

MINNESOTA CODE OF AGENCY RULES

RULES OF THE BUREAU OF MEDIATION SERVICES

1982 Reprint



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Prepared by

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BUREAU OF MEDIATION SERVICES

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CHAPTER ONE: BMS 1-19

RULES OF PROCEDURE FOR INVESTIGATION AND CERTIFICATION OF REPRESENTATIVES FOR COLLECTIVE BARGAINING UNDER M.S. 179.16

BMS 1 Purpose and Construction. These rules govern the conduct of all proceedings before the Director of Mediation Services involving investigation and certification of representatives for collective bargaining under M.S. 179.16. These rules shall be liberally construed to effectuate the purposes and provisions of the Minnesota Labor Relations Act, M.S. Chapter 179. The Director may waive any requirement of these rules unless a party shows prejudice thereby.

BMS 2 Definitions. Unless the language or context clearly indicates that a different meaning is intended, the words, terms and phrases in these rules shall have the same meaning and definition as is contained in the definitions used in M.S., Chapter 179.

BMS 3 Request for Investigation. A request for investigation by the Director of Mediation Services of a question concerning the representation of employees for collective bargaining may be filed with the Director by any employee, group of employees, labor organization, employer, or group of employers. Such request shall be in writing in the form hereinafter prescribed. Forms for filing this information may be obtained from the office of the Director of Mediation Services.

BMS 4 Required Information. The request shall be addressed to the Director of Mediation Services and shall contain the following information:

- (a) The type of organization making the request, be it labor organization, employer, employee, or unorganized group of employees, and the name, address and telephone number of the petitioner or petitioners.
- (b) The name, address and telephone number of the agent or attorney who represents the petitioner or petitioners.
- (c) The name, address and telephone number of the opposing party in the dispute.
- (d) The name, address and telephone number of the agent or attorney for the opposing party, if known.
- (e) The names, addresses and telephone numbers of all other individuals or labor organizations known to have an interest in or claiming to represent any of the employees involved.
- (f) The nature of the business of the employer.
- (g) The approximate total number of employees in the unit the petitioner claims is appropriate, and a statement as to the bargaining unit or units claiming the right of representation, whether employer unit, craft unit, plant unit or other unit as proposed by the petitioner.
- (h) A detailed list of the classifications in the proposed appropriate bargaining unit, indicating the number of employees in each classification.

BMS 5 Notice of Hearing and Investigation. Upon receipt by the Director of a request in proper form, he shall investigate the controversy by any suitable means. He may investigate such controversy personally or through an agent appointed by him. He may provide for an appropriate hearing before himself or an agent appointed by him. Notice of such investigation or hearing shall be given to all parties directly involved in or directly affected by the controversy, so far as

named in the request or known to the Director. All such parties shall be deemed parties to the proceedings. The notice shall be posted in a conspicuous place at the place of employment of the employees therein referred to at least two days prior to the scheduled date of investigation or hearing. A copy of the request filed by the petitioner shall be given to each party, excepting individual employees, with the first notice, and shall be posted in a like manner. If a hearing is ordered, the Director shall cause a stenographic report of the hearing to be kept.

BMS 6 Hearings. All hearings before the Director shall be conducted in conformity with the following rules and regulations.

(a) All hearings before the Director shall be open to the public. It shall be the duty of the Director conducting the hearing to inquire fully into the facts in dispute, to call, examine and cross-examine witnesses, and to require the production of such documentary or other evidence as he may deem necessary to fully acquaint him with all the facts relating to the dispute.

(b) Any party in interest to the proceeding shall have the right to appear at such hearing in person, by counsel or representative and to call, examine, and cross-examine witnesses and to introduce into evidence such documentary or other evidence as the Director may deem admissible. In such proceeding the parties thereto shall be permitted to introduce only competent evidence, as defined in M.S. 179.01, Subd. 12.

(c) At any such hearing the parties to the dispute may enter into stipulation of facts which shall have the same weight as though evidence had been adduced to prove the same.

(d) Any objection with respect to the conduct of the hearing, including any objection to the introduction of evidence, shall be stated orally, together with a statement of the grounds of such objection and included in the stenographic report of the hearing if one is kept. No objection shall be deemed waived by further participation in the hearing.

(e) The Director may adjourn the hearing from day to day or from time to time and from place to place as he may deem proper upon appropriate notice thereof to the parties to said proceeding.

(f) At the close of the hearing the parties to the proceeding shall be entitled to submit the matter on either oral or written arguments as the Director may determine. When permission for oral argument is granted, the Director shall fix the length thereof, and such argument shall not be included in the stenographic record of the hearing unless it is so directed by the Director. If the matter is submitted on written argument, the Director shall fix the time for the filing thereof by the respective parties to the proceeding.

(g) All or any part of the testimony of any witness may be disregarded by the Director, if said witness shall refuse to answer any question which the Director has ruled to be a proper one.

(h) The record in the proceedings shall consist of the request for investigation, the notice of hearing, proof of service of such notice upon the parties to the proceedings, the objections of any person to the proceedings, the rulings thereon, all stipulations between the parties, exhibits, documentary evidence, depositions, findings of fact and conclusions, if such are made, the stenographic notes or record if kept, and the order of the Director.

BMS 7 Witnesses - Subpoenas

(a) Witnesses shall be examined orally under oath, provided, however, that the testimony of all witnesses who reside outside of the state or who, through illness or other cause, are unable to testify in person before the Director may be taken by deposition in such manner and form as may be prescribed by the Director.

