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State of Minnesota
HOUSE OF REPRESENTATIVES
EIGHTY-EIGHTH SESSION
H. F. No. 3015

03/12/2014 Authored by Carlson

The bill was read for the first time and referred to the Committee on Judiciary Finance and Policy

03/20/2014 Adoption of Report: Amended and re-referred to the Committee on Ways and Means

1.1 A bill for an act
1.2 relating to labor; creating the Public Employment Relations Board; authorizing
1.3 rulemaking; appropriating money; amending Minnesota Statutes 2012, sections
1.4 179A.03, by adding a subdivision; 179A.04, subdivision 3; 179A.051; 179A.06,
1.5 by adding a subdivision; 179A.10, subdivision 1; 179A.13; proposing coding
1.6 for new law in Minnesota Statutes, chapter 179A.

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

1.8 Section 1. Minnesota Statutes 2012, section 179A.03, is amended by adding a
1.9 subdivision to read:

1.10 Subd. 2a. **Board.** "Board" means the Public Employment Relations Board under
1.11 section 179A.041.

1.12 Sec. 2. Minnesota Statutes 2012, section 179A.04, subdivision 3, is amended to read:

1.13 Subd. 3. **Other duties.** (a) The commissioner shall:

1.14 (1) provide mediation services as requested by the parties until the parties reach
1.15 agreement, and may continue to assist parties after they have submitted their final
1.16 positions for interest arbitration;

1.17 (2) issue notices, subpoenas, and orders required by law to carry out duties under
1.18 sections 179A.01 to 179A.25;

1.19 (3) assist the parties in formulating petitions, notices, and other papers required to be
1.20 filed with the commissioner or the board;

1.21 (4) conduct elections;

1.22 (5) certify the final results of any election or other voting procedure conducted
1.23 under sections 179A.01 to 179A.25;

(6) adopt rules relating to the administration of this chapter and the conduct of hearings and elections;

(7) receive, catalogue, file, and make available to the public all decisions of arbitrators and panels authorized by sections 179A.01 to 179A.25, all grievance arbitration decisions to the extent the decision is public under section 13.43, subdivision 2, paragraph (b), and the commissioner's orders and decisions;

(8) adopt, subject to chapter 14, a grievance procedure that fulfills the purposes of section 179A.20, subdivision 4, that is available to any employee in a unit not covered by a contractual grievance procedure;

(9) maintain a schedule of state employee classifications or positions assigned to each unit established in section 179A.10, subdivision 2;

(10) collect fees established by rule for empanelment of persons on the labor arbitrator roster maintained by the commissioner or in conjunction with fair share fee challenges. Arbitrator application fees will be \$100 per year for initial applications and renewals effective July 1, 2007;

(11) provide technical support and assistance to voluntary joint labor-management committees established for the purpose of improving relationships between exclusive representatives and employers, at the discretion of the commissioner;

(12) provide to the parties a list of arbitrators as required by section 179A.16, subdivision 4; ~~and~~

(13) maintain a list of up to 60 arbitrators for referral to employers and exclusive representatives for the resolution of grievance or interest disputes. Each person on the list must be knowledgeable about collective bargaining and labor relations in the public sector, well versed in state and federal labor law, and experienced in and knowledgeable about labor arbitration. To the extent practicable, the commissioner shall appoint members to the list so that the list is gender and racially diverse; and

(14) upon request of the board, provide administrative support and other assistance to the board, including assistance in development and adoption of board rules.

(b) From the names provided by representative organizations, the commissioner shall maintain a list of arbitrators to conduct teacher discharge or termination hearings according to section 122A.40 or 122A.41. The persons on the list must meet at least one of the following requirements:

(1) be a former or retired judge;

(2) be a qualified arbitrator on the list maintained by the bureau;

(3) be a present, former, or retired administrative law judge; or

(4) be a neutral individual who is learned in the law and admitted to practice in Minnesota, who is qualified by experience to conduct these hearings, and who is without bias to either party.

Each year, education Minnesota shall provide a list of up to 14 names and the Minnesota School Boards Association a list of up to 14 names of persons to be on the list. The commissioner may adopt rules about maintaining and updating the list.

