomagnetic or stenographic recording of the hearing.

The commissioner shall retain the audiomagnetic or stenographic recording of the hearing for a period not less than 60 calendar days after the issuance of his order.

Subp. 10a. **Requests for transcripts.** The audiomagnetic recording of a hearing before the bureau may be transcribed in whole or in part upon the written request of any party or person, provided that the party or person requesting the transcript makes a request within the 60-day retention period and agrees in writing to pay full costs of preparation of the transcript.

Subp. 10b. **Preparation of case record on appeal to PERB.** Any person or party appealing a determination of the commissioner to the board must agree in writing to pay for the cost of preparing the transcript of the hearing upon which the determination was based, as well as the costs of duplicating all relevant exhibits and other written case file material. If the appeal involves only a portion of the elements or factors decided by the commissioner, and only parts of the hearing are relevant to that element or factor, a partial transcript and record may be purchased. The extent of the transcript and record necessary to provide the board with the complete record upon which that portion of the commissioner's determination was based will be determined by the commissioner, based upon the scope of the issues under appeal. <u>However, any party to an appeal may request that a portion of the entire record be added to the record submitted by the commissioner to PERB. The party making such a request must agree in writing to pay for the cost of preparing this additional record.</u> Any partial transcript shall include all testimony and evidence relevant to the issues under appeal.

[For text of subps 11 to 15, see M.R.]

Approved
by Revisor _____

5510.2810 PETITION FOR MEDIATION.

[For text of subps 1 to 4, see M.R.]

Subp. 5. **Mediation meetings.** Joint or separate mediation meetings of the parties may be scheduled by the commissioner. Mediation meetings are informal and must be limited by the commissioner to matters relevant to the settlement of the dispute. The parties must continue to participate in a mediation meeting until excused by the commissioner. Use of recording devices, stenographic records, or other recording methods is prohibited in mediation meetings.

A mediation meeting may be closed to the public by the commissioner when, in the commissioner's judgment, closing will facilitate resolution of the dispute. In all cases a meeting will be closed only after receipt by the bureau of a valid and timely petition for mediation or after initiation of mediation by the commissioner. The commissioner may close a meeting to the public prior to its start or at any time during the meeting.

Subp. 5a. **Meetings of governing bodies.** When the commissioner determines that it is in the interest of resolution of a dispute, the commissioner may authorize a closed meeting of the public employer's governing body for the purpose of review and discussion of the status of negotiations and the employer's positions.

No closed meeting may be authorized unless the bureau has received a valid and timely petition for mediation or unless mediation has been initiated by the commissioner.

No closed meeting may be authorized when the commissioner or a representative of the commissioner is not physically present at the meeting unless the bureau has received a timely and valid notice of intent to strike.

In the event the commissioner determines that a closed meeting is necessary, but the commissioner cannot be physically present at the meeting and a timely and valid notice of intent to strike has been received by the bureau, the commissioner may authorize a closed meeting upon written notice to the governing body and exclusive representative at least 24 hours prior to the

Approved
by Revisor _____

closed meeting. The written notice must include the date, time, and place of the closed meeting of the governing body and limit the purpose of the meeting to matters relevant to the dispute.

Approved
by Revisor _____

APPROVED AS TO LEGALITY

October 29, 19 90

HUBERT H. HUMPHREY, III
ATTORNEY GENERAL

BY Charlene H. Hatcher
SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
OCT 30 1990

Joan Anderson Growe
Secretary of State

3:40 P.M.
M

MJC

RULE REVIEW CHECKLIST

File No. 1749
DATE RECEIVED 10-11-90
REVIEW DATE 10-22-90
DUE DATE 10-29-90
(DIS)APPROVED 10-29-90
WITHDRAWN _____

Docket No. 05 0009 0650
ADOPTED W/O HEARING _____
EMERGENCY RULE _____
TO REVISOR ON 10/19/90
REVISOR (DIS)APPROVED _____
FILED W/SEC. OF STATE 10/30/90
RETURNED TO AGENCY _____

✓ 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~~

_____ Board's Authorizing Resolution
_____ Date adopted

✓ Proposed Rule
✓ Revisor's Certificate

✓ Notice of Intent to Adopt Rule
179.02 sub 4 Statutory Authority
NA Small Business Statement
_____ Expenditure of public money statement
Feb 26, 1990 Signature

_____ Statement of Need and Reasonableness (if applicable)
_____ Small Business Statement
_____ Fees - § 16A.128

✓ Affidavit of Mailing Notice of Intent to Adopt Rule
* see my notes Dated 30/25 days before adoption
_____ Notice attached indicates it is attached
_____ Copy of rule or summary attached

_____ Publication in State Register
2-26-90, 3-19-90 8-26-90 Date 30/25 days before adoption

~~see~~ see my notes 180-day deadline from:
✓ Effective date of law requiring rule (14.12) (both rules) amendments don't apply
* see my notes 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
Oct 9, 1990 Date

✓ Written Requests, Submissions or Comments

✓ Declaration of Attorney
Andrea Kircher Name of SAAG representing agency

_____ Notice of Submission to Attorney General (if applicable)

_____ Affidavit of ~~Mailing Notice~~ to Attorney General (if applicable)

In the Matter of
Proposed Amendments to Rules of the State Bureau of Mediation Services Relating to Contract Bar, Fair Share Fee Assessment, and Hearing Records

STATEMENT OF NEED AND REASONABLENESS

PART	NEED	REASONABLENESS
5510.0510 Subpart 1.	The Bureau has observed cases where a single party to a collective bargaining agreement has raised last-minute unit clarification issues during the course of contract negotiations. The consequences of such circumstances are highly disruptive of the bargaining process, cause protracted delays in the resolution of collective bargaining disputes, and have long-lasting negative impacts on the character of the labor-management process. The rule change is needed to prevent this disruption of bargaining, while protecting the right of either party to raise unit clarification issues -- in a timely manner.	The proposed rule allows single party petitions during that period in the life of a collective bargaining relationship when everything can be regarded as "up for grabs", while preventing such actions from unduly disrupting the bargaining process. Unit clarification and collective bargaining issues are disparate matters and, since unit issues are not mandatory subjects for bargaining, an arms-length relationship between them is appropriate. The rule allows a unit clarification matter to be raised at any time whenever both parties agree that it is an appropriate issue. The restraint it imposes upon single parties is reasonable in that they are free to raise any clarification issue, but must do so in a prudent and timely fashion.
5510.1410 Subpart 1	U.S. Supreme Court decisions on the subject of agency or fair share fees imposed upon non-members of an exclusive representative require that such non-members be provided with information regarding the use of such funds so that the right of non-members to object to impermissive use is protected. There has been confusion on the part of some exclusive representatives regarding the extent of the information which should be provided to non-members and current	The rule is reasonable in that it does not require the exclusive representative to create or maintain records or reports which are not common to good business practice, while providing the non-member with an opportunity to compare actual spending practices with proposed expenditures so that informed decisions can be made regarding the propriety of the amount of the fair share fee assessment, particularly where the fee is based upon prospective expenditures.

