

Minnesota Attorney General: Administrative Rules Proceedings

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DEPARTMENT: Office of the Attorney General **STATE OF MINNESOTA**

OFFICE MEMORANDUM

DATE: March 4, 1991

TO: JERMAINE FOSLIEN
Public Employment Relations Board
1380 Energy Lane, Suite #3

FROM: CHARLENE HATCHER CH
Special Assistant Attorney General
525 Park Street, Suite 500 (55103)

PHONE: 296-9422

SUBJECT: In the Matter of the Adopted Rule Relating to Arbitration Policies, Issues and Appeals, Meeting Procedures, Code of Ethics, and Independent Review

The above-referenced rule has been approved as to its legality by the Attorney General on February 26, 1991.

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.

CH:sc
Enclosures
cc: Martha Casserly
William Brown, Chief Judge
MaryAnn Hruby

CH

RULE REVIEW CHECKLIST

File No. 1796
DATE RECEIVED 2-13-91
REVIEW DATE 2-22-91
DUE DATE 2-26-91
(DIS)APPROVED 2-26-91
WITHDRAWN _____

Docket No. 05 0009 0678
ADOPTED W/O HEARING _____
EMERGENCY RULE _____
TO REVISOR ON 2-22-91
REVISOR (DIS)APPROVED 2-26-91
FILED W/SEC. OF STATE 2-26-91
RETURNED TO AGENCY 3-4-91

✓ Rule as adopted (4 copies)

✓ Notice to Solicit Outside Information/Opinion (if applicable)
June 25, 1990 Date published in State Register
_____ Comments

_____ Petition for Adoption of a Rule

_____ Board's Authorizing Resolution
May 15, 1990 Date adopted

✓ Proposed Rule

✓ Revisor's Certificate

✓ Notice of Intent to Adopt Rule
179A.05 subds 3, 5, 6 Statutory Authority 179A.25 and 14.06
_____ Small Business Statement
_____ Expenditure of public money statement
October 8, 1990 Signature

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

✓ Affidavit of Mailing Notice of Intent to Adopt Rule
October 8, 1990 Dated 30/25 days before adoption
✓ Notice attached indicates it is attached
_____ Copy of rule or summary attached

✓ Publication in State Register
October 29, 1990 Date 30/25 days before adoption

_____ 180-day deadline from:
_____ Effective date of law requiring rule (14.12) (both rules) amendments don't apply
✓ end of comment period (§ 14.26) (rules without hearing)
_____ effective date of statutory authority (§ 14.29) (emergency rules)

* see 2nd Paragraph of SONAR under Tab

✓ Resolution Adopting
January 15, 1991 Date adopted

✓ Findings of Fact, Conclusions & Order Adopting
February 13, 1991 Date

✓ Written Requests, Submissions or Comments

✓ Declaration of Attorney
Mary Cassedy Name of SAAG representing agency

2-13-91 Notice of Submission to Attorney General (if applicable)

2-13-91

Public Employment Relations Board

Adopted Permanent Rules and Amendments Relating to Arbitration Policies, Issues and Appeals, Meeting Procedures, Code of Ethics, and Independent Review

Rules as Adopted

7300.0100 DEFINITIONS.

Subpart 1. **Appeal.** "Appeal" means issues relating to the meaning of the terms "supervisory employee," "confidential employee," "essential employee," or "professional employee"; appeals from determinations of the commissioner relating to the appropriateness of a unit; and appeals from determinations of the commissioner relating to a fair share fee challenge.

[For text of subps 3 and 4, see M.R.]

Subp. 6. **Commissioner.** "Commissioner" means the commissioner of the Bureau of Mediation Services.

Subp. 7a. **Executive director.** "Executive director" means the executive director of the Public Employment Relations Board.

Subp. 7b. **Holiday or legal holiday.** "Holiday" or "legal holiday" means those dates designated by Minnesota Statutes, section 645.44, subdivision 5, as holidays for the executive branch of the state of Minnesota.

Subp. 8. **Party.** "Party" means any public employer, exclusive representative of public employees, public employee organization, or public employer organization whose legal rights, duties, or privileges will be directly determined in an appeal; or any public employee who has filed a fair share fee challenge.

[For text of subp 9, see M.R.]

Subp. 11. **Service; serve.** "Service" or "serve" means delivery by personal service, United States certified or regular mail, or other delivery. Electronic mail (fax machine) is not an effective method of service. Service is effective upon receipt by the recipient.

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7300.0110 COMPUTATION OF TIME.

In computing any period of time prescribed or allowed by parts 7300.0100 to 7300.3300, the day of an act or event on which the designated period of time begins to run is not included. The last day of the time period is included unless it is a Saturday, Sunday, or legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or legal holiday. When the period of time prescribed or allowed is less than seven days, Saturday, Sunday, and legal holidays are not included in the computation. See part 7300.0100, subpart 7b, for the definition of legal holiday.

7300.0300 SCOPE.

This chapter shall apply to:

[For text of item A, see M.R.]

B. appeals from determinations of the commissioner relating to the appropriateness of a unit; and

C. appeals from determinations of the commissioner relating to a fair share fee challenge.

7300.0350 BARGAINING UNIT ACCRETION.

In review of a unit accretion pursuant to Minnesota Statutes, section 179A.09 and under part 7300.0300, item B, the board must consider as a relevant factor whether the employee or employees in question have indicated a showing of interest to be accreted so long as the confidentiality of the individual cards is protected in accordance with Minnesota Statutes, section 179A.12, subdivision 6.

7300.0500 PRESIDING OFFICER; BOARD OR PANEL.

The board, as a full body or as a panel of three of its members, may hear and decide an appeal. A panel shall consist of an equal number of representatives of public employees and public employers and the member who represents the public at large.

7300.0600 PRESIDING OFFICER; ADMINISTRATIVE LAW JUDGE.

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The board may appoint an administrative law judge to hear an appeal. The administrative law judge shall have such authority as the board deems necessary and appropriate to hear the appeal. The administrative law judge must submit to the board recommended findings, conclusion, and order as requested by the board. The final decision must in all cases be made by the board.

7300.0700 INITIATING AN APPEAL.

Subpart 1. **Time limits.**

A. Within 15 calendar days of the date of a final determination by the commissioner, any party, or parties, may initiate an appeal by serving a copy of a notice of appeal upon all other parties with a copy to the commissioner and filing the original with the board. Service is effective upon receipt by the board, bureau, and all other parties.

B. If a party or parties files a request for reconsideration of a decision by the commissioner, the appeal to the board must be initiated within 15 calendar days of the date of the reconsideration decision by the commissioner. A copy of the notice of appeal must be served upon all other parties with a copy to the commissioner and the original filed with the board. Service is effective upon receipt by the board, bureau, and all other parties.

Subp. 2. **Notice of appeal.** A notice of appeal shall include:

[For text of item A, see M.R.]

B. the names and addresses of all individuals and organizations who were parties to the appeal;

C. a copy of the commissioner's determination from which the appeal is being taken, and, if applicable, a copy of the reconsideration decision by the commissioner;

[For text of item D, see M.R.]

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

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those rules; and

[For text of item F, see M.R.]

7300.0800 ANSWER.

Within 15 calendar days after service of a notice of appeal, all other parties may submit an answer to the notice of appeal. A copy of the answer shall be served on all parties to the appeal and filed with the board. Failure to submit an answer shall not be deemed an admission of any statement contained in the notice of appeal or a waiver of any rights afforded the respondent by any statute or rule.

7300.0810 BRIEFS.

Subpart 1. **Establishment of briefing schedule.** Upon transmission of the record from the commissioner, the board must provide written notice to the parties establishing specific dates for each party to submit its brief. The appellant must serve and file the appellants's brief within 14 calendar days after the board's written notice establishing the briefing schedule. The respondent must serve and file the respondent's brief within 14 calendar days after service of the appellant's brief. Parties must notify the board by the established dates if they do not intend to file a brief.

Subp. 2. **Extension of the briefing schedule.**

A. Either party may request an extension of the briefing schedule. Request for an extension must be received by the board before the deadline and in writing. If it is a first request and the extension does not exceed 14 calendar days, the request will be granted by the executive director. Written notice must be provided to all the parties of the revised briefing schedule.

B. Either party may request an extension that exceeds 14 calendar days or the same party who made the first request for an extension may request a second extension. These requests must be in writing and received by the board before the deadline established in the initial briefing schedule. The board must consider the request at its next meeting and may grant the

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extensions only for good cause shown and if it causes no prejudice to the other party. If the board is not scheduled to meet within 14 calendar days from the date of the written request, the board chair has authority to decide the request.

7300.0850 AMICUS CURIAE STATUS.

An individual, association, or organization may seek permission in an appeal to file a brief as amicus curiae. The board will grant amicus curiae status if the requester establishes that its brief will be relevant to the appeal and that it will contribute to the board's understanding of the case and the board's decision. Any request of the commissioner for amicus curiae status must be granted. Any brief which is filed under this part must be submitted to the board within the time established for the respondent's brief under part 7300.0810.

7300.0900 NOTICE OF HEARING.

Subpart 1. **Contents of notice.** At least 15 calendar days before the hearing date, the board must provide to all parties by certified mail a notice of hearing stating:

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

Subp. 2. **Copy of rules included.** A copy of this chapter must be included with the notice of hearing.

7300.1000 CONTINUANCE OF HEARING.

A request for continuance of a hearing, if mutually consented to by all of the parties, will be granted by the board's executive director. If there is no mutual consent, the board must consider the request for continuance at its next meeting and grant the request upon good cause shown. If a board meeting is not scheduled that provides the opportunity for the board to consider the request and provide a timely response, the board chair has the authority to consider and decide the request.

7300.1200 INFORMAL AND SUMMARY DISPOSITION.

[For text of subpart 1, see M.R.]

Subp. 2. **Summary disposition.** The board, on its own motion or on motion of any party, may:

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[For text of item A, see M.R.]

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

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

7300.1500 SUBSTITUTION OF PARTY'S REPRESENTATIVE.

Substitution of a party's representative may be allowed only if notice of the substitution is served on all other parties and the board at least seven calendar days before the hearing date.

7300.1700 REMAND.

Subpart 1. **Remand to commissioner.** A party may make a motion to remand the appeal to the commissioner. The board may remand to the commissioner all or part of the appeal for rehearing, the taking of specified additional evidence, or other appropriate action.

Subp. 2. **Circumstances for remand.** The board must grant a remand under the following circumstances:

A. additional evidence, newly discovered, that with reasonable diligence could not have been found and produced at the hearing;

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

C. irregularities or errors of law occurring during the bureau's proceedings.

Subp. 3. **Appeals on remand.** When the board remands an appeal under subparts 1 and 2, the appeal remains before the board, until the board decides the appeal or dismisses the appeal. If the commissioner, upon remand, issues a decision that differs from its initial decision, the board must dismiss the appeal unless either party seeks continuance of the appeal by providing written notice in the same manner as provided in part 7300.0700. If the commissioner, upon remand under subparts 1 and 2, issues a decision that affirms its initial decision, the board must notify the parties that it will proceed with the appeal under the terms of the appellant's initiation of appeal

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filed with the board before the remand. The party who initiated the appeal may provide written notice to the board of its request to withdraw the appeal.

7300.1910 THE BOARD RECORD.

Before the hearing, the board must prepare an official record in each appeal that contains:

A. the record of the proceedings before the commissioner;

B. the determination of the commissioner, and if applicable, the reconsideration decision of the commissioner;

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

Additional evidence admitted pursuant to part 7300.2050 shall become part of the board record.

7300.2100 TRANSCRIPT OF BOARD HEARING.

A verbatim record must be taken by a hearing reporter or recording equipment of any hearing conducted pursuant to part 7300.2000 or 7300.2050.

7300.2600 BOARD DECISIONS AND ORDERS.

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

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

7300.2800 REQUEST FOR REHEARING.

The board, on its own motion or on petition of any party and for good cause shown, may reopen, rehear, and redetermine an appeal. The petition for rehearing by the parties must be served on all other parties and the board within 15 calendar days of the date of the board's written decision.

7300.2900 PETITION FOR REHEARING.

A petition for rehearing must contain:

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

7300.3100 NOTICE OF REHEARING.

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A notice of rehearing must be provided in the same manner prescribed for a hearing by part 7300.0900.

7300.3200 REHEARING PROCEDURE.

A rehearing of an appeal must be conducted in the same manner prescribed for a hearing by parts 7300.1910 to 7300.2400.

7300.3300 DECISION AFTER REHEARING.

The decision after rehearing must be issued in the same manner prescribed for the decision after a hearing by parts 7300.1200, 7300.1300, and 7300.2600.

7306.0100 PURPOSE AND CONSTRUCTION.

The purpose of parts 7306.0100 to 7306.0400 is to preserve the integrity and independence of board decision making and to promote public confidence in the objectivity of board decisions. Board members and staff must maintain high standards of conduct to prevent a conflict or the appearance of a conflict between private interests and official duties. Parts 7306.0100 to 7306.0400 must be construed to secure these objectives in keeping with the quasi-judicial function of the board.

7306.0150 DEFINITIONS.

Except as otherwise provided, the words, terms, and phrases in this chapter have the same meaning and definition as the meaning and definition they are given in part 7300.0100.

7306.0200 CONFLICT OF INTEREST; IMPROPRIETY.

Subpart 1. **General behavior.** A board member or employee shall respect and comply with law and take action that promotes public confidence in the integrity and impartiality of the board's decision-making process.

Subp. 2. **Actions prohibited.** Board members and staff shall avoid any action that might result in or create a conflict of interest or the appearance of impropriety, including:

A. using public office for private gain;

B. giving preferential treatment to an interested person or entity;

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C. impeding the efficiency or economy of board decision making;

D. loss of independence or impartiality of action;

E. making a board decision not based on the evidence in the record;

F. noncompliance with applicable statutes such as the open meeting law; and

G. affecting adversely the confidence of the public in the integrity of the board.

7306.0300 QUASI-JUDICIAL RESPONSIBILITIES.

Subpart 1. **Inappropriate influences.** Board members shall not be swayed by partisan or pecuniary interests, public clamor, or fear of criticism.

Subp. 2. **Orderly proceedings, behavior.** Board members shall maintain order and decorum in proceedings before the board. In their official capacity, board members must be patient, dignified, and courteous to litigants, witnesses, lawyers, and others appearing before them. Board members shall require similar conduct from persons appearing before them.

7306.0400 DISQUALIFICATION.

Board members shall disqualify themselves from participating in decisions on issues and appeals before the board if they:

A. have a personal bias or prejudice concerning a party; or

B. have a direct interest, pecuniary or otherwise, that could be substantially affected by the outcome of the proceeding.

BOARD ADMINISTRATIVE PROCEDURES

7306.0500 OFFICERS AND DUTIES.

Subpart 1. **Officers.** The officers of the board are the chair and vice-chair.

Subp. 2. **Electing the chair and vice-chair.** The chair and vice-chair shall be elected annually by the majority vote of all

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the board members. The vote shall be taken at the board's April meeting and the chair and vice-chair shall serve a one-year term beginning May 1 of each year.

Subp. 3. **Vacancies.** Upon a vacancy in the office of the chair, the vice-chair shall serve as chair until a new chair is elected at the next regular meeting of the board. Upon a vacancy in the office of vice-chair, a new vice-chair shall be elected at the next regular meeting of the board.

Subp. 4. **Removal.** The chair and vice-chair may be removed from office by the majority vote of all the members of the board. This vote must be taken at the next regular meeting following the motion for removal.

Subp. 5. **Duties of chair.** The chair is the chief administrative officer of the board and shall preside at meetings of the board. The chair shall sign letters and other documents approved by the board pursuant to law on behalf of the board, and may authorize the executive director to sign letters and documents on the chair's behalf. The chair shall represent and speak for the board to the public, members of the branches of state government, and other organizations.

Subp. 6. **Duties of vice-chair.** The vice-chair shall discharge the duties of the chair during the absence or disability of the chair and perform other duties as the chair desires.

7306.0600 MEETING.

Subpart 1. **Meeting time.** The board shall meet on the second Thursday of each month at a time and place set by the board if a quorum is present. If a quorum is not possible for that date, the board must reschedule the meeting according to the open meeting law under Minnesota Statutes, section 471.705.

Subp. 2. **Quorum.** Three members are a quorum. To conduct official business at a meeting, the quorum must consist of one member who represents the public at large, one member who represents public employees, and one member who represents public employers.

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by Revisor _____

Subp. 3. **Agenda notice.** The meeting agenda must be posted according to the open meeting law, Minnesota Statutes, section 471.705, at least three days before the meeting on the principal bulletin board at the board's office. The agenda must include the date, time, place, and purpose of the meeting.

Subp. 4. **Distribution of agenda.** At least three days before its meeting, the board must mail the agenda according to the open meeting law to each individual or association who has filed a written request or otherwise notified the board requesting notice of the board meeting.

Subp. 5. **Presiding officer.** The chair or vice-chair, in absence of the chair, shall preside at board meetings and shall determine the limits of time and the relevancy of discussion or debate on any matter before the board.

Subp. 6. **Voting.** A majority vote of the members present at the meeting is necessary to make any decision, except as provided in part 7306.0500, subparts 2 and 4.

Subp. 7. **Meeting minutes and open meeting law.** Full and accurate minutes of the meeting must be kept. Minutes must be approved at the next board meeting. Approved minutes must be available to the public. The meeting must be conducted in compliance with the open meeting law.

Subp. 8. **Reconsideration of a decision.** Any decision of the board may be reconsidered, if a board member who voted on the prevailing side makes a motion for reconsideration.

Subp. 9. **Parliamentary procedure.** Except as specifically provided in this chapter, Scott Foresmans' Robert's Rules of Order, Newly Revised, Henry M. Robert, author, and Scott Foresman, Glenview, Illinois, publisher, 1981 publication date is incorporated by reference and is applicable and shall govern any question of parliamentary procedure that may arise at any meeting of the board. The rule is not subject to frequent change and is available for inspection and copying at the Minnesota State Law Library, 117 University Avenue, Saint Paul, Minnesota 55155.

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7315.0210 SCOPE.

This chapter applies to procedures governing independent review pursuant to Minnesota Statutes, section 179A.25.

7315.0400 DEFINITIONS.

[For text of subpart 1, see M.R.]

Subp. 2. **Party.** "Party" means any public employee, public employer, exclusive representative of public employees, public employee organization, or public employer organization whose legal rights, duties, or privileges will be directly determined in an independent review.

7315.0500 PETITION.

Subpart 1. **Authority to petition.** An employee may petition the board in writing for independent review of a grievance arising out of the interpretation of or adherence to terms and conditions of employment when no other such procedure exists to hear that grievance. The petitioner must provide all parties a copy of the petition at the time of filing with the board.

Subp. 2. **Petition contents.** The petition must contain:

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

7315.0650 ANSWER.

Within 15 calendar days after receipt of a petition, all other parties shall file with the board and provide to the other parties an answer to the petition. The answer must contain a concise statement specifying whether:

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

7315.0900 PRESIDING OFFICER; BOARD OR PANEL.

The board, as a full body or as a panel of three of its members, may hear and decide an independent review. Whenever possible, a panel must consist of an equal number of representatives of public employees and public employers, and the member who represents the public at large.

7315.1000 PRESIDING OFFICER; ADMINISTRATIVE LAW JUDGE.

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The board may appoint an administrative law judge to hear the grievance. The administrative law judge shall have authority as the board deems necessary and appropriate to hear the grievance. The administrative law judge must submit to the board recommended findings, conclusions, and order as requested by the board. The final decision on the grievance shall in all cases be made by the board.

7315.1100 BRIEFS.

~~Upon completion of the hearing,~~ The board may request the parties to submit a ~~post-hearing~~ brief if the written brief will assist the board in making its determination. If briefs are necessary, the board must establish a briefing schedule and notify the parties of the dates for submission of the briefs.

7315.1200 NOTICE OF HEARING.

At least 15 calendar days before the hearing date, the board must provide to all parties by certified mail a notice of hearing providing:

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

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

7315.1300 CONTINUANCE OF HEARING.

A request for continuance of hearing, if mutually consented to by all of the parties, must be granted by the board's executive director. If there is no mutual consent, the board must consider the request for continuance at its next meeting and may grant the request upon good cause shown. If a board meeting is not scheduled that provides the opportunity for the board to consider the request and provide a timely response, the board chair has the authority to consider and decide the request.

7315.1800 SUBSTITUTION OF PARTY'S REPRESENTATIVE.

Substitution of a party's representative may be allowed only if notice of the substitution is served on all other parties and the board at least seven calendar days before the hearing date.

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7315.1900 CONSOLIDATION.

[For text of subps 1 and 2, see M.R.]

Subp. 3. **Order.** The board must serve on all parties the order of consolidation.

Subp. 4. **Severance from consolidation.** Within seven calendar days of receipt of the order of consolidation, a party may file with the board a petition for severance from consolidation which must include the reasons why the requirements of subpart 1 are not met.

7315.2100 THE HEARING.

Subpart 1. **How conducted.** The hearing must be conducted as follows:

[For text of item A, see M.R.]

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

[For text of item C, see M.R.]

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

[For text of item E, see M.R.]

Subp. 2. **Transcript of board hearing.** A verbatim record must be taken by a hearing reporter or recording equipment of any hearing conducted pursuant to subpart 1.

[For text of subp 3, see M.R.]

7315.2200 BOARD DECISIONS AND ORDERS.

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

7315.2300 REQUEST FOR REHEARING.

The board on its own motion or on petition of any party and

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for good cause shown, may reopen, rehear, and redetermine an independent review decision. The petition for rehearing by the parties must be served on all parties and the board within 15 calendar days of the date of the board's written decision.

7315.2400 PETITION FOR REHEARING.

A petition for rehearing must contain:

A. the name and address of the petitioner;

B. the board designation of the case;

C. a statement as to the issues on which rehearing is sought; and

D. the reason why the issue should be reheard.

7315.2500 CONSIDERATION.

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

7315.2600 DETERMINATION.

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

A. irregularities in board proceeding;

B. errors of law occurring during board proceedings;

C. newly discovered material evidence;

D. a change in existing law material to the independent review; or

E. good cause for failure to appear.

7315.2700 NOTICE OF REHEARING.

A notice of rehearing must be provided in the same manner prescribed for a hearing by part 7315.1200.