Sec. 3. **[179A.041] PUBLIC EMPLOYMENT RELATIONS BOARD; POWER, AUTHORITY, AND DUTIES.**

Subdivision 1. Membership. The Public Employment Relations Board is established with three members. One member shall be an officer or employee of an exclusive representative of public employees and shall be appointed by the governor; one shall be representative of public employers and shall be appointed by the governor; and one shall be representative of the public at large and shall be appointed by the other two members. Public employers and employee organizations representing public employees may submit for consideration names of persons representing their interests. The board shall select one of its members to serve as chair for a term beginning July 1 of each year.

Subd. 2. Alternate members. (a) The appointing authorities shall appoint alternate members to serve only in the case of a member having a conflict of interest under subdivision 8, as follows:

(1) one alternate, appointed by the governor, who is an officer or employee of an exclusive representative of public employees, to serve as an alternate to the member appointed by the governor who is an officer or employee of an exclusive representative of public employees. This alternate must not be an officer or employee of the same exclusive representative of public employees as the member for whom the alternate serves;

(2) one alternate, appointed by the governor, who is a representative of public employers, to serve as an alternate to the member appointed by the governor who is a representative of public employers. This alternate must not represent the same public employer as the member for whom the alternate serves; and

(3) one alternate, appointed by the member who is an officer or employee of an exclusive representative of public employees and the member who is a representative of public employers, who is not an officer or employee of an exclusive representative of public employees, or a representative of a public employer, to serve as an alternate for the member that represents the public at large.

(b) Each alternate member shall serve a term that is coterminous with the term of the member for whom the alternate member serves as an alternate.

4.1 Subd. 3. **Terms; compensation.** The membership terms, compensation, removal
4.2 of members, and filling of vacancies for members and alternate members shall be as
4.3 provided in section 15.0575.

4.4 Subd. 4. **Rules; meetings.** The board shall adopt rules governing its procedure and
4.5 shall hold meetings as prescribed in those rules. The chair shall preside at meetings of
4.6 the board.

4.7 Subd. 5. **Appeals.** In addition to the other powers and duties given it by law, the
4.8 board shall hear and decide appeals from:

4.9 (1) recommended decisions and orders relating to an unfair labor practice under
4.10 section 179A.13; and

4.11 (2) determinations of the commissioner under section 179A.12, subdivision 11.

4.12 Subd. 6. **Rulemaking.** The board shall adopt rules under chapter 14 governing
4.13 the presentation of issues and the taking of appeals under subdivision 5. All issues and
4.14 appeals presented to the board shall be determined upon the record of hearing, except that
4.15 the board may request additional evidence when necessary or helpful.

4.16 Subd. 7. **Employees and contracts.** The board may hire investigators, hearing
4.17 officers, and other employees as necessary to perform its duties, or may enter into
4.18 contracts to perform any of the board's duties.

4.19 Subd. 8. **Conflict of interest.** A member must disclose any conflict of interest in
4.20 a case before the board and shall not take any action or vote in the case. The person
4.21 designated as the recused member's alternate shall serve in place of the member who
4.22 has a conflict for all actions and votes on the case, unless the alternate has a conflict of
4.23 interest. If both a member and the member's alternate have a conflict of interest in a case,
4.24 the appointing authority will appoint a second alternate member, who meets the same
4.25 requirements as the alternate member and who has no conflict of interest, to take action
4.26 and vote in the case. A board member or alternate member has a conflict of interest in a
4.27 case if the member is employed by, an officer of, a member of the governing body of, or
4.28 a member of a party in the case.

4.29 **EFFECTIVE DATE.** This section is effective July 1, 2014. The board shall be
4.30 established and prepared to hear and decide rules under Minnesota Statutes, section
4.31 179A.041, subdivision 4, by July 1, 2015.

4.32 Sec. 4. Minnesota Statutes 2012, section 179A.051, is amended to read:

4.33 **179A.051 APPEALS OF COMMISSIONER'S DECISIONS.**

(a) Decisions of the commissioner relating to supervisory, confidential, essential, and professional employees, appropriateness of a unit, or fair share fee challenges may be reviewed on certiorari by the Court of Appeals. A petition for a writ of certiorari must be filed and served on the other party or parties and the commissioner within 30 days from the date of the mailing of the commissioner's decision. The petition must be served on the other party or parties at the party's or parties' last known address.

(b) Decisions of the commissioner relating to unfair labor practices under section 179A.12, subdivision 11, may be appealed to the board if the appeal is filed with the board and served on all other parties no later than 30 days after service of the commissioner's decision.