PART	NEED	REASONABLENESS
	practice varies widely. The proposed rule is needed to ensure that the information provided to non-members is sufficient to permit evaluation of the exclusive representative's pattern of spending and to enable the non-member to make informed decisions about potential grounds for challenging a fair share fee assessment. The proposed rule also eliminates any requirement for the exclusive representative to file copies of fair share fee notices with the Bureau, a change which brings the rule into compliance with recent changes to M.S. 179A.06, subd. 3.	
5510.1410 Subpart 4.	The proposed rule change is needed to clarify the escrow and processing requirements for fair share fee assessments deducted by public employers. Current language is confusing.	The proposed rule does not change intent, merely clarifies that only initial fair share fee deductions need be escrowed by the employer for 30 days.
5510.1510 Subpart 1.	The current rule requires unnecessary and redundant information be included in a petition challenging a fair share fee.	The proposed rule eliminates unnecessary data from the petition.
5510.1510 Subpart 3.	The current rule is inconsistent with State Operating Policies and Procedures #06;06;08.	The proposed rule is consistent with established policies.
5510.1510 Subpart 4.	Stylistic.	The proposed change establishes consistent terminology in these parts.

PART	NEED	REASONABLENESS
5510.1910 Subpart 10.	The Bureau has encountered confusion and misunderstanding regarding the application of the current rule as to the production of transcripts and forwarding of the Bureau record upon appeal.	The language of this subpart is transferred to Subparts 11 and 12 and restated for ease of understanding and reference.
5510.1910 Subpart 11.	Because hearings before the Bureau are matters of public record, it is necessary to clarify procedures through which parties or the public may secure transcripts of such proceedings.	The Bureau has a 60-day retention schedule for the audio-magnetic or other verbatim record of hearings, and contracts with non-state vendors for the transcription of such records. The proposed rule retains provisions previously included in Subpart 10 while clarifying that parties need to request transcripts before the record retention period has elapsed.
5510.1910 Subpart 12.	Appeals from Bureau decisions are determined based upon the record established with the Bureau. It is, therefore, necessary to establish and/or clarify procedures for the preparation and forwarding of the record in the event of an appeal. Since an appeal may involve only one element of a much broader Bureau determination, it is unreasonable to require parties to assume the cost of a full transcript in order to appeal one particular element. However, in order to assure that an appealing party does not restrict the transcript and record to be forwarded to the appellate body to only those parts which favor its position, it is	The proposed rule does not alter current policy or practice. It allows production of partial transcripts and records in the event of an appeal, while ensuring that the original decision-maker is able to present the full portion of the record upon which the decision was based.

PART	NEED	REASONABLENESS
	necessary that the Bureau retain the final determination as to the extent of the transcript and/or record to be provided.	
5510.0510 Subpart 5 and 5a.	In prior format, the rule incorporated the matter of closed mediation meetings and closed meetings of governing bodies into the same rule. There was occasional confusion on the part of clients regarding the standards and requirements for closing a meeting of a governing body.	The proposed rule is reasonable in that it does not alter standards or procedures, but merely distinguishes that portion of the rule which applies to meetings of governing bodies.

new mailing

Stat. Authority 179.02 subd 4 (1989 Supp)

incorrect cite Feb. 26, 90 later corrected it

The commissioner shall maintain a roster of persons suited and qualified by training and experience to act as abritrators of labor disputes and shall provide parties to a labor dispute with the names of persons on the roaster upon written request. The commissioner shall adopt rules governing appointments to, removals from and administration of the roster.

mailing -
3 different mail dates
- 1st mailed it Feb 28, 1990 — correct cite
- 2nd correction March 20, 1990
- 3rd Withdrawal - August 26, 1990
~~they should have republished it~~
they withdrew the rule on August 20, 1990 - only withdrew part of the rule 5510.0510 subpart 1. ~~subd~~ 5510.1410, 5510.1510, 5510.1910 and 5510.2810 are not withdrawn.

correct cite stated in ~~Feb~~ March 26, 1990 correction

179A.04 subd 3 (f)

The commissioner shall: ~~accept and investigate all petitions for~~ (f) adopt rules regulating the forms of petitions, notices and orders, and the conduct of hearings and election

180 day deadline 14.26

1st published at Feb 28, 1990 not 180 days

March 20, 1990 3 174 days

August 26, 1990 3 all within 180 days

Since they withdrew it on March 20, 1990 and gave purple another comment ~~per~~ period I think it should start from March 20, 1990 even though the complete Notice of Intent was published on Feb 28, 1990

14.26 states that the rule shall be submitted to the Attorney General within 180 days of the day that the comment period for the rule is over or the rule is automatically withdrawn.

STATE OF MINNESOTA

BUREAU OF MEDIATION SERVICES

In the Matter of
Permanent Rules
Relating to
Public Employee
Labor Relations

FINDINGS OF FACT,
CONCLUSIONS, AND ORDER
ADOPTING RULES WITHOUT
PUBLIC HEARING

(1) Notice of the Commissioner's intent to adopt the above-entitled rules was published in the State Register on February 26, 1990, and was sent by United States mail to all persons on the list maintained by the agency pursuant to Minn. Stat. S 14.14 (1988), subd. 1a and 14.22 on February 28, 1990. (2) The statement of need and reasonableness was prepared before February 26, 1990, and was available to the public.

A corrected notice of intent to adopt the above-entitled rules was published in the State Register on March 19, 1990, and was sent by United States mail to all persons on the list maintained by the agency pursuant to Minn. Stat. S 14.14 (1988), subd. 1a and 14.22 on March 20, 1990.

(4) All persons were given the opportunity to submit comments on the rules for 30 days after notice of proposed rulemaking. Parties were given an additional 30 days to submit comments due to the correction published on March 19, 1990. (5) No requests for a public hearing on the rule were received by the agency.

(7) One submission or comment on the rules was received by the agency. (8) No requests for notice of submission to the attorney general were received by the agency.

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

(6)

1. Part 5510.0510, subp. 1, of the proposed rules as published on February 26, 1990, was withdrawn on August 20, 1990.

2. Part 5510.1410, subp. 1 (D) of the proposed rules as published on February 26, 1990, required exclusive representative to provide information which includes documentation of the preceding year's actual expenditures and of the current year's projected expenditures. The rule as adopted requires the exclusive representative to provide information which includes the most recent documentation.

3. Part 5510.1910, subp. 10b of the proposed rules requires any person or party appealing a determination of the commissioner to agree in writing to pay for the cost of preparing the transcript and allows for the preparation of partial transcripts and records. The rule as adopted allows parties to an appeal to request that additional portions of the record be submitted to PERB and requires that the requesting party agrees to pay for the additional portions of the transcripts and records.

4. Part 5510.2810, subp. 5 and 5a reformats the prior subp. 5 by dividing it into two parts. The rule as adopted clarifies that the Commissioner can close both mediation meetings and meetings of governing bodies.

