

Presented to the governor May 23, 1991

Signed by the governor May 27, 1991, 10:24 p.m.

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### CHAPTER 196—S.F.No. 86

*An act relating to education; providing for the arbitration of disputes concerning the proposed termination, discharge, or demotion of teachers following the probationary period; amending Minnesota Statutes 1990, sections 125.12, subdivision 4, and by adding a subdivision; 125.17, subdivision 5, and by adding a subdivision; 179A.04, subdivision 3; and 179A.20, subdivision 4.*

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

Section 1. Minnesota Statutes 1990, section 125.12, subdivision 4, is amended to read:

Subd. 4. **TERMINATION OF CONTRACT AFTER PROBATIONARY PERIOD.** A teacher who has completed a probationary period in any school district, and who has not been discharged or advised of a refusal to renew the teacher's contract pursuant to subdivision 3, shall have a continuing contract with such district. Thereafter, the teacher's contract shall remain in full force and effect, except as modified by mutual consent of the board and the teacher, until terminated by a majority roll call vote of the full membership of the board prior to April 1 upon one of the grounds specified in subdivision 6 or prior to June 1 upon one of the grounds specified in subdivision 6a or 6b, or until the teacher is discharged pursuant to subdivision 8, or by the written resignation of the teacher submitted prior to April 1; provided, however, that if an agreement as to the terms and conditions of employment for the succeeding school year has not been adopted pursuant to the provisions of sections 179A.01 to 179A.25 prior to March 1, the teacher's right of resignation shall be extended to the 30th calendar day following the adoption of said contract in compliance with section 179A.20, subdivision 5. Such written resignation by the teacher shall be effective as of June 30 if submitted prior to that date and the teachers' right of resignation for the school year then beginning shall cease on July 15. Before a teacher's contract is terminated by the board, the board shall notify the teacher in writing and state its ground for the proposed termination in reasonable detail together with a statement that the teacher may make a written request for a hearing before the board within 14 days after receipt of such notification. If the grounds are those specified in subdivision 6 or 8, the notice must also state a teacher may request arbitration under section 2. Within 14 days after receipt of this notification the teacher may make a written request for a hearing before the board or an arbitrator and it shall be granted upon reasonable notice to the teacher of the date set for hearing, before final action is taken. If no hearing is requested within such period, it shall be deemed acquiescence by the teacher to the board's

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action. Such termination shall take effect at the close of the school year in which the contract is terminated in the manner aforesaid. Such contract may be terminated at any time by mutual consent of the board and the teacher and this section shall not affect the powers of a board to suspend, discharge, or demote a teacher under and pursuant to other provisions of law.

Sec. 2. Minnesota Statutes 1990, section 125.12, is amended by adding a subdivision to read:

Subd. 9a. HEARING AND DETERMINATION BY ARBITRATOR. A teacher whose termination is proposed under subdivision 4 on grounds specified in subdivision 6, or whose discharge is proposed under subdivision 8, may elect a hearing before an arbitrator instead of the school board. The hearing is governed by this subdivision.

(a) The teacher must make a written request for a hearing before an arbitrator within 14 days after receiving notification of proposed termination on grounds specified in subdivision 6 or within ten days of receiving notification of proposed discharge under subdivision 8. If a request for a hearing does not specify that the hearing be before an arbitrator, it shall be considered to be a request for a hearing before the school board.

(b) If the teacher and the school board are unable to mutually agree on an arbitrator, the school board shall request from the bureau of mediation services a list of five persons to serve as an arbitrator. If the matter to be heard is a proposed termination on grounds specified in subdivision 6, arbitrators on the list must be available to hear the matter and make a decision within a time frame that will allow the school board to comply with all statutory timelines relating to termination. If the teacher and the school board are unable to mutually agree on an arbitrator from the list provided, the parties shall alternately strike names from the list until the name of one arbitrator remains. The person remaining after the striking procedure shall be the arbitrator. If the parties are unable to agree on who shall strike the first name, the question must be decided by a flip of a coin. The teacher and the school board shall share equally the costs and fees of the arbitrator.