Sec. 5. **[179A.052] APPEALS OF BOARD'S DECISIONS.**

Decisions of the board relating to unfair labor practices under section 179A.12, subdivision 11, or 179A.13, including dismissal of unfair labor practice charges, may be reviewed on certiorari by the Court of Appeals. A petition for a writ of certiorari must be filed and served on the other party or parties and the board within 30 days from the date of the mailing of the board's decision. The petition must be served on the other party or parties at the party's or parties' last known address.

Sec. 6. Minnesota Statutes 2012, section 179A.06, is amended by adding a subdivision to read:

Subd. 7. **Concerted activity.** Public employees have the right to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection.

Sec. 7. Minnesota Statutes 2012, section 179A.10, subdivision 1, is amended to read:

Subdivision 1. **Exclusions.** The commissioner of management and budget shall meet and negotiate with the exclusive representative of each of the units specified in this section, except as provided in section 43A.06, subdivision 1, paragraph (c). The units provided in this section are the only appropriate units for executive branch state employees. The following employees shall be excluded from any appropriate unit:

(1) the positions and classes of positions in the classified and unclassified services defined as managerial by the commissioner of management and budget in accordance with section 43A.18, subdivision 3, and so designated in the official state compensation schedules;

(2) unclassified positions in the Minnesota State Colleges and Universities defined as managerial by the Board of Trustees;

- (3) positions of physician employees compensated under section 43A.17, subdivision 4;
- (4) positions of all unclassified employees appointed by a constitutional officer;
- (5) positions in the Bureau of Mediation Services and the Public Employment Relations Board;
- (6) positions of employees whose classification is pilot or chief pilot;
- (7) administrative law judge and compensation judge positions in the Office of Administrative Hearings; and
- (8) positions of all confidential employees.

The governor may upon the unanimous written request of exclusive representatives of units and the commissioner direct that negotiations be conducted for one or more units in a common proceeding or that supplemental negotiations be conducted for portions of a unit or units defined on the basis of appointing authority or geography.

Sec. 8. Minnesota Statutes 2012, section 179A.13, is amended to read:

179A.13 UNFAIR LABOR PRACTICES.

Subdivision 1. **Actions.** (a) The practices specified in this section are unfair labor practices. Any employee, employer, employee or employer organization, exclusive representative, or any other person or organization aggrieved by an unfair labor practice as defined in this section may bring an action for injunctive relief and for damages caused by the unfair labor practice in the district court of the county in which the practice is alleged to have occurred. A copy of any complaint alleging an unfair labor practice must be filed with the commissioner at the time it is brought in district court. The party bringing an unfair labor practice action in district court shall also transmit to the commissioner any orders or judgments of the court within ten days of the order or judgment file an unfair labor practice charge with the board.

(b) Whenever it is charged that any party has engaged in or is engaging in any unfair labor practice, an investigator designated by the board shall promptly conduct an investigation of the charge. If after the investigation the board finds that the charge involves a material issue of law or fact, the board shall promptly issue a complaint and cause to be served upon the party a complaint stating the charges, accompanied by a notice of hearing before a qualified hearing officer designated by the board at the offices of the bureau or other location as the board deems appropriate, not less than five days nor more than 20 days after serving the complaint, provided that no complaint shall be issued based upon any unfair labor practice occurring more than six months prior to the filing of a charge. A complaint issued under this subdivision may be amended by the board at any

time prior to the issuance of an order based thereon. The party who is the subject of the complaint has the right to file an answer to the original or amended complaint prior to hearing and to appear in person or by a representative and give testimony at the place and time fixed in the complaint. In the discretion of the hearing officer conducting the hearing or the board, any other party may be allowed to intervene in the proceeding and to present testimony. The board or designated hearing officers shall not be bound by the rules of evidence applicable to courts, except as to the rules of privilege recognized by law.

(c) Designated investigators must conduct the investigation of charges.

(d) Hearing officers must be licensed to practice law in the state of Minnesota and must conduct the hearings and issue recommended decisions and orders.

(e) The board or its designees shall have the power to issue subpoenas and administer oaths. If any party willfully fails or neglects to appear or testify or to produce books, papers, and records pursuant to the issuance of a subpoena, the board may apply to a court of competent jurisdiction to request that the party be ordered to appear to testify or produce the requested evidence.