7315.2800 REHEARING PROCEDURE.

A rehearing of an independent review must be conducted in the same manner prescribed for a hearing by part 7315.2100.

7315.2900 DECISION AFTER REHEARING.

The decision after rehearing must be issued in the same manner prescribed for the decision after a hearing by part

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7315.2200.

7320.0030 DEFINITIONS.

[For text of subpart 1, see M.R.]

Subp. 1a. **Arbitration panel.** "Arbitration panel" means three arbitrators who have been selected from a referral arbitration panel that contains seven arbitrators for an interest arbitration case. The panel of three arbitrators function as a single arbitrator to hear and decide the issues certified at impasse by the commissioner.

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

Subp. 3a. **Bureau.** "Bureau" means the Bureau of Mediation Services.

[For text of subps 4 and 5, see M.R.]

Subp. 5a. **Commissioner.** "Commissioner" means the commissioner of the Bureau of Mediation Services.

[For text of subp 6, see M.R.]

Subp. 6a. **Holiday or legal holiday.** "Holiday" or "legal holiday" means those dates designated by Minnesota Statutes, section 645.44, subdivision 5, as holidays for the executive branch of the state of Minnesota.

[For text of subps 7 and 8, see M.R.]

Subp. 9. [See Repealer.]

Subp. 10. **Party or parties.** "Party" or "parties" means, in the case of interest arbitration, any exclusive representative and any employer or employer organization engaged in the arbitration of terms and conditions of employment. In the case of grievance arbitration, "party" means any person authorized by contract or law to select the arbitrator of a grievance.

Subp. 11. **Referral arbitration panel or referral panel.** "Referral arbitration panel" or "referral panel" means a listing of roster members compiled by the board for either interest or grievance arbitration cases. Referral panels are submitted to the parties of a grievance arbitration case for the selection of a single arbitrator. In the case of interest arbitration, the

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parties may select either a single arbitrator or an arbitration panel composed of three arbitrators.

Subp. 12. **Service or serve.** "Service" or "serve" means delivery by personal service, United States certified or regular mail, or other delivery. Electronic mail (fax machine) is not an effective method of service. Service is effective upon receipt by the recipient.

7320.0040 COMPUTATION OF TIME.

In computing any period of time prescribed or allowed by parts 7320.0010 to 7320.0220, the day of an act or event on which the designated period of time begins to run is not included. The last day of the time period is included unless it is a Saturday, Sunday, or legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or legal holiday. When the period of time prescribed or allowed is less than seven days, Saturdays, Sundays, and legal holidays are not included in the computation. See part 7320.0030, subpart 6a, for the definition of a legal holiday.

7320.0090 ARBITRATOR CONDUCT, STANDARDS, AND RESPONSIBILITIES.

[For text of subps 1 to 6, see M.R.]

Subp. 7. **Prehearing conduct.** An arbitrator or arbitration panel, upon notification by the board of appointment to an arbitration case, must communicate with the parties as soon as possible to arrange for the date, time, and location of the hearing and any other necessary procedural matters. All prehearing communications between the arbitrator and the parties must be done in a manner that promotes complete impartiality by the arbitrator. It is the arbitrator's responsibility to ensure that copies of any prehearing correspondence between the arbitrator and either party are made available to the other party.

Subp. 8. **Hearing conduct.** The parties are entitled to a hearing that is conducted in a fair and impartial manner, allowing the parties adequate opportunity to present their

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respective evidence and argument. The arbitrator is responsible for conducting an orderly proceeding and may:

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

An accurate record must be developed by the arbitrator. The arbitrator may, with notice to the parties, use a tape recorder to supplement notetaking. Notes, recorded tapes, and other records of the hearing developed by the arbitrator shall remain the property of the arbitrator and must be retained by the arbitrator for 90 days after delivery of a copy of the award to the parties. The provision of an official transcript may be arranged for by either party before the hearing. The transcript must be paid for by the party or parties requesting it. A copy of the official transcript must be submitted at no cost to the arbitrator and made available to the parties, at copying costs.

[For text of subps 9 and 10, see M.R.]

Subp. 11. **Jurisdiction.** In ruling on a grievance, an arbitrator must comply with the limitations of authority found in a labor agreement. In interest arbitration cases, the arbitrator or arbitration panel has jurisdiction to rule on the ~~issues~~ items or the arbitrability of the ~~issues~~ items certified to impasse by the commissioner of the bureau of mediation services. At any stage of interest or grievance arbitration proceedings, the parties may settle some or all of the ~~issues~~ items in dispute. In those circumstances where some but not all of the ~~issues~~ items have been settled, the arbitrator must state in the award those certified ~~issues~~ items which were settled by the parties. The jurisdiction of the arbitrator continues until all ~~issues~~ items certified to impasse have been resolved.

[For text of subps 12 and 13, see M.R.]

7320.0110 SELECTION RATE OF ARBITRATORS.

Subpart 1. **Maintenance of statistical information.** The executive director shall maintain reliable data concerning the frequency with which individuals are selected by the parties from panels referred by the board. On an annual basis, the board must review statistics showing the selection rates of its

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arbitrators, and rank the arbitrators according to their usage by the number of times proposed and the number of times selected.

Subp. 2. **Selection rates of arbitrators in lowest quartile.** An arbitrator may be removed from the roster if the arbitrator has been in the lowest quartile of the selection rate for the past two consecutive years and was selected for fewer than two cases in the most recent 12-month period.

Subp. 3. **Selection rate of newly enpaneled arbitrators.** A newly enpaneled arbitrator is not subject to subpart 2 until after the arbitrator has completed four years of service on the arbitrator roster.

7320.0120 REFERRAL ARBITRATION PANELS.

Subpart 1. **Random selection.** Referral arbitration panels shall be created by a random selection process. Each referral arbitration panel shall contain a mix of frequently-used, moderately-used, and infrequently-used arbitrators, pursuant to the ranking list determined in the board's review.

Subp. 2. to 4. [See Repealer.]

Subp. 5. **Replacements of referral arbitration panels.** The board must replace referral arbitration panels under the following circumstances.

A. In proposing a referral arbitration panel, if the panel which has been selected for a particular case includes the name of an arbitrator who has on file a written notice of a conflict of interest in that case, that panel shall not be used for that case and another panel shall be selected.

B. The board will consider any objections raised by either party, as to whether an arbitrator on the proposed referral panel has a conflict of interest in that particular case. The party raising the objection must submit a written request for a replacement panel and the rationale for which the objection is being raised. A copy of the request for a replacement panel be forwarded to the other party of the dispute. Any response by the other party must be in writing and submitted to the board within ten calendar days from the date of

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the request for the replacement panel. The board at its next scheduled meeting will determine if pursuant to part 7320.0070, subpart 2, a conflict of interest exists. If it is found that a conflict exists, a replacement panel must be provided to the parties. If it is determined that a conflict of interest does not exist, the parties shall proceed to select an arbitrator from the initial referral panel of arbitrators submitted to the parties. The decision is final.

C. All joint written requests to substitute a proposed list of arbitrators with a second list shall be honored.

D. A replacement panel must be provided to the parties if the arbitrator selected is unable to render an award.

E. A replacement panel must be provided to the parties when one of the proposed arbitrators on the referral arbitration panel has voluntarily removed their name from the arbitrator roster and one of the parties requests a replacement panel.

Subp. 6. **Selection of referral arbitration panels.** Approximately once a week, pursuant to a schedule established at a regular board meeting, the chair and executive director will meet to select the referral arbitration panels to be proposed in pending cases.

The board may designate any of its members, other than the chair, or the executive director to select the referral arbitration panels for pending cases.

Subp. 7. **Arbitrator requests for inactive status.** An arbitrator may request in writing not to be proposed on referral arbitration panels for up to six months without being subject to removal from the arbitrator list.

An arbitrator who requests to be withheld from proposal on referral arbitration panels for more than six months shall be removed from the arbitrator list. That arbitrator may reapply for placement on the list according to the board's qualification procedures.

7320.0130 INTEREST ARBITRATION.

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Parts 7320.0130 to 7320.0180 apply to the procedures governing the arbitration of disputes concerning the resolution of new terms and conditions of employment.

7320.0140 CERTIFICATION OF IMPASSE.

Subpart 1. **Contents.** A certification of impasse by the commissioner according to Minnesota Statutes, chapter 179A, must contain the following:

A. a petition or petitions requesting arbitration;

B. a concise statement by the commissioner indicating that an impasse has been reached and that the requirements of Minnesota Statutes, chapter 179A, have been met;

C. a determination by the commissioner of the ~~matters~~ items in dispute;

D. any final positions submitted by the parties; and

E. any notice of a mutual selection of an arbitrator or arbitration panel by parties pursuant to part 7320.0140, subpart 4.

Subp. 2. **Filing.** The certification must be filed with the board.

Subp. 3. **Final positions.**

A. The board must assign a referral panel of arbitrators to cases which have been certified by the commissioner unless the parties have mutually selected an arbitrator or arbitration panel pursuant to part 7320.0140, subpart 4. Upon notification of the selection of the arbitrator by the parties, the board must forward final positions of the parties which have been received from both parties. The board shall proceed with forwarding those final positions which are on hand, but must instruct the arbitrator that final positions are nonpublic and confidential data until receipt of the final positions of the other party or until commencement of the arbitration hearing.

B. When either party has submitted a final position for an issue which has not been certified to impasse by the commissioner, the board must notify the parties and the selected

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arbitrator or arbitration panel that the arbitrator has jurisdiction to rule only on the issue or the arbitrability of the issues cited by the commissioner as issues which remain in dispute between the parties in the certification of matters for arbitration.

Subp. 4. **Mutual selection of an arbitrator.** If the parties mutually agree to select an arbitrator or arbitration panel from the arbitrator roster maintained by the board, the commissioner must advise the board that the arbitrator or panel of arbitrators has been mutually agreed to by the parties. The written notification of selection of an arbitrator must be included with the certification of impasse when it is forwarded by the commissioner to the board.

7320.0150 SELECTION OF ARBITRATOR.

Subpart 1. **Submission of panel.** When the commissioner has certified an impasse to the board under Minnesota Statutes, chapter 179A, and part 7320.0140, and mutual selection of an arbitrator has not occurred, the board must submit to the parties a list of seven names for the selection of a single arbitrator or a panel of three arbitrators. The parties must agree and provide a written request to the board if selection of a panel of three arbitrators is preferred. In selecting a single arbitrator or a panel of three arbitrators, the parties shall alternately strike names from the list until the appropriate number of names remain.

Subp. 2. **Striking of names.** If the parties are unable to agree on who shall strike the first name, the question shall be decided by the flip of a coin. When a panel of three arbitrators has been selected, the parties shall designate a convenor. If the parties fail to agree upon a convenor, each party shall strike, in the continued order of striking, one name from the panel. The remaining arbitrator shall act as the convenor for the purpose of commencing the proceedings. After selection, the parties must immediately notify the board in writing of the name of the single arbitrator or the names of the

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three arbitrators and the designated convenor.

7320.0160 SELECTION OF CHAIR.

At its initial session, the panel of three arbitrators must select one of its members as the chair. If the arbitrators cannot agree, the convenor must serve as the chair.

7320.0170 SUBMISSION TO THE ARBITRATOR.

The board must submit to the arbitrator or an arbitration panel selected by the parties, the certification of the impasse of the commissioner.

7320.0180 ARBITRATION PROCEDURES.

The arbitration proceeding shall be conducted and the award must be rendered pursuant to Minnesota Statutes, chapter 179A, and part 7320.0090. The procedures and authority of the Uniform Arbitration Act in Minnesota Statutes, sections 572.08 to 572.30, shall apply to arbitration proceedings except as they are inconsistent with the Public Employment Labor Relations Act.

7320.0190 GRIEVANCE ARBITRATION.

Parts 7320.0190 to 7320.0220 apply to the procedures governing arbitration of disputes concerning the resolution of existing terms and conditions of employment.

7320.0200 PETITION FOR GRIEVANCE ARBITRATION.

Subpart 1. **Authority to petition.** A party may petition the board in writing for a list of five arbitrators. The petitioner must provide all parties a copy of the petition at the time of filing with the board.

Subp. 2. **Contents of petition.** The petition must include:

A. the name and address of the petitioner;

B. the name and address of the adverse party;

C. the name and address of the adverse party's representative; and

D. a concise statement of the nature of the grievance and the relief requested.

7320.0210 SELECTION OF THE ARBITRATOR.

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Upon receipt of a petition, the board must submit to the parties a list of five names for the selection of an arbitrator. The parties shall alternately strike names from the list until one name remains. If parties are unable to agree on who shall strike the first name, the question shall be decided by the flip of a coin. After selection, the parties shall immediately notify the board in writing of the name of the arbitrator.

7320.0220 ARBITRATION PROCEDURES.

The arbitration proceedings shall be conducted and the award must be rendered according to Minnesota Statutes, chapter 179A, and part 7320.0090. The procedures and authority of the Uniform Arbitration Act in Minnesota Statutes, sections 572.08 to 572.30, apply to arbitration proceedings except as they are inconsistent with the Public Employment Labor Relations Act.

REPEALER. Minnesota Rules, parts 7300.0400; 7300.1800; 7300.2050; 7305.0100; 7305.0200; 7305.0300; 7305.0500; 7305.0610; 7305.0700; 7305.0800; 7305.0910; 7305.1100; 7305.1200; 7310.0100; 7310.0200; 7310.0300; 7310.0400; 7310.0500; 7310.0550; 7310.0600; 7315.2000; 7320.0030, subpart 9; and 7320.0120, subparts 2, 3 and 4, are repealed.

Approved
by Revisor _____

APPROVED AS TO LEGALITY

February 26, 1991

HUBERT H. HUMPHREY, III
ATTORNEY GENERAL

BY Charlene H. Hatcher
SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED

FEB 26 1991

Joan Anderson Growe
Secretary of State

3:25 P.M.

CERTIFICATE OF THE

PUBLIC EMPLOYMENT RELATIONS BOARD

RESOLUTION ADOPTING THE RULE

I, Herbert T. Custer, do hereby certify that I am a member and the Chair of the Public Employment Relations Board, a Board duly authorized under the laws of the State of Minnesota, and that the following is true, complete, and correct copy of a resolution adopted at a meeting of the Public Employment Relations Board, duly and properly called and held on the fifteenth day of January, 1991, that a quorum was present, and that a majority of those present voted for the resolution which has not been rescinded or modified.

> "RESOLVED, that the rule relating to arbitration policies, issues and appeals, meeting procedures, code of ethics, and independent review of the Public Employment Relations Board is approved and adopted, pursuant to authority vested in the Board by Minnesota Statutes 179A.05, subds. 3, 5, and 6. Jermaine Foslien, executive director of the Board is authorized to sign the findings of fact, conclusions, and order adopting the rule and further is authorized to modify the rule if necessary to obtain the approval of the rule by the attorney general to perform the necessary acts to provide that the rule shall have the force and effect of law."

IN WITNESS WHEREOF, I have hereunto subcribed my name this fifteenth day of January, 1991.

Herbert T. Custer
Chair,
Public Employment Relations Board

Member,
Public Employment Relations Board

Stat. Authority 179A.25

It is the public policy of the State of Minnesota that every public employee should be provided with the right of independent review . . .

14.06

Each agency must adopt rules . . . setting forth the nature and requirements of all formal and informal procedures related to the administration of official agency duties to the extent those procedures directly affect the rights of or procedures available to the public.

179A.05 subd 3

The board shall adopt rules governing its procedure and shall hold meetings as prescribed in these rules

subd 5

The board shall adopt rules under cap chapter 14 governing the presentation of issues and the taking of appeals . . .

subd 6

The board shall maintain a list of names

of administrators ~~and~~ arbitrators qualified by experience and training in the field of labor management

STATE OF MINNESOTA

MINNESOTA PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of the Proposed Permanent Rules and Amendments Relating to Arbitration Policies, Issues and Appeals, Meeting Procedures, Code of Ethics, and Independent Review of the State Public Employment Relations Board

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

(1) Notice of the Board's intent to adopt the above-entitled rule was published in the State Register on October 29, 1990, and was sent by United States mail to all persons on the list maintained by the agency pursuant to Minnesota Statutes, sections 14.14, subdivision 1a and 14.22 on October 8, 1990. (2) The statement of need and reasonableness was prepared before the notice of intent to adopt a rule without public hearing was mailed to all persons on the rulemaking mailing list and published in the State Register and was available to the public. A copy of the statement of need and reasonablness was sent to the Legislative Commission to Review Administrative Rules when it became available to the public.

(4) All persons were given the opportunity to submit comment on the rule for 30 days after notice of proposed rulemaking. Twelve comments and submissions were received by the agency. (5) One request for a public hearing on the rule was received by the agency.

(7) One request for notice of submission to the attorney general was received by the agency.

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

MINNESOTA RULES 7300.0600 and 7315.1000

That the circumstance of an administrative law judge being restricted from providing the Board a conclusion and order in addition to a finding, if the Board appoints an administrative law judge to hear an appeal or independent review case, is an unnecessary restriction and may impede the Board's resolution of the matter or dispute. Therefore, Minn. Rule 7300.0600 is amended as follows: "The administrative law judge must submit to the board recommended findings, conclusion and order as requested by the board." Minn. Rule 7315.1000 is amended as follows: "The administrative law judge must submit to the board recommended findings, conclusion and order as requested by the board." These modifications do not constitute substantial change because appointed administrative law judges ordinarily provide conclusions and recommendations anyway and the change in the rule to require submission of conclusion and order may facilitate the decision-making function of the board.

The above-captioned rule therefore is needed and reasonable.

MINNESOTA RULE 7315.1100

The proposed rule mentioned only post-hearing briefs and one of the comentators mentioned that this may appear to limit the board to only allowing post-hearing briefs. Ordinarily the board would not request pre-hearing briefs, however, it does not want to be restricted from that option. Therefore Minn. Rule 7315.1100 is amended as follows: "~~Upon completion of the hearing,~~ The board may request the parties to submit a ~~post-hearing~~ brief." This modification does not constitute a substanial change because it covers the same subject, does not expand the rule to cover other persons, and its purpose is solely to inform parties that in the appropriate case and to provide full due-process rights to the petitioner, briefs, whether pre-hearing or post-hearing, will be permitted if useful to the Board's determination of the matter.

(8) The above-captioned rule is therefore needed and reasonable.

MINNESOTA RULE 7320.0090, subpart 8

That the proposed rule caused undue confusion under the circumstance when only one party requests a transcript. The Board's current practice is to require the transcript to be made available to the arbitrator at no cost and, should the other party request a copy of the transcript, is available at copying costs. Therefore, Minn. Rule 7320.0090, subpart 8 is amended as follows: "A copy of the official transcript must be submitted at no cost to the arbitrator and made available to the parties at copying costs." This modification does not constitute substantial change because it covers the same subject, does not expand coverage of the rule to other parties and merely provides explicit clarification when only one party requests an official transcript.

The above-captioned rule is therefore needed and reasonable.

MINNESOTA RULE 7320.0090, Subpart 11 and 7320.0140, Subpart 1(c)

That the circumstance in reference to interest arbitration when identifying "items in dispute" as "issues or matters in dispute" is misleading as it is possible for an issue to contain more than one item. Therefore Minn. Rule 7320.0090, subp. 11 is amended as follows: "In interest arbitration cases, the arbitrator or arbitration panel has jurisdiction to rule on the ~~issues~~ items or the arbitrability of the ~~issues~~ items certified to impasse by the commissioner of the bureau of mediation services. At any stage of interest or grievance arbitration proceedings, the parties may settle some or all of the ~~issues~~ items in dispute. In those circumstances where some but not all of the ~~issues~~ items have been settled, the arbitrator must state in the award those certified ~~issues~~ items which were settled by the parties. The jurisdiction of the arbitrator continues until all the ~~issues~~ items certified to impasse have been resolved." Minn. Rule 7320.0140, subp. 1 (c) is amended as follows: "C. a determination by the commissioner of the ~~matters~~ items in dispute." These modifications do not constitute substantial change but rather represent a need to

clarify and provide uniformity in the useage of collective bargaining terms and prevent undue confusion in the application of these terms.

The above-captioned rule is therefore needed and reasonable.

MINNESOTA RULE 7320.0110

That the circumstance of an arbitrator being removed from the roster due to a selection rate that places him/her in the lowest quartile of the selection rate, is too harsh a consequence for newly enpaneled arbitrators on the roster. The Board concludes that newly enpaneled arbitrators be provided more than two consecutive years to be considered for removal from the roster. Therefore, Minn. Rule 7320.0110 is amended as follows: "Subp. 1. Maintenance of Statistical Information Subp. 2. Selection Rate of Arbitrators in the Lowest Quartile. Subp. 3. Selection Rate of Newly Enpaneled Arbitrators. Newly enpaneled arbitrators shall not be subject to subp. 2, until after the newly enpaneled arbitrator has completed four years of service on the arbitrator roster." This modification is not a substantial change because it covers the same subject, does not expand the scope of the rule and is reasonable to adopt this amendment based on the comment it sometimes takes some time for a newly enpaneled arbitrator to be selected by the parties because of the arbitrators newness.

The above-captioned rule is therefore needed and reasonable.

MINNESOTA RULE 7320.0120

That the circumstance of the parties inability to attain upon request a replacement panel of arbitrators when the selected arbitrator, due to illiness or other circumstances is unavailable to render an award impedes the collective bargaining process. The Board concludes that an expeditious way in which to receive a replacement panel must be afforded the parties. Therefore Minn. Rule 7320.0120 is amended as follows: "D. a replacement panel must be submitted to the parties if the arbitrator selected is unavailable to render an award." This modification does not constitute a substantial change because the Board is required upon request to furnish replacement panels when three other circumstances are in place. This change is not substantial because it covers the same subject, does not expand the coverage of the rule to other persons, and merely provides another circumstance under which the parties may request a replacement panel and thereby expedite resolution of their dispute.

The above-captioned rule is therefore needed and reasonable.

MINNESOTA RULE 7320.0120

That the circumstance of the parties inability to attain upon request a replacement panel of arbitrators when one of the arbitrators on the initial panel has voluntarially removed their name from the roster impedes the collective bargaining process. The Board concludes that an expeditious way in which to receive a replacement panel must be afforded the parties. Therefore, Minn. Rule 7320.0120 is amended

as follows: "E. a replacement panel must be submitted to the parties when one of the proposed arbitrators on the referral arbitration panel has voluntarially removed their name from the roster and one of the partys' request a replacement panel." This modification does not constitute a substantial change because it covers the same subject, does not expand the scope of the rule to other persons when these circumstances are present(arbitrator voluntarially removes name from the roster and one of the parties request a replacement panel) it is reasonable to provide another panel to expedite the resolution of the dispute.