5. 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 rule and who are affected by the rule is unchanged: Labor unions and employers;

   b) The subject matter covered by the proposed and adopted rules is the same: Fair Share Fee Requirements and Preparation of Case Record on Appeal to PERB; and

   c) The changes made in the rule as adopted merely clarify policies, remove ambiguity, and bring the rules into conformance with state law. The proposed rules were adequately noticed and invited comments are to their technical aspects. No person or class of persons affected by the rules is disadvantaged by the change in the adopted rule.

6. The above captioned rules are needed and reasonable.

(9) NOW, THEREFORE, IT IS ORDERED that the rules identified as Minnesota Rules: Parts ~~5510.0510~~ 5510.1410, 5510.1510, 5510.1910 and 5510.~~2110~~ are adopted this 9th day of October, 1990, pursuant to the authority vested in me by Minn. Stat. S 179.04, subd. 3, (f) (1989).

2810

^A

Signature: Paul W. Goldberg
Name: PAUL W. GOLDBERG
Title: Commissioner

E

STATE OF MINNESOTA
Department of Administration

BUILDING CODES AND STANDARDS

408 Metro Square
7th and Robert Sts.
Saint Paul, Minnesota 55101
Phone: (612) 296-4639
FAX: (612) 297-1973

FAX COVER SHEET

TO: CHARLENE HATCHER

FROM: DICK HAUCK

FAX NUMBER:

BCSD 297-1973

PAGES TO FOLLOW: 3

DATE: 10-23-90

Dick Hauch
6-4628

GIVE ME A CALL IF YOU HAVE QUESTIONS OR SUGGESTIONS.

STATE OF MINNESOTA
DEPARTMENT OF ADMINISTRATION
BUILDING CODES AND STANDARDS DIVISION

In the Matter of a Settlement between the Building Codes and Standards Division and Manufactured Home Dealer William Toberman licensed to sell under the name M. H. I. Manufactured Homes, Inc. (MD1518)

SETTLEMENT AGREEMENT

WHEREAS, the Commissioner has investigated Licensee's business practices and the extent of compliance with the laws and rules governing the sale of manufactured homes, and she has determined the following:

1. That on or about August 16, 1989 Donna Griffin (now Bremseth) purchased a used 1976 Marshfield manufactured home, serial number 29460, from Licensee for which she paid a total delivered price of $13,000.00. A down payment of $2,000.00 was given to Licensee who financed the remaining $11,000.00 over a 71 month period.

2. On or about September 12, 1990 the Building Codes and Standards Division (hereinafter BCSD) received a complaint regarding the above referenced home from Donna Bremseth.

3. The manufactured home was inspected by BCSD personnel on October 18, 1990 to determine the extent of manufactured home code violations that were not corrected prior to the sale to Bremseth. The Licensee's records were also reviewed on the same date.

4. The manufactured home contained three readily visible electrical wiring violations that should have been apparent to the Licensee which were not corrected prior to the sale to Bremseth, in violation of Minn. Stat. § 327.32 subd. 1.

5. The safety feature disclosure form required to be given by the seller to the buyer by Rule 1350.9100 was incorrect and not signed by the seller as required by Minn. Stat. § 327.07 subd. 3(a).

6. Title to the home was placed in the name of M. H. I. Manufactured Homes on October 26, 1989 rather than in the name of the purchaser as required by Minn. Stat. § 327B.05 subd. 1(n).

7. Bremseth was not given a copy of the retail installment contract as required by Rule 1350.8600. All three copies were in the Licensee's file on October 18, 1990 when the review was made.

OCT-23-'90 TUE 14:22 ID:BLDG CODES&STDS DIV TEL NO:612 297 1973 #834 P02

NOW, THEREFORE, in consideration of the mutual promises and covenants included herein, the parties agree as follows:

1. Licensee agrees to henceforth comply with the requirements of Minn. Stat. § 327B.01 through ~~subd. 01~~ 327B.12 and the administrative rules promulgated pursuant thereto.

Due to the statutory violations committed by Licensee, the Commissioner of Administration has assessed a penalty against Licensee in the amount of $500.00.

2. Licensee agrees to repurchase the manufactured home from Donna Bremseth for a total amount of her downpayment, by providing a cashier's check or money order payable to Donna Bremseth in the amount of $2,000.00. The check is to be mailed to the Building Codes and Standards Division. BY OCTOBER 31, 1990

3. Licensee agrees to pay BCSD a penalty fee ~~in the amount~~ of $500.00 by check payable to the Minnesota State Treasurer. This penalty fee must be received by the BCSD BEFORE DECEMBER 1, 1990 a must be ~~made~~ by ck payable to...

neither it nor any of its successors it will not commence any lawsuit

4. ~~The~~ Licensee agrees that there will be no claims against Donna Bremseth for lot rent, installment payments, taxes, etc., and that upon repurchase of the home, Bremseth will be free and clear of any such claims. BY THE LICENSEE.

2.

5. Licensee will immediately correct the electrical wiring violations and provide evidence of inspection to BCSD.

6. The Commissioner of Administration and the BCSD agree not to pursue revocation of Licensee's license based on the above-referenced findings except as agreed in paragraph 8 of this Agreement.

7. This Agreement has been read and understood by the parties and is to be considered a full and complete expression of the terms and conditions agreed to by the parties, and no other oral or written documents or statements will vary this agreement in any way.

8. Both parties agree that violation of any of the terms and conditions of this agreement will result in the immediate institution of a license revocation proceeding which will encompass the above-referenced findings of the Commissioner as well as any additional violations of Minn. Stat. § 327B ~~subd. 02~~ through 327B ~~subd.~~ 12 and the administrative rules promulgated pursuant thereto.

M. H. I. MANUFACTURED HOMES, INC.	STATE OF MINNESOTA DEPARTMENT OF ADMINISTRATION
Dated: _____	Dated: _____
By: _____ WILLIAM TOBERMAN, President	By: _____ RICHARD A. BROOKS, Director, Building Codes and Standards Division

STATE OF MINNESOTA

OFFICE OF THE ATTORNEY GENERAL

HUBERT H. HUMPHREY, III
ATTORNEY GENERAL

GOVERNMENT SERVICES SECTION
525 PARK STREET
SUITE 500
ST. PAUL, MN 55103
TELEPHONE: (612) 297-2040
FACSIMILE: (612) 297-2576

FACSIMILE TRANSMISSION

MINNESOTA ATTORNEY GENERAL'S OFFICE
Government Services Section
500 Capitol Office Building
525 Park Street
St. Paul, Minnesota 55103
Telephone: (612) 297-2040
Facsimile: (612) 297-2576

Date: 10/26/90

Time: 9:00

TO: Andrea Kircher
Bremer Tower

FAX NUMBER: 296-7438

FROM: Charlene Hatcher
525 Park

NUMBER OF PAGES (INCLUDING THIS PAGE): 3

MESSAGE:

IF THERE ARE PROBLEMS RECEIVING THIS TRANSMISSION, PLEASE CALL:

Sandra AT (612) 297-5910

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MINNESOTA EDUCATION ASSOCIATION
Forty-One Sherburne Avenue
St. Paul, Minnesota 55103
612-227-9541
A POWERFUL FORCE FOR BETTER EDUCATION

March 20, 1990

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

Dear Mr. Goldberg:

In response to February 26, 1990 Proposed Permanent rules relating to Public Employee Labor Relations:

Rule 5510.0510

The Minnesota Education Association would like the proposed (A. 2) language added to the proposed (B) language on unit clarification.

