

sion 1, which the commissioner may assign to the division. The ~~mental retardation~~ division for persons with developmental disabilities shall be under the supervision of a director whose responsibility it shall be to maximize the availability of federal or private money for programs to assist persons with mental retardation or related conditions. The commissioner shall appoint the director who shall serve in the classified service of the state civil service. The commissioner may employ additional personnel with such qualifications and in such numbers as are reasonable and are necessary to carry out the provisions of this section.

Approved April 30, 1987

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#### CHAPTER 45—H.F.No. 1028

*An act relating to labor; regulating mediation, fact finding, and other functions of the bureau of mediation services; providing for violations of the labor union democracy act; amending Minnesota Statutes 1986, sections 179.02, subdivision 2, and by adding a subdivision; 179.07; 179.08; 179.083; 179.22; 179.38; proposing coding for new law in Minnesota Statutes, chapter 179; repealing Minnesota Statutes 1986, sections 179.05; 179.23; and 179.24.*

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 1986, section 179.02, subdivision 2, is amended to read:

Subd. 2. The ~~governor~~ director may, from time to time, appoint special mediators to aid in the settlement of particular labor disputes or controversies who shall have the same power and authority as the director with respect to such dispute and such appointment shall be for the duration only of the particular dispute. Such special mediators shall be paid a per diem of \$75 per day allowance not to exceed that established for arbitrators in section 179A.16, subdivision 8, while so engaged and their necessary expenses. ~~The director shall prepare a roster of persons qualified to act as such special mediators and keep the same revised at all times and available to the governor and the public.~~

Sec. 2. Minnesota Statutes 1986, section 179.02, is amended by adding a subdivision to read:

Subd. 3. The director shall adopt rules to govern proceedings before the director under the provisions of this chapter.

Sec. 3. Minnesota Statutes 1986, section 179.07, is amended to read:

**179.07 LABOR DISPUTE AFFECTING PUBLIC INTERESTS; PROCEDURE.**

If the dispute is in any industry, business, or institution affected with a public interest, which includes, but is not restricted to, any industry, business, or

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institution engaged in supplying the necessities of life, safety, or health, so that a temporary suspension of its operation would endanger the life, safety, health, or well-being of a substantial number of people of any community, the provisions of section 179.06 shall apply ~~and~~. The ~~director of mediation services~~ shall also ~~notify the governor who~~ may appoint a fact finding commission composed of three members to conduct a hearing and make a report on the issues involved and the merits of the respective contentions of the parties to the dispute. If the ~~governor~~ director decides to appoint a commission, the ~~governor shall so advise the director who~~ shall immediately notify the parties to the labor dispute ~~and also inform them of the date of the notification to the governor~~. The members of such commission shall on account of vocations, employment, or affiliations be representatives of employees, employers, and the public, respectively. Such report shall be filed with the governor ~~not less than five days before the end of the 30-day period hereinafter provided and may be published as the governor may determine in one or more legal newspapers in the counties where the dispute exists~~. If and when the ~~governor shall notify~~ director notifies the ~~director~~ parties of the decision to appoint a commission, neither party to the dispute shall make any change in the situation affecting the dispute and no strike or lockout shall be instituted until 30 days ~~shall have elapsed~~ after the director's notification to the ~~governor parties~~. ~~In case the governor shall fail if the director fails to appoint a commission within five days after the notification to the parties, this limitation on the parties shall be suspended and inoperative. If the governor shall~~ director thereafter ~~appoint~~ appoints a commission, no strike or lockout having been instituted in the meantime, the limitation shall again become operative, but in no case for more than the original 30-day period. The 30-day period may be extended by stipulation ~~upon the record of the hearing before the commission or by written stipulation signed by~~ of the parties to the labor dispute ~~and, which shall be filed with the director. The commission shall meet within five days of its appointment by the director and conduct the hearings which are necessary to render its report on the issues involved and merits of the contentions of the parties. If so extended, The report of the commission shall be filed with the governor~~ director not less than five days ~~before~~ prior to the end of the ~~extended period 30-day period set forth above or any extension thereof. The director shall provide copies of the report to the parties to the dispute and may make the report public.~~