(b) Subpoenas requiring the attendance and testimony of witnesses and the production of evidence, including books, records, correspondence, or documents relating to any matter pending before the Director, shall be issued in the name of the Director over his signature. Applications for the issuance of such subpoenas shall be filed with the Director by the party to the proceedings desiring the subpoena. Such application shall be timely and shall specify the names of the witnesses, the books, records, correspondence, or documents, required to be produced by the witness. Witnesses summoned before the Director shall be paid fees and mileage in the same manner and amounts as are paid to witnesses in the district court of this state. Witnesses whose depositions are taken and persons taking the same shall be entitled to the same fees as provided by law for taking of depositions for use in the district court of this state. Witness fees and mileage shall be paid at the time of the service of the subpoena to the witness whose attendance is required by the subpoena by the parties at whose instance the subpoena is issued, excepting witnesses subpoenaed by the Director who shall be paid as provided by law.

BMS 8 Determination of Representative. The Director, upon the completion of the hearing, shall forthwith determine who are the representatives of the employees for collective bargaining, or the method to be used to ascertain who shall be such representatives.

BMS 9 Election Procedure. If the Director shall determine to take a secret ballot of the employees, he may direct that such election be conducted by a designated agent in such manner as he may prescribe. Upon conclusion of such election, the agent conducting the same shall prepare a report containing a tally of the ballots and the result of such election. The employer and each person or organization claiming the right to act as representative of the employees may designate one person as a challenger, who shall be permitted to be present at the place of election during the casting of the ballots and counting thereof by the Director or his designated agent. Immediately upon the completion of the tallying of the ballots so cast, the person conducting the election shall place all ballots cast and a copy of the tally sheet in an envelope, which shall be immediately sealed, endorsed across the seal by a challenger for each party, if such there be, and retained by the Director in his files for a period of not less than thirty days, subject to inspection as hereinafter provided. The parties to the proceedings shall be furnished with a tabulation of the ballots cast in the election and the result thereof.

BMS 10 Challenge of Voter. The right of any employee to vote at an election held for the purpose of determining the representative of employees may be challenged by any authorized challenger designated as provided by BMS 9, or by any employee entitled to vote at the election. The person making the challenge shall state fully the grounds thereof and a record thereof shall be made by the agent conducting the election. The agent shall then examine the challenged

employee as to his qualifications for voting and shall make a record thereof. If the challenge be not then withdrawn, and the challenged employee shall insist on voting, he shall be permitted to vote upon filing with the agent a statement in writing, signed by the employee and witnessed by the agent, alleging that he is eligible to vote and setting forth his qualifications. Ballots so received shall not be marked or otherwise distinguished from the other ballots cast. The agent conducting the election shall transmit the record of the proceedings upon all challenges to the Director with the returns of the election. If it appears therefrom that the number of challenged votes is sufficient to have affected the result of the election, the Director shall hold a hearing on the question after notice to the challenged voters, to the persons or organizations voted upon as representatives, and to other parties, if any, to whom notice of the election was given. He shall thereupon determine whether or not the respective challenged voters were eligible to vote and whether or not the result of the election might have been affected by votes cast by ineligible persons. If he finds that the result of the election might have been so affected, he may declare the election void and proceed further, as though no election had been held.

BMS 11 Consent Election. Whenever a question or controversy has arisen concerning the representation of the employees of an employer within the meaning of M.S. 179.16, the parties to such controversy may agree in writing, subject to the approval of the Director, that an election may be held by said Director for the selection of a representative for the purposes of collective bargaining who may be certified by the Director as such representative without the necessity of a hearing concerning the controversy. Such agreement to hold a consent election must be in the form prescribed by the Director. The approval of such agreement by the Director shall be subject to the following conditions:

(a) A notice of the consent election in the form prescribed by the Director shall be posted in a conspicuous place at the place of employment of the employees therein referred to.

(b) Upon objection being filed with the Director as provided in the notice, the Director may, if he deems it proper, revoke the acceptance and approval of the agreement for a consent election. With the consent of the parties to said agreement and upon notice to the person or persons filing such objections, he may, if he deems it proper, amend in such manner as he may determine, the provisions contained in said agreement for a consent election.

(c) All persons having any objections to such consent election must file their objections thereto in writing with the Director at his office in St. Paul, Minnesota, either in person or by registered or certified mail, not later than the date prescribed in the posted notice of such consent election. Any person or persons failing to file their objections to such consent election within the time hereinabove prescribed shall not thereafter be permitted to question the holding of such election unless permitted to do so by the Director.

BMS 12 Certification Order. The director shall, upon the completion of the proceedings hereinbefore described, forthwith certify to the parties in writing the name or names of the representatives that have been designated or selected and serve the certification order upon the parties to these proceedings.

BMS 13 Objections to Certification. Any party to the proceedings may within seven days from the deposit of said certification order in the United States mails

file with the Director objections to the certification. If it appears to the Director that such objection may raise a substantial and material issue with respect to the correctness of said certification, he shall issue and cause to be served upon the parties to the proceeding a notice fixing a time and place of hearing upon said objections. If the Director shall determine, after the close of such hearing, upon the record made therein that such objections are well taken, then he shall forthwith declare the certification void and shall proceed in the same manner as though no certification had been made. Upon application by any party to the dispute, the Director may stay the operation of the order of certification until the hearing and determination of the objections to the order of certification.