(8) The above-captioned rule is therefore, needed and reasonable.

(9) NOW, THEREFORE, IT IS ORDERED that the rule identified as the rule of the State Public Employment Relations Board relating to Arbitration Policies, Issues and Appeals, Meeting Procedure, Code of Ethics, and Independent Review, as modified is adopted this 13th day of February, 1991, pursuant to authority vested in me by Minnesota Statutes, section 179A.05, subd. 6.

Jermaine Foslien
Executive Director



November 23, 1990

Jermaine Foslien, Executive Director
Public Employment Relations Board
1380 Energy Lane, Suite 3
St. Paul, Mn. 55108

This is in response to the Board's Proposed Permanent Rules Relating to Arbitration Policies, Issues and Appeals, Meeting Procedures, Code of Ethics, and Independent Review, dated October 8, 1990.

My comments relate specifically to Chapter 7320.0110 "SELECTION RATE" of Arbitrators, which states in part: "An Arbitrator may be removed from the roster if the arbitrator has been in the lowest quartile of the selection rate for the past two consecutive years and was selected for fewer than two cases in the most recent 12 month period".

I was placed on the PERB arbitrator roster in May 3, 1989. I have just recently been selected as an arbitrator, - the first time since my placement. Based on this rate of selection, it is conceivable that by June, 1991 I would not have been selected for a second case. And an objective application of the above quoted provision could remove me from the roster of arbitrators.

I acknowledge the "may be removed" phrase, which provides discretion to the Board (as it should be). This discretion permits the Board to give due consideration to probable causes or factors in non-selection. I also believe I understand the rationale for the rule. I concur that if a person is not selected for an extended period of time, there is no point in maintaining said person on the roster.

My point is that the provision may be too narrow or restrictive in the number of years of non-selection, as a basis for removal from the roster.

It is my observation that the "previous" occupation of the arbitrator may affect the selection rate. In my case I was a City Manager for 25 years and understandably may be percieved as a management advocate. I can not change that perception. Therefore, I believe a reasonable period of time is necessary to allow that perception to change. This would provide some balance to those other "previous" occupations who do not suffer a perception of probable bias, - for whatever reason. The attached letter illustrates my point.

Perhaps three years would be a reasonable period of time to demonstrate the acceptability of arbitrators. However, I also believe the arbitrator should be given the opportunity to respond to a proposed removal from the roster.

I sincerely commend the Board for their continuing effort to profesionalize the arbitration process. My comments should not be construed as a criticism or opposition to the proposed rules. They are my response as to the potential application of the above noted provision.

Thank you for the opportunity to comment.

Yours truly,

James F. Andre

James F. Andre
2024 N. Cleveland Av.
Roseville, Mn. 55113

Law Enforcement Labor Services, Inc.

127 East Eighth Street • Duluth, Minnesota 55805
Phone: 800/642-6759

20

October 31, 1990

James Andre
2024 N. Cleveland Ave.
Roseville, Mn. 55113

RE: LELS and the City of Crookston
Case No. 90-PN-804

Dear Mr. Andre:

Your name appears on a list of arbitrators in the above entitled matter. I am writing to ask you to withdraw your name from that list and so inform the Public Employee Relations Board.

The Adopted Permanent Rules Relating to Public Employees, section 7320.0090, subpart 6 in pertinent part states:

> "An arbitrator shall withdraw from an arbitration at any time the arbitrator perceives a conflict of interest."

In this matter, the Union of course is LELS from whom you sat across the table while you were City Manager of Roseville. The employer representative in this matter is Mr. Cyrus Smythe, who represented the City of Roseville while you were City Manager. It is my belief that under these circumstances there exists a conflict of interest and I am therefore requesting your withdrawal pursuant to the rules.

Thank you for your consideration.

Sincerely,

Sarah Lewerenz
Attorney/Business Agent

SL:kmc

cc: C.F. Smythe
Marylee Abrams
Roland Miles
Greg Bastien
Thom Skelly
Tom Barnett
Clayton Briggs
Ronald Haller
Tim Motherway

13

BARD AND BARD, LTD.
ATTORNEYS AT LAW
SUITE 2415
OFFICES AT CENTRE VILLAGE
431 SOUTH SEVENTH STREET
MINNEAPOLIS, MINNESOTA 55415

STEPHEN A. BARD
HOWARD M. BARD

TELEPHONE: (612) 333-6691
FAX: (612) 344-1683

October 22, 1990



Mr. Jermaine Foslien, Executive Director
Public Employment Relations Board
1380 Energy Lane, Suite Three
St. Paul, MN 55108-5253

RE: Proposed Amendments to the Arbitration Rules

Dear Jermaine:

I have reviewed the proposed Amendments to the Arbitration Rules per your request. The provision that is of the most obvious concern to me, as I am sure will be to many arbitrators, is Section 7320.0110, Selection Rate of Arbitrators. I would be interested in reviewing the "statement of need and reasonableness" in regard to this particular proposed change.

In principal, I am not opposed to the provision. Obviously, at some point in time arbitrators who are not being picked ought to make room for those who might find greater favor in the future. My concern, and I believe it is a serious one, relates to the use of a two year period on which to make this judgment. Arbitrators (such as has been true in my case) tend to fall in and out of favor. Because of a number of interest arbitration disputes in which I was involved two years ago involving a rather unpopular interpretation of the comparable worth law, my selection rate has fallen dramatically.

I am confident, however, that with time I will be able to once again become acceptable to the parties as an arbitrator. When this will be, however, I do not know. It certainly may be more than two years; our office went through a much longer drought

many years ago. It would therefore be my recommendation that consideration be given to extending the two year period to four or five years.

Thank you for your kind consideration of this matter.

Very truly yours,

BARD AND BARD, LTD.

Howard Bard

Howard M. Bard

HMB/sel/hb221

LAW OFFICES
OF
DALE G. SWANSON

SUITE 13, FRANKLIN BUILDING
69 NORTH LAKE STREET
FOREST LAKE, MINNESOTA 55025

TELEPHONE 464-6555
AREA CODE 612

October 23, 1990



Ms. Jermaine Foslien
Executive Director, PERB
1380 Energy Lane, Suite 3
St. Paul, Mn 55108

Re: Proposed Adoption of Noncontroversial Rules

Dear Ms. Foslien:

I have reviewed the September 11, 1990 draft of the above-referenced rules and submit the following comments for consideration by PERB:

1. The amendment to Part 7300.0100, subp. 8 would deny party status to individual employees before PERB on various determinations made by the Commissioner of BMS except for fair share fee challenges. I do not find anything in PELRA expressly requiring this restriction, and on the other hand, I believe the decision-making process could be benefitted by permitting individual participation by anyone able to show "standing" in the usual legal sense of the word. For example, one or more employees may desire to be included in a "supervisory employee" unit and succeed in getting the incumbent exclusive representative to file a unit clarification petition. The individual employees may have the most at stake and also be the best able to represent the facts bearing upon the issue. The proposed deletion would certainly further enhance the power of exclusive representatives, but I would prefer that BMS and PERB retain discretion to determine when a person or thing is sufficiently "aggrieved" in the traditional sense to warrant party status.

2. While I realize the language making service effective upon receipt in Part 7300.0100, subp. 11 and Part 7320.0030, subp. 12 simply continues a prior practice, the approach of general civil litigation making service complete on mailing would be far preferrable, easier to document and less susceptible to mischief by one seeking to evade service.

3. The provisions describing the role of the

administrative law judge in Part 7300.0600 and Part 7315.1000 refer to the latter submitting recommended findings to PERB. Since any enlightened ALJ can easily prepare findings demanding certain conclusions and decision, I recommend you simply provide for recommended findings, conclusions and determination. This would parallel, for example, what hearing examiners now do for termination or demotion hearings for school employees. Furthermore, you may wish to note that Part 7300.2600 and Part 7315.2200 do not require PERB decisions and orders to be accompanied by findings but only "a statement of the reasons therefor". The term "reasons" is undefined, and I am aware of no generally accepted legal definition to compare or contrast with a requirement for findings. I believe the latter two provisions would be helped by reference to findings of fact and conclusions of law in PERB decisions and orders.

4. In regard to "independent review", I have submitted by separate letter some specific concerns about the authority of PERB. Of a more technical nature, you should note that the term "grievance" remains undefined in PERB rules. It clearly cannot have the definition provided in Minn. Stat. §179A.21 since the latter presumes a contract required by Minn. Stat. §179A.20 necessarily incorporating review by binding arbitration. While Minn. Stat. §179A.25 contains the same defect, the rules would at least avoid an ambiguous and undefined term if you substituted the word "dispute" in reference to terms and conditions of employment.

5. By the proposed new language and the old language stricken from Part 7315.1100, the proposed changes appear to eliminate pre-hearing briefs and confine brief submission generally to the discretion of the board. I would like to think that written argument, as well as oral argument, would always prove to be some benefit to a decision-maker or at least no great hindrance. On the other hand should these changes be seen as prohibiting pre-hearing written argument, they may well implicate the due process rights of an employee to be meaningfully heard.

6. I reiterate that Part 7315.2200 is unsupported by any statutory reference authorizing decisions, binding or otherwise, respecting "independent review". Legislative clarification should be sought to support this rule as it now exists.

7. Part 7320.0090, subp. 11, Part 7320.0140, subps. 1C. and 3B. refer to BMS certification of "issues",

"matters" and "issue", respectively. Minn. Stat. §179A.16 does refer to the commissioner certifying "a matter" but otherwise refers to the certification of "items" of dispute. (See also Minn. Stat. §179A.04, subd. 3(c)). The reference to "items" is substantive by affording the parties the tactical opportunity to present an issue in one or more "items" as the party's best interest appears. You may wish to note that in the case of school principals, Minn. Stat. §179A.16, subd. 7 restricts the arbitrator to selecting between the final offers of the parties "on each impasse item". Both the old and new language of these rules should be corrected to refer to such "items".

8. Part 7320.0120, subp. 5B. refers to PERB consideration of objections based on conflict of interest. The repealer section would repeal Parts 7305.1200 and 7310.0600 respecting the Code of Professional Responsibility for Arbitrators, but the same has now been incorporated in Part 5530.0800, subp. 2. I suggest that the rule be amended to permit PERB to consider objections premised upon any breach of professional and ethical responsibilities included in the Code.

9. I note that Parts 7320.0130 to 7320.0180 are silent upon any dispute over BMS certification of "items" in dispute. Genuine problems can occur in this regard for reasons which may include poor communication at the mediation level. I am given to understand that PERB is reluctant to perform any review of "items" certified. It seems to me that the answer lies in providing upon good cause shown for the remand to the commissioner of such items for reconsideration comparable to that provided in Part 7300.1700. Jurisdiction would remain with PERB, and the underlying policy of addressing all "unresolved disputes" would be advanced. (Minn. Stat. §179A.01). Without an opportunity to remand, the rules could defeat the underlying policy in cases of bureaucratic error or misunderstanding.

I finally request to be advised of the submission of this matter to the Attorney General and request a copy of the adopted rule in final form.

Sincerely yours,

Dale G. Swanson

Dale G. Swanson

DGS:rc

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

Office of
ANOKA COUNTY ATTORNEY

ROBERT M.A. JOHNSON

Courthouse, 325 East Main Street, Anoka, MN 55303
612-421-4760 Fax 612-422-7524

15

October 31, 1990



Ms. Jermaine Foslien
Executive Director
Public Employment Relations Board
1380 Energy Lane
Suite 3
St. Paul, MN 55108

RE: Proposed Permanent Rules and Amendments Relating to Arbitration Polices, Issues and Appeals, Meeting Procedures, Code of Ethics and Independent Review

Dear Ms. Foslien:

I am hereby formally requesting a public hearing with regard to the above-referenced proposed rules. I would also like to receive notice of any public hearings that are to be scheduled. If no public hearing is required, I would like to receive notification of the date of submission to the Attorney General's Office. In addition, I would like to receive a copy of the Statement of Need and Reasonableness that is prepared by your office.

Thank you for your time and consideration in this matter.

Sincerely,

Thomas G. Haluska
Assistant Anoka County Attorney

TGH:ko

PUBLIC EMPLOYMENT RELATIONS BOARD

STATE OF MINNESOTA

December 11, 1990

Thomas G. Haluska
Assistant Anoka
County Attorney
Courthouse
325 East Main Street
Anoka, Minnesota 55303

Dear Mr. Haluska:

Per your request, please find enclosed a copy of the Statement of Need and Reasonableness that was prepared by the Public Employment Relations Board. This document regards proposed permanent rules and amendments relating to arbitration policies, issues and appeals, meeting procedures, code of ethics and independent review.

Should you have any questions regarding this material, please feel free to contact me.

Sincerely,

Jermaine Foslien

Jermaine Foslien
Executive Director

Enclosure

(612) 649-5450
1380 Energy Lane, Suite #3, St. Paul, Minnesota 55108-5253

In the Matter of the Proposed Permanent Rules and Amendments Relating to Arbitration Policies, Issues and Appeals, Meeting Procedures, Code of Ethics, and Independent Review of the State Public Employment Relations Board

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

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

Jermaine Foslien, being sworn says:

That on the 13th day of February, 1991, in the City of St. Paul, County of Ramsey, State of Minnesota, I mailed the attached Notice of Submission to the Attorney General by despositing 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 rule in the above-entitled matter has been submitted to the Attorney General.

Subscribed and sworn to before me this 13th day of February, 1991.

Janet L. Johnson

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

Jermaine Foslien
Jermaine Foslien

Executive Director
Executive Director

STATE OF MINNESOTA

MINNESOTA PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of the Proposed Permanent Rules and Amendments Relating to Arbitration Policies, Issues and Appeals, Meeting Procedures, Code of Ethics, and Independent Review of the State Public Employment Relations Board	NOTICE OF SUBMISSION OF RULE ADOPTED WITHOUT PUBLIC HEARING TO THE ATTORNEY GENERAL

Pursuant to your request and in accordance with Minnesota Statutes, 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, February 13, 1991, 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 have been submitted to the Attorney General.

The proposed rule which was published in the State Register and made available to the public on October 29, 1990, has been modified. A free copy of the rule as modified as well as the findings of fact, conclusion and order explaining the amendments and adopting the rule is available upon request from Jermaine Foslien, Executive Director of the Public Employment Relations Board, 1380 Energy Lane, Suite #3, St. Paul, Minnesota 55108.

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. Any written comments must be submitted within eight calendar days of the date of 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 and requests for the decision must be directed to:

The Office of the Attorney General
Public Finance Division
525 Park Street, Suite 500
St. Paul, Minnesota 55103
Telephone Number: (612) 297-2040

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

Jermaine Foslien, Executive Director
Public Employment Relations Board
1380 Energy Lane, Suite #3
St. Paul, Minnesota 55108
Telephone Number: (612) 649-5450

Jermaine Foslien

Jermaine Foslien

Executive Director

Executive Director

Dated: February 13, 1991

In the Matter of Adoption
of the Rule of the State Public
Employment Relations Board
relating to Arbitration Policies,
Issues and Appeals, Meeting Procedures,
Code of Ethics, and Independent Review

DECLARATION
OF COUNSEL

I, Martha Casserly, 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 0678

Martha J. Casserly

Martha Casserly
Special Assistant
Attorney General

Dated: February 8, 1991

In the Matter of
Proposed Rules and
Amendments of the Public
Employment Relations Board
Governing Arbitration Policies,
Issues and Appeals, Meeting Procedures,
Code of Ethics, and Independent Review

STATEMENT OF NEED
AND REASONABLENESS

GENERAL

The Public Employment Relations Board has jurisdiction in three distinct areas. (1) to hear and decide appeals from the Bureau of Mediation Services relating to unit determinations, fair share fee challenges and definitions of supervisor, confidential, essential and professional employees; (2) to maintain roster of qualified arbitrators and provide referral arbitration panels to the parties; and (3) to provide independent review to an individual who has a dispute with their employer over the interpretation or adherence of a term and condition of employment if no other procedure exists for the independent review of such grievance. Minn. Stat. §§179A.05 and 179A.25.

The authority to promulgate these amendments to the rules are Minn. Stat.§§179A.05, subds. 3,5,6, 179A.25, and 14.06. For the most part, these proposed rules are amendments to existing rules. However, Rules part 7306.0100 through 7306.0600 and 7320.1300 through 7320.0220 are new rules. 7306.0100 through 7306.0600 govern the Board's administrative procedures as required by Minn. Stat. §179A.05, subd. 3. While the statutory section was adopted in 1971 (Extra Session, 1971, Chap. 33, Section 12), it appears that administrative procedural rules were never formally adopted. However, the 180 day deadline in Minn. Stat. §14.12 is not applicable because it (§14.12) was not passed until 1980 (Laws of 1980, Chapter 615, Section 10). To apply the 180 day deadline to a law passed nine years earlier would be retroactive application of the law in violation of Minn. Stat. §645.21. For these reasons, the section 14.12 notice was not sent out.

The amendments to the Appeals, Independent Review and Board Procedures do not effect small businesses as only bargaining representatives, public employees or public employers have appeal and hearing rights under PELRA. Therefore, Minn. Stat. §14.115 does not apply to those chapters. Furthermore, individual arbitrators, not their firms or businesses, are included on the arbitrator roster. Even if small businesses were remotely affected by these rules, to the extent possible, the Board adopted the least stringent deadline and requirements for all entities subject to the rules. The proposed amendments do not establish reporting requirements for businesses, or establish any performance standards. Nor do the arbitration rules impose any additional requirements beyond that required by other state and federal agencies that empanel labor arbitrators.

NEED AND REASONABLENESS OF INDIVIDUAL RULES

7300.0100 DEFINITIONS

Need to assure that the terms of the rule are consistent with the terms of the statute and that new terms are adopted to facilitate understanding and uniform application. The rule is reasonable in that it provides clarification, eliminates duplication and defines terms and phrases in a manner consistent with general and customary labor relations usage and practice.

IN 7300.0100, subparts 1 through 6 and throughout the entire rule "Director"of the Bureau of Mediation Services was replaced with "Commissioner" pursuant to Laws of 1987, Chap. 186, Section 15.

7300.0100, Subp. 7a. Executive Director

For ease in identification and to avoid duplication in the rule, executive director is defined.

7300.0100, Subp. 7b. Holiday or legal holiday.

Need to assure that there is no dispute as to whether a day is a holiday or not. It is reasonable to adopt the definition of the executive branch because it accomplishes this task.

7300.0100, Subp. 8. Party.

The amendment limits the definition of a party to the public employer, an employee organization and the exclusive representative. Under the old rule, every member of the bargaining unit had the right to initiate an appeal with the Board. Both the BMS and National Labor Relations Board limits party status to the exclusive representative, an employee organization and employer with respect to unit determinations and clarifications. It would be inconsistent and unworkable to provide that an individual has standing at the appeal level, when that individual would not have standing at the initial level before the Bureau. Furthermore, amending this rule to be in line with common labor law practice fosters constructive relationships under PELRA.

7300.0100, Subp. 11. Service.

The definition of service was changed to include regular mail as a sufficient method of service and to emphasize that service is effective upon receipt by the recipient. The method of delivery is not important since the service is effective upon receipt. The rule clarifies that fascimile transmissions will not be acceptable method since orginial documents must be filed and to avoid a flux of filing at the end of an appeal deadline.

7300.0110 COMPUTATION OF TIME

Need to assure that the method for computing time is readily understood and uniformly applied. The rule is reasonable in that it sets forth a consistent method for computation of time and is copied from Minn. Stat. §645.15 and MInn. R. Civ. P. 6.01.

7300.0300 SCOPE

As discussed previously, the term "director" was replaced with "commissioner" in accordance with Laws of 1987, Chap. 186, Sec. 15.

7300.0350 BARGAINING UNIT ACCRETION

Minn. Stat. §179A.09 provides that "other relevent factors" are to be considered in determining the scope of an appropriate unit. Since there may not be an election demonstrating the employees interest in being represented by an exclusive representative, the Board considers the employees "showing of interest" to be one of the relevant factors in determining whether to accrete the employees in an existing unit. Therefore, to inform and notify parties, as well as, the Bureau of the Board interpretation of relevent factors with respect to the determination of an amendment of a unit under the statutory criteria, the rule is proposed. Because Minn. Stat. §179A.12, subd. b, provides that signature cards are confidential, the rule cross-references the statute and provides only that the results of the showing of interest be disclosed.

7300.0500 PRESIDING OFFICER; BOARD OR PANEL

The proposed amendments codifies existing practice of the Board and corrects the language in mandating that the panel of three must consist of one member representing employers, one member representing employees and one member representing the public at large. This change assures that a panel of the Board consists of at least a quorum of the Board, assures a fair and balanced panel decision and to be consitent with the apparent statutory intent in the make-up of the Board.

7300.0600 PRESIDING OFFICER; ADMINISTRATIVE LAW JUDGE

Updates the rule to the current statutory terms and need to delete language that related to 7300.2050 which has been repealed. The rule is reasonable because it provides clarification and eliminates obsolete language.

7300.0700 INITIATING AN APPEAL

Subp. 1. Time limits.

A. The current rules are confusing as to the method of the calulation of days and the proposed amendments eliminate this confusion. The current rule provides that when a period of time is ten days or less, Saturdays, Sundays, and holidays are not included. In contrast, the Bureau rules and Court rules all provide a threshold of seven days. To avoid inconsistency, the rule as been changed to provide a threshold of seven days. Consquently, it is necessary to adjust the time for appeal under the new calulation method. In practice, the change only adds one day to the time for appeal, which is a

reasonable and ample time to file an appeal from the Bureau's decision. In addition, the proposed amendments here repeat part 7300.0100, subp. 11 that service is effective upon receipt, not upon mailing. Since failing to meet this requirement results in the Board dismissing the appeal and since it is different from the standard procedures of other entities such as the Courts, it is helpful to the parties to again repeat this crucial requirement here.

Subp. 1. Time limits

B. This new rule clarifies that when a party requests reconsideration by the Bureau, the time for appeal to the Board runs from the date of the reconsideration decision. This proposed rule changes the current requirement that a party moving reconsideration with the Bureau must simultaneously file an appeal with the Board to perserve their appeal rights. The rule is reasonable in providing clarification, eliminates duplication and provides for a more efficient process to the parties and the Board for the initiation of an appeal.