The phrase "when the commissioner determines that the interest of good labor relations policy warrant consideration of the petition during the life of the existing contract"... should be added after the words "...collective bargaining contract," in the second sentence of the new part B.

Rationale: There are times when the Bureau may wish to consider a petition for clarification of a unit when it is in the best interest of good labor relations, such as:

-During the contract "open window" periods

-In accordance with Minn. Stat. 179A.14; 179A.15; or 179A.16

-By agreement of the parties during negotiations to exclude from bargaining disputed job classifications or positions pending a decision by the Bureau.

-Significant changes in the duties and responsibilities of a job classification or position which affect the unit assignment or the classification or position.

-Legislative change in the P.E.L.R.A. which directly affects the appropriate unit.

-Judicial decision which directly affects the appropriate unit.

President
Vice President
Secretary-Treasurer
Executive Director

Robert E. Astrup, Mounds View
Walter H. Munsterman, Anoka
Judy L. Schaubach, Red Wing
Larry E. Wicks, St. Paul

-Significant governmental reorganization.

-Establishment of new job classifications or positions.

Rule 5510.1410 Fair Share Fee Requirements:

In the proposed rule addition, the following should be added:

Between the words "include" and "documentation" add the words "the most recent."

The new language would read:

"This information shall include the most recent documentation of the preceding year's actual expenditures and the current year's expenditures."

Rational: The practice is to provide documentation of the previous fiscal year's expenditures. The actual audit of those expenditures does not occur until January or February, after the fiscal year.

Rule 5510.1910 Hearings or Investigations

The following statement should be added to Subd. 10b prior to the last sentence beginning with "...Any partial...."

"However, any party to an appeal may request that a portion of the entire record be added to the record submitted by the commissioner to PERB. The party making such a request must agree in writing to pay for the cost of preparing this additional record."

Rationale:

If one party requests just a portion of a transcript, the defendant may wish to have more of the transcript prepared for this challenge. This additional language allows the defendant to request a portion of the transcript if agreeing to pay for such expenditure.

I would appreciate if a response to these changes could be made as soon as possible, in order for us to meet any additional timelines imposed by these rule changes.

Sincerely,

Charles Kehrberg, Negotiations Department

cc: Greg McNeilly
Roger Barrett
Harley Ogata

/t...0319

STATE OF MINNESOTA

BUREAU OF MEDIATION SERVICES

In the Matter of
Permanent Rules
Relating to
Public Employee
Labor Relations

FINDINGS OF FACT,
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ADOPTING RULES WITHOUT
PUBLIC HEARING

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All persons were given the opportunity to submit comments on the rules for 30 days after notice of proposed rulemaking. Parties were given an additional 30 days to submit comments due to the correction published on March 19, 1990. No requests for a public hearing on the rule were received by the agency.

One submission or comment on the rules was received by the agency. No requests for notice of submission to the attorney general were received by the agency.

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

1. Part 5510.0510, subp. 1, of the proposed rules as published on February 26, 1990, was withdrawn on August 20, 1990.

2. Part 5510.1410, subp. 1 (D) of the proposed rules as published on February 26, 1990, required exclusive representative to provide information which includes documentation of the preceding year's actual expenditures and of the current year's projected expenditures. The rule as adopted requires the exclusive representative to provide information which includes the most recent documentation.

3. Part 5510.1910, subp. 10b of the proposed rules requires any person or party appealing a determination of the commissioner to agree in writing to pay for the cost of preparing the transcript and allows for the preparation of partial transcripts and records. The rule as adopted allows parties to an appeal to request that additional portions of the record be submitted to PERB and requires that the requesting party agrees to pay for the additional portions of the transcripts and records.

4. Part 5510.2810, subp. 5 and 5a reformats the prior subp. 5 by dividing it into two parts. The rule as adopted clarifies that the Commissioner can close both mediation meetings and meetings of governing bodies.

5. 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 rule and who are affected by the rule is unchanged: Labor unions and employers;

   b) The subject matter covered by the proposed and adopted rules is the same: Fair Share Fee Requirements and Preparation of Case Record on Appeal to PERB; and

   c) The changes made in the rule as adopted merely clarify policies, remove ambiguity, and bring the rules into conformance with state law. The proposed rules were adequately noticed and invited comments are to their technical aspects. No person or class of persons affected by the rules is disadvantaged by the change in the adopted rule.

6. The above captioned rules are needed and reasonable.

(9) NOW, THEREFORE, IT IS ORDERED that the rules identified as Minnesota Rules: Parts 5510.0510, 5510.1410, 5510.1510, 5510.1910 and 5510.2110 are adopted this 9th day of October, 1990, pursuant to the authority vested in me by Minn. Stat. S 179.04, subd. 3, (f) (1989).

Signature: Paul W. Goldberg
Name: PAUL W. GOLDBERG
Title: Commissioner

converted to use as a retail food store, properly prepared plans and specifications for construction, major remodeling, or conversion must be submitted to the Department of Agriculture for review and approval. The plans and specifications must show the proposed layout, arrangement, mechanical plans, construction materials of work areas, and the type and model of proposed fixed equipment and facilities. The Department of Agriculture will treat the plans and specifications as confidential or trade secret information in accordance with law and will approve the plans and specifications if they meet the requirements of this chapter. A retail food store may not be constructed, extensively remodeled, or converted except in accordance with plans and specifications approved by the Department of Agriculture.

Subp. 2. **Plan review fee.** Plans submitted to the Department of Agriculture under this part must be accompanied by the appropriate fee and a plan review application form provided by the department. Fees are based on the square footage of the structure being constructed, remodeled, or converted as prescribed below.

Square Footage	Review Fee
0 - 4,999	$125
5,000 - 24,999	175
25,000 plus	275

Bureau of Mediation Services

Proposed Permanent Rules Relating to Public Employee Labor Relations

Notice of Intent to Adopt a Rule without a Public Hearing

NOTICE IS HEREBY GIVEN that the State Bureau of Mediation Service 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 *Minnesota Statutes*, section 179.02, subdivision 4.

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, St. Paul, Minnesota, 55108.

YOU ARE HEREBY ADVISED pursuant to *Minnesota Statutes*, section 14.115 (1988) that the proposed rules are not considered to have any impact on small business.

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.

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 relates 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, St. Paul, Minnesota, 55108.