(c) The arbitrator shall determine, by a preponderance of the evidence, whether the grounds for termination or discharge specified in subdivision 6 or 8 exist to support the proposed termination or discharge. A lesser penalty than termination or discharge may be imposed by the arbitrator only to the extent that either party proposes such lesser penalty in the proceeding. In making the determination, the arbitration proceeding is governed by sections 572.11 to 572.17 and by the collective bargaining agreement applicable to the teacher.

(d) An arbitration hearing conducted under this subdivision is a meeting for preliminary consideration of allegations or charges within the meaning of section 471.705, subdivision 1d, clause (c), and shall be closed, unless the teacher requests it to be open.

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(e) The arbitrator's award is final and binding on the parties, subject to sections 572.18 to 572.26.

Sec. 3. Minnesota Statutes 1990, section 125.17, subdivision 5, is amended to read:

Subd. 5. **HEARING OF CHARGES AGAINST TEACHER.** The charges against a teacher shall be in writing and signed by the person making the same and then filed with the secretary or clerk of the school board having charge of the school in which the teacher is employed. Such school board before discharging or demoting a teacher shall then accord the teacher against whom such charges have been filed a full hearing and give to the teacher at least ten days' notice in writing of the time and place of such hearing; such notice may be served personally or sent by certified mail addressed to such teacher at the teacher's last known post office address; provided, that if the charge be made by any person not in connection with the school system the charge may be disregarded by such school board. If the grounds are those specified in subdivision 4, clause (1), (2), (3), or (4), the notice must also state a teacher may request arbitration under section 4. Upon such hearing being held such school board or an arbitrator shall hear all evidence that may be adduced in support of the charges and for the teacher's defense thereto. Either party shall have the right to have a written record of the hearing at the expense of the board and to have witnesses subpoenaed and all witnesses so subpoenaed shall be examined under oath. Any member of the school board conducting such a hearing shall have authority to issue subpoenas and to administer oaths to witnesses.

Sec. 4. Minnesota Statutes 1990, section 125.17, is amended by adding a subdivision to read:

Subd. 10a. HEARING AND DETERMINATION BY ARBITRATOR. A teacher against whom charges have been filed alleging any cause for discharge or demotion specified in subdivision 4, clause (1), (2), (3), or (4), may elect a hearing before an arbitrator instead of the school board. The hearing is governed by this subdivision.

(a) The teacher must make a written request for a hearing before an arbitrator within ten days after receiving a written notice of the filing of charges required by subdivision 5. Failure to request a hearing before an arbitrator during this period is considered acquiescence to a hearing before the board.

(b) If the teacher and the school board are unable to mutually agree on an arbitrator, the school board shall request from the bureau of mediation services a list of five persons to serve as an arbitrator. If the teacher and the school board are unable to mutually agree on an arbitrator from the list provided, the parties shall alternately strike names from the list until the name of one arbitrator remains. The person remaining after the striking procedure shall be the arbitrator. If the parties are unable to agree on who shall strike the first name, the question must be decided by a flip of a coin. The teacher and the school board shall share equally the costs and fees of the arbitrator.

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(c) The arbitrator shall determine, by a preponderance of the evidence, whether the causes specified in subdivision 4, clause (1), (2), (3), or (4), exist to support the proposed discharge or demotion. A lesser penalty than discharge or demotion may be imposed by the arbitrator only to the extent that either party proposes such lesser penalty in the proceeding. In making the determination, the arbitration proceeding is governed by sections 572.11 to 572.17 and by the collective bargaining agreement applicable to the teacher.

(d) An arbitration hearing conducted under this subdivision is a meeting for preliminary consideration of allegations or charges within the meaning of section 471.705, subdivision 1d, clause (c), and shall be closed, unless the teacher requests it to be open.

(e) The arbitrator's decision is final and binding on the parties, subject to sections 572.18 to 572.26.