BMS 14 Reconsideration within One Year. If the Director has certified the representatives as provided in M.S. 179.16, and if a question should arise within the period of one year from the date of such certification concerning the representatives so certified, then any employee, group of employees, labor organization or employer may file a petition in like form as provided in BMS 4, and in addition thereto a statement which shall set forth in detail the reasons upon which are based the request for a new certification of representatives of employees. Upon receiving such request the Director, after such investigation as he may deem necessary, shall notify all parties to the proceedings of his decision upon the request. If the Director determines that further proceedings shall be had thereon, he shall proceed as hereinbefore provided for action on an original request for investigation of the question of representation for collective bargaining purposes.

BMS 15-19 (Reserved for future use)

CHAPTER TWO: BMS 20-29

RULES OF PROCEDURE GOVERNING PROCEEDINGS FOR MEDIATION UNDER M.S. 179.06

BMS 20 Purpose and Construction. These rules govern the conduct of all proceedings before the Director of Mediation Services involving mediation. These rules shall be liberally construed to effectuate the purposes and provisions of the Minnesota Labor Relations Act. The Director or his agent may waive any requirements of these rules unless a party shows prejudice thereby.

BMS 21 Definitions. Unless the language or context clearly indicates that a different meaning is intended, the words, terms and phrases in these rules shall have the same meaning and definition as is contained in the definitions used in Minnesota Statutes, Chapter 179.

BMS 22 Petitions. A petition for mediation given under the Minnesota Labor Relations Act to the Director shall be in writing and shall contain the following:

- (a) The name, address and telephone number of the party filing the petition.
- (b) The name, address and telephone number of the agent or attorney representing petitioner.
- (c) The name, address and telephone number of adverse party in dispute.
- (d) The name, address and telephone number of attorney for adverse party, if known.
- (e) If the adverse party is an association, a list giving the names, addresses and telephone numbers of all members of the association directly interested shall be attached to the petition.
- (f) The nature of the industry, business or institution involved in the dispute.
- (g) The number of employees involved in the dispute, directly and indirectly.
- (h) A clear and concise statement of the nature of the dispute and the demands of the party filing the petition.
- (i) Forms for filing this information may be obtained from the office of the Director of Mediation Services.

BMS 23 Employer Associations. A petition for mediation may be given by or to any association of employers for collective bargaining purposes provided that a complete list of the names and addresses of all members of the employer association directly interested is contained in the notice.

BMS 24 Meetings. The Director, upon receiving such petition, shall fix the time and place for meetings of the parties to the dispute. Notice in writing of the time and place so fixed shall be given by the Director to said parties. Such meetings shall be informal and limited by the Director to matters relative and material to the settlement of the dispute. The meetings shall not be open to the public and shall be limited to the parties and their representatives interested in the dispute. Agreements reached shall only be binding when agreed to by both parties and put in writing.

BMS 25-29 (Reserved for future use)

CHAPTER THREE: BMS 30-39

RULES OF PROCEDURE FOR HEARINGS BEFORE COMMISSIONS APPOINTED IN LABOR DISPUTES AFFECTING PUBLIC INTERESTS UNDER M.S. 179.07, 179.08

BMS 30 Purpose and Construction. These rules govern the conduct of all proceedings before commissions appointed in labor disputes affecting public interests under M.S. 179.07 and 179.08. These rules shall be liberally construed to effectuate the purposes and provisions of the Minnesota Labor Relations Act, M.S. Chapter 179. The commission may waive any requirement of these rules unless a party shows prejudice thereby.

BMS 31 Definitions. Unless the language or context clearly indicates that a different meaning is intended, the words, terms and phrases in these rules shall have the same meaning and definition as is contained in the definitions used in M.S., Chapter 179.

BMS 32 Appearances. 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 at any commission hearing. Any party not directly involved in the dispute desiring to appear and have the same rights before the commission as parties directly involved, shall file a petition in writing with the Director or the commission setting forth the grounds upon which such person claims to be interested. The commission shall rule upon all such petitions; provided, however, that the parties to the dispute may present arguments and be heard on the question of permitting such appearances. The commission may permit appearances in person, by counsel or by a representative, to such extent and upon such terms as it may deem just.

BMS 33 Witnesses-Subpoenas

(a) Witnesses shall be examined orally under oath, provided, however, that the testimony of all witnesses who reside outside of the state or who, through illness or other cause, are unable to testify in person before the commission may be taken by deposition in such manner and form as may be prescribed by the commission.

(b) Subpoenas requiring the attendance and testimony of witnesses and the production of evidence, including books, records, correspondence, or documents relating to any matter pending before the commission, shall be issued in the name of the commission over the signature of one of the members thereof. Applications for the issuance of such subpoenas shall be filed with the commission by the party to the proceedings desiring the subpoena. Such application shall be timely and shall specify the names of the witnesses, the books, records, correspondence, or documents required to be produced by the witness. Witnesses summoned before the commission shall be paid fees and mileage in the same manner and amounts as are paid to witnesses in the district court of this state. Witnesses whose depositions are taken and persons taking the same shall be entitled to the same fees as provided by law for taking of depositions for use in the district court of this state. Witness fees and mileage

shall be paid at the time of the service of the subpoena to the witness whose attendance is required by the subpoena by the parties at whose instance the subpoena is issued excepting witnesses subpoenaed by the commission who shall be paid as provided by law.