Dated: 26 February 1990

Rules as Proposed

5510.0510 LIMITATION ON FILING PETITION.

Subpart 1. **Contract bar.**

A. If there is an exclusive representative and a labor contract in effect, the commissioner shall consider a petition for ~~clarification,~~ decertification~~,~~ or representation only:

~~A.~~ (1) when it is submitted during the open-window period or after the expiration date in the contract; or

~~B. when it is submitted jointly by the employer and the exclusive representative; or~~

~~C.~~ (2) when the commissioner determines that the interests of good labor relations policy warrant consideration of the petition during the life of the existing contract.

B. A single-party petition for clarification of a unit shall be accepted only when submitted prior to the close of the open-window period of an existing collective bargaining contract.

A joint request for clarification of a unit shall be accepted at any time during the life of the existing contract.

[For text of subps 2 to 7, see M.R.]

5510.1410 FAIR SHARE FEE REQUIREMENTS.

Subpart 1. **Advance notice of fair share fee assessment.** The exclusive representative must provide written notice of the amount of the fair share fee assessment to ~~the commissioner,~~ the employer~~,~~ and each employee assessed: upon initial implementation of the fair share fee assessment; to employees hired after the original notice has been issued; and upon a change in the amount of the fair share fee assessment. The notice must contain:

[For text of items A to C, see M.R.]

D. sufficient information to identify expenditures for benefits available only to members of the exclusive representative and sufficient information to identify expenditures for collective bargaining and contract administration services that have been provided for bargaining unit employees without regard to membership status. This information shall include documentation of the preceding year's actual expenditures and of the current year's projected expenditures;

[For text of items E and F, see M.R.]

[For text of subps 2 and 3, see M.R.]

Subp. 4. **Assessment.** On the effective day of the fair share fee assessment and thereafter, the amount of the assessment shall be deducted by the employer from the pay of the employee. The initial amounts deducted must be held in escrow by the employer and not remitted to the exclusive representative for a period of 30 calendar days from the date notice is provided under subpart 1.

If at the end of the 30-day period an employee has not challenged the fair share fee assessment, subsequent assessments shall be promptly remitted to the exclusive representative ~~without the need for escrow by the employer~~.

If an employee challenges the fair share fee assessment, the assessment for that employee shall continue to be deducted, but must be held in escrow by the employer until otherwise ordered by the commissioner.

5510.1510 FAIR SHARE FEE CHALLENGE PETITION.

Subpart 1. **Filing petition.** A petition challenging a fair share fee assessment may be filed by individual employees and must include:

[For text of items A to C, see M.R.]

D. ~~the job classification of the petitioner;~~

~~E.~~ the amount of regular membership dues in the unit;

~~F.~~ E. the amount of the fair share fee assessment;

~~G. the amount that represents 85 percent of the regular membership dues;~~

~~H. the percent of regular membership dues which the fair share fee represents;~~

~~I. the amount by which the fair share fee assessment should be adjusted to conform to the statutory prerequisites of *Minnesota Statutes*, section 179A.06, subdivision 3;~~

~~J.~~ F. the specific activities or expenditures of the exclusive representative which the ~~challenger~~ petitioner believes are not in conformance with the statutory prerequisites of *Minnesota Statutes*, section 179A.06, subdivision 3; and

~~K.~~ G. the date on which the petitioner received notice of the fair share fee assessment.

[For text of subp 2, see M.R.]

Subp. 3. **Filing fee.** The challenge petition must be accompanied by a certified check or other guaranteed form of payment in the amount of $10, made payable to ~~"Treasurer, State of Minnesota."~~ "Bureau of Mediation Services." A challenge petition filed without the proper filing fee shall be returned to the individual filing the petition.

Subp. 4. **Receipt of petition.** Upon receipt of the challenge petition and fee, the commissioner shall provide the ~~challenger~~ petitioner with an acknowledgment and receipt, along with a copy of the rules governing such challenge.

[For text of subps 5 and 6, see M.R.]

5510.1910 HEARINGS OR INVESTIGATIONS.

[For text of subps 1 to 9, see M.R.]

Subp. 10. **The record.** The commissioner shall maintain the record in each case. The record shall contain:

[For text of items A to D, see M.R.]

E. an audiomagnetic or stenographic recording of the hearing.

The commissioner shall retain the audiomagnetic or stenographic recording of the hearing for a period not less than 60 calendar days after the issuance of his order. ~~In the event that an appeal of the commissioner's order is initiated by any party to the hearing on the matter, the record shall be transcribed, in whole or in part, at the request of any party, provided the request is timely and the party requesting the transcript pays a charge per page, as established by the commissioner, for transcript production and for duplication of other requested or necessary parts of the record. In the event a party to a hearing before the commissioner requests that all or part of the record be transcribed absent a pending appeal from or prior to the issuance of the commissioner's order in such matter, the commissioner shall require the party to pay the full costs associated with the production of the transcript. In all cases, the commissioner shall maintain original documents as a part of bureau records and parties requesting copies of the record for any purpose shall be required to pay a charge per page, as established by the commissioner.~~

Subp. 10a. **Requests for transcripts.** The audiomagnetic recording of a hearing before the bureau may be transcribed in whole or in part upon the written request of any party or person, provided that the party or person requesting the transcript makes a request within the 60-day retention period and agrees in writing to pay full costs of preparation of the transcript.

Subp. 10b. **Preparation of case record on appeal to PERB.** Any person or party appealing a determination of the commissioner to the board must agree in writing to pay for the cost of preparing the transcript of the hearing upon which the determination was based, as well as the costs of duplicating all relevant exhibits and other written case file material. If the appeal involves only a portion of the elements or factors decided by the commissioner, and only parts of the hearing are relevant to that element or factor, a partial transcript and record may be purchased. The extent of the transcript and record necessary to provide the board with the complete record upon which that portion of the commissioner's determination was based will be determined by the commissioner, based upon the scope of the issues under appeal. Any partial transcript shall include all testimony and evidence relevant to the issues under appeal.

[For text of subps 11 to 15, see M.R.]

5510.2810 PETITION FOR MEDIATION.

[For text of subps 1 to 4, see M.R.]

Subp. 5. **Mediation meetings.** Joint or separate mediation meetings of the parties may be scheduled by the commissioner. Mediation meetings are informal and must be limited by the commissioner to matters relevant to the settlement of the dispute. The parties must continue to participate in a mediation meeting until excused by the commissioner. Use of recording devices, stenographic records, or other recording methods is prohibited in mediation meetings.

A mediation meeting may be closed to the public by the commissioner when, in the commissioner's judgment, closing will facilitate resolution of the dispute. In all cases a meeting will be closed only after receipt by the bureau of a valid and timely petition for

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mediation or after initiation of mediation by the commissioner. The commissioner may close a meeting to the public prior to its start or at any time during the meeting.

Subp. 5a. **Meetings of governing bodies.** When the commissioner determines that it is in the interest of resolution of a dispute, the commissioner may authorize a closed meeting of the public employer's governing body for the purpose of review and discussion of the status of negotiations and the employer's positions.