Subp. 2. Notice of Appeal (B and C)

The proposed amendment more clearly identifies whose names and addresses must be included in the notice of appeal. The rule is reasonable in that it provides clarification. In addition, the proposed amendments incorporate the new procedure of reconsideration by the Bureau in requiring copies of the reconsideration decision to be included in the notice of appeal along with the initial decision by the Bureau. Often, the reconsideration decision is the substantive decision being appealed and it is reasonable to require that this be included in the notice of appeal, so that the Board and the parties are informed as to what decision is being appealed.

7300.0800 ANSWER

Need to adjust the timeframe in light of the new calulation method. In addition, to assure that the timeframe is more clearly understood, throughout this chapter "day" is changed to "calendar day" when timeframes are estbalished in rule. The rule is reasonable in that it provides clarification and attempts to make the process more accessable to the parties.

7300.0810 BRIEFS

Subp. 1 Establishment of the briefing schedule.

Need to provide procedures relating to the establishment of the briefing schedule. The rule is reasonable in that it provides clarification and codifys existing practice which the Board has found to be beneficial in the execution of its duties. Past practice has established that two weeks is sufficient time with which to submit briefs.

Subpart 2. Extension of the Briefing Schedule.

Again proposed rule codifies current practice and procedures regarding extensions. The rule is reasonable in allowing first time and short extensions to be resolved by the executive director and further extensions decided by the Board. The rule is reasonable resolution for handling requests for extensions and is patterned after court procedures.

7300.0850 AMICUS CURIAE STATUS

The rule is necessary to explain under what circumstances the Board will grant amicus curiae status. The standard is reasonable in permitting participation in the appeal only when it will be helpful to the Board's decision-making. Since the Bureau is the decision-maker of the decision being reviewed and ordinarily requests this status under compelling circumstances, it is reasonable for the Board to always grant the commissioner amicus curiae status. In addition, the Board needs to establish a timeframe for submission of the brief. The rule is reasonable in that it ties the timeframe for submission of the amicus brief to the briefs submitted by the parties to assure that all materials are before the Board at a time certain.

7300.0900 NOTICE OF HEARING

Need to assure that the timeframes are more clearly understood and to require that notice of hearing will be by certified mail to the parties. The rule is reasonable in that it provides clarification and codifys an existing practice which the Board has found beneficial in executing its duties.

7300.1000 CONTINUANCE OF A HEARING

The current rule regarding continuances is incomplete and must be amended and clarified to codify existing practice and procedures. The proposed rule is reasonable in providing the method of when the executive director will approve continuances and when a continuance must be considered by the Board. The standard of "good cause" is a term adopted by the Courts in determining whether to grant continuances and is reasonable for the Board to adopt that standard here.

7300.1200 INFORMAL AND SUMMARY DISPOSITION

Again "director" is changed to "commissioner" in accordance with Laws of 1987, Chap. 186, Sec. 15.

7300.1500 SUBSTITUTION OF PARTY'S REPRESENTATIVE

Necessary to correct the rule as it is not possible to substitute a party. Rule as been amended to permit the substitution of a party's representative. In addition, the timeframe has been changed to reflect the new calculation method, but the change does not alter the amount of time. The rule is reasonable in that it provides clarification and eliminates incorrect language.

7300.1700 REMAND

Subp. 1. Remand to Commissioner.

The rule is amended to codify Board practice to allow parties to make a motion to remand. In addition, the clause "at any time prior to its decision" was deleted as incorrect.

When the Board reverses the Bureau's decision, it remands the case to the Bureau to bring the matter into compliance with the Board's decision. Therefore, the existing rules were incorrect in providing remands may occur only before a decision, and thus, was deleted to allow the Board to remand upon its decision.

Subp. 2. Circumstances for Remand.

It's necessary to provide criteria by which the Board will consider whether to remand a matter to the Bureau. Each of the enumerated circumstances are situations where another hearing is necessary and reasonable for the Board's decision. The Board is not a hearing examiner, but rather is required to review matters of the record established by the Bureau. The proposed criteria is patterned after Minn. R. Civ. P. 59.01 and thus is a reasonable practice to consider remands for hearing.

Subp. 3. Appeal on Remand.

Explains the status of the appeal before the Board while the Commissioner is considering the remand and the status upon the Commissioner's issuance of the decision. The procedures are reasonable by providing that if the Commissioner's decision differs as a result of the remand, the nature of the appeal has changed warranting more information. It is necessary and reasonable to explain the procedure so that the parties understand their responsibilities under the circumstance of a remand.

7300.1910 THE BOARD RECORD

Need to use simpler words in the rule for easier understanding, to assure that the terms of the rule are consistent with the terms of the statute and provide that the reconsideration decision will be part of the record. The rule is reasonable in that it provides clarification.

7300.2100 TRANSCRIPT OF BOARD HEARING

Change to make the rule more easily understood and in lay person's terms.

7300.2600 BOARD DECISIONS AND ORDERS

Change to make the rule more easily understood and in lay person's terms. In addition, changing "director" to "commissioner" in accordance with Laws of 1987, Chap. 186, Sec. 15.

7300.2800 REQUEST FOR REHEARING

Need to correct poor language and provide additional language to assure that the rule is clearly understood and to change the number of days for such requests under the new calculation of days. The rule is reasonable in that it provides clarification.

7300.2900 PETITION FOR REHEARING
7300.3100 NOTICE OF REHEARING
7300.3200 REHEARING PROCEDURE
7300.3300 DECISION AFTER REHEARING

Change to make rule more easily understood and in lay person's terms.

7306.0100 PURPOSE AND CONSTRUCTION

Need to articulate the Board's purpose for the establishment of a code of ethics and the underlying construction of this chapter. The rule is reasonable because it accomplishes this task. The rules 7306.0100 through 7306.0400 have been patterned after Chapter 7845 which contain Standards of Conduct for the Public Utilities Commission.

7306.0150 DEFINITIONS

Need to assure that the terms are understood and uniformally applied. Provides a cross-reference to the definitions in 7300.0100 so that the same terms apply in both chapters of the rules. The rule is reasonable in that it provides clarification, eliminates repetition and provides for consistent definitions of terms and phrases.

7306.0200 CONFLICT OF INTEREST: IMPROPRIETY

Need to set standards for the Board relating to its actions so as to ensure public confidence in the integrity and impartiality of the Board's decision-making process.

7306.0300 QUASI-JUDICIAL RESPONSIBILITIES

Need to articulate the Board's responsibilities relating to inappropriate influences and orderly proceeding. The rule is reasonable because it accomplishes this task.

7306.0400 DISQUALIFICATION

Need to provide criteria for which a member must disqualify themself from participating in an action before the Board. The rule is reasonable because it provides clarification and in part codifys an existing practice which the Board has found beneficial in executing its duties.

7306.0500 OFFICERS AND DUTIES

Subp. 1. Officers; Subp. 2. Electing the chair and vice-chair; Subp. 3. Vacancies; Subp. 4. Removal. Subp. 5. Duties of chair; Subp. 6. Duties of vice-chair.

Need to establish procedures for the election and removal of the a chair and vice-chair and set forth duties of each office. Rules 7306.0500 through 7306.0600 were patterned after the working rules of the Ethical Practices Board. The rule is reasonable in that it provides clarification and uniformity with respect to certain duties of the Board's officers.

7306.0600 MEETING

Subp. 1. Meeting Time.

Need to assure that standards and procedures are established for conduction of the Board's meetings. The rule is reasonable because it provides clarification and uniformity as to how the Board will conduct its meetings.

Subp. 2. Quorum.

Need to codify the number necessary for a quorum and to codify the apparent intent of the legislature in its make-up of the Board that the quorum must have representative of each of the three interests. The rule is reasonable in that it provides clarification and is consistent with the statute.

Subp. 3. Agenda notice; Subp. 4. Distribution of agenda; Subp. 7. Meeting minutes and open meeting law.

Merely repeats the requirements of the open meeting law which must be followed by the Board.

Subp. 6. Voting; Subp. 8. Reconsideration of a decision. Subp. 9. Parliamentary procedure.

Eestablishes procedures in accordance with Robert's Rules, and thus are well established, widely adopted and a reasonable practice.

7315.0210 SCOPE

Change to make rule more easily understood and in lay-person's terms.

7315.0400 DEFINITIONS

Need to delete person from definition of party. The independent review statute covers only public employees, therefore it was incorrect for the current rule to include "person" having party status for these cases. The rule is reasonable in that it is consistent with the statute and provides clarification.

7315.0500 PETITION

Subp. 1. Authority to petition; Subp. 2. Petition contents.

Change to make the rule more easily understood and in lay person's terms.

7315.0650 ANSWER

Changed the timeline to reflect the new counting method and to round the count to fifteen days. Also, change to make the rule more easily understood and in lay person's terms. The rule is reasonable in that it provides clarification and consistency.

7315.0900 PRESIDING OFFICER: BOARD OR PANEL

Need to assure that the composition of the panel is balanced and is consistent with the apparent statutory intent of the make up of the Board. Furthermore, the change to three panel members is so that a quorum of the Board decides the appeal and thereby provide equal representation of the interests which are required by statute. The rule is reasonable in that it provides consistency and uniformity.

7315.1000 PRESIDING OFFICER; ADMINISTRATIVE LAW JUDGE

Updates the terms of the rule with the terms of the statute. The rule is reasonable in that it provides consistency.

7315.1100 BRIEFS

Since independent review hearings are evidenciary hearings, briefs are not necessary. In addition, the Board desires to keep the costs and the procedures for the parties as low and as easily understood as possible. However, if it is necessary to assist the Board in their decision-making, it may request post-hearing briefs. This is reasonable and notifies the parties that post-hearing briefs may be necessary under the circumstances.

7315.1200 NOTICE OF HEARING

Again clarifies the timeline, that fifteen days means calendar days and change to make the rule more easily understood in lay person's terms. Finally, to assure that all parties received notice of the hearing, the Board elects to send these notices by certified mail. The rule is reasonable in that it provides consistency and clarification.

7315.1300 CONTINUANCE OF HEARING

The existing rule was ambiguous and did not provide a working framework from which to grant continuances. The proposed language for continuances is identical to proposed rule 7300.1000 and thus, the need and reasonableness for the proposed rule equally applies to this rule.

7315.1800 SUBSTITUTION OF PARTY'S REPRESENTATIVE

Need to assure that the language is correct, as it is not possible to substitute a party. Rule as been amended to permit the substitution of a party's representative. In addition, in light of the change in the method of calculation of days, five working days was changed to seven claendar days. The rule is reasonable in that it provides clarification and corrects the language of the rule.

7315.1900 CONSOLIDATION

Change to make the rule more easily understood and in lay person's terms. In addition, in light of the change in the method of calculation, five working days is changed to seven calendar days to be consistent with the rest of the rule. The rule is reasonable in that it provides consistency and clarification.

7315.2100 HEARING; 7315.2200 BOARD DECISIONS AND ORDERS

Change to make the rule more easily understood and in lay person's terms.

7315.2300 REQUEST FOR REHEARING

Need to provide that the Board on its own motion or by petition of a party may rehear an independent review. This procedure is the same as 7300.2800 allowing the Board to rehear an appeal. Because that rule has functioned satisfactorily for appeals, it is proposed to be used for the independent review section.

7315.2400 PETITION FOR REHEARING

Need to define the content of a petition for rehearing of an independent review. This procedure is the same as 7300.2900 which allows for the rehearing of an appeal. Because that procedure has functioned satisfactorily for appeals, it is proposed for the independent review section. All of the requested information is necessary and reasonable for the Board to make its determination whether to rehear the matter.

7315.2500 CONSIDERATION

Need to assure that consideration for rehearing of an independent review can be granted upon evidence in a written or oral form. This is the same rule that is provided in 7300.2950 of the appeals section. Because that rule has functioned satisfactorily for appeals, it is proposed for the independent review section.

7315.2600 DETERMINATION

Need to provide criteria for granting a rehearing of an independent review. This criteria is the same as set forth in 7300.3000 of the appeal section. Because that rule has functioned satisfactorily, it is proposed for the independent review section. This criteria is patterned after Minn. R. Civ. P. 59.01 and thus it is reasonable to adopt a well established and widely adopted standard.

7315.2700 NOTICE OF REHEARING

Need to provide a procedure for the notice of a rehearing. This rule is the same as provided for in 7300.3100 of the appeal section. Because that rule has functioned satisfactorily for appeals, it is proposed for the independent review section. Once the Board has determined to rehear a matter, notice and opportunity for the parties to be heard must be provided.

7315.2800 REHEARING PROCEDURE

Need to provide procedures for conducting a rehearing of an independent review. This rule is the same as provided in 7300.3200 of the appeal section. Because that procedure functioned satisfactorily for an appeal, it is proposed for the independent review section.

7315.2900 DECISION AFTER REHEARING

Need to provide a procedure for the issuance of an independent review decision with respect to a rehearing. This procedure is the same as provided for in 7300.3300 of the appeal section. Because that procedure functioned staisfactorily for appeals, it is proposed for the independent review section. It is reasonable to issue the rehearing decision in the same manner as the original decision.

7320.0030 DEFINITIONS

Need to provide definitions that are exclusive to the arbitration section and to also provide other definitions that are consistent with the appeal section. The rule is reasonable in that it provides clarification and defines terms and phrases that are consistent with general and customary labor relations usage and practice.

Subp. 1a. Arbitration panel; Subp. 11. Referral arbitration panel. Need to distinguish between an arbitration panel that is submitted to the parties for a selection of an arbitrator(referral arbitration panel) and an arbitration panelthat has been selected by the parties to hear and decide a matter (arbitration panel). The rule is reasonable in that it eliminates confusion and provides consistency and clarification.

Subp. 3a. Bureau; Subp. 5a. Commissioner.

Short terms relating to the Bureau of Mediation Services and its head for ease of rules.

Subp. 6a. Holiday or legal holiday.

Need to assure that there is no dispute as to whether a day is a holiday or not. It is reasonable to adopt the definition of the executive branch because it accomplishes this task. This is the same definition proposed in 7300.0100 of the appeal section.

Subp. 10. Parties or parties.

Need to provide separate definitions for a party involved in grievance and interest arbitration as each form of arbitration requires differing response from the Board in its submission of a referral arbitration panel to the parties. An individual does not have contractual right to select an arbitrator in an interest matter. Whereas, in grievance arbitration individual members of the bargaining unit do sometimes have contractual rights to select an arbitrator. Rules 7305.0100, subp.1 and 7310.0100 were repealed and reinserted in the arbitration section. The rule is reasonable in that it provides for an orderely submission of referral panels to the parties in both types of arbitration to the parties in both types of arbitration.

Subp. 12. Service or serve.

The definition of service is the same as provided in 7300.0100 of the appeal section and thus the need and reasonableness for that proposed rule also applies here.

7320.0040 COMPUTATION OF TIME

Need to provide a method for the computation of time. This rule is the same as provided for in the appeal section in proposed rule 7300.0100. Therefore, the need and reasonableness for that proposed rule also applies here.

7320.0090 ARBITRATOR CONDUCT, STANDARDS, AND RESPONSIBILITIES

Subp. 7. Prehearing conduct.

Change is not substantive, provides clarification that the reference to panel is an arbitration panel selected to hear and decide the matter.

Subp. 8. Hearing conduct.

Need to assure that either party may arrange for the official transcript of an arbitration hearing. This rule is reasonable in that it is consistent with the practice of the parties and provides clarification.

Subp. 11. Jurisdiction.

Need to assure that the arbitrator cites in the award those certified issues which have been resolved by the parties. This language does not require the terms of the agreement for each issue resolved by the parties, but rather a mere listing of those issues that were settled. The rule is reasonable in that it provides clarification and is consistent with the practice of the arbitrators.

7320.0110 SELECTION RATE OF ARBITRATORS

Need to assure that the Board maintains data relating to the frequency with which individuals are selected from the roster to hear and decide an arbitration case and to establish criteria for removal from the roster with respect to the selection rate of the arbitrator. In order to maintain qualified arbitrators on the roster and since the arbitration roster is limited to 40 names, it is reasonable to remove arbitrators who show low acceptability to the parties. The rule is reasonable in that it provides criteria that can be uniformly applied and provides notice to the arbitrators and the parties of this new criterion.

7320.0120 REFERRAL ARBITRATION PANELS

Subp. 1. Random selection; Subp. 5. Replacements of referral arbitration panels; Subp. 6 Selection of referral arbitration panels; Subp. 7. Arbitrator requests for inactive status.

Need to assure that whenever there is a reference in the rule to an arbitration panel that will be utilized by the parties for the selection of an arbitrator, that the arbitration panel be identified as a referrel arbitration panel. The rule is reasonable in that it provides consistency and clarification and also distinguishes an arbitration panel that is utilized for selection of an arbitrator (referral arbitration panel) from an arbitration panel composed of three arbitrators to decide a matter (arbitration panel).

7320.0130 INTEREST ARBITRATION

Need to assure that certain subparts are referenced as relating to interest arbitration rather than grievance arbitration as the Board's procedures for submission of a referral arbitration panel differ with respect to each type of arbitration. The rule is reasonable in that it provides clarification and consistency.

7320.0140 CERTIFICATION OF IMPASSE

Subp. 1. Contents.

Need to assure that the content of the certification of impasse complys with a PELRA amendment contained in Laws of Minnesota 1990, Chap. 547, Sec. 7. This rule was previously cited as 7305.0500, Subp. 1 and has been repealed and reenserted here. The change to the rule relates to the PELRA amendment and requires that the content of the certification of impasse include, if applicable, a notice that the parties have mutually selected an arbitrator from the Board's roster. This action on the part of the parties, releases the Board from its responsibility to submit a referral arbitration panel to the parties. The rule is reasonable in that it provides clarification, uniformity and is in compliance with the PELRA statute.

Subp. 2. Filing.

This is old language previously cited as rule 7305.0500, subp. 2, and has been reenserted in this section. The old rule as been amended to omit the requirement that the Bureau serve the certification of impasse upon the parties. The Bureau's rules address the procedure for transmission of the certification of impasse, and thus it is not necessary for the Board to make such a requirement. The rule is reasonable in that it provides clarification and eliminates language that is not necessary.

Subp. 3. Final Positions

This is a new subpart that assures that procedures are in place in the event that the parties mutually select an arbitrator pursuant to Minn. Stat. §179A.16, subd. 4. The rule also provides a procedure should one party fail to submit its final position to the Bureau. In that circumstance, the Board must instruct the selected arbitrator that the final position is nonpublic and confidential under the Data Privacy Act. The rule is reasonable in that it provides uniformity, clarification and complys with the statute.

Subp. 4. Mutual selection of an arbitrator.

This is a new subpart that assures that procedures are in place should the parties opt to mutually select an arbitrator pursuant to Minn. Stat. §179A.16, subd. 4, by requiring that the Bureau provide written notification in its certification of impasse that mutual selection of an arbitrator has occurred at the Bureau level. The rule is reasonable in that it provides clarification and uniformity .

7320.0150 SELECTION OF ARBITRATOR

Subp. 1. Submission of panel.

This is old language previously cited as 7305.0610 and has been reenserted in this section. The old rule has been divided into two subparts. This subpart is amended to bring it into conformity with two PELRA amendments. Laws of Minnesota 1989, Chapter 255, Sec. 10, provides a PELRA amendment which no longer requires a party in an interest arbitration matter, to notify the Board if they wish to select a single arbitrator. Under the old PELRA statute it was assumed that the parties would utilize a three member arbitration panel. As amended, PELRA assumes the parties will utilize a single arbitrator, and thus only require notification to the Board if there is mutual agreement for a three member arbitration panel. In addition, Laws of Minnesota 1990, Chap. 547, Sec. 7, permit mutual selection of an arbitrator at the Bureau level. The rule has been amended to reflect both of these statutory changes. The rule is reasonable in that it provides clarification, uniformity and is in compliance with the PELRA statute.

Subp. 2. Striking of names.

This is old language previously cited as 7305.0610 and has been reenserted in this section without amendment. The rule provides procedures for the striking of names from a referral arbitration panel and for the designation of a convenor of a three member arbitration panel. The rule is reasonable in that it provides clarification and uniformity.

7320.0160 SELECTION OF CHAIR

This is old language previously cited as 7305.0800 and has been reenserted in this section. The rule has been amended to provide for ease of reading rather than reflecting a substantive change. The rule provides a procedure for the selection by the parties of a chair when the parties have selected a three member arbitration panel. The rule is reasonable in that it provides clarification and uniformity.

7320.0170 SUBMISSION TO THE ARBITRATOR

This is old language previously cited as 7305.0700 and has been repealed and reenserted in this section. The rule has been changed to provide for ease of reading and replaces the term "director" to "commissioner" in accordance with Laws of Minnesota 1987, Chap. 186, Sec. 15. The rule provides for the submission of the Certification of Impasse by the Board to the arbitrator selected by the parties. The rule is reasonable in that it provides clarification and consistency.

7320.0180 ARBITRATION PROCEDURES

This is old language previously cited as 7305.0910 and has been repealed and reenserted in this section. The rule as been amended to require that arbitration procedures be conducted pursuant to 7320.0090 in addition to the PELRA statute and the Uniform Arbitration Act. The rule is reasonable in that it provides uniformity and clarification.

7320.0190 GRIEVANCE ARBITRATION

This is old language previously cited as 7310.0200 and has been repealed and reenserted in this section. The rule has been amended to provide for ease in reading rather than reflecting a substantive change. The rule is reasonable in that it provides clarification.

7320.0200 PETITION FOR GRIEVANCE ARBITRATION

Subp. 1. Authority to petition.

This is old language previously cited as 7310.0400, subp. 1 and has been repealed and reenserted in this section without amendment. The rule provides for a party to petition the Board for a referral arbitration panel and also requires that the party serve notice of the petition on all parties. The rule is reasonable in that it provides uniformity,

Subp. 2. Contents of petition.

This is old language previously cited as 7310.0400, Subp. 2 and has been repealed and reenserted in this section. The rule is amended to delete the requirement that the parties include in their petition for a referral arbitration panel a copy of the provisions of the contract applicable to the grievance. In practice the parties rarely include this item but rather, cite the contract provision in their statement of the nature of the grievance. This response is adequate in providing the information needed to process the request of the party. The rule is reasonable in that it eliminates an unnecessary requirement.