BMS 34 Hearings

(a) All hearings by the commission shall be open to the public. It shall be the duty of the commission conducting the hearing to inquire fully into the facts in dispute, to call, examine and cross-examine witnesses, and to require the production of such documentary or other evidence as it may deem necessary to fully acquaint it with all the facts relating to the dispute.

(b) A stenographic record of the hearing shall be kept by the Director on the written request of any of the parties of interest to the proceeding, or by the commission.

(c) Any party in interest to the proceeding shall have the right to appear at such hearing in person, by counsel or representative and to call, examine, and cross-examine witnesses and to introduce into evidence such documentary or other evidence as the commission may deem admissible. In such proceeding the parties thereto shall be permitted to introduce only competent evidence, as defined in M.S. 179.01, Subd. 12.

(d) At any such hearing the parties to the dispute may enter into stipulation of fact which shall have the same weight as though evidence has been adduced to prove the same.

(e) Any objection with respect to the conduct of the hearing, including any objection to the introduction of evidence, shall be stated orally, together with a statement of the grounds of such objection and included in the stenographic report of the hearing, if one is kept. No objection shall be deemed waived by further participation in the hearing.

(f) The commission may adjourn the hearing from day to day or from time to time and from place to place as it may deem proper upon appropriate notice thereof to the parties to said proceeding.

(g) At the close of the hearing the parties to the proceeding shall be entitled to submit the matter on either oral or written arguments as the commission may determine. When permission for oral argument is granted, the commission shall fix the length thereof, and such argument shall not be included in the record of the hearing unless it is so directed by the commission. If the matter is submitted on written argument, the commission shall fix the time for the filing thereof by the respective parties to the proceeding.

(h) All or any part of the testimony of any witness may be disregarded by the commission, if said witness shall refuse to answer any question which the commission has ruled to be a proper one.

(i) The record in the proceedings shall consist of the order appointing the commission, the notice of hearing, proof of service of such notice upon the parties to the proceedings, the objections of any person to the proceedings, the rulings thereon, all motions, stipulations between the parties, exhibits, documentary evidence, depositions, the stenographic notes or record if kept, and the report of the commission.

BMS 35-39 (Reserved for future use)

CHAPTER FOUR: BMS 40-49

RULES OF PROCEDURE FOR DETERMINATION OF JURISDICTIONAL CONTROVERSIES UNDER M.S. 179.083

BMS 40 Purpose and Construction. These rules govern the conduct of all proceedings before labor referees appointed according to M.S. 179.083. These rules shall be liberally construed to effectuate the purposes and provisions of the Minnesota Labor Relations Act., M.S. Chapter 179. The labor referee may waive any requirements of these rules unless a party shows prejudice thereby.

BMS 41 Definitions. Unless the language or context clearly indicates that a different meaning is intended, the words, terms and phrases in these rules shall have the same meaning and definition as is contained in the definitions used in M.S., Chapter 179.

BMS 42 Notice of Controversy. A written notice that a jurisdictional controversy exists, which is made the ground for picketing or declaring a strike or boycott, may be filed with the Director of Mediation Services by a labor organization or organizations or by an employer or group of employers. Such notice shall be addressed to the Director and shall contain the following information:

(a) The name, address and telephone number of person or organization filing such notice, the address of its principal office or place of business.

(b) If the notice is filed by an employer or organization of employers, the names, addresses and telephone numbers of all labor organizations involved in such jurisdictional controversy, the nature of the employer's business or industry and the name, address and telephone number, if known of any representative or attorney for such employer or organization of employers.

(c) If the notice is filed by a labor organization, the names, addresses and telephone numbers of all employers and all other labor organizations involved in such jurisdictional controversy and the nature of the employer's business or industry, the name, address and telephone number, if known, of any representative or attorney of such employer or employers' organization.

(d) The classification of employment, the approximate number of employees in each classification and the approximate total number of employees involved.

(e) The names of all labor organizations with whom the employer or employers have labor agreements and the expiration date of such agreements.

(f) A clear and concise statement of the nature of the controversy; the history of past collective bargaining experience between the parties involved; the date on which the controversy arose which is made the ground for picketing or declaring a strike or boycott and whether such jurisdictional controversy is made the ground for one or more of the following: picketing, declaring a strike or declaring a boycott against such employer and the name of the labor organization taking such action.

(g) Forms for filing this information may be obtained from the office of the Director of Mediation Services.

BMS 43 Certification to Governor. Whenever it appears to the Director that 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 of dispute is made the ground for picketing an employer or declaring a strike or boycott against such employer, he shall certify that fact to the governor.

BMS 44 Appointment of Referee; His Duties. If the governor in his discretion appoints a labor referee to hear and determine the jurisdictional controversy, said labor referee shall immediately fix a time and place for the first hearing before said referee and shall mail to each of the parties to the controversy, at least 5 days before the date set for the first hearing, a notice thereof, together with a copy of these rules; provided, that notice may be waived or the time therefor shortened by agreement of the parties. Notice of such hearing shall be given to all parties directly involved in or affected by the controversy so far as named in the original notice or known to the labor referee, and all such parties shall be deemed to be parties to the proceedings. A copy of the original notice, relative to said jurisdictional controversy, shall be sent by certified mail to each party with the first notice of hearing.