No closed meeting may be authorized unless the bureau has received a valid and timely petition for mediation or unless mediation has been initiated by the commissioner.

No closed meeting may be authorized when the commissioner or a representative of the commissioner is not physically present at the meeting unless the bureau has received a timely and valid notice of intent to strike.

In the event the commissioner determines that a closed meeting is necessary, but the commissioner cannot be physically present at the meeting and a timely and valid notice of intent to strike has been received by the bureau, the commissioner may authorize a closed meeting upon written notice to the governing body and exclusive representative at least 24 hours prior to the closed meeting. The written notice must include the date, time, and place of the closed meeting of the governing body and limit the purpose of the meeting to matters relevant to the dispute.

Pollution Control Agency

Proposed Permanent Rules Relating to Municipal Wastewater Treatment Construction Grant Programs

Notice of Intent to Adopt Rules Without a Public Hearing and Intent to Adopt Rules With Public Hearing Upon Receiving 25 or More Requests

NOTICE IS HEREBY GIVEN that the Minnesota Pollution Control Agency (Agency) intends to adopt the above-entitled rule without a public hearing following the procedures set forth in the Administrative Procedure Act in *Minnesota Statutes* §§ 14.22 to 14.28 (1988). The Agency's authority to adopt the rule is set forth in *Minnesota Statutes* § 116.07, subd. 3 (1988).

The proposed rules follow this notice. All persons have until 4:30 p.m. on March 28, 1990, to submit comments in support of or in opposition to the proposed rules or any part or subpart of the rules. Comment is encouraged. Each comment should identify the portion of the proposed rules addressed, the reason for the comment, and any change proposed.

Any person may also make a written request for a public hearing on the rules within the comment period. **IF 25 OR MORE PERSONS SUBMIT A WRITTEN REQUEST FOR A PUBLIC HEARING WITHIN THE COMMENT PERIOD, A PUBLIC HEARING WILL BE HELD UNLESS A SUFFICIENT NUMBER WITHDRAW THEIR REQUESTS 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 rules addressed, the reason for the request, and any change proposed.

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

Debbie Olson
Minnesota Pollution Control Agency
520 Lafayette Road North
St. Paul, Minnesota 55155
(612) 296-7223

If 25 or more requests for a public hearing are received, a hearing will be held pursuant to *Minnesota Statutes* § 14.14, subdivision 1, beginning on Wednesday, April 4, at 10:00 a.m. in the 5th floor conference rooms of the Minnesota Pollution Control Agency, at the above address. The hearing will continue at the following times and locations:

1. Monday, April 9, 1990, 7:00 p.m.
   Mankato State University
   Student Union, Room 203
   Mankato, Minnesota
2. Wednesday, April 11, 1990, 7:00 p.m.
   Meeting Room 1
   Crow Wing County Services Building
   Laurel Street behind the Court House
   Brainerd, Minnesota

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 Merit System

The rules proposed and published at *State Register*, Volume 14, Number 47, pages 2688-2691, May 21, 1990 (14 S.R. 2688) are adopted as proposed.

Department of Human Services

Adopted Permanent Rules Relating to Merit System

The rules proposed and published at *State Register*, Volume 14, Number 47, pages 2682-2688, May 21, 1990 (14 S.R. 2682) are adopted as proposed.

Withdrawn Rules

Bureau of Mediation Services

In the Matter of the Proposed Adoption of Rules of the State Bureau of Mediation Services Relating to Public Employee Labor Relations

Notice of Order Withdrawing Rule

NOTICE IS HEREBY GIVEN that the Minnesota Bureau of Mediation Services has issued an Order Withdrawing the Proposed Rules Relating to Public Employee Labor Relations, *Minnesota Rules* 5510.0510, subpart 1. Those rules appeared at 14 S.R. 2081, Monday 26 February 1990. *Minnesota Rules* 5510.1410, 5510.1510, 5510.1910 and 5510.2810 are not being withdrawn.

Persons having questions about this matter may contact Carol Clifford at the Minnesota Bureau of Mediation Services, 1380 Energy Lane, Suite Two, St. Paul, Minnesota, 55108, telephone (612) 649-5423.

Dated: 20 August 1990

Pollution Control Agency

Adopted Permanent Rules Relating to Hazardous Waste Facility Fee Amendments

The rule proposed and published at *State Register*, Volume 14, Number 21, pages 1210-1214, November 20, 1989 (14 S.R. 1210) is adopted with the following modifications:

Rules as Adopted

7046.0020 HAZARDOUS WASTE FACILITY FEES.

Subpart 1. **Fee schedule for five-year permits.** A person applying for issuance or reissuance of a five-year permit for a hazardous waste facility shall remit the permit application fee or permit reissuance fee given in item A or B. A person who owns or operates a hazardous waste facility shall remit the annual facility fee for that fiscal year if on July 1, the facility is treating, storing, or disposing of hazardous waste or has hazardous waste remaining after closure. A facility in which hazardous waste remains after closure continues to be subject to the annual facility fee until ~~certification of completion of post-closure care is submitted to the commissioner and the commissioner releases the owner or operator from the financial assurance requirements for post-closure care as described in part 7045.0602, subpart~~ 4 the owner or operator is exempted under subpart 8.

Subp. 8. **Exemption for closed land disposal facilities from annual facility fee.** The owner or operator of a closed land disposal facility may petition the commissioner, at any time after two years have passed since the last wastes were disposed of at the facility, to release the owner or operator from the requirement to pay an annual facility fee. The petition shall include all available leachate and groundwater monitoring data for the facility, a description of the characteristics of the wastes in the facility, a description of the technology applied to secure the facility and avoid migration of the wastes, a description of anticipated future monitoring, an evaluation of the potential for future environmental problems, and any additional information the owner or operator has to support the petition. The commissioner shall grant the petition and exempt the owner or operator from the requirement to pay the annual facility fee if the commissioner determines that, based on the information contained in the petition, groundwater contamination has not occurred and is not likely to occur and the facility will not require significant agency oversight. The exemption shall continue until such time as the commissioner determines, after notice to the owner or operator, that the facility does require significant agency oversight. The exemption shall expire if the owner or operator adds or allows to be added additional wastes to the facility. The exemption from the requirement to pay the annual facility fee does not exempt the owner or operator from the requirement to pay the permit reissuance fee.

Errata

Bureau of Mediation Services

Correction to Notice of Intent to Adopt a Rule without a Public Hearing Regarding Proposed Permanent Rules Relating to Public Employee Labor Relations

On February 26, 1990, a Notice of Intent to Adopt a Rule Without a Public Hearing was published in the *State Register*, Volume 14, Number 35, Pages 2081-2084. The original notice incorrectly stated that the statutory authority to adopt the rule is *Minnesota Statutes*, section 179.02, subdivision 4. The correct statutory authority to adopt the rule is ***Minnesota Statutes*** 179A.04, subdivision 3, (f).