7320.0210 SELECTION OF AN ARBITRATOR

This is old language previously cited as 7310.0500 and has been repealed and reenserted in this section. The rule is amended to delete the requirement that the parties select an arbitrator within five days of receipt of the referral arbitration panel. This requirement is rarely met by the parties and would be very difficult for the Board to force compliance. The rule is reasonable in that it eliminates an unnecessary requirement.

7320.0220 ARBITRATION PROCEDURES

This is old language previously cited as 7310.0550 and 7310.0600 which have been repealed and reinserted in this section. The rule has been amended and reflects a consolidation of the two rules under the old chapter. The rule requires that arbitrators be in compliance with the Uniform Arbitration Act expect where the act conflicts with PELRA and further requires that arbitration procedures be in compliance with PELRA and the Professional Responsibility for Arbitrators of Labor-Management Disputes. Rule 7320.0090 references this code, and is thereby included as a procedural requirement when a arbitrator conducts grievance hearings which originate from the Board. The rule is reasonable in that it provides uniformity and consistency.

REPEALERS

7300.0400 COMPUTATION OF TIME

When the Board established a new method for the computation of time, it was necessary to repeal this part and revise the rule as 7300.0110. The repeal is resonable because it accomplishes this task.

7300.1800 EXTENSION OF TIME

Need to repeal this part because it conflicts with the newly revised rules 7300.0810 BRIEFS and 7300.1000 CONTINUANCE OF HEARING which establish procedures for extensions of the timeframes under the appeals section. The repeal is reasonable in that it eliminates conflicting procedures.

7300.2050 ADDITIONAL EVIDENCE

Need to repeal this part because changes to 7300.1700 provide for the circumstance of admitting additional evidence into the record under newly established criteria for remand to the Bureau. Under the new criteria the Board will grant a remand if it is shown that additional evidence, newly discovered exists and could not be produced at the hearing before the Bureau. Equally important, the Board in practice does not itself admit additional evidience. The practice has been to determine if there is a reason to admit additional evidence pursuant to the criteria of 7300.2050 and if so, remand the case to the Bureau for the purpose of admitting the additional evidence. Repeal of this rule clarifys the process and eliminates an unnecessary procedure. In addition, the revisions and repeal codifys an existing practice which the Board has found to be beneficial.

7305.0100 DEFINITIONS; 7305.0200 SCOPE; 7305.0500 CERTIFICATION OF IMPASSE; 7305.0610 SELECTION OF ARBITRATOR; 7305.0700 SUBMISSION TO ARBITRATOR; 7305.0800 PANEL CHAIR; 7305.0910 ARBITRATION PROCEDURES; 7305.1200 PROFESSIONAL RESPONSIBILITY; 7310.0100 DEFINITIONS; 7310. 0200 SCOPE; 7310.0400 PETITION; 7310.0600 PROFESSIONAL RESPONSIBILITY.

The Board in revising its rules has also reorganized them, so as to place all rules relating to arbitration in the arbitration section. To accomplish that task the above rules have been repealed and re-enserted in Chapter 7320. In addition, these rules have been revised to reflect amendments to the PELRA statute and to codify existing practices which the Board has found to be beneficial to the parties and the process in the execution of its duties relating to the arbitration process.

7305.0300 POLICY and 7310.0300 POLICY

The policy statement the the Board will liberally construe its arbitration rules to effectuate the purposes and provision of PELRA is not necessary. The rules are adequate to assure that the rights of the parties and the arbitration process is protected and facilitated as is provided by the PELRA statute. The repeal is reasonable because it eliminates unnecessary language.

7305.1100 PAYMENT OF ARBITRATOR

Minn. Stat. 179A.16, subd. 8 provides for payment by the parties to anarbitrator for services rendered in the issuance of an arbitration award. The PELRA language is adequate, and thus, there is no need to establish a rule for the payment due an arbitrator. In addition, it is the practice of the Board not to intervene on the part of the parties or the arbitrator when issues relating to payment due or refused arise between the parties. The repeal is reasonable because it eliminates unnecessary language and removes any implication that the Board will intervene when these issues are evident.

7315.2000 EXTENSION OF TIME

Need to repeal this part because it conflicts with newly revised rules 7315.1100 BRIEFS and 7315.1300 CONTINUANCE OF HEARING which set forth procedures for the extension of timeframes which are established under the independent review section. The repeal is reasonable because it eliminates unnecessary language and provides clarification and uniformity.

7320. 0030 DEFINITIONS Subp. 9 Panel

This part has been repealed and reenserted in 7320.0030, subp.11. It is necessary to distinguish between an arbitration panel submitted to the parties for the selection of an arbitrator and an arbitration panel composed of three arbitrators who have been selected to hear and decide the matter. The repeal is reasonable in that it permits this subpart to be relocated in the appropriate part of 7320.0030.

7320.0120 REFERRAL ARBITRATION PANELS; Subp. 2. Interest arbitration; Subp. 3. Grievance arbitration and Subp. 4. Assignment of panels to pending cases.

Need to assure that the Board utilizes the most effective type of a random selection process for the construction of referral arbitration panels. The repeal deletes language which limits the Board to a specific type of random selection process. The repeal is reasonable because it permits the Board to try other systems which may be easier to administer and generate more panels in a given period time then is possible under the old system.

Date: October 8, 1990

Jermaine Foslien

Jermaine Foslien
Executive Director

Executive Director

Office of the Revisor of Statutes
Administrative Rules

Harry M. Walsh
Deputy Revisor
296-4752

700 State Office Building
100 Constitution Avenue
St. Paul, MN 55155-1297

September 11, 1990

Jermaine Foslien
Public Employment Relations Board
1380 Energy Lane, Suite 3
St. Paul, MN 55108

RE: File No. 1671

Dear Ms. Foslien:

I am enclosing six copies of your rules, approved as to form.
Please submit two copies to the State Register for publication.

If you have any questions, please call me.

Very truly yours,

Harry M. Walsh

Public Employment Relations Board

Proposed Permanent Rules and Amendments Relating to Arbitration Policies, Issues and Appeals, Meeting Procedures, Code of Ethics, and Independent Review

Rules as Proposed

7300.0100 DEFINITIONS.

Subpart 1. **Appeal.** "Appeal" means issues relating to the meaning of the terms "supervisory employee," "confidential employee," "essential employee," or "professional employee"; appeals from determinations of the ~~director~~ commissioner relating to the appropriateness of a unit; and appeals from determinations of the ~~director~~ commissioner relating to a fair share fee challenge.

[For text of subps 3 and 4, see M.R.]

Subp. 6. ~~Director~~ **Commissioner.** ~~"Director"~~ "Commissioner" means the ~~Director~~ commissioner of the Bureau of Mediation Services.

Subp. 7a. **Executive director.** "Executive director" means the executive director of the Public Employment Relations Board.

Subp. 7b. **Holiday or legal holiday.** "Holiday" or "legal holiday" means those dates designated by Minnesota Statutes, section 645.44, subdivision 5, as holidays for the executive branch of the state of Minnesota.

Subp. 8. **Party.** "Party" means any ~~person, public employee,~~ public employer, exclusive representative of public employees, public employee organization, or public employer organization whose legal rights, duties, or privileges will be directly determined in an appeal; or any public employee who has filed a fair share fee challenge.

[For text of subp 9, see M.R.]

Subp. 11. **Service; serve.** "Service" or "serve" means ~~service of a document required by this chapter, by person or certified United States mail with return requested, postage~~

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~~prepaid,-and-addressed-to-the-party-at-its-last-known-address,~~
~~unless-some-other-manner-of-service-is-required-by-law.~~
~~Certified-mail-means-mail-which-must-be-signed-for-by-the~~
~~addressee-upon-receipt-of-said-mail.--Unless-otherwise-expressly~~
~~stated-by-this-chapter,-service-is-effective-upon~~
~~receipt~~ delivery by personal service, United States certified or regular mail, or other delivery. Electronic mail (fax machine) is not an effective method of service. Service is effective upon receipt by the recipient.

7300.0110 COMPUTATION OF TIME.

In computing any period of time prescribed or allowed by parts 7300.0100 to 7300.3300, the day of an act or event on which the designated period of time begins to run is not included. The last day of the time period is included unless it is a Saturday, Sunday, or legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or legal holiday. When the period of time prescribed or allowed is less than seven days, Saturday, Sunday, and legal holidays are not included in the computation. See part 7300.0100, subpart 7b, for the definition of legal holiday.

7300.0300 SCOPE.

This chapter shall apply to:

[For text of item A, see M.R.]

B. appeals from determinations of the ~~director~~ commissioner relating to the appropriateness of a unit; and

C. appeals from determinations of the ~~director~~ commissioner relating to a fair share fee challenge.

7300.0350 BARGAINING UNIT ACCRETION.

In review of a unit accretion pursuant to Minnesota Statutes, section 179A.09 and under part 7300.0300, item B, the board must consider as a relevant factor whether the employee or employees in question have indicated a showing of interest to be accreted so long as the confidentiality of the individual cards is protected in accordance with Minnesota Statutes, section

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179A.12, subdivision 6.

7300.0500 PRESIDING OFFICER; BOARD OR PANEL.

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

7300.0600 PRESIDING OFFICER; ~~HEARING EXAMINER~~ ADMINISTRATIVE LAW JUDGE.

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

7300.0700 INITIATING AN APPEAL.

Subpart 1. **Time limits.**

A. Within ~~ten~~ 15 calendar days of the date of a final determination by the ~~director~~ commissioner, any party, or parties, may initiate an appeal by serving a copy of a notice of appeal upon all other parties with a copy to the ~~director~~ commissioner and filing the original with the board. Service is effective upon receipt by the board, bureau, and all other parties.

B. If a party or parties files a request for reconsideration of a decision by the commissioner, the appeal to the board must be initiated within 15 calendar days of the date of the reconsideration decision by the commissioner. A copy of the notice of appeal must be served upon all other parties with a copy to the commissioner and the original filed with the board. Service is effective upon receipt by the board, bureau, and all other parties.

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Subp. 2. **Notice of appeal.** A notice of appeal shall include:

[For text of item A, see M.R.]

B. the names and addresses of all ~~parties~~ individuals and organizations who were parties to the appeal;

C. a copy of the ~~director's~~ commissioner's determination from which the appeal is being taken, and, if applicable, a copy of the reconsideration decision by the commissioner;

[For text of item D, see M.R.]

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

[For text of item F, see M.R.]

7300.0800 ANSWER.

Within ~~ten~~ 15 calendar days after service of a notice of appeal, all other parties may submit an answer to the notice of appeal. A copy of ~~such~~ the answer shall be served on all parties to the appeal and filed with the board. Failure to submit an answer shall not be deemed an admission of any statement contained in the notice of appeal or a waiver of any rights afforded the respondent by any statute or rule.

7300.0810 BRIEFS.

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

Subpart 1. **Establishment of briefing schedule.** Upon transmission of the record from the commissioner, the board must provide written notice to the parties establishing specific dates for each party to submit its brief. The appellant must serve and file the appellants's brief within 14 calendar days after the board's written notice establishing the briefing schedule. The respondent must serve and file the respondent's brief within 14 calendar days after service of the appellant's brief. Parties must notify the board by the established dates

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if they do not intend to file a brief.

Subp. 2. **Extension of the briefing schedule.**

A. Either party may request an extension of the briefing schedule. Request for an extension must be received by the board before the deadline and in writing. If it is a first request and the extension does not exceed 14 calendar days, the request will be granted by the executive director. Written notice must be provided to all the parties of the revised briefing schedule.

B. Either party may request an extension that exceeds 14 calendar days or the same party who made the first request for an extension may request a second extension. These requests must be in writing and received by the board before the deadline established in the initial briefing schedule. The board must consider the request at its next meeting and may grant the extensions only for good cause shown and if it causes no prejudice to the other party. If the board is not scheduled to meet within 14 calendar days from the date of the written request, the board chair has authority to decide the request.

7300.0850 AMICUS CURIAE STATUS.

An individual, association, or organization may seek permission in an appeal to file a brief as amicus curiae. The board will grant amicus curiae status if the requester establishes that its brief will be relevant to the appeal and that it will contribute to the board's understanding of the case and the board's decision. Any request of the commissioner for amicus curiae status must be granted. Any brief which is filed under this part must be submitted to the board within the time established for the respondent's brief under part 7300.0810.

7300.0900 NOTICE OF HEARING.

Subpart 1. **Contents of notice.** At least 15 calendar days ~~prior to~~ before the hearing date, the board ~~shall serve upon all~~ must provide to all parties by certified mail a notice of hearing stating:

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

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Subp. 2. **Copy of rules included.** A copy of this chapter ~~shall~~ must be included with the notice of hearing.

7300.1000 CONTINUANCE OF HEARING.

A request for continuance ~~must be served upon the parties and filed with the board not less than seven days prior to the hearing unless exceptional circumstances are shown.~~ of a hearing, if mutually consented to by all of the parties, will be granted by the board's executive director. If there is no mutual consent, the board must consider the request for continuance at its next meeting and grant the request upon good cause shown. If a board meeting is not scheduled that provides the opportunity for the board to consider the request and provide a timely response, the board chair has the authority to consider and decide the request.

7300.1200 INFORMAL AND SUMMARY DISPOSITION.

[For text of subpart 1, see M.R.]

Subp. 2. **Summary disposition.** The board, on its own motion or on motion of any party, may:

[For text of item A, see M.R.]

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

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

7300.1500 SUBSTITUTION OF ~~PARTY~~ PARTY'S REPRESENTATIVE.

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

7300.1700 REMAND.

Subpart 1. **Remand to commissioner.** ~~At any time prior to its decision,~~ A party may make a motion to remand the appeal to the commissioner. The board may remand to the ~~director~~ commissioner all or part of the appeal for rehearing, the taking of specified additional evidence, or other appropriate action.

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Subp. 2. **Circumstances for remand.** The board must grant a remand under the following circumstances:

A. additional evidence, newly discovered, that with reasonable diligence could not have been found and produced at the hearing;

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

C. irregularities or errors of law occurring during the bureau's proceedings.

Subp. 3. **Appeals on remand.** When the board remands an appeal under subparts 1 and 2, the appeal remains before the board, until the board decides the appeal or dismisses the appeal. If the commissioner, upon remand, issues a decision that differs from its initial decision, the board must dismiss the appeal unless either party seeks continuance of the appeal by providing written notice in the same manner as provided in part 7300.0700. If the commissioner, upon remand under subparts 1 and 2, issues a decision that affirms its initial decision, the board must notify the parties that it will proceed with the appeal under the terms of the appellant's initiation of appeal filed with the board before the remand. The party who initiated the appeal may provide written notice to the board of its request to withdraw the appeal.

7300.1910 THE BOARD RECORD.

~~Prior to~~ Before the hearing, the board ~~shall~~ must prepare an official record in each appeal ~~which shall contain~~ that contains:

A. the record of the proceedings before the ~~director~~ commissioner;

B. the determination of the ~~director~~ commissioner, and if applicable, the reconsideration decision of the commissioner;

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

Additional evidence admitted pursuant to part 7300.2050 shall become part of the board record.

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7300.2100 TRANSCRIPT OF BOARD HEARING.

A verbatim record ~~shall~~ must be taken by a hearing reporter or recording equipment of any hearing conducted pursuant to part 7300.2000 or 7300.2050.

7300.2600 BOARD DECISIONS AND ORDERS.

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

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

7300.2800 ~~BOARD-RIGHT-TO-REHEAR~~ REQUEST FOR REHEARING.

The board, on its own motion or on petition of any party and for good cause shown, may reopen, rehear, and redetermine an appeal. The petition for rehearing by the parties must be served on all other parties and ~~filed with~~ the board within ~~ten~~ 15 calendar days of the ~~determination of the appeal~~ date of the board's written decision.

7300.2900 PETITION FOR REHEARING.

A petition for rehearing ~~shall~~ must contain:

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

7300.3100 NOTICE OF REHEARING.

A notice of rehearing ~~shall~~ must be provided in the same manner prescribed for a hearing by part 7300.0900.

7300.3200 REHEARING PROCEDURE.

A rehearing of an appeal ~~shall~~ must be conducted in the same manner prescribed for a hearing by parts 7300.1910 to 7300.2400.

7300.3300 DECISION AFTER REHEARING.

The decision after rehearing ~~shall~~ must be issued in the same manner prescribed for the decision after a hearing by parts 7300.1200, 7300.1300, and 7300.2600.

7306.0100 PURPOSE AND CONSTRUCTION.

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The purpose of parts 7306.0100 to 7306.0400 is to preserve the integrity and independence of board decision making and to promote public confidence in the objectivity of board decisions. Board members and staff must maintain high standards of conduct to prevent a conflict or the appearance of a conflict between private interests and official duties. Parts 7306.0100 to 7306.0400 must be construed to secure these objectives in keeping with the quasi-judicial function of the board.

7306.0150 DEFINITIONS.

Except as otherwise provided, the words, terms, and phrases in this chapter have the same meaning and definition as the meaning and definition they are given in part 7300.0100.

7306.0200 CONFLICT OF INTEREST; IMPROPRIETY.

Subpart 1. **General behavior.** A board member or employee shall respect and comply with law and take action that promotes public confidence in the integrity and impartiality of the board's decision-making process.

Subp. 2. **Actions prohibited.** Board members and staff shall avoid any action that might result in or create a conflict of interest or the appearance of impropriety, including:

A. using public office for private gain;

B. giving preferential treatment to an interested person or entity;

C. impeding the efficiency or economy of board decision making;

D. loss of independence or impartiality of action;

E. making a board decision not based on the evidence in the record;

F. noncompliance with applicable statutes such as the open meeting law; and

G. affecting adversely the confidence of the public in the integrity of the board.

7306.0300 QUASI-JUDICIAL RESPONSIBILITIES.

Subpart 1. **Inappropriate influences.** Board members shall

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not be swayed by partisan or pecuniary interests, public clamor, or fear of criticism.

Subp. 2. **Orderly proceedings, behavior.** Board members shall maintain order and decorum in proceedings before the board. In their official capacity, board members must be patient, dignified, and courteous to litigants, witnesses, lawyers, and others appearing before them. Board members shall require similar conduct from persons appearing before them.

7306.0400 DISQUALIFICATION.

Board members shall disqualify themselves from participating in decisions on issues and appeals before the board if they:

A. have a personal bias or prejudice concerning a party; or

B. have a direct interest, pecuniary or otherwise, that could be substantially affected by the outcome of the proceeding.

BOARD ADMINISTRATIVE PROCEDURES

7306.0500 OFFICERS AND DUTIES.

Subpart 1. **Officers.** The officers of the board are the chair and vice-chair.

Subp. 2. **Electing the chair and vice-chair.** The chair and vice-chair shall be elected annually by the majority vote of all the board members. The vote shall be taken at the board's April meeting and the chair and vice-chair shall serve a one-year term beginning May 1 of each year.

Subp. 3. **Vacancies.** Upon a vacancy in the office of the chair, the vice-chair shall serve as chair until a new chair is elected at the next regular meeting of the board. Upon a vacancy in the office of vice-chair, a new vice-chair shall be elected at the next regular meeting of the board.

Subp. 4. **Removal.** The chair and vice-chair may be removed from office by the majority vote of all the members of the board. This vote must be taken at the next regular meeting following the motion for removal.

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Subp. 5. **Duties of chair.** The chair is the chief administrative officer of the board and shall preside at meetings of the board. The chair shall sign letters and other documents approved by the board pursuant to law on behalf of the board, and may authorize the executive director to sign letters and documents on the chair's behalf. The chair shall represent and speak for the board to the public, members of the branches of state government, and other organizations.

Subp. 6. **Duties of vice-chair.** The vice-chair shall discharge the duties of the chair during the absence or disability of the chair and perform other duties as the chair desires.

7306.0600 MEETING.

Subpart 1. **Meeting time.** The board shall meet on the second Thursday of each month at a time and place set by the board if a quorum is present. If a quorum is not possible for that date, the board must reschedule the meeting according to the open meeting law under Minnesota Statutes, section 471.705.

Subp. 2. **Quorum.** Three members are a quorum. To conduct official business at a meeting, the quorum must consist of one member who represents the public at large, one member who represents public employees, and one member who represents public employers.

Subp. 3. **Agenda notice.** The meeting agenda must be posted according to the open meeting law, Minnesota Statutes, section 471.705, at least three days before the meeting on the principal bulletin board at the board's office. The agenda must include the date, time, place, and purpose of the meeting.

Subp. 4. **Distribution of agenda.** At least three days before its meeting, the board must mail the agenda according to the open meeting law to each individual or association who has filed a written request or otherwise notified the board requesting notice of the board meeting.

Subp. 5. **Presiding officer.** The chair or vice-chair, in absence of the chair, shall preside at board meetings and shall

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determine the limits of time and the relevancy of discussion or debate on any matter before the board.

Subp. 6. **Voting.** A majority vote of the members present at the meeting is necessary to make any decision, except as provided in part 7306.0500, subparts 2 and 4.

Subp. 7. **Meeting minutes and open meeting law.** Full and accurate minutes of the meeting must be kept. Minutes must be approved at the next board meeting. Approved minutes must be available to the public. The meeting must be conducted in compliance with the open meeting law.

Subp. 8. **Reconsideration of a decision.** Any decision of the board may be reconsidered, if a board member who voted on the prevailing side makes a motion for reconsideration.

Subp. 9. **Parliamentary procedure.** Except as specifically provided in this chapter, Scott Foresmans' Robert's Rules of Order, Newly Revised, Henry M. Robert, author, and Scott Foresman, Glenview, Illinois, publisher, 1981 publication date is incorporated by reference and is applicable and shall govern any question of parliamentary procedure that may arise at any meeting of the board. The rule is not subject to frequent change and is available for inspection and copying at the Minnesota State Law Library, 117 University Avenue, Saint Paul, Minnesota 55155.

7315.0210 SCOPE.

This chapter ~~shall apply~~ applies to procedures governing independent review pursuant to Minnesota Statutes, section 179A.25.

7315.0400 DEFINITIONS.

[For text of subpart 1, see M.R.]

Subp. 2. **Party.** "Party" means any ~~person,~~ public employee, public employer, exclusive representative of public employees, public employee organization, or public employer organization whose legal rights, duties, or privileges will be directly determined in an independent review.