BMS 45 Hearings. All hearings before the labor referee shall be conducted in conformity with the following rules and regulations:

(a) All hearings before the labor referee shall be open to the public. It shall be the duty of the labor referee conducting the hearing to inquire fully into the facts in dispute, to call, examine and cross-examine witnesses, and to require the production of such documentary or other evidence as he may deem necessary to fully acquaint him with all the facts relating to the dispute.

(b) Any party in interest to the proceeding shall have the right to appear at such hearing in person, by counsel or representative and to call, examine, and cross-examine witnesses and to introduce into evidence such documentary or other evidence as the labor referee may deem admissible. In such proceeding the parties thereto shall be permitted to introduce only competent evidence, as defined in M.S. 179.01, Subd. 12.

(c) At any such hearing the parties to the dispute may enter into stipulation of facts which shall have the same weight as though evidence had been adduced to prove the same.

(d) Any objection with respect to the conduct of the hearing, including any objection to the introduction of evidence, shall be stated orally, together with a statement of the grounds of such objection and included in the stenographic report of the hearing, if one is kept. No objection shall be deemed waived by further participation in the hearing.

(e) The labor referee may adjourn the hearing from day to day or from time to time and from place to place as he may deem proper upon appropriate notice thereof to the parties to said proceeding.

(f) At the close of the hearing the parties to the proceeding shall be entitled to submit the matter on either oral or written arguments as the labor referee may determine. When permission for oral argument is granted, the labor referee shall fix the length thereof, and such argument shall not be included in the stenographic record of the hearing unless it is so directed by the labor referee. If the matter is submitted on written argument, the labor referee shall fix the time for the filing thereof by the respective parties to the proceeding.

(g) All or any part of the testimony of any witness may be disregarded by the referee, if said witness shall refuse to answer any question which the referee has ruled to be a proper one.

(h) The record in the proceedings shall consist of the order appointing the labor referee, the notice of hearing, proof of service of such notice of hearing upon the parties to the proceeding, the objections of any person to the proceedings, the rulings thereon, all stipulations between the parties, exhibits, documentary evidence, depositions, findings of fact and conclusions, if such are made, the stenographic notes or record, if kept, and the determination of the jurisdictional controversy by the labor referee.

BMS 46 Witnesses-Subpoenas

(a) Witnesses shall be examined orally, under oath, provided, however, that the testimony of all witnesses who reside outside of the state or who, through illness or other cause, are unable to testify in person before the labor referee may be taken by deposition in such manner and form as may be prescribed by the labor referee.

(b) Subpoenas requiring the attendance and testimony of witnesses and the production of evidence, including books, records, correspondence, or documents relating to any matter pending before the labor referee, shall be issued in the name of the referee over his signature. Applications for the issuance of such subpoenas shall be filed with the referee by the party to the proceedings desiring the subpoena. Such application shall be timely and shall specify the names of the witnesses, the books, records, correspondence, or documents required to be produced by the witness. Witnesses summoned before the labor referee shall be paid fees and mileage in the same manner and amounts as are paid to witnesses in the district court of this state. Witnesses whose depositions are taken and persons taking the same shall be entitled to the same fees as provided by law for taking of depositions for use in the district court of this state. Witness fees and mileage shall be paid at the time of the service of the subpoena to the witness whose attendance is required by the subpoena by the parties at whose instance the subpoena is issued, excepting witnesses subpoenaed by the labor referee, who shall be paid as provided by law.

BMS 47 Determination of Referee. When the labor referee shall have concluded his hearings and investigations, he shall make a determination of the jurisdictional controversy. The determination shall be in writing and shall set forth in detail the findings of the labor referee upon all the issues before him and his decision thereon. The labor referee shall file with the Director the record of the proceedings. In case, before a final determination is made, a written agreement shall be filed with the labor referee and the Director, duly executed by all the parties to the dispute, settling all questions at issue, the labor referee shall cease his activities without making a determination and shall include in the record of the proceedings said written agreement.

BMS 48 Reconsideration. Any party to a jurisdictional controversy proceeding may request a reconsideration or clarification of the determination of the labor referee, on any or all of the following grounds: That there is material evidence newly discovered, which, with reasonable diligence, could not be found or produced at the prior hearings; that the determination is not justified by the evidence; that any adverse party has been guilty of misconduct which materially affected the result. Such request shall be in writing and shall set forth the facts upon which it is based. Copies of such request shall be served on all other parties to the proceeding and upon the labor referee. The labor referee may then proceed to consider the request if he deems the grounds stated sufficient, or may reject the same if he deems the grounds insufficient. If the labor referee

determines to consider the request, he shall order a preliminary hearing thereon, notice of which shall be given as provided for the first hearing upon such jurisdictional controversy. After such hearing the labor referee shall make his order granting or denying the request. If the request is granted, the labor referee shall proceed to reconsider or clarify the determination and shall fix a time and place for hearing thereon, of which notice shall be given as for the first hearing. The labor referee may by order limit the matters upon which he will receive new or additional evidence. Thereupon, further proceedings shall be had as upon the original notice or jurisdictional controversy. At the conclusion thereof, the labor referee shall affirm his determination or shall make and file an amended determination which shall supersede the original determination.