Inasmuch as the incorrect statutory authority was cited, all persons will have 30 additional days in which to submit comments.

Please reference the *State Register*, Volume 14, Number 35, pages 2081-2084 for the remainder of the information regarding this rule.

Dated: 26 March 1990

Paul W. Goldberg
Commissioner

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.

BUREAU OF MEDIATION SERVICES **INTRA-OFFICE MEMO**

TO: **Patricia Nolte**
Attorney General's Office

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

RE: **Rules of the Bureau of Mediation Services**
Relating to Public Employee Labor Relations

DATE: 10-11-90

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

1. A copy of the proposed rule 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 submitted to the state register. (A copy of the notice as printed in the state register was mailed to interested persons.).

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 a rule without a public hearing as published in the state register.

6. Four copies of the rule as adopted.

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

8. A copy of the correction to notice of intent to adopt a rule without a public hearing as mailed to the parties.

9. A copy of the order withdrawing proposed rules as published in the state register.

10. A copy of the order withdrawing proposed rules as mailed to the parties.

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

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

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

(No one requested notification of the submission of the rule to the Attorney General.)

In the Matter of the Adoption of
Rules of the State Bureau of
Mediation Services Relating to
Public Employee Labor Relations

DECLARATION
OF COUNSEL

I, Andrea 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 if 0650.

AM Kircher

Andrea Kircher
Special Assistant
Attorney General

Dated: 10-11-90

BUREAU OF MEDIATION SERVICES

In the Matter of the Proposed Adoption of Rules of the State Bureau of Mediation Services Relating to Public Employee Labor Relations	NOTICE OF INTENT TO ADOPT A RULE WITHOUT A PUBLIC HEARING

(1) Notice is hereby given that the State Bureau of Mediation Service 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 Minnesota Statutes, section 179.02, subdivision 4.

(2) 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. (3) 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. (4) 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. (6) 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. (7) 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:

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

(8) 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.

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

(12) 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, St. Paul, Minnesota, 55108.

(14) You are hereby advised pursuant to Minnesota Statutes, section 14.115 (1988) that the proposed rules are not considered to have any impact on small business.

(9) 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 relates 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, St. Paul, Minnesota, 55108.

Dated: February 26, 1990

Paul W. Goldberg
Name

Commissioner
Title

In the Matter of the Proposed Adoption of Rules of the State Bureau of Mediation Services Relating to Public Employee Labor Relations

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. Clifford being sworn, says:

I hereby certify that the list of persons and associations who have requested, pursuant to Minnesota Statutes, section 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 28 th day of February, 1990.

That on the 28 th day of February, 1990, 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.

That on the 20 th day of March, 1990, at the City of St. Paul, County of Ramsey, State of Minnesota, I mailed the attached Correction to 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.

That on the 23 rd day of August, 1990, at the City of St. Paul, County of Ramsey, State of Minnesota, I mailed the attached Notice of Order Withdrawing Rule 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. Clifford
Name

Executive I
Title

JANET L. JOHNSON
NOTARY PUBLIC-MINNESOTA
ANOKA COUNTY
MY COMMISSION EXPIRES JUNE 12, 1995

Subscribed and sworn to before me this 9 th day of October, 1990.

Janet L. Johnson

Mailed to list 3/20/90

BUREAU OF MEDIATION SERVICES

CORRECTION TO NOTICE OF INTENT TO ADOPT A RULE WITHOUT A PUBLIC HEARING.

REGARDING PROPOSED PERMANENT RULES RELATING TO PUBLIC EMPLOYEE LABOR RELATIONS.

On February 26, 1990, a Notice of Intent to Adopt a Rule Without a Public Hearing was published in the State Register, Volume 14, Number 35, Pages 2081-2084. The original notice incorrectly stated that the statutory authority to adopt the rule is Minnesota Statutes, section 179.02, subdivision 4. The correct statutory authority to adopt the rule is Minnesota Statutes 179A.04, subdivision 3, (f).

Inasmuch as the incorrect statutory authority was cited, all persons will have 30 additional days in which to submit comments.

Please reference the State Register, Volume 14, Number 35, pages 2081-2084 for the remainder of the information regarding this rule.

Dated: 26 March 1990

Name

Commissioner
Title

Mailed to
Rules List - 8/23/90

BUREAU OF MEDIATION SERVICES

In the Matter of the Proposed Adoption of Rules of the State Bureau of Mediation Services Relating to Public Employee Labor Relations

NOTICE OF ORDER WITHDRAWING RULE

NOTICE IS HEREBY GIVEN that the Minnesota Bureau of Mediation Services has issued an Order Withdrawing the Proposed Rules Relating to Public Employee Labor Relations, Minnesota Rules 5510.0510, subpart 1. Those rules appeared at 14 S.R. 2081, Monday 26 February 1990. Minnesota Rules 5510.1410, 5510.1510, 5510.1910 and 5510.2810 are not being withdrawn.

Persons having questions about this matter may contact Carol Clifford at the Minnesota Bureau of Mediation Services, 1380 Energy Lane, Suite Two, St. Paul, Minnesota, 55108, telephone (612) 649-5423.

Dated: August 20, 1990

Paul W. Goldberg
Name

Commissioner
Title

BUREAU OF MEDIATION SERVICES **INTRA-OFFICE MEMO**

TO: **Charlene Hatcher**

FROM: **Carol Clifford** Carol

RE: **Findings of Fact**

DATE: **October 26, 1990**

Enclosed is a new findings of fact for the rules which were recently submitted to you for review. Corrections have been made on the last paragraph on the second page as needed. (The reference to Part 5510.0510 was deleted; reference to 5510.2110 was corrected to read 5510.2810; and Minn. Stat. 179.04 was corrected to read 179A.04) If you have any questions, please call either myself or Paul Goldberg at 649-5421.

Bureau of Mediation Services

Proposed Permanent Rules Relating to Public Employee Labor Relations

Rules as Proposed

5510.0510 LIMITATION ON FILING PETITION.

Subpart 1. **Contract bar.**

A. If there is an exclusive representative and a labor contract in effect, the commissioner shall consider a petition for ~~clarification,~~ decertification, or representation only:

~~A.~~ (1) when it is submitted during the open-window period or after the expiration date in the contract; or

~~B.--when-it-is-submitted-jointly-by-the-employer-and the-exclusive-representative;-or~~

~~C.~~ (2) when the commissioner determines that the interests of good labor relations policy warrant consideration of the petition during the life of the existing contract.

B. A single-party petition for clarification of a unit shall be accepted only when submitted prior to the close of the open-window period of an existing collective bargaining contract.

A joint request for clarification of a unit shall be accepted at any time during the life of the existing contract.

[For text of subps 2 to 7, see M.R.]