(f) A full and complete record shall be kept of all proceedings before the board or designated hearing officer and shall be transcribed by a reporter appointed by the board.

(g) The party on whom the burden of proof rests shall be required to sustain the burden by a preponderance of the evidence.

(h) At any time prior to the close of a hearing, the parties may by mutual agreement request referral to mediation, at which time the commissioner shall appoint a mediator, and the hearing shall be suspended pending the results of the mediation.

(i) If, upon a preponderance of the evidence taken, the hearing officer determines that any party named in the charge has engaged in or is engaging in an unfair labor practice, then a recommended decision and order shall be issued stating findings of fact and conclusions, and requiring the party to cease and desist from the unfair labor practice, to post a cease-and-desist notice in the workplace, and to take action to effectuate the policies of this section, including reinstatement of public employees with back pay and compensatory damages up to three times the amount of actual damages. If back pay is awarded, the award must include interest at the rate of seven percent per annum. The order further may require the party to make reports from time to time, and demonstrate the extent to which the party has complied with the order.

(j) If there is no preponderance of evidence that the party named in the charge has engaged in or is engaging in the unfair labor practice, then the hearing officer shall issue a recommended decision and order stating findings of fact and dismissing the complaint.

8.1 (k) Parties may file exceptions to the hearing officer's recommended decision and
8.2 order with the board no later than 30 days after service of the recommended decision
8.3 and order. The board shall review the recommended decision and order upon timely
8.4 filing of exceptions or upon its own motion. If no timely exceptions have been filed, the
8.5 parties must be deemed to have waived their exceptions. Unless the board reviews the
8.6 recommended decision and order upon its own motion, it must not be legal precedent and
8.7 must be final and binding only on the parties to the proceeding as issued in an order issued
8.8 by the board. If the board does review the recommended decision and order, the board
8.9 may adopt all, part, or none of the recommended decision and order, depending on the
8.10 extent to which it is consistent with the record and applicable laws. The board shall issue
8.11 and serve on all parties its decision and order. The board shall retain jurisdiction over the
8.12 case to ensure the parties' compliance with the board's order. Unless overturned by the
8.13 board, the parties must comply with the recommended decision and order.

8.14 (l) Until the record has been filed in the Court of Appeals or district court, the board
8.15 at any time, upon reasonable notice and in a manner it deems appropriate, may modify or
8.16 set aside, in whole or in part, any finding or order made or issued by it.

8.17 (m) Upon a final order that an unfair labor practice has been committed, the board or
8.18 the charging party may petition the district court for the enforcement of the order and for
8.19 appropriate temporary relief or restraining order. When the board petitions the court, the
8.20 charging party may intervene as a matter of right.

8.21 (n) Whenever it appears that any party has violated a final order of the board issued
8.22 pursuant to this section, the board must petition the district court for an order directing the
8.23 party, its officers, agents, servants, successors, and assigns to comply with the order of
8.24 the board. The board shall be represented in this action by its general counsel, who has
8.25 been appointed by the board. The court may grant or refuse, in whole or in part, the relief
8.26 sought, provided that the court also may stay an order of the board pending disposition of
8.27 the proceedings. The court may punish a violation of its order as in civil contempt.

8.28 (o) The board shall have power, upon issuance of an unfair labor practice complaint
8.29 alleging that a party has engaged in or is engaging in an unfair labor practice, to petition
8.30 the district court for appropriate temporary relief or restraining order. Upon the filing of
8.31 any such petition, the court shall cause notice thereof to be served upon such parties,
8.32 and thereupon shall have jurisdiction to grant to the board or commissioner temporary
8.33 relief or a restraining order as it deems appropriate. Nothing in this paragraph precludes
8.34 a charging party from seeking injunctive relief in district court after filing the unfair
8.35 labor practice charge.

(p) The proceedings in paragraphs (m), (n), and (o) shall be commenced in the district court for the county in which the unfair labor practice which is the subject of the order or administrative complaint was committed, or where a party alleged to have committed the unfair labor practice resides or transacts business.

(q) The board shall not defer to any grievance and arbitration procedure or other legal process in investigating or deciding any unfair labor practice case, charge, or claim.