BMS 49 (Reserved for future use)

CHAPTER FIVE: BMS 50-69

RULES OF PROCEDURE FOR THE INVESTIGATION OF FORMAL RECOGNITION OR APPROPRIATE REPRESENTATION UNIT QUESTIONS CONCERNING PUBLIC EMPLOYEES

BMS 50 Purpose and Construction. These rules govern the conduct of all proceedings before the Director of Mediation Services involving investigation and certification of formal representative or appropriate representation unit controversies arising under M.S. 179.52. These rules shall be liberally construed to effectuate the purposes and provisions of the Minnesota Labor Relations Act, M.S. 179.52. The Director may waive any requirement of these rules unless a party shows prejudice thereby.

BMS 51 Definition. Unless the language or context clearly indicates that a different meaning is intended the words, terms, and phrases in these rules shall have the same meaning and definitions as is contained in the definitions used in M.S., Chapter 179.

BMS 52 Request for Investigation of Formal Recognition or Appropriate Representation Unit. A request for investigation concerning the question of definition of the appropriate representation unit or formal recognition shall be filed with the Director of Mediation Services by the governmental agency, the labor or employee organization, or the employees. Such request shall be in writing in the form hereinafter prescribed. Forms for filing this information may be obtained from the office of the Director.

BMS 53 Required Information. The request shall be addressed to the Director of Mediation Services and shall contain the following information:

- (a) Type of request:
 1. Definition of appropriate unit;
 2. formal recognition;
 3. or both.
- (b) Type of organization making the request; be it by the labor organization, governmental agency, employee organization or an unorganized group of employees, and the name, address and telephone number of the petitioner.
- (c) The name, address and telephone number of the agent or attorney who represents the petitioner.
- (d) The name, address and telephone number of the adverse party in the dispute.
- (e) The name, address and telephone number of the agent or attorney for the opposing party, if known.
- (f) Type of governmental agency involved.
- (g) A statement of the proposed appropriate representation unit, the approximate total number of employees involved in the unit and the geographic work location, or locations of the employees.
- (h) Has formal recognition been requested and denied by the governmental agency?
- (i) The name, address and telephone number of any other labor or employee organization known to represent employees in the appropriate bargaining unit proposed.

BMS 54 Notice of Hearing on a Request for Investigation for formal Recognition or Appropriate Representation Unit or Both. Upon receipt by the Director of a request in proper form, he shall investigate the controversy as provided by law. He may investigate such controversy in person or through an agent assigned by him. He shall provide an appropriate hearing. Notice of such hearing shall be given to all parties directly involved or directly affected by the controversy, as named in the request. The parties named in the request shall be deemed parties to the proceedings. The hearing notice shall be posted in a conspicuous place at the work location or locations of the employees at least four days prior to the scheduled date of the hearing. A copy of the request filed by the petitioner shall be given to each party, except individual employees, with the first notice, and shall be posted in a like manner. At the hearing, the Director shall provide that a stenographic report be kept.

BMS 55 Hearing Procedure on a Request for Investigation for Formal Recognition or Appropriate Representation Unit or Both. A hearing shall be held by the Director or his agent on all notices properly completed and received by the Bureau of Mediation Services, be they questions of appropriate unit definition, formal certification, or both. If the question of appropriate unit definition is agreed to by the parties, such agreement will be recorded into the official transcript of the hearing. If there is no mutual agreement on appropriate unit definition by the parties, the Director or his agent will proceed with the hearing as stated in this section.

Upon the parties reaching mutual agreement on the appropriate unit definition or upon the completion of testimony and evidence being submitted by the parties concerning the appropriate unit, the Director of Mediation Services or his agent will proceed to gather evidence and testimony necessary to conduct a formal representation election.

At the hearing held by the Director of Mediation Services or his agent involving the question of an appropriate representation unit, any organization having a bona fide interest in the question will be considered a party to the case and will have the right to present pertinent evidence and testimony. Only the organization (s) named in the original petition will be deemed parties to the formal certification procedure and election.

Based on the official transcript and information gathered through an investigation, if it is ordered, the Director of Mediation Services will:

(a) Certify to the parties the appropriate representation unit using the criteria stated in M.S. 179.52, Subd. 4.

and/or

(b) Order an election to be held to determine whether a situation of formal representation exists within the appropriate unit.

All hearings before the Director of Mediation Services shall be conducted in conformity with the following rules and regulations.

(a) All hearings before the Director shall be open to the public. It shall be the duty of the Director conducting the hearing to inquire fully into the facts in dispute, to call, examine and cross-examine witnesses and to require the production of documentary or other evidence as he may deem necessary to fully acquaint him with all the fact relating to the dispute. All hearings shall be held in the county where the controversy has arisen or exists.

(b) If requested by the Director, the governmental agency involved shall be required to provide an appropriate current payroll list.

(c) Any party claiming and having a recognized interest in the proceeding shall have the right to appear at such a hearing in person, by counsel or

representative and to call, examine and cross-examine witnesses and to introduce into evidence such documentary or other evidence as the Director may deem admissible. In such a proceeding the parties thereto shall be permitted to introduce only competent evidence, as defined in M.S. 179.01, Subd.12.

(d) Any objection with respect to the conduct of the hearing, including any objection to the introduction of evidence, shall be stated orally, together with a statement of the grounds of such objection and included in the stenographic report of the hearing. No objection shall be deemed waived by further participation in the hearing.

(e) The Director may adjourn the hearing from day to day or from time to time and from place to place as he may deem proper upon appropriate notice thereof to the parties to the proceeding.

(f) At the close of the hearing the parties to the proceeding shall be permitted to submit written arguments. The Director shall fix the time for the filing of such arguments by the parties to the proceeding.