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7315.0500 PETITION.

Subpart 1. **Authority to petition.** An employee may petition the board in writing for independent review of a grievance arising out of the interpretation of or adherence to terms and conditions of employment when no other such procedure exists to hear that grievance. The petitioner ~~shall~~ must provide all parties a copy of the petition at the time of filing with the board.

Subp. 2. **Petition contents.** The petition ~~shall~~ must contain:

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

7315.0650 ANSWER.

Within ~~ten~~ 15 calendar days after receipt of a petition, all other parties shall file with the board and provide to the other parties an answer to the petition. The answer ~~shall~~ must contain a concise statement specifying whether:

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

7315.0900 PRESIDING OFFICER; BOARD OR PANEL.

The board, as a full body or as a panel of ~~one or more~~ three of its members, may hear and decide an independent review. Whenever possible, a panel ~~shall~~ must consist of an equal number of representatives of public employees and public employers, ~~unless otherwise agreed to by the parties~~ and the member who represents the public at large.

7315.1000 PRESIDING OFFICER; ~~HEARING EXAMINER~~ ADMINISTRATIVE LAW JUDGE.

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

7315.1100 BRIEFS.

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~~The board may establish a briefing schedule as it deems appropriate.~~ Upon completion of the hearing, the board may request the parties to submit a post-hearing brief if the written brief will assist the board in making its determination. If briefs are necessary, the board must establish a briefing schedule and notify the parties of the dates for submission of the briefs.

7315.1200 NOTICE OF HEARING.

At least 15 calendar days ~~prior to~~ before the hearing date, the board ~~shall serve upon~~ must provide to all parties by certified mail a notice of hearing providing:

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

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

7315.1300 CONTINUANCE OF HEARING.

A request for continuance ~~must be served upon the parties and filed with the board within seven days of the hearing unless exceptional circumstances are shown.~~ of hearing, if mutually consented to by all of the parties, must be granted by the board's executive director. If there is no mutual consent, the board must consider the request for continuance at its next meeting and may grant the request upon good cause shown. If a board meeting is not scheduled that provides the opportunity for the board to consider the request and provide a timely response, the board chair has the authority to consider and decide the request.

7315.1800 SUBSTITUTION OF ~~PARTY~~ PARTY'S REPRESENTATIVE.

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

7315.1900 CONSOLIDATION.

[For text of subps 1 and 2, see M.R.]

Subp. 3. **Order.** The board ~~shall~~ must serve on all parties

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the order of consolidation.

Subp. 4. **Severance from consolidation.** Within ~~five~~ seven calendar days of receipt of the order of consolidation, a party may file with the board a petition for severance from consolidation which ~~shall~~ must include the reasons why the requirements of subpart 1 are not met.

7315.2100 THE HEARING.

Subpart 1. **How conducted.** The hearing ~~shall~~ must be conducted as follows:

[For text of item A, see M.R.]

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

[For text of item C, see M.R.]

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

[For text of item E, see M.R.]

Subp. 2. **Transcript of board hearing.** A verbatim record ~~shall~~ must be taken by a hearing reporter or recording equipment of any hearing conducted pursuant to subpart 1.

[For text of subp 3, see M.R.]

7315.2200 BOARD DECISIONS AND ORDERS.

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

7315.2300 REQUEST FOR REHEARING.

The board on its own motion or on petition of any party and for good cause shown, may reopen, rehear, and redetermine an independent review decision. The petition for rehearing by the parties must be served on all parties and the board within 15

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by Revisor _____

calendar days of the date of the board's written decision.

7315.2400 PETITION FOR REHEARING.

A petition for rehearing must contain:

A. the name and address of the petitioner;

B. the board designation of the case;

C. a statement as to the issues on which rehearing is sought; and

D. the reason why the issue should be reheard.

7315.2500 CONSIDERATION.

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

7315.2600 DETERMINATION.

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

A. irregularities in board proceeding;

B. errors of law occurring during board proceedings;

C. newly discovered material evidence;

D. a change in existing law material to the independent review; or

E. good cause for failure to appear.

7315.2700 NOTICE OF REHEARING.

A notice of rehearing must be provided in the same manner prescribed for a hearing by part 7315.1200.

7315.2800 REHEARING PROCEDURE.

A rehearing of an independent review must be conducted in the same manner prescribed for a hearing by part 7315.2100.

7315.2900 DECISION AFTER REHEARING.

The decision after rehearing must be issued in the same manner prescribed for the decision after a hearing by part 7315.2200.

7320.0030 DEFINITIONS.

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by Revisor _____

[For text of subpart 1, see M.R.]

Subp. 1a. **Arbitration panel.** "Arbitration panel" means three arbitrators who have been selected from a referral arbitration panel that contains seven arbitrators for an interest arbitration case. The panel of three arbitrators function as a single arbitrator to hear and decide the issues certified at impasse by the commissioner.

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

Subp. 3a. **Bureau.** "Bureau" means the Bureau of Mediation Services.

[For text of subps 4 and 5, see M.R.]

Subp. 5a. **Commissioner.** "Commissioner" means the commissioner of the Bureau of Mediation Services.

[For text of subp 6, see M.R.]

Subp. 6a. **Holiday or legal holiday.** "Holiday" or "legal holiday" means those dates designated by Minnesota Statutes, section 645.44, subdivision 5, as holidays for the executive branch of the state of Minnesota.

[For text of subps 7 and 8, see M.R.]

Subp. 9. [See Repealer.]

Subp. 10. **Party or parties.** "Party" or "parties" means ~~an employer or~~, in the case of interest arbitration, any exclusive representative ~~directly involved and affected by a dispute for which a roster member has been requested or referred, or a designated representative~~ and any employer or employer organization engaged in the arbitration of terms and conditions of employment. In the case of grievance arbitration, "party" means any person authorized by contract or law to select the arbitrator of a grievance.

Subp. 11. **Referral arbitration panel or referral panel.** "Referral arbitration panel" or "referral panel" means a listing of roster members compiled by the board for either interest or grievance arbitration cases. Referral panels are submitted to the parties of a grievance arbitration case for the selection of a single arbitrator. In the case of interest arbitration, the parties may select either a single arbitrator

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or an arbitration panel composed of three arbitrators.

Subp. 12. **Service or serve.** "Service" or "serve" means delivery by personal service, United States certified or regular mail, or other delivery. Electronic mail (fax machine) is not an effective method of service. Service is effective upon receipt by the recipient.

7320.0040 COMPUTATION OF TIME.

In computing any period of time prescribed or allowed by ~~this chapter~~ parts 7320.0010 to 7320.0220, the day of an act or event ~~from~~ on which the designated period of time begins to run ~~shall~~ is not ~~be~~ included. The last day of the time period ~~so computed shall be~~ is included unless it is a Saturday, Sunday, or legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or legal holiday. ~~For any time~~ When the period of ~~ten~~ time prescribed or allowed is less than seven days ~~or less~~, Saturdays, Sundays, ~~or~~ and legal holidays ~~shall~~ are not ~~be~~ included in ~~computing~~ the ~~period of time~~ computation. See part 7320.0030, subpart 6a, for the definition of a legal holiday.

7320.0090 ARBITRATOR CONDUCT, STANDARDS, AND RESPONSIBILITIES.

[For text of subps 1 to 6, see M.R.]

Subp. 7. **Prehearing conduct.** An arbitrator or arbitration panel, upon notification by the board of appointment to an arbitration case, must communicate with the parties as soon as possible to arrange for the date, time, and location of the hearing and any other necessary procedural matters. All prehearing communications between the arbitrator and the parties must be done in a manner that promotes complete impartiality by the arbitrator. It is the arbitrator's responsibility to ensure that copies of any prehearing correspondence between the arbitrator and either party are made available to the other party.

Subp. 8. **Hearing conduct.** The parties are entitled to a hearing that is conducted in a fair and impartial manner, allowing the parties adequate opportunity to present their

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respective evidence and argument. The arbitrator is responsible for conducting an orderly proceeding and may:

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

An accurate record must be developed by the arbitrator. The arbitrator may, with notice to the parties, use a tape recorder to supplement notetaking. Notes, recorded tapes, and other records of the hearing developed by the arbitrator shall remain the property of the arbitrator and must be retained by the arbitrator for 90 days after delivery of a copy of the award to the parties. The provision of an official transcript ~~must~~ may be arranged for by ~~the arbitrator if~~ either party ~~requests~~ ~~one~~ before the hearing. The transcript must be paid for by the party or parties requesting it. A copy of the official transcript must be submitted to the arbitrator and made available to the parties.

[For text of subps 9 and 10, see M.R.]

Subp. 11. **Jurisdiction.** In ruling on a grievance, an arbitrator must comply with the limitations of authority found in a labor agreement. In interest arbitration cases, the arbitrator or arbitration panel has jurisdiction to rule on the issues or the arbitrability of the issues certified to impasse by the commissioner of the bureau of mediation services. At any stage of interest or grievance arbitration proceedings, the parties may settle some or all of the issues. In those circumstances~~, the agreement of the parties must be incorporated by the arbitrator into the award~~ where some but not all of the issues have been settled, the arbitrator must state in the award those certified issues which were settled by the parties. The jurisdiction of the arbitrator continues until all issues certified to impasse have been resolved.

[For text of subps 12 and 13, see M.R.]

7320.0110 ~~RANKING~~ SELECTION RATE OF ARBITRATORS.

The executive director shall maintain reliable data concerning the frequency with which individuals are selected by the parties from panels referred by the board. On an annual

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basis, the board must review statistics showing the selection rates of its arbitrators, and rank the arbitrators according to their usage by the number of times proposed and the number of times selected. An arbitrator may be removed from the roster if the arbitrator has been in the lowest quartile of the selection rate for the past two consecutive years and was selected for fewer than two cases in the most recent 12-month period.

7320.0120 REFERRAL ARBITRATION PANELS.

Subpart 1. **Random selection.** Referral arbitration panels shall be created by a random selection process. Each referral arbitration panel shall contain a mix of frequently-used, moderately-used, and infrequently-used arbitrators, pursuant to the ranking list determined in the board's review. ~~The panels shall be drawn according to subparts 2 to 6.~~

Subp. 2. to 4. [See Repealer.]

Subp. 5. **Replacements of referral arbitration panels.** The board must replace referral arbitration panels under the following circumstances.

A. In proposing ~~an~~ a referral arbitration panel, if the ~~number~~ panel which has been selected for a particular case ~~is assigned to a panel which~~ includes the name of an arbitrator who has on file a written notice of a conflict of interest in that case, that ~~number~~ panel shall not be used for that case and another ~~number~~ panel shall be selected.

B. The board will consider any objections raised by either party, as to whether an arbitrator on the proposed referral panel has a conflict of interest in that particular case. The party raising the objection must submit a written request for a replacement panel and the rationale for which the objection is being raised. A copy of the request for a replacement panel be forwarded to the other party of the dispute. Any response by the other party must be in writing and submitted to the board within ten calendar days from the date of the request for the replacement panel. The board at its next scheduled meeting will determine if pursuant to part 7320.0070,

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by Revisor _____

subpart 2, a conflict of interest exists. If it is found that a conflict exists, a replacement panel must be provided to the parties. If it is determined that a conflict of interest does not exist, the parties shall proceed to select an arbitrator from the initial referral panel of arbitrators submitted to the parties. The decision is final.

C. All joint written requests to substitute a proposed list of arbitrators with a second list shall be honored.

Subp. 6. **Selection of referral arbitration panels.** Approximately once a week, pursuant to a schedule established at a regular board meeting, the chair and executive director will meet to select the referral arbitration panels to be proposed in pending cases.

The board may designate any of its members, other than the chair, or the executive director to select the referral arbitration panels for pending cases.

Subp. 7. **Arbitrator requests for inactive status.** An arbitrator may request in writing not to be proposed on referral arbitration panels for up to six months without being subject to removal from the arbitrator list.

An arbitrator who requests to be withheld from proposal on referral arbitration panels for more than six months shall be removed from the arbitrator list. That arbitrator may reapply for placement on the list according to the board's qualification procedures.

Rules as Proposed (all new material)

7320.0130 INTEREST ARBITRATION.

Parts 7320.0130 to 7320.0180 apply to the procedures governing the arbitration of disputes concerning the resolution of new terms and conditions of employment.

7320.0140 CERTIFICATION OF IMPASSE.

Subpart 1. **Contents.** A certification of impasse by the commissioner according to Minnesota Statutes, chapter 179A, must contain the following:

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by Revisor _____

A. a petition or petitions requesting arbitration;

B. a concise statement by the commissioner indicating that an impasse has been reached and that the requirements of Minnesota Statutes, chapter 179A, have been met;

C. a determination by the commissioner of the matters in dispute;

D. any final positions submitted by the parties; and

E. any notice of a mutual selection of an arbitrator or arbitration panel by parties pursuant to part 7320.0140, subpart 4.

Subp. 2. **Filing.** The certification must be filed with the board.

Subp. 3. **Final positions.**

A. The board must assign a referral panel of arbitrators to cases which have been certified by the commissioner unless the parties have mutually selected an arbitrator or arbitration panel pursuant to part 7320.0140, subpart 4. Upon notification of the selection of the arbitrator by the parties, the board must forward final positions of the parties which have been received from both parties. The board shall proceed with forwarding those final positions which are on hand, but must instruct the arbitrator that final positions are nonpublic and confidential data until receipt of the final positions of the other party or until commencement of the arbitration hearing.

B. When either party has submitted a final position for an issue which has not been certified to impasse by the commissioner, the board must notify the parties and the selected arbitrator or arbitration panel that the arbitrator has jurisdiction to rule only on the issue or the arbitrability of the issues cited by the commissioner as issues which remain in dispute between the parties in the certification of matters for arbitration.

Subp. 4. **Mutual selection of an arbitrator.** If the parties mutually agree to select an arbitrator or arbitration panel from the arbitrator roster maintained by the board, the

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commissioner must advise the board that the arbitrator or panel of arbitrators has been mutually agreed to by the parties. The written notification of selection of an arbitrator must be included with the certification of impasse when it is forwarded by the commissioner to the board.

7320.0150 SELECTION OF ARBITRATOR.

Subpart 1. **Submission of panel.** When the commissioner has certified an impasse to the board under Minnesota Statutes, chapter 179A, and part 7320.0140, and mutual selection of an arbitrator has not occurred, the board must submit to the parties a list of seven names for the selection of a single arbitrator or a panel of three arbitrators. The parties must agree and provide a written request to the board if selection of a panel of three arbitrators is preferred. In selecting a single arbitrator or a panel of three arbitrators, the parties shall alternately strike names from the list until the appropriate number of names remain.

Subp. 2. **Striking of names.** If the parties are unable to agree on who shall strike the first name, the question shall be decided by the flip of a coin. When a panel of three arbitrators has been selected, the parties shall designate a convenor. If the parties fail to agree upon a convenor, each party shall strike, in the continued order of striking, one name from the panel. The remaining arbitrator shall act as the convenor for the purpose of commencing the proceedings. After selection, the parties must immediately notify the board in writing of the name of the single arbitrator or the names of the three arbitrators and the designated convenor.

7320.0160 SELECTION OF CHAIR.

At its initial session, the panel of three arbitrators must select one of its members as the chair. If the arbitrators cannot agree, the convenor must serve as the chair.

7320.0170 SUBMISSION TO THE ARBITRATOR.

The board must submit to the arbitrator or an arbitration

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panel selected by the parties, the certification of the impasse of the commissioner.

7320.0180 ARBITRATION PROCEDURES.

The arbitration proceeding shall be conducted and the award must be rendered pursuant to Minnesota Statutes, chapter 179A, and part 7320.0090. The procedures and authority of the Uniform Arbitration Act in Minnesota Statutes, sections 572.08 to 572.30, shall apply to arbitration proceedings except as they are inconsistent with the Public Employment Labor Relations Act.

7320.0190 GRIEVANCE ARBITRATION.

Parts 7320.0190 to 7320.0220 apply to the procedures governing arbitration of disputes concerning the resolution of existing terms and conditions of employment.

7320.0200 PETITION FOR GRIEVANCE ARBITRATION.

Subpart 1. **Authority to petition.** A party may petition the board in writing for a list of five arbitrators. The petitioner must provide all parties a copy of the petition at the time of filing with the board.

Subp. 2. **Contents of petition.** The petition must include:

A. the name and address of the petitioner;

B. the name and address of the adverse party;

C. the name and address of the adverse party's representative; and

D. a concise statement of the nature of the grievance and the relief requested.

7320.0210 SELECTION OF THE ARBITRATOR.

Upon receipt of a petition, the board must submit to the parties a list of five names for the selection of an arbitrator. The parties shall alternately strike names from the list until one name remains. If parties are unable to agree on who shall strike the first name, the question shall be decided by the flip of a coin. After selection, the parties shall immediately notify the board in writing of the name of the arbitrator.

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7320.0220 ARBITRATION PROCEDURES.

The arbitration proceedings shall be conducted and the award must be rendered according to Minnesota Statutes, chapter 179A, and part 7320.0090. The procedures and authority of the Uniform Arbitration Act in Minnesota Statutes, sections 572.08 to 572.30, apply to arbitration proceedings except as they are inconsistent with the Public Employment Labor Relations Act.

REPEALER. Minnesota Rules, parts 7300.0400; 7300.1800; 7300.2050; 7305.0100; 7305.0200; 7305.0300; 7305.0500; 7305.0610; 7305.0700; 7305.0800; 7305.0910; 7305.1100; 7305.1200; 7310.0100; 7310.0200; 7310.0300; 7310.0400; 7310.0500; 7310.0550; 7310.0600; 7315.2000; 7320.0030, subpart 9; and 7320.0120, subparts 2, 3 and 4, are repealed.

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Office of the Revisor of Statutes

Administrative Rules

TITLE: Proposed Permanent Rules Relating to Arbitration Policies, Issues and Appeals, Meeting Procedures, Code of Ethics, and Independent Review

AGENCY: Public Employment Relations Board

MINNESOTA RULES: Chapters 7300; 7305; 7306; 7310; 7315; and 7320

INCORPORATION BY REFERENCE:

Part 7306.0600: Scott Foresmans' Robert's Rules of Order, Newly Revised, published by Scott Foresman, Glenview, Illinois, 1981 publication date. Available at Minnesota State Law Library.

The attached rules are approved for publication in the State Register

Harry M. Walsh
Deputy Revisor

CERIFICATE OF THE

PUBLIC EMPLOYMENT RELATIONS BOARD

AUTHORIZING RESOLUTION

I, Herbert T. Custer, do hereby certify that I am a member and the Chair, of the Public Employment Relations Board, a board duly authorized under the laws of the State of Minnesota, and that the following is a true, complete and correct copy of a resolution adopted at a meeting of the Public Employment Relations Board duly and properly called and held on the eighth day of May, 1990, that a quorum was present, and that a majority of those present voted for the resolution which has not been rescinded or modified.

> "RESOLVED, that Jermaine Foslien, Executive Director of the Public Employment Relations Board, is hereby granted the authority and directed to sign and to give the Notice of the Public Employment Relations Board's Intent to Adopt a Rule without public hearing governing issues and appeals, meetings, code of ethics, independent review, interest arbitration, grievance arbitration and administration of the arbitrator roster to all persons who have registered their names with the Board for that purpose and publish the Notice and rule in the State Register, and to perform any and all acts incidential thereto."

IN WITNESS WHEREOF, I have hereunto subscribed my name this fifteenth day of May, 1990.

Herbert T. Custer
Chair,
Public Employment Relations Board

Member,
Public Employment Relations Board

Oral statements will be received during regular business hours, 8:00 a.m. to 4:30 p.m., Monday through Friday.

Statements and comments will be accepted until July 25, 1990. Any written materials received by the Agency shall become part of the rulemaking record in the event that the rule is amended.

Gerald L. Willet
Commissioner

Public Employment Relations Board

Notice of Solicitation of Outside Information or Opinions Regarding Proposed Rules and Amendments of Rules Governing Issues and Appeals, Independent Review, Meetings, Code of Ethics, Interest and Grievance Arbitration and the Administration of the Arbitrator Roster

NOTICE IS HEREBY GIVEN that the Public Employment Relations Board is seeking information or opinions from sources outside the agency in preparing to propose the adoption and amendment of rules governing Issues and Appeals, Independent Review, Meetings, Code of Ethics, Interest and Grievance Arbitration and Administration of the Arbitrator Roster. The adoption of the rule is authorized by *Minnesota Statutes*, Section 179A.05, subds. 3, 5 and 6 and 14.06 which requires the Board to adopt rules governing its procedures and the administration of its duties.

The Public Employment Relation Board requests information and opinions concerning the subject matter of the rule. Interested persons or groups may submit data or views on the subject matter of concern in writing or orally. Written statements should be addressed to:

Jermaine Foslien, Executive Director
Public Employment Relations Board
1380 Energy Lane, Suite #3
St. Paul, Minnesota 55108

Oral statements will be received during regular business hours over the telephone at 612-649-5450 and in person at the above address.

All statements of information and opinions shall be accepted until July 16, 1990. Any written material received by the Public Employment Relations Board shall become part of the rulemaking record to be submitted to the attorney general or administrative law judge in the event that the rule is adopted.

Jermaine Foslien
Executive Director
Public Employment Relations Board

Dated: 15 June 1990

Resolve Bargaining Disputes and Grievances

Public Employment Labor Relations Act 1989. The collective bargaining rights and responsibilities of public employers and public employees. Details employees' right to organize and the legislature's authority. Code #2-90, $6.00 plus tax.

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Publication editors: As a public service, please reprint this ad in your publication as is, reduced, enlarged, or redesigned to suit your format. Thank you.

PUBLIC EMPLOYMENT RELATIONS BOARD

STATE OF MINNESOTA

February 13, 1991

Patricia Nolte
Office of the Attorney
General Rules Review
Capitol Building, Suite 500
525 Park Street
St. Paul, Minnesota 55155

Dear Ms. Nolte:

Please find enclosed, the necessary documents regarding the Public Employment Relations Board's rule and amendments relating to arbitration policies, issues and appeals, meeting procedures, code of ethics, and independent review.

Sincerely,

Jermaine Foslien
Executive Director

PUBLIC EMPLOYMENT RELATIONS BOARD
STATE OF MINNESOTA

Enclosure

(612) 649-5450
1380 Energy Lane, Suite #3, St. Paul, Minnesota 55108-5253
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E. Surface water drainage must be diverted around and away from the burning and ash storage areas.