Sec. 5. Minnesota Statutes 1990, section 179A.04, subdivision 3, is amended to read:

Subd. 3. **OTHER DUTIES.** The commissioner shall:

(a) provide mediation services as requested by the parties until the parties reach agreement. The commissioner may continue to assist parties after they have submitted their final positions for interest arbitration;

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

(c) certify to the board items of dispute between parties subject to action of the board under section 179A.16;

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

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

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

(g) receive, catalogue, and file all orders and decisions of the board, all decisions of arbitration panels authorized by sections 179A.01 to 179A.25, all grievance arbitration decisions, and the commissioner's orders and decisions. All orders and decisions catalogued and filed shall be readily available to the public;

(h) adopt, subject to chapter 14, a grievance procedure to fulfill the purposes of section 179A.20, subdivision 4. The grievance procedure shall not provide for the services of the bureau of mediation services. The grievance procedure shall

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be available to any employee in a unit not covered by a contractual grievance procedure;

(i) conduct elections;

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

(k) collect such fees as are established by rule for empanelment of persons on the labor arbitrator roster maintained by the commissioner or in conjunction with fair share fee challenges; ~~and~~

(l) 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; and

(m) from the names provided by representative organizations, maintain a list of arbitrators to conduct teacher discharge or termination hearings according to section 125.12 or 125.17. The persons on the list shall 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 either the bureau of mediation services or the public employment relations board according to section 179A.05, subdivision 6;

(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, the Minnesota education association shall provide a list of seven names, the Minnesota federation of teachers a list of seven names, and the Minnesota school boards association a list of 14 names of persons to be on the list. The commissioner may adopt rules about maintaining and updating the list.

Sec. 6. Minnesota Statutes 1990, section 179A.20, subdivision 4, is amended to read:

Subd. 4. **GRIEVANCE PROCEDURE.** (a) All contracts must include a grievance procedure providing for compulsory binding arbitration of grievances including all written disciplinary actions. If the parties cannot agree on the grievance procedure, they are subject to the grievance procedure promulgated by the commissioner under section 179A.04, subdivision 3, clause (h).

(b) Notwithstanding any home rule charter to the contrary, after the probationary period of employment, any disciplinary action; ~~other than the termina-~~

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~~tion of a teacher contract or the discharge of a teacher under section 125.12 or 125.17, is subject to the grievance procedure and compulsory binding arbitration.~~

(c) Employees covered by civil service systems created under chapter 43A, 44, 375, 387, 419, or 420, by a home rule charter under chapter 410, or by Laws 1941, chapter 423, may pursue a grievance through the procedure established under this section. When the grievance is also within the jurisdiction of appeals boards or appeals procedures created by chapter 43A, 44, 375, 387, 419, or 420, by a home rule charter under chapter 410, or by Laws 1941, chapter 423, the employee may proceed through the grievance procedure or the civil service appeals procedure, but once a written grievance or appeal has been properly filed or submitted by the employee or on the employee's behalf with the employee's consent the employee may not proceed in the alternative manner.

(d) A teacher who elects a hearing before an arbitrator under section 2 or 4 or who elects or acquiesces to a hearing before the school board may not later proceed in the alternative manner nor challenge the termination or discharge through a grievance procedure required by this subdivision.

(e) This section does not require employers or employee organizations to negotiate on matters other than terms and conditions of employment.

Presented to the governor May 23, 1991

Signed by the governor May 27, 1991, 10:28 p.m.

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#### CHAPTER 197—S.F.No. 302

*An act relating to signs; requiring recycling centers and junk yards to accept certain hazard signs; amending Minnesota Statutes 1990, sections 115A.555; and 161.242, subdivision 2, and by adding a subdivision.*

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

Section 1. Minnesota Statutes 1990, section 115A.555, is amended to read:

#### 115A.555 RECYCLING CENTER DESIGNATION.

The agency shall designate recycling centers for the purpose of section 173.086. To be designated as a recycling center, a recycling facility must be open a minimum of 12 operating hours each week, 12 months each year, and must accept for recycling:

(1) at least four different materials such as paper, glass, plastic, and metal;  
and

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