(g) The record of the proceeding shall consist of the following:

1. The request for investigation,
2. the notice of hearing,
3. proof of service of such notice upon the parties to the proceeding,
4. the objections of any person to the proceeding.
5. all stipulations between the parties,
6. exhibits,
7. documentary evidence,
8. depositions,
9. findings of fact and conclusions ,
10. the stenographic notes and
11. the certification order of the Director.

BMS 56 Election Procedure. The Director of Mediation Services shall direct that an election be conducted either by himself or a designated representative, in the case of a request for a formal representation investigation. Upon conclusion of such an election, the agent conducting the same shall prepare a report containing a tallying of the ballots and the results of such election. The parties to the election may each designate one person as an observer who shall be permitted to be present at the place of the election during the casting of the ballots and the counting thereof by the Director or his agent. Immediately upon the completion of the tallying of the ballots cast, the person conducting the election shall place all ballots cast and a copy of the tally in an envelope, which will be retained by the Director in his files for a period of not less than thirty days, subject to inspection as hereinafter provided. The parties to the election shall be furnished with a tabulation of the ballots cast in the election and the result thereof.

BMS 57 Voter Eligibility. The right of any employee to vote at an election will be determined by the Director of Mediation Services as a result of the hearing procedure herein provided. Upon the determination by the Director of the appropriate representation unit, and the determination of the employees eligible to vote, such determination will be contained in the election order sent to the parties involved. The observers named by the parties involved shall have the right to question the identities of persons eligible to vote. Questions concerning the proper placement of employees within or out of the appropriate formal representation unit shall be brought up at the time of the hearing and will be determined by the Director in his election order.

BMS 58 Certification Order. The Director of Mediation Services shall, upon completion of the procedure hereinbefore described, forthwith certify to the parties in writing the name of the formal representative or the appropriate representation unit.

BMS 59 Objection to Certification. An objection to be valid must be filed with the Director of Mediation Services within ten calendar days from the deposit of said certification order in the United States mail. If it appears to the Director that such objection may raise substantial and material issue with respect to the correctness of said certification, he shall issue and cause to be served upon the parties, a notice fixing a time and place of a hearing upon said objections. If the Director shall determine, after the close of such hearing, upon the record made therein, that such objections are well taken, he shall then forthwith declare the certification void and shall proceed in the same manner as though no certification had been made. Upon an objection to the certification, the Director may stay the operation of the order of certification until the hearing and determination of the objections to the original order of certification.

BMS 60-69 Reserved for Future Use

CHAPTER SIX: BMS 70-79

RULES OF PROCEDURE BEFORE BOARDS OF ARBITRATION APPOINTED UNDER M.S. 179.09

BMS 70 These rules shall apply to all arbitration proceedings under Minnesota Statutes Chapter 179, subject to all applicable provisions of the law.

BMS 71 Arrangements for Hearing. When a board of arbitrators has been appointed, it shall immediately fix a time and place for the first hearing before said board. The chairman shall mail to each of the parties to the dispute, at least five days before the date set for the first hearing, a notice thereof, together with a copy of these rules; provided that notice may be waived or the time therefor shortened by agreement of the parties. Any hearing may be adjourned to a certain time, which shall be announced at the close of the hearing, without further notice, but if no time be fixed for further hearing upon adjournment, notice shall be given as for the first hearing.

BMS 72 Proceedings during the Hearing. Any party to the dispute may be represented by a representative or an attorney at law. The first party requesting any action shall be called the moving party. The other party shall be called the defending party. Each party shall have the right to cross-examine the witnesses of the other party. The order of the proceedings shall be as follows: The moving party shall outline his case, call his witnesses and present his evidence; upon the completion of the case of the moving party, the defending party shall outline his case, call his witnesses and present his evidence. The opportunity to call witnesses in rebuttal shall be accorded to each party. Exhibits may be offered by either party and when received in evidence by the board shall be made a part of the record. After the parties have concluded the presentation of their evidence, they may make arguments in the same order as hereinbefore provided for submission of evidence, and thereupon the hearings shall be closed. All proceedings and the record thereof shall be confidential unless both parties agree in writing to the release thereof by the board. No member of the board shall present the case or examine the witnesses of any party to the dispute except so far as such examination may be necessary to amplify the testimony disclosed by the examination by the parties to the dispute.

BMS 73 Evidence. The board shall hear all evidence which is competent, relevant and material to the issue. The board shall not conduct any hearing hereunder unless all parties to the dispute are present in person or by their designated representatives; provided, however, that a hearing may proceed in the absence of any party who consents thereto, or who fails to appear after due notice of the hearing, or who leaves without being excused by the board. The board may, however, make any independent inspection of the subject matter of the dispute, or make such inquiries or obtain such information outside of the hearings as it may deem necessary and proper; provided, however, that the parties to the dispute shall be afforded an opportunity to examine any evidence so secured, and to introduce evidence in opposition thereto, unless the right to such examination and introduction of evidence is waived in writing. The parties shall furnish such evidence as the board may require, as far as possible and the failure to produce such evidence when required may be considered by the board in

making its award. The board may, at its discretion, receive written briefs, and shall fix at the close of the hearings the time within which the same shall be served upon the opposing parties and filed with proof of such service.

BMS 74 Amendments. The original statement of the dispute may be amended by a supplemental written agreement signed by all parties and filed with the board at any time before the final decision. No issues shall be considered by the board except as specified in the original agreement or a supplemental agreement executed and filed as herein provided.