Subd. 2. **Employers.** Public employers, their agents and representatives are prohibited from:

(1) interfering, restraining, or coercing employees in the exercise of the rights guaranteed in sections 179A.01 to 179A.25;

(2) dominating or interfering with the formation, existence, or administration of any employee organization or contributing other support to it;

(3) discriminating in regard to hire or tenure to encourage or discourage membership in an employee organization;

(4) discharging or otherwise discriminating against an employee because the employee has signed or filed an affidavit, petition, or complaint or given information or testimony under sections 179A.01 to 179A.25;

(5) refusing to meet and negotiate in good faith with the exclusive representative of its employees in an appropriate unit;

(6) refusing to comply with grievance procedures contained in an agreement;

(7) distributing or circulating a blacklist of individuals exercising a legal right or of members of a labor organization for the purpose of preventing blacklisted individuals from obtaining or retaining employment;

(8) violating rules established by the commissioner regulating the conduct of representation elections;

(9) refusing to comply with a valid decision of a binding arbitration panel or arbitrator;

(10) violating or refusing to comply with any lawful order or decision issued by the commissioner or the board;

(11) refusing to provide, upon the request of the exclusive representative, all information pertaining to the public employer's budget both present and proposed, revenues, and other financing information provided that in the executive branch of state government this clause may not be considered contrary to the budgetary requirements of sections 16A.10 and 16A.11; or

(12) granting or offering to grant the status of permanent replacement employee to a person for performing bargaining unit work for the employer during a lockout of

10.1 employees in an employee organization or during a strike authorized by an employee
10.2 organization that is an exclusive representative.

10.3 Subd. 3. **Employees.** Employee organizations, their agents or representatives,
10.4 and public employees are prohibited from:

10.5 (1) restraining or coercing employees in the exercise of rights provided in sections
10.6 179A.01 to 179A.25;

10.7 (2) restraining or coercing a public employer in the election of representatives to be
10.8 employed to meet and negotiate or to adjust grievances;

10.9 (3) refusing to meet and negotiate in good faith with a public employer, if the
10.10 employee organization is the exclusive representative of employees in an appropriate unit;

10.11 (4) violating rules established by the commissioner regulating the conduct of
10.12 representation elections;

10.13 (5) refusing to comply with a valid decision of an arbitration panel or arbitrator;

10.14 (6) calling, instituting, maintaining, or conducting a strike or boycott against any
10.15 public employer on account of any jurisdictional controversy;

10.16 (7) coercing or restraining any person with the effect to:

10.17 (i) force or require any public employer to cease dealing or doing business with any
10.18 other person;

10.19 (ii) force or require a public employer to recognize for representation purposes an
10.20 employee organization not certified by the commissioner;

10.21 (iii) refuse to handle goods or perform services; or

10.22 (iv) prevent an employee from providing services to the employer;

10.23 (8) committing any act designed to damage or actually damaging physical property
10.24 or endangering the safety of persons while engaging in a strike;

10.25 (9) forcing or requiring any employer to assign particular work to employees in a
10.26 particular employee organization or in a particular trade, craft, or class rather than to
10.27 employees in another employee organization or in another trade, craft, or class;

10.28 (10) causing or attempting to cause a public employer to pay or deliver or agree to
10.29 pay or deliver any money or other thing of value, in the nature of an exaction, for services
10.30 which are not performed or not to be performed;

10.31 (11) engaging in an unlawful strike;

10.32 (12) picketing which has an unlawful purpose such as secondary boycott;

10.33 (13) picketing which unreasonably interferes with the ingress and egress to facilities
10.34 of the public employer;

10.35 (14) seizing or occupying or destroying property of the employer;

11.1 (15) violating or refusing to comply with any lawful order or decision issued by
11.2 the commissioner or the board.

11.3 Sec. 9. **APPROPRIATION; INITIAL ASSISTANCE.**

11.4 (a) \$125,000 in fiscal year 2015 is appropriated from the general fund to the
11.5 commissioner of the Bureau of Mediation Services for purposes of the Public Employment
11.6 Relations Board under Minnesota Statutes, section 179A.041. This appropriation is
11.7 added to the base.

11.8 (b) The commissioner of the Bureau of Mediation Services must call the first
11.9 meeting of the board, and must assist the board in its initial operations, including
11.10 development and adoption of the board's initial rules.

11.11 Sec. 10. **EFFECTIVE DATE.**

11.12 Sections 1, 2, and 4 to 8 are effective July 1, 2015. Section 9 is effective July 1, 2014.