Sec. 4. Minnesota Statutes 1986, section 179.08, is amended to read:

**179.08 POWERS OF COMMISSION APPOINTED BY GOVERNOR ~~DIR-~~ECTOR.**

(1) The commission appointed by the ~~governor~~ director pursuant to the provisions of ~~sections 179.04 to 179.17~~ section 179.07 shall have the power to issue subpoenas requiring the attendance and testimony of witnesses and the production of evidence which relates to any matter involved in any such hearing, and may by its chair administer oaths and affirmations, and may examine witnesses. Such attendance of witnesses and the production of such evidence may be required from any place in the state at any designated place of hearing,

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but whenever practical hearings shall be held in a county where the labor dispute has arisen or exists;

(2) In case of contumacy or refusal to obey a subpoena issued under clause (1), the district court of the state for the county where the proceeding is pending or in which the person guilty of such contumacy or refusal to obey is found, or resides, or transacts business, or application by the commission shall have jurisdiction to issue to such person an order requiring such person to appear before the commission, there to produce evidence as so ordered, or there to give testimony touching the matter under investigation or in question, and any failure to obey such order of the court may be punished by the court as a contempt thereof;

(3) Any party to or party affected by the dispute may appear before the commission in person or by attorney or by their representative, and shall have the right to offer competent evidence and to be heard on the issues before the report of the commission is made.

Any commissioners so appointed shall be paid a per diem of \$75 allowance not to exceed that established for arbitrators in section 179A.16, subdivision 8, and their necessary expenses while serving.

Sec. 5. Minnesota Statutes 1986, section 179.083, is amended to read:

#### 179.083 JURISDICTIONAL CONTROVERSIES.

Whenever two or more labor organizations adversely claim for themselves or their members jurisdiction over certain classifications of work to be done for any employer or in any industry, or over the persons engaged in or performing such work and such jurisdictional interference or dispute is made the ground for picketing an employer or declaring a strike or boycott against the employer, the director of mediation services shall certify that fact to the governor. ~~Upon receipt of such certification the governor may appoint a labor referee to hear and determine the jurisdictional controversy.~~ If the labor organizations involved in the controversy have an agreement between themselves defining their respective jurisdictions, or if they are affiliated with the same labor federation or organization which has by the charters granted to the contending organizations limited their jurisdiction, the labor referee shall determine the controversy in accordance with the proper construction of the agreement or of the provisions of the charters of the contending organizations. If there is no agreement or charter which governs the controversy, the labor referee shall make such decision as, in consideration of past history of the organization, harmonious operation of the industry, and most effective representation for collective bargaining, will best promote industrial peace. If the labor organizations involved in the controversy so desire, they may submit the controversy to a tribunal of the federation or labor organization which has granted their charters or to arbitration before a tribunal selected by themselves, provided the controversy is so submitted prior to the appointment by the governor of a labor referee to act in the controversy. After the appointment of the labor referee by the governor, or the submission of

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the controversy to another tribunal as herein provided, it shall be unlawful for any person or labor organization to call or conduct a strike or boycott against the employer or industry or to picket any place of business of the employer or in the industry on account of such jurisdictional controversy.

Sec. 6. Minnesota Statutes 1986, section 179.22, is amended to read:

**179.22 LABOR REFEREE.**

~~There is hereby created an office, to be known as labor referee. The governor~~ director may from time to time appoint labor referees for particular disputes ~~as hereinafter provided under sections 179.18 to 179.25.~~ Such appointment shall be for the duration only of the particular dispute. Such labor referees shall be paid a per diem of \$75 per day allowance not to exceed that established for arbitrators in section 179A.16, subdivision 8, while so engaged, and their necessary expenses. When approved by the director, the director ~~of mediation services~~ shall cause to be paid, from the appropriation to the director, the amount due to the labor referees for services and expenses.