F. Burning must be conducted according to the conditions in part 7005.0715, subpart 4, items A to E and G.

G. Twenty-four hour notice must be given to the local authority of the time and duration of each burn.

H. Fugitive ash emissions must be controlled and ash residue must be collected periodically and disposed of in a permitted sanitary landfill or other method allowed by applicable statutes and rules.

I. The fire must not be allowed to smolder with no flame present.

J. Fugitive dust emissions from access roads and the site must be controlled as required by part 7005.0550.

Subp. 6. **Site termination.** A permanent open burning site must be terminated in compliance with items A to D.

A. All unburned materials must be removed and disposed of in an appropriate manner.

B. All ash must be removed to a permitted sanitary landfill or other method allowed by applicable statutes and rules.

C. Areas affected by burning must be covered with soil and seeded to prevent erosion and to restore the site to a natural condition.

D. A sign must be posted informing the public that the site has been closed, and listing the closest disposal site alternative.

Subp. 7. **Application process.** Applicants for a permanent open burning site permit shall submit a complete application on a form provided by the commissioner. This application must be submitted at least 90 days before the date of the proposed operation of the permanent open burning site. The application must be submitted to the commissioner and must contain:

A. the name, address, and telephone number of all owners of the site proposed for use as the permanent open burning site;

B. if the operator for the proposed permanent open burning site is different from the owner, the name, address, and telephone number of the operator;

C. a general description of the materials to be burned, including the source and estimated quantity;

D. a topographic or similarly detailed map of the site and surrounding area within a one mile circumference showing all structures that might be affected by the operation of the site; and

E. any other information relevant to the operation of the site, or as requested by the commissioner to determine if the site can be operated in compliance with all applicable rules.

Subp. 8. **Permittees.** The permit application must be signed by all owners and operators of the proposed permanent open burning site, and the commissioner shall designate all owners and operators as copermittees when issuing the permit.

INSTRUCTION TO REVISOR. In the next edition of *Minnesota Rules*, the revisor shall change the reference from "parts 7005.0700 to 7005.0820" to "parts 7005.0705 to 7005.0815" in *Minnesota Rules*, parts 7001.0020 and 7035.2565.

REPEALER. *Minnesota Rules*, parts 7005.0700; 7005.0710; 7005.0720; 7005.0730; 7005.0740; 7005.0750; 7005.0760; 7005.0770; 7005.0780; 7005.0790; 7005.0800; 7005.0810; and 7005.0820 are repealed.

Public Employment Relations Board

Proposed Permanent Rules and Amendments Relating to Arbitration Policies, Issues and Appeals, Meeting Procedures, Code of Ethics, and Independent Review

Notice of Intent to Adopt a Rule Without a Public Hearing

NOTICE IS HEREBY GIVEN that the State Public Employment Relations Board intends to adopt and amend the above-entitled rules without a public hearing following procedures set forth in the Administrative Procedure Act for adopting rules without a public hearing in *Minnesota Statutes*, sections 14.22 to 14.29. The statutory authorities to adopt and amend the rule are *Minnesota Statutes*, sections 179A.05, subds. 3, 5, and 6, 179A.25 and 14.06.

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.

All persons have 30 days in which to submit comment in support of or in opposition to the proposed rules and amendments 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 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 public hearing must be submitted to:

Jermaine Foslien, Executive Director
Public Employment Relations Board
1380 Energy Lane, Suite Three
St. Paul, Minnesota 55108
(612) 649-5450

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 the reasonableness of each provision of the proposed rule and amendment and identifies that data and information relied upon to support the proposed rule has been prepared and is available from Jermaine Foslien, Executive Director, Public Employment Relations Board, 1380 Energy Lane, Suite Three, St. Paul, Minnesota 55108 upon request.

You are hereby advised pursuant to *Minnesota Statute*, section 14.115 (1988) that the proposed rule and amendments may have an impact on small business. The proposed rule and amendments set forth the substantive and procedural requirements for maintenance of the arbitrator roster. Small businesses which arbitrators are considered to be, may be impacted by the proposed rules if the arbitrator applies or is appointed to serve on the Board's roster. *Minnesota Statute* 14.11 is not applicable as the proposed rules do not require expenditure of public money by local public bodies.

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 the submission to the Attorney General. Persons who wish to advised of the submission of this material to the Attorney General, or who wish to receive a copy of the adopted rule, must submit a written request to Jermaine Foslien, Director, Public Employment Relations Board, 1380 Energy Lane, Suite Three, St. Paul, Minnesota 55108.

Dated: 8 October 1990

Jermaine Foslien
Executive Director

Rules as Proposed

7300.0100 DEFINITIONS.

Subpart 1. **Appeal.** "Appeal" means issues relating to the meaning of the terms "supervisory employee," "confidential employee," "essential employee," or "professional employee"; appeals from determinations of the ~~director~~ commissioner relating to the appropriateness of a unit; and appeals from determinations of the ~~director~~ commissioner relating to a fair share fee challenge.

[For text of subps 3 and 4, see M.R.]

Subp. 6. ~~Director~~ **Commissioner.** ~~"Director"~~ "Commissioner" means the ~~Director~~ commissioner of the Bureau of Mediation Services.

Subp. 7a. **Executive director.** "Executive director" means the executive director of the Public Employment Relations Board.

Subp. 7b. **Holiday or legal holiday.** "Holiday" or "legal holiday" means those dates designated by *Minnesota Statutes*, section 645.44, subdivision 5, as holidays for the executive branch of the state of Minnesota.

Subp. 8. **Party.** "Party" means any ~~person, public employee,~~ public employer, exclusive representative of public employees, public employee organization, or public employer organization whose legal rights, duties, or privileges will be directly determined in an appeal; or any public employee who has filed a fair share fee challenge.

[For text of subp 9, see M.R.]

Subp. 11. **Service; serve.** "Service" or "serve" means ~~service of a document required by this chapter. by person or certified United States mail with return requested. postage prepaid. and addressed to the party at its last known address. unless some other manner of service is required by law. Certified mail means mail which must be signed for by the addressee upon receipt of said mail. Unless otherwise expressly stated by this chapter. service is effective upon receipt~~ delivery by personal service, United States certified or regular mail, or other delivery. Electronic mail (fax machine) is not an effective method of service. Service is effective upon receipt by the recipient.

7300.0110 COMPUTATION OF TIME.

In computing any period of time prescribed or allowed by parts 7300.0100 to 7300.3300, the day of an act or event on which the designated period of time begins to run is not included. The last day of the time period is included unless it is a Saturday, Sunday, or legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or legal holiday. When the period of time prescribed or allowed is less than seven days, Saturday, Sunday, and legal holidays are not included in the computation. See part 7300.0100, subpart 7b, for the definition of legal holiday.

7300.0300 SCOPE.

This chapter shall apply to:

[For text of item A, see M.R.]

B. appeals from determinations of the ~~director~~ commissioner relating to the appropriateness of a unit; and

C. appeals from determinations of the ~~director~~ commissioner relating to a fair share fee challenge.

7300.0350 BARGAINING UNIT ACCRETION.

In review of a unit accretion pursuant to *Minnesota Statutes*, section 179A.09 and under part 7300.0300, item B, the board must consider as a relevant factor whether the employee or employees in question have indicated a showing of interest to be accreted so long as the confidentiality of the individual cards is protected in accordance with Minnesota Statutes, section 179A.12, subdivision 6.

7300.0500 PRESIDING OFFICER; BOARD OR PANEL.

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

7300.0600 PRESIDING OFFICER; ~~HEARING EXAMINER~~ ADMINISTRATIVE LAW JUDGE.

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

7300.0700 INITIATING AN APPEAL.

Subpart 1. **Time limits.**

A. Within ~~ten~~ 15 calendar days of the date of a final determination by the ~~director~~ commissioner, any party, or parties, may initiate an appeal by serving a copy of a notice of appeal upon all other parties with a copy to the ~~director~~ commissioner and filing the original with the board. Service is effective upon receipt by the board, bureau, and all other parties.

B. If a party or parties files a request for reconsideration of a decision by the commissioner, the appeal to the board must be initiated within 15 calendar days of the date of the reconsideration decision by the commissioner. A copy of the notice of appeal must be served upon all other parties with a copy to the commissioner and the original filed with the board. Service is effective upon receipt 1by the board, bureau, and all other parties.

Subp. 2. **Notice of appeal.** A notice of appeal shall include:

[For text of item A, see M.R.]

B. the names and addresses of all ~~parties~~ individuals and organizations who were parties to the appeal;

C. a copy of the ~~director's~~ commissioner's determination from which the appeal is being taken, and, if applicable, a copy of the reconsideration decision by the commissioner;

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[For text of item D, see M.R.]

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

[For text of item F, see M.R.]

7300.0800 ANSWER.

Within ~~ten~~ 15 calendar days after service of a notice of appeal, all other parties may submit an answer to the notice of appeal. A copy of ~~such~~ the answer shall be served on all parties to the appeal and filed with the board. Failure to submit an answer shall not be deemed an admission of any statement contained in the notice of appeal or a waiver of any rights afforded the respondent by any statute or rule.

7300.0810 BRIEFS.

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

Subpart 1. **Establishment of briefing schedule.** Upon transmission of the record from the commissioner, the board must provide written notice to the parties establishing specific dates for each party to submit its brief. The appellant must serve and file the appellants's brief within 14 calendar days after the board's written notice establishing the briefing schedule. The respondent must serve and file the respondent's brief within 14 calendar days after service of the appellant's brief. Parties must notify the board by the established dates if they do not intend to file a brief.

Subp. 2. **Extension of the briefing schedule.**

A. Either party may request an extension of the briefing schedule. Request for an extension must be received by the board before the deadline and in writing. If it is a first request and the extension does not exceed 14 calendar days, the request will be granted by the executive director. Written notice must be provided to all the parties of the revised briefing schedule.

B. Either party may request an extension that exceeds 14 calendar days or the same party who made the first request for an extension may request a second extension. These requests must be in writing and received by the board before the deadline established in the initial briefing schedule. The board must consider the request at its next meeting and may grant the extensions only for good cause shown and if it causes no prejudice to the other party. If the board is not scheduled to meet within 14 calendar days from the date of the written request, the board chair has authority to decide the request.

7300.0850 AMICUS CURIAE STATUS.

An individual, association, or organization may seek permission in an appeal to file a brief as amicus curiae. The board will grant amicus curiae status if the requester establishes that its brief will be relevant to the appeal and that it will contribute to the board's understanding of the case and the board's decision. Any request of the commissioner for amicus curiae status must be granted. Any brief which is filed under this part must be submitted to the board within the time established for the respondent's brief under part 7300.0810.

7300.0900 NOTICE OF HEARING.

Subpart 1. **Contents of notice.** At least 15 calendar days ~~prior to~~ before the hearing date, the board ~~shall serve upon all~~ must provide to all parties by certified mail a notice of hearing stating:

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

Subp. 2. **Copy of rules included.** A copy of this chapter ~~shall~~ must be included with the notice of hearing.

7300.1000 CONTINUANCE OF HEARING.

A request for continuance ~~must be served upon the parties and filed with the board not less than seven days prior to the hearing unless exceptional circumstances are shown.~~ of a hearing, if mutually consented to by all of the parties, will be granted by the board's executive director. If there is no mutual consent, the board must consider the request for continuance at its next meeting and grant the request upon good cause shown. If a board meeting is not scheduled that provides the opportunity for the board to consider the request and provide a timely response, the board chair has the authority to consider and decide the request.

7300.1200 INFORMAL AND SUMMARY DISPOSITION.

[For text of subpart 1, see M.R.]

Subp. 2. **Summary disposition.** The board, on its own motion or on motion of any party, may:

[For text of item A, see M.R.]

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

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

7300.1500 SUBSTITUTION OF ~~PARTY~~ PARTY'S REPRESENTATIVE.

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

7300.1700 REMAND.

Subpart 1. **Remand to commissioner.** ~~At any time prior to its decision.~~ A party may make a motion to remand the appeal to the commissioner. The board may remand to the ~~director~~ commissioner all or part of the appeal for rehearing, the taking of specified additional evidence, or other appropriate action.

Subp. 2. **Circumstances for remand.** The board must grant a remand under the following circumstances:

A. additional evidence, newly discovered, that with reasonable diligence could not have been found and produced at the hearing;

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

C. irregularities or errors of law occurring during the bureau's proceedings.

Subp. 3. **Appeals on remand.** When the board remands an appeal under subparts 1 and 2, the appeal remains before the board, until the board decides the appeal or dismisses the appeal. If the commissioner, upon remand, issues a decision that differs from its initial decision, the board must dismiss the appeal unless either party seeks continuance of the appeal by providing written notice in the same manner as provided in part 7300.0700. If the commissioner, upon remand under subparts 1 and 2, issues a decision that affirms its initial decision, the board must notify the parties that it will proceed with the appeal under the terms of the appellant's initiation of appeal filed with the board before the remand. The party who initiated the appeal may provide written notice to the board of its request to withdraw the appeal.

7300.1910 THE BOARD RECORD.

~~Prior to~~ Before the hearing, the board ~~shall~~ must prepare an official record in each appeal ~~which shall contain~~ that contains:

A. the record of the proceedings before the ~~director~~ commissioner;

B. the determination of the ~~director~~ commissioner, and if applicable, the reconsideration decision of the commissioner;

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

Additional evidence admitted pursuant to part 7300.2050 shall become part of the board record.

7300.2100 TRANSCRIPT OF BOARD HEARING.

A verbatim record ~~shall~~ must be taken by a hearing reporter or recording equipment of any hearing conducted pursuant to part 7300.2000 or 7300.2050.

7300.2600 BOARD DECISIONS AND ORDERS.

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

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

7300.2800 ~~BOARD RIGHT TO REHEAR~~ REQUEST FOR REHEARING.

The board, on its own motion or on petition of any party and for good cause shown, may reopen, rehear, and redetermine an appeal. The petition for rehearing by the parties must be served on all other parties and ~~filed with~~ the board within ~~ten~~ 15 calendar days of the ~~determination of the appeal~~ date of the board's written decision.

7300.2900 PETITION FOR REHEARING.

A petition for rehearing ~~shall~~ must contain:

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

7300.3100 NOTICE OF REHEARING.

A notice of rehearing ~~shall~~ must be provided in the same manner prescribed for a hearing by part 7300.0900.

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7300.3200 REHEARING PROCEDURE.

A rehearing of an appeal ~~shall~~ must be conducted in the same manner prescribed for a hearing by parts 7300.1910 to 7300.2400.

7300.3300 DECISION AFTER REHEARING.

The decision after rehearing ~~shall~~ must be issued in the same manner prescribed for the decision after a hearing by parts 7300.1200, 7300.1300, and 7300.2600.

7306.0100 PURPOSE AND CONSTRUCTION.

The purpose of parts 7306.0100 to 7306.0400 is to preserve the integrity and independence of board decision making and to promote public confidence in the objectivity of board decisions. Board members and staff must maintain high standards of conduct to prevent a conflict or the appearance of a conflict between private interests and official duties. Parts 7306.0100 to 7306.0400 must be construed to secure these objectives in keeping with the quasi-judicial function of the board.

7306.0150 DEFINITIONS.

Except as otherwise provided, the words, terms, and phrases in this chapter have the same meaning and definition as the meaning and definition they are given in part 7300.0100.

7306.0200 CONFLICT OF INTEREST; IMPROPRIETY.

Subpart 1. **General behavior.** A board member or employee shall respect and comply with law and take action that promotes public confidence in the integrity and impartiality of the board's decision-making process.

Subp. 2. **Actions prohibited.** Board members and staff shall avoid any action that might result in or create a conflict of interest or the appearance of impropriety, including:

A. using public office for private gain;

B. giving preferential treatment to an interested person or entity;

C. impeding the efficiency or economy of board decision making;

D. loss of independence or impartiality of action;

E. making a board decision not based on the evidence in the record;

F. noncompliance with applicable statutes such as the open meeting law; and

G. affecting adversely the confidence of the public in the integrity of the board.

7306.0300 QUASI-JUDICIAL RESPONSIBILITIES.

Subpart 1. **Inappropriate influences.** Board members shall not be swayed by partisan or pecuniary interests, public clamor, or fear of criticism.

Subp. 2. **Orderly proceedings, behavior.** Board members shall maintain order and decorum in proceedings before the board. In their official capacity, board members must be patient, dignified, and courteous to litigants, witnesses, lawyers, and others appearing before them. Board members shall require similar conduct from persons appearing before them.

7306.0400 DISQUALIFICATION.

Board members shall disqualify themselves from participating in decisions on issues and appeals before the board if they:

A. have a personal bias or prejudice concerning a party; or

B. have a direct interest, pecuniary or otherwise, that could be substantially affected by the outcome of the proceeding.

BOARD ADMINISTRATIVE PROCEDURES

7306.0500 OFFICERS AND DUTIES.

Subpart 1. **Officers.** The officers of the board are the chair and vice-chair.

Subp. 2. **Electing the chair and vice-chair.** The chair and vice-chair shall be elected annually by the majority vote of all the board members. The vote shall be taken at the board's April meeting and the chair and vice-chair shall serve a one-year term beginning May 1 of each year.

Subp. 3. **Vacancies.** Upon a vacancy in the office of the chair, the vice-chair shall serve as chair until a new chair is elected at the next regular meeting of the board. Upon a vacancy in the office of vice-chair, a new vice-chair shall be elected at the next regular meeting of the board.

Subp. 4. **Removal.** The chair and vice-chair may be removed from office by the majority vote of all the members of the board. This vote must be taken at the next regular meeting following the motion for removal.

Subp. 5. **Duties of chair.** The chair is the chief administrative officer of the board and shall preside at meetings of the board. The chair shall sign letters and other documents approved by the board pursuant to law on behalf of the board, and may authorize the executive director to sign letters and documents on the chair's behalf. The chair shall represent and speak for the board to the public, members of the branches of state government, and other organizations.

Subp. 6. **Duties of vice-chair.** The vice-chair shall discharge the duties of the chair during the absence or disability of the chair and perform other duties as the chair desires.

7306.0600 MEETING.

Subpart 1. **Meeting time.** The board shall meet on the second Thursday of each month at a time and place set by the board if a quorum is present. If a quorum is not possible for that date, the board must reschedule the meeting according to the open meeting law under *Minnesota Statutes*, section 471.705.

Subp. 2. **Quorum.** Three members are a quorum. To conduct official business at a meeting, the quorum must consist of one member who represents the public at large, one member who represents public employees, and one member who represents public employers.

Subp. 3. **Agenda notice.** The meeting agenda must be posted according to the open meeting law, *Minnesota Statutes*, section 471.705, at least three days before the meeting on the principal bulletin board at the board's office. The agenda must include the date, time, place, and purpose of the meeting.

Subp. 4. **Distribution of agenda.** At least three days before its meeting, the board must mail the agenda according to the open meeting law to each individual or association who has filed a written request or otherwise notified the board requesting notice of the board meeting.

Subp. 5. **Presiding officer.** The chair or vice-chair, in absence of the chair, shall preside at board meetings and shall determine the limits of time and the relevancy of discussion or debate on any matter before the board.

Subp. 6. **Voting.** A majority vote of the members present at the meeting is necessary to make any decision, except as provided in part 7306.0500, subparts 2 and 4.

Subp. 7. **Meeting minutes and open meeting law.** Full and accurate minutes of the meeting must be kept. Minutes must be approved at the next board meeting. Approved minutes must be available to the public. The meeting must be conducted in compliance with the open meeting law.

Subp. 8. **Reconsideration of a decision.** Any decision of the board may be reconsidered, if a board member who voted on the prevailing side makes a motion for reconsideration.

Subp. 9. **Parliamentary procedure.** Except as specifically provided in this chapter, Scott Foresmans' Robert's Rules of Order, Newly Revised, Henry M. Robert, author, and Scott Foresman, Glenview, Illinois, publisher, 1981 publication date is incorporated by reference and is applicable and shall govern any question of parliamentary procedure that may arise at any meeting of the board. The rule is not subject to frequent change and is available for inspection and copying at the Minnesota State Law Library, 117 University Avenue, Saint Paul, Minnesota 55155.

7315.0210 SCOPE.

This chapter ~~shall apply~~ applies to procedures governing independent review pursuant to *Minnesota Statutes*, section 179A.25.

7315.0400 DEFINITIONS.

[For text of subpart 1, see M.R.]

Subp. 2. **Party.** "Party" means any ~~person.~~ public employee, public employer, exclusive representative of public employees, public employee organization, or public employer organization whose legal rights, duties, or privileges will be directly determined in an independent review.

7315.0500 PETITION.

Subpart 1. **Authority to petition.** An employee may petition the board in writing for independent review of a grievance arising out of the interpretation of or adherence to terms and conditions of employment when no other such procedure exists to hear that grievance. The petitioner ~~shall~~ must provide all parties a copy of the petition at the time of filing with the board.

Subp. 2. **Petition contents.** The petition ~~shall~~ must contain:

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

7315.0650 ANSWER.

Within ~~ten~~ 15 calendar days after receipt of a petition, all other parties shall file with the board and provide to the other parties an answer to the petition. The answer ~~shall~~ must contain a concise statement specifying whether:

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

7315.0900 PRESIDING OFFICER; BOARD OR PANEL.

The board, as a full body or as a panel of ~~one or more~~ three of its members, may hear and decide an independent review. Whenever possible, a panel ~~shall~~ must consist of an equal number of representatives of public employees and public employers, ~~unless otherwise agreed to by the parties~~ and the member who represents the public at large.

7315.1000 PRESIDING OFFICER; ~~HEARING EXAMINER~~ ADMINISTRATIVE LAW JUDGE.

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

7315.1100 BRIEFS.

~~The board may establish a briefing schedule as it deems appropriate.~~ Upon completion of the hearing, the board may request the parties to submit a post-hearing brief if the written brief will assist the board in making its determination. If briefs are necessary, the board must establish a briefing schedule and notify the parties of the dates for submission of the briefs.