5510.1410 FAIR SHARE FEE REQUIREMENTS.

Subpart 1. **Advance notice of fair share fee assessment.** The exclusive representative must provide written notice of the amount of the fair share fee assessment to ~~the-commissioner,~~ the employer, and each employee assessed: upon initial implementation of the fair share fee assessment; to employees hired after the original notice has been issued; and upon a change in the amount of the fair share fee assessment. The

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notice must contain:

[For text of items A to C, see M.R.]

D. sufficient information to identify expenditures for benefits available only to members of the exclusive representative and sufficient information to identify expenditures for collective bargaining and contract administration services that have been provided for bargaining unit employees without regard to membership status. This information shall include documentation of the preceding year's actual expenditures and of the current year's projected expenditures;

[For text of items E and F, see M.R.]

[For text of subps 2 and 3, see M.R.]

Subp. 4. **Assessment.** On the effective day of the fair share fee assessment and thereafter, the amount of the assessment shall be deducted by the employer from the pay of the employee. The initial amounts deducted must be held in escrow by the employer and not remitted to the exclusive representative for a period of 30 calendar days from the date notice is provided under subpart 1.

If at the end of the 30-day period an employee has not challenged the fair share fee assessment, subsequent assessments shall be promptly remitted to the exclusive representative ~~without the need for escrow by the employer~~.

If an employee challenges the fair share fee assessment, the assessment for that employee shall continue to be deducted, but must be held in escrow by the employer until otherwise ordered by the commissioner.

5510.1510 FAIR SHARE FEE CHALLENGE PETITION.

Subpart 1. **Filing petition.** A petition challenging a fair share fee assessment may be filed by individual employees and must include:

[For text of items A to C, see M.R.]

D. ~~the job classification of the petitioner;~~

E. the amount of regular membership dues in the unit;

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~~F.~~ E. the amount of the fair share fee assessment;

~~G.--the-amount-that-represents-85-percent-of-the regular-membership-dues;~~

~~H.--the-percent-of-regular-membership-dues-which-the fair-share-fee-represents;~~

~~I.--the-amount-by-which-the-fair-share-fee-assessment should-be-adjusted-to-conform-to-the-statutory-prerequisites-of Minnesota-Statutes,-section-179A.06,-subdivision-3;~~

~~J.~~ F. the specific activities or expenditures of the exclusive representative which the ~~challenger~~ petitioner believes are not in conformance with the statutory prerequisites of Minnesota Statutes, section 179A.06, subdivision 3; and

~~K.~~ G. the date on which the petitioner received notice of the fair share fee assessment.

[For text of subp 2, see M.R.]

Subp. 3. **Filing fee.** The challenge petition must be accompanied by a certified check or other guaranteed form of payment in the amount of $10, made payable to ~~"Treasurer,-State of-Minnesota."~~ "Bureau of Mediation Services." A challenge petition filed without the proper filing fee shall be returned to the individual filing the petition.

Subp. 4. **Receipt of petition.** Upon receipt of the challenge petition and fee, the commissioner shall provide the ~~challenger~~ petitioner with an acknowledgment and receipt, along with a copy of the rules governing such challenge.

[For text of subps 5 and 6, see M.R.]

5510.1910 HEARINGS OR INVESTIGATIONS.

[For text of subps 1 to 9, see M.R.]

Subp. 10. **The record.** The commissioner shall maintain the record in each case. The record shall contain:

[For text of items A to D, see M.R.]

E. an audiomagnetic or stenographic recording of the hearing.

The commissioner shall retain the audiomagnetic or stenographic recording of the hearing for a period not less than

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60 calendar days after the issuance of his order. ~~In the event that an appeal of the commissioner's order is initiated by any party to the hearing on the matter, the record shall be transcribed, in whole or in part, at the request of any party, provided the request is timely and the party requesting the transcript pays a charge per page, as established by the commissioner, for transcript production and for duplication of other requested or necessary parts of the record. In the event a party to a hearing before the commissioner requests that all or part of the record be transcribed absent a pending appeal from or prior to the issuance of the commissioner's order in such matter, the commissioner shall require the party to pay the full costs associated with the production of the transcript. In all cases, the commissioner shall maintain original documents as a part of bureau records and parties requesting copies of the record for any purpose shall be required to pay a charge per page, as established by the commissioner.~~

Subp. 10a. **Requests for transcripts.** The audiomagnetic recording of a hearing before the bureau may be transcribed in whole or in part upon the written request of any party or person, provided that the party or person requesting the transcript makes a request within the 60-day retention period and agrees in writing to pay full costs of preparation of the transcript.

Subp. 10b. **Preparation of case record on appeal to PERB.** Any person or party appealing a determination of the commissioner to the board must agree in writing to pay for the cost of preparing the transcript of the hearing upon which the determination was based, as well as the costs of duplicating all relevant exhibits and other written case file material. If the appeal involves only a portion of the elements or factors decided by the commissioner, and only parts of the hearing are relevant to that element or factor, a partial transcript and record may be purchased. The extent of the transcript and record necessary to provide the board with the complete record upon which that portion of the commissioner's determination was

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based will be determined by the commissioner, based upon the scope of the issues under appeal. Any partial transcript shall include all testimony and evidence relevant to the issues under appeal.

[For text of subps 11 to 15, see M.R.]

5510.2810 PETITION FOR MEDIATION.

[For text of subps 1 to 4, see M.R.]

Subp. 5. **Mediation meetings.** Joint or separate mediation meetings of the parties may be scheduled by the commissioner. Mediation meetings are informal and must be limited by the commissioner to matters relevant to the settlement of the dispute. The parties must continue to participate in a mediation meeting until excused by the commissioner. Use of recording devices, stenographic records, or other recording methods is prohibited in mediation meetings.

A mediation meeting may be closed to the public by the commissioner when, in the commissioner's judgment, closing will facilitate resolution of the dispute. In all cases a meeting will be closed only after receipt by the bureau of a valid and timely petition for mediation or after initiation of mediation by the commissioner. The commissioner may close a meeting to the public prior to its start or at any time during the meeting.

Subp. 5a. **Meetings of governing bodies.** When the commissioner determines that it is in the interest of resolution of a dispute, the commissioner may authorize a closed meeting of the public employer's governing body for the purpose of review and discussion of the status of negotiations and the employer's positions.

No closed meeting may be authorized unless the bureau has received a valid and timely petition for mediation or unless mediation has been initiated by the commissioner.

No closed meeting may be authorized when the commissioner or a representative of the commissioner is not physically present at the meeting unless the bureau has received a timely and valid notice of intent to strike.

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In the event the commissioner determines that a closed meeting is necessary, but the commissioner cannot be physically present at the meeting and a timely and valid notice of intent to strike has been received by the bureau, the commissioner may authorize a closed meeting upon written notice to the governing body and exclusive representative at least 24 hours prior to the closed meeting. The written notice must include the date, time, and place of the closed meeting of the governing body and limit the purpose of the meeting to matters relevant to the dispute.

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Office of the Revisor of Statutes

Administrative Rules

TITLE: Proposed Permanent Rules Relating to Public Employee Labor Relations

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