**Sec. 7. [179.231] VIOLATIONS.**

Subdivision 1. DIRECTOR MAY APPOINT REFEREE. Whenever it reasonably appears to the director that a labor organization has failed to comply with any of the requirements of sections 179.18 to 179.25, the director may appoint a labor referee to act in the dispute.

Subd. 2. HEARING. Within ten days of appointment, the labor referee shall fix a time and place for a hearing upon the matter and send written notice thereof to the labor organization, and its officers who are charged in the complaint, the complainant, and to other persons who are parties to the dispute.

Subd. 3. APPEARANCE; EVIDENCE. A party to or party affected by the dispute may appear at the hearing before the labor referee in person, by attorney, or by other representative. The party has the right to offer competent evidence and to be heard on the issues before an order is made by the referee. Within 30 days of the close of the hearing, the referee shall prepare and file with the director findings of fact and an order sustaining or dismissing the charges. If the charges are sustained, a labor organization may be suspended from acting as the representative of employees by the director until the basis for the failure to comply with the requirements of sections 179.18 to 179.25 has been removed as provided in subdivision 4. The director shall suspend a labor organization which does not act affirmatively to remove the basis of sustained charges within 30 days of the filing of the referee's order with the director.

Subd. 4. REMOVAL OF SUSPENSION. A labor organization which has had charges sustained against it under this section, whether suspended from acting as the representative of employees or not, may remove the basis for the charges or suspension by applying to the director and submitting proof that the basis for the charges has been removed or corrected. Upon receipt of the application, the director shall notify all parties to the hearing before the

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referee of the filing of the application. If within 20 days after providing notice, written objection by one of the parties to the removal of the basis or suspension is received by the director, the matter shall be referred for additional investigation by a referee under this section. If no objection is so filed, the director shall provide written notice of the removal of the basis for the original complaint and remove any suspension imposed.

**Subd. 5. POWERS OF LABOR REFEREE.** A labor referee appointed by the director under this section shall have the same powers as provided to commissions under section 179.08.

Sec. 8. Minnesota Statutes 1986, section 179.38, is amended to read:

**179.38 ARBITRATION MANDATORY.**

In the event of the existence of any labor dispute which cannot be settled by negotiation between the charitable hospital employers and their employees, either such employers or employees may petition and avail themselves of the provisions of sections 179.01 to 179.17, insofar as sections are not inconsistent with the provisions of sections 179.35 to 179.39. If such dispute is not settled within ten days after submission to mediation, any unsettled issue of maximum hours of work, minimum hourly wage rates, and other conditions of employment concerning union security shall, upon service of written notice by either party upon the other party and the director of ~~mediation services~~, be submitted to the determination of a board of arbitrators whose determination shall be final and binding upon the parties. The board of arbitrators shall be selected and proceed in the following manner, unless otherwise agreed between the parties: the employers shall appoint one arbitrator, the employees shall appoint one arbitrator, and the two arbitrators so chosen shall appoint a third arbitrator who shall act as chair and who shall receive reasonable compensation for the work; but if said arbitrators are unable to agree upon the appointment of such third arbitrator within five days after submission to arbitration, the ~~governor~~ director shall submit five names to the parties and the parties shall select the third arbitrator, who shall act as chair, from the five submitted by the ~~governor~~ director. The selection of the third arbitrator shall be by the process of elimination, with the parties taking turns at striking names from the list of five submitted by the ~~governor~~ director, until only one name remains. If the parties are unable to agree with respect to which party shall take the first turn for the purpose of striking a name, it shall be decided by the flip of a coin. Each party shall be responsible for compensating the arbitrator of their choice, and the parties shall share equally the compensation paid to the third arbitrator. The board of arbitrators shall serve as a temporary arbitration tribunal and shall have the powers provided for commissioners under section 179.08. The board of arbitrators shall make its determination with all due diligence and shall file a copy of its report with the director of ~~mediation services~~.

**Sec. 9. REPEALER.**

Minnesota Statutes 1986, sections 179.05, 179.23, and 179.24 are repealed.

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