7315.1200 NOTICE OF HEARING.

At least 15 calendar days ~~prior to~~ before the hearing date, the board ~~shall serve upon~~ must provide to all parties by certified mail a notice of hearing providing:

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

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

7315.1300 CONTINUANCE OF HEARING.

A request for continuance ~~must be served upon the parties and filed with the board within seven days of the hearing unless exceptional circumstances are shown.~~ of hearing, if mutually consented to by all of the parties, must be granted by the board's executive director. If there is no mutual consent, the board must consider the request for continuance at its next meeting and may grant the request upon good cause shown. If a board meeting is not scheduled that provides the opportunity for the board to consider the request and provide a timely response, the board chair has the authority to consider and decide the request.

7315.1800 SUBSTITUTION OF ~~PARTY~~ PARTY'S REPRESENTATIVE.

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

7315.1900 CONSOLIDATION.

[For text of subps 1 and 2, see M.R.]

Subp. 3. **Order.** The board ~~shall~~ must serve on all parties the order of consolidation.

Subp. 4. **Severance from consolidation.** Within ~~five~~ seven calendar days of receipt of the order of consolidation, a party may file with the board a petition for severance from consolidation which ~~shall~~ must include the reasons why the requirements of subpart 1 are not met.

7315.2100 THE HEARING.

Subpart 1. **How conducted.** The hearing ~~shall~~ must be conducted as follows:

[For text of item A, see M.R.]

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

[For text of item C, see M.R.]

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

[For text of item E, see M.R.]

Subp. 2. **Transcript of board hearing.** A verbatim record ~~shall~~ must be taken by a hearing reporter or recording equipment of any hearing conducted pursuant to subpart 1.

[For text of subp 3, see M.R.]

7315.2200 BOARD DECISIONS AND ORDERS.

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

7315.2300 REQUEST FOR REHEARING.

The board on its own motion or on petition of any party and for good cause shown, may reopen, rehear, and redetermine an independent review decision. The petition for rehearing by the parties must be served on all parties and the board within 15 calendar days of the date of the board's written decision.

7315.2400 PETITION FOR REHEARING.

A petition for rehearing must contain:

A. the name and address of the petitioner;

B. the board designation of the case;

C. a statement as to the issues on which rehearing is sought; and

D. the reason why the issue should be reheard.

7315.2500 CONSIDERATION.

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

7315.2600 DETERMINATION.

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

A. irregularities in board proceeding;

B. errors of law occurring during board proceedings;

C. newly discovered material evidence;

D. a change in existing law material to the independent review; or

E. good cause for failure to appear.

7315.2700 NOTICE OF REHEARING.

A notice of rehearing must be provided in the same manner prescribed for a hearing by part 7315.1200.

7315.2800 REHEARING PROCEDURE.

A rehearing of an independent review must be conducted in the same manner prescribed for a hearing by part 7315.2100.

7315.2900 DECISION AFTER REHEARING.

The decision after rehearing must be issued in the same manner prescribed for the decision after a hearing by part 7315.2200.

7320.0030 DEFINITIONS.

[For text of subpart 1, see M.R.]

Subp. 1a. **Arbitration panel.** "Arbitration panel" means three arbitrators who have been selected from a referral arbitration panel that contains seven arbitrators for an interest arbitration case. The panel of three arbitrators function as a single arbitrator to hear and decide the issues certified at impasse by the commissioner.

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

Subp. 3a. **Bureau.** "Bureau" means the Bureau of Mediation Services.

[For text of subps 4 and 5, see M.R.]

Subp. 5a. **Commissioner.** "Commissioner" means the commissioner of the Bureau of Mediation Services.

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[For text of subp 6, see M.R.]

Subp. 6a. **Holiday or legal holiday.** "Holiday" or "legal holiday" means those dates designated by *Minnesota Statutes*, section 645.44, subdivision 5, as holidays for the executive branch of the state of Minnesota.

[For text of subps 7 and 8, see M.R.]

Subp. 9. [See Repealer.]

Subp. 10. **Party or parties.** "Party" or "parties" means ~~an employer or~~, in the case of interest arbitration, any exclusive representative ~~directly involved and affected by a dispute for which a roster member has been requested or referred, or a designated representative~~ and any employer or employer organization engaged in the arbitration of terms and conditions of employment. In the case of grievance arbitration, "party" means any person authorized by contract or law to select the arbitrator of a grievance.

Subp. 11. **Referral arbitration panel or referral panel.** "Referral arbitration panel" or "referral panel" means a listing of roster members compiled by the board for either interest or grievance arbitration cases. Referral panels are submitted to the parties of a grievance arbitration case for the selection of a single arbitrator. In the case of interest arbitration, the parties may select either a single arbitrator or an arbitration panel composed of three arbitrators.

Subp. 12. **Service or serve.** "Service" or "serve" means delivery by personal service, United States certified or regular mail, or other delivery. Electronic mail (fax machine) is not an effective method of service. Service is effective upon receipt by the recipient.

7320.0040 COMPUTATION OF TIME.

In computing any period of time prescribed or allowed by ~~this chapter~~ parts 7320.0010 to 7320.0220, the day of an act or event ~~from~~ on which the designated period of time begins to run ~~shall~~ is not ~~be~~ included. The last day of the time period ~~so computed shall be~~ is included unless it is a Saturday, Sunday, or legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or legal holiday. ~~For any time~~ When the period of ~~ten~~ time prescribed or allowed is less than seven days ~~or less~~, Saturdays, Sundays, ~~or~~ and legal holidays ~~shall~~ are not ~~be~~ included in ~~computing~~ the ~~period of time~~ computation. See part 7320.0030, subpart 6a, for the definition of a legal holiday.

7320.0090 ARBITRATOR CONDUCT, STANDARDS, AND RESPONSIBILITIES.

[For text of subps 1 to 6, see M.R.]

Subp. 7. **Prehearing conduct.** An arbitrator or arbitration panel, upon notification by the board of appointment to an arbitration case, must communicate with the parties as soon as possible to arrange for the date, time, and location of the hearing and any other necessary procedural matters. All prehearing communications between the arbitrator and the parties must be done in a manner that promotes complete impartiality by the arbitrator. It is the arbitrator's responsibility to ensure that copies of any prehearing correspondence between the arbitrator and either party are made available to the other party.

Subp. 8. **Hearing conduct.** The parties are entitled to a hearing that is conducted in a fair and impartial manner, allowing the parties adequate opportunity to present their respective evidence and argument. The arbitrator is responsible for conducting an orderly proceeding and may:

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

An accurate record must be developed by the arbitrator. The arbitrator may, with notice to the parties, use a tape recorder to supplement notetaking. Notes, recorded tapes, and other records of the hearing developed by the arbitrator shall remain the property of the arbitrator and must be retained by the arbitrator for 90 days after delivery of a copy of the award to the parties. The provision of an official transcript ~~must~~ may be arranged for by ~~the arbitrator if~~ either party ~~requests one~~ before the hearing. The transcript must be paid for by the party or parties requesting it. A copy of the official transcript must be submitted to the arbitrator and made available to the parties.

[For text of subps 9 and 10, see M.R.]

Subp. 11. **Jurisdiction.** In ruling on a grievance, an arbitrator must comply with the limitations of authority found in a labor agreement. In interest arbitration cases, the arbitrator or arbitration panel has jurisdiction to rule on the issues or the arbitrability of the issues certified to impasse by the commissioner of the bureau of mediation services. At any stage of interest or grievance arbitration proceedings, the parties may settle some or all of the issues. In those circumstances~~, the agreement of the parties must be incorporated by the arbitrator into the award~~ where some but not all of the issues have been settled, the arbitrator must state in the award those certified issues which were settled by the parties. The jurisdiction of the arbitrator continues until all issues certified to impasse have been resolved.

[For text of subps 12 and 13, see M.R.]

7320.0110 ~~RANKING~~ SELECTION RATE OF ARBITRATORS.

The executive director shall maintain reliable data concerning the frequency with which individuals are selected by the parties from

panels referred by the board. On an annual basis, the board must review statistics showing the selection rates of its arbitrators, and rank the arbitrators according to their usage by the number of times proposed and the number of times selected. An arbitrator may be removed from the roster if the arbitrator has been in the lowest quartile of the selection rate for the past two consecutive years and was selected for fewer than two cases in the most recent 12-month period.

7320.0120 REFERRAL ARBITRATION PANELS.

Subpart 1. **Random selection.** Referral arbitration panels shall be created by a random selection process. Each referral arbitration panel shall contain a mix of frequently-used, moderately-used, and infrequently-used arbitrators, pursuant to the ranking list determined in the board's review. ~~The panels shall be drawn according to subparts 2 to 6.~~

Subp. 2. to 4. [See Repealer.]

Subp. 5. **Replacements of referral arbitration panels.** The board must replace referral arbitration panels under the following circumstances.

A. In proposing ~~an~~ a referral arbitration panel, if the ~~number~~ panel which has been selected for a particular case ~~is assigned to a panel which~~ includes the name of an arbitrator who has on file a written notice of a conflict of interest in that case, that ~~number~~ panel shall not be used for that case and another ~~number~~ panel shall be selected.

B. The board will consider any objections raised by either party, as to whether an arbitrator on the proposed referral panel has a conflict of interest in that particular case. The party raising the objection must submit a written request for a replacement panel and the rationale for which the objection is being raised. A copy of the request for a replacement panel be forwarded to the other party of the dispute. Any response by the other party must be in writing and submitted to the board within ten calendar days from the date of the request for the replacement panel. The board at its next scheduled meeting will determine if pursuant to part 7320.0070, subpart 2, a conflict of interest exists. If it is found that a conflict exists, a replacement panel must be provided to the parties. If it is determined that a conflict of interest does not exist, the parties shall proceed to select an arbitrator from the initial referral panel of arbitrators submitted to the parties. The decision is final.

C. All joint written requests to substitute a proposed list of arbitrators with a second list shall be honored.

Subp. 6. **Selection of referral arbitration panels.** Approximately once a week, pursuant to a schedule established at a regular board meeting, the chair and executive director will meet to select the referral arbitration panels to be proposed in pending cases.

The board may designate any of its members, other than the chair, or the executive director to select the referral arbitration panels for pending cases.

Subp. 7. **Arbitrator requests for inactive status.** An arbitrator may request in writing not to be proposed on referral arbitration panels for up to six months without being subject to removal from the arbitrator list.

An arbitrator who requests to be withheld from proposal on referral arbitration panels for more than six months shall be removed from the arbitrator list. That arbitrator may reapply for placement on the list according to the board's qualification procedures.

Rules as Proposed (all new material)

7320.0130 INTEREST ARBITRATION.

Parts 7320.0130 to 7320.0180 apply to the procedures governing the arbitration of disputes concerning the resolution of new terms and conditions of employment.

7320.0140 CERTIFICATION OF IMPASSE.

Subpart 1. **Contents.** A certification of impasse by the commissioner according to *Minnesota Statutes*, chapter 179A, must contain the following:

A. a petition or petitions requesting arbitration;

B. a concise statement by the commissioner indicating that an impasse has been reached and that the requirements of *Minnesota Statutes*, chapter 179A, have been met;

C. a determination by the commissioner of the matters in dispute;

D. any final positions submitted by the parties; and

E. any notice of a mutual selection of an arbitrator or arbitration panel by parties pursuant to part 7320.0140, subpart 4.

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.

Subp. 2. **Filing.** The certification must be filed with the board.

Subp. 3. **Final positions.**

A. The board must assign a referral panel of arbitrators to cases which have been certified by the commissioner unless the parties have mutually selected an arbitrator or arbitration panel pursuant to part 7320.0140, subpart 4. Upon notification of the selection of the arbitrator by the parties, the board must forward final positions of the parties which have been received from both parties. The board shall proceed with forwarding those final positions which are on hand, but must instruct the arbitrator that final positions are nonpublic and confidential data until receipt of the final positions of the other party or until commencement of the arbitration hearing.

B. When either party has submitted a final position for an issue which has not been certified to impasse by the commissioner, the board must notify the parties and the selected arbitrator or arbitration panel that the arbitrator has jurisdiction to rule only on the issue or the arbitrability of the issues cited by the commissioner as issues which remain in dispute between the parties in the certification of matters for arbitration.

Subp. 4. **Mutual selection of an arbitrator.** If the parties mutually agree to select an arbitrator or arbitration panel from the arbitrator roster maintained by the board, the commissioner must advise the board that the arbitrator or panel of arbitrators has been mutually agreed to by the parties. The written notification of selection of an arbitrator must be included with the certification of impasse when it is forwarded by the commissioner to the board.

7320.0150 SELECTION OF ARBITRATOR.

Subpart 1. **Submission of panel.** When the commissioner has certified an impasse to the board under *Minnesota Statutes*, chapter 179A, and part 7320.0140, and mutual selection of an arbitrator has not occurred, the board must submit to the parties a list of seven names for the selection of a single arbitrator or a panel of three arbitrators. The parties must agree and provide a written request to the board if selection of a panel of three arbitrators is preferred. In selecting a single arbitrator or a panel of three arbitrators, the parties shall alternately strike names from the list until the appropriate number of names remain.

Subp. 2. **Striking of names.** If the parties are unable to agree on who shall strike the first name, the question shall be decided by the flip of a coin. When a panel of three arbitrators has been selected, the parties shall designate a convenor. If the parties fail to agree upon a convenor, each party shall strike, in the continued order of striking, one name from the panel. The remaining arbitrator shall act as the convenor for the purpose of commencing the proceedings. After selection, the parties must immediately notify the board in writing of the name of the single arbitrator or the names of the three arbitrators and the designated convenor.

7320.0160 SELECTION OF CHAIR.

At its initial session, the panel of three arbitrators must select one of its members as the chair. If the arbitrators cannot agree, the convenor must serve as the chair.

7320.0170 SUBMISSION TO THE ARBITRATOR.

The board must submit to the arbitrator or an arbitration panel selected by the parties, the certification of the impasse of the commissioner.

7320.0180 ARBITRATION PROCEDURES.

The arbitration proceeding shall be conducted and the award must be rendered pursuant to *Minnesota Statutes*, chapter 179A, and part 7320.0090. The procedures and authority of the Uniform Arbitration Act in *Minnesota Statutes*, sections 572.08 to 572.30, shall apply to arbitration proceedings except as they are inconsistent with the Public Employment Labor Relations Act.

7320.0190 GRIEVANCE ARBITRATION.

Parts 7320.0190 to 7320.0220 apply to the procedures governing arbitration of disputes concerning the resolution of existing terms and conditions of employment.

7320.0200 PETITION FOR GRIEVANCE ARBITRATION.

Subpart 1. **Authority to petition.** A party may petition the board in writing for a list of five arbitrators. The petitioner must provide all parties a copy of the petition at the time of filing with the board.

Subp. 2. **Contents of petition.** The petition must include:

A. the name and address of the petitioner;

B. the name and address of the adverse party;

C. the name and address of the adverse party's representative; and

D. a concise statement of the nature of the grievance and the relief requested.

7320.0210 SELECTION OF THE ARBITRATOR.

Upon receipt of a petition, the board must submit to the parties a list of five names for the selection of an arbitrator. The parties

shall alternately strike names from the list until one name remains. If parties are unable to agree on who shall strike the first name, the question shall be decided by the flip of a coin. After selection, the parties shall immediately notify the board in writing of the name of the arbitrator.

7320.0220 ARBITRATION PROCEDURES.

The arbitration proceedings shall be conducted and the award must be rendered according to *Minnesota Statutes*, chapter 179A, and part 7320.0090. The procedures and authority of the Uniform Arbitration Act in *Minnesota Statutes*, sections 572.08 to 572.30, apply to arbitration proceedings except as they are inconsistent with the Public Employment Labor Relations Act.

REPEALER. *Minnesota Rules*, parts 7300.0400; 7300.1800; 7300.2050; 7305.0100; 7305.0200; 7305.0300; 7305.0500; 7305.0610; 7305.0700; 7305.0800; 7305.0910; 7305.1100; 7305.1200; 7310.0100; 7310.0200; 7310.0300; 7310.0400; 7310.0500; 7310.0550; 7310.0600; 7315.2000; 7320.0030, subpart 9; and 7320.0120, subparts 2, 3 and 4, are repealed.

Office of the Secretary of State

Proposed Permanent Rules Relating to Absentee Ballot Applications

Notice of Intent to Adopt a Rule Without a Public Hearing

NOTICE IS HEREBY GIVEN that the Secretary of State 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 Act of May 3rd 1990, section 19, *1990, Minnesota Laws* 2218.

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 Secretary of State will proceed pursuant to *Minnesota Statutes*, sections 14.131 to 14.20.

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

Joseph Mansky
Director, Election Division
180 State Office Building
St. Paul, MN 55155
(612) 296-6011

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 the Secretary of State upon request.

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 the 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 matter to the Attorney General, or who wish to receive a copy of the adopted rule, must submit the written request to the Secretary of State.

Dated: 11 October 1990

Joseph Mansky
Director, Election Division

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.

PUBLIC EMPLOYMENT RELATIONS BOARD

In the matter the adoption of the Proposed Adoption of Rules of the State Public Employment Relations Board Governing Issues and Appeals, Independent Review, Meetings Code of Ethics, Interest Arbitration, Grievance Arbitration and the Administration of the Arbitrator Roster maintained by the Agency.

NOTICE OF INTENT TO ADOPT A RULE WITHOUT A PUBLIC HEARING

Notice is hereby given that the State Public Employment Relations Board intends to adopt and amend the above-entitled rules without a public hearing following procedures set forth in the Administrative Procedure Act for adopting rules without a public hearing, Minnesota Statutes, sections 14.22 to 14.29. The stautory authorities to adopt and amend the rule are Minnesota Statutes, sections 179A.05, subds. 3, 5, and 6, 179A.25 and 14.06

All persons have 30 days in which to submit comment in support of or in opposition to the proposed rules and amendments 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 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 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 reasons 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 public hearing must be submitted to:

Jermaine Foslien, Executive Director
Public Employment Relations Board
1380 Energy Lane, Suite Three
St. Paul, Minnesota 55108
(612) 649-5450

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 the reasonableness of each provision of the proposed rule and amendment and identifies that data and information relied upon to support the proposed rule has been prepared and is available from

Jermaine Foslien, Executive Director, Public Employment Relations Board, 1380 Energy Lane, Suite Three, St. Paul, MInnesota, 55108 upon request.

You are hereby advised pursuant to Minnesota Statute, section 14.115 (1988) that the proposed rule and amendments may have an impact on small business. The proposed rule and amendments set forth the substantive and procedural requirements for maintenance of the arbitrator roster. Small businesses which arbitrators are considered to be, maybe impacted by the the proposed rules if the arbitrator applies or is appointed to serve on the Board's roster. Minnesota Statute 14.11 is not applicable as the proposed rules do not require expenditure of public money by local public bodies.

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 the 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 Jeramine Foslien, Director,

Public Employment Relations Board, 1380 Energy Lane, Suite Three, St. Paul, Minnesota, 55108.

Jermaine Foslien

Jermaine Foslien
Executive Director

Dated: October 8, 1990

In the Matter of the Proposed Permanent Rules and Amendments Relating to Arbitration Policies, Issues and Appeals, Meeting Procedures, Code of Ethics, and Independent Review of the State Public Employment Relations Board

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

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

Jermaine Foslien, being sworn says:

I hereby certify that the lsit 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 Public Employment Relations Board's rulemaking mailing list is accurate, complete, and current as of this 5th day of October, 1990.

That on the 8th day of October, 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 Public Hearing by despositing in the State Central Mail System for United States mailing, a copy thereof, with postage prepaid, to all persons and associations on the aforementioned mailing list.

Subscribed and sworn to before me this 5th day of February, 1991.

Jermaine Foslien

Jermaine Foslien

Executive Director

Executive Director

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

PUBLIC EMPLOYMENT RELATIONS BOARD

In the matter the adoption of the Proposed Adoption of Rules of the State Public Employment Relations Board Governing Issues and Appeals, Independent Review, Meetings Code of Ethics, Interest Arbitration, Grievance Arbitration and the Administration of the Arbitrator Roster maintained by the Agency.

NOTICE OF INTENT TO ADOPT A RULE WITHOUT A PUBLIC HEARING

(1) Notice is hereby given that the State Public Employment Relations Board intends to adopt and amend the above-entitled rules without a public hearing following procedures set forth in the Administrative Procedure Act for adopting rules without a public hearing, Minnesota Statutes, sections 14.22 to 14.29. The stautory authorities to adopt and amend the rule are Minnesota Statutes, sections 179A.05, subds. 3, 5, and 6, 179A.25 and 14.06

(2) All persons have 30 days in which to submit comment in support of or in opposition to the proposed rules and amendments 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 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 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 reasons 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.

(5) Comments or written requests for public hearing must be submitted to:

Jermaine Foslien, Executive Director
Public Employment Relations Board
1380 Energy Lane, Suite Three
St. Paul, Minnesota 55108
(612) 649-5450

(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 the reasonableness of each provision of the proposed rule and amendment and identifies that data and information relied upon to support the proposed rule has been prepared and is available from

Jermaine Foslien, Executive Director, Public Employment Relations Board, 1380 Energy Lane, Suite Three, St. Paul, MInnesota, 55108 upon request.

(14) You are hereby advised pursuant to Minnesota Statute, section 14.115 (1988) that the proposed rule and amendments may have an impact on small business. The proposed rule and amendments set forth the substantive and procedural requirements for maintenance of the arbitrator roster. Small businesses which arbitrators are considered to be, maybe impacted by the the proposed rules if the arbitrator applies or is appointed to serve on the Board's roster. Minnesota Statute 14.11 is not applicable as the proposed rules do not require expenditure of public money by local public bodies.

(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 the 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 Jeramine Foslien, Director,

Public Employment Relations Board, 1380 Energy Lane, Suite Three, St. Paul, Minnesota, 55108.

Jermaine Foslien

Jermaine Foslien

Executive Director

Executive Director

Dated: October 8, 1990

PUBLIC EMPLOYMENT RELATIONS BOARD

STATE OF MINNESOTA

October 8, 1990

Senator Gene Waldorf
Chair
Legislative Commission to
Review Administrative Rules
55 State Office Building
St. Paul, Minnesota 55155-1201

Dear Senator Waldorf:

Pursuant to Laws of Minnesota 1990, Chapter 422, Section 6, please find enclosed, a copy of the statement of need and reasonableness which was prepared by the Public Employment Relations Board.

Sincerely,

Jermaine Foslien

Jermaine Foslien
Executive Director

(612) 649-5450
1380 Energy Lane, Suite #3, St. Paul, Minnesota 55108-5253
An Equal Opportunity Employer