BMS 75 Award. When the board shall have concluded its hearings and investigations, it shall make an award. The award shall be in writing, signed by a majority of the arbitrators, and shall set forth in detail the findings of the board upon all the issues before it and its decision thereon. The board shall file with the Director the stenographic record of its proceedings, if kept, together with all exhibits and records and the original findings, opinion and award made by it. In case before a final award is made a written agreement shall be filed with the board, duly executed by all of the parties to the dispute, settling all questions at issue, the board shall cease its activities without making an award and shall file its records with the Director as hereinbefore provided.

BMS 76 Reconsideration of the Award. Any party to an arbitration proceeding may request a reconsideration of the award made by the board therein upon any or all of the following grounds: That there is material evidence, newly discovered, which with reasonable diligence could not have been found and produced at the prior hearings; that the award is not justified by the evidence or is contrary to law; that any adverse party has been guilty of misconduct which materially affected the result. Such request shall be in writing and shall set forth the facts constituting grounds upon which it is based. Copies of such request shall be served upon all other parties to the proceedings, upon the chairman of the board, and upon the Director. The board may then proceed to consider the request, if it deems the grounds stated sufficient, or may reject the same if it deems the grounds insufficient. If the board determines to consider the request, it shall order a preliminary hearing thereon, notice of which shall be given as provided for the first hearing upon an arbitration agreement. After such hearing, the board shall make its order granting or denying the request. If the request is granted, the board shall proceed to reconsider the award, and shall fix a time and place for the hearing thereon, of which notice shall be given as for the first hearing. The board may by order limit the matters upon which it will receive new or additional evidence. Thereupon further proceedings shall be had as upon the original arbitration agreement. At the conclusion thereof the board shall affirm the award or shall make and file amended award which shall supersede the original award.

BMS 77-79 (Reserved for future use)

**BUREAU OF MEDIATION SERVICES RULES
AND REGULATIONS GOVERNING IMPLEMENTATION
OF THE PUBLIC EMPLOYMENT LABOR
RELATIONS ACT**

I. Rules of Procedure for Appropriate Unit Determinations; Representative Elections; Investigation, Certification and Decertification of Exclusive Representative; and Unfair Election Practices Under the Public Employment Labor Relations Act.

BMS 100 Application. These rules govern the conduct of proceedings before the Director of the Bureau of Mediation Services involving determination of an appropriate unit or units, representative elections, investigation, certification and decertification of exclusive representative, and unfair election practice arising under the Public Employment Labor Relations Act.

BMS 101 Policy. These rules shall be liberally construed to effectuate the purposes and provisions of the Public Employment Labor Relations Act. Any requirements of these rules may be waived by agreement of all parties and the approval of the Director.

BMS 102 Definitions

- (a) **Bureau.** "Bureau" means of Mediation Services.
- (b) **Director.** "Director" means the Director of the Bureau of Mediation Services or his authorized agent.
- (c) **Board.** "Board" means the Public Employment Relations Board.
- (d) **Party.** "Party" means public employer, exclusive representative of public employees, public employee organization or public employer organization whose legal rights, duties or privileges will be directly affected by the proceedings or who has a substantial interest in the outcome of the proceedings.
- (e) **Hearing Officer.** "Hearing officer" means the Director or his agent.
- (f) **Service, Serve.** "Service" or "serve" means service of a document required by these rules, by person or certified United States mail, with return requested, postage prepaid and addressed to the party at his 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.
- (g) **Time.** In computing any period of time prescribed or allowed by these rules, the day of the act or event from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, A Sunday or a 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 period of 10 days or less, Saturdays, Sundays or legal holidays shall not be included in computing the period of time.
- (h) **Unfair Election Practice.** "Unfair election practice" means any of the prohibitions outlined in BMS 109 and any unfair labor practice com-

mitted by an employer, or representative candidate, or an employee or group of employees which affect the result of an election.

(i) **Miscellaneous Definitions.** All other words, terms and phrases in these rules shall have the same meaning and definition as contained in the definitions used in Minnesota Statutes, Section 179.63.

BMS 103 Petition for Determination of Appropriate Unit and, or, Certification of Exclusive Representative of Public Employees; Petition for Clarification or Amendment of Appropriate Unit.

(a) **Petition.** A petition for determination of an appropriate unit shall be filed in person or by certified mail with the Bureau by a public employer, by an employee organization, or by a joint request of public employer and employee organization. Such petition shall be in writing in the form prescribed. Such form is available from the Bureau.

(b) **Petition for Clarification or Amendment of Appropriate Unit.** A petition for clarification or amendment of an appropriate unit shall be filed in person or by certified mail with the Bureau by a public employer, by an employee organization, or by a joint request of public employer and employee organization. Such petition shall be in writing in the form prescribed. Such form is obtainable from the Bureau.

(c) **Limitation of Filing Petition.** Where there is an exclusive representative and where a contract is in effect, the Bureau shall entertain a petition for a clarification or amendment of a unit upon a joint request from the employer and the exclusive representative. A petition by either party for clarification or amendment of a unit may be entertained by the Director.

(d) **Contents of Petition.** The petition shall contain the following information:

(1) Type of organization making the request, be it the employee organization, public employer, or a joint request of both parties.

(2) The name, address, and telephone number of the petitioner or petitioners and the name of the agent who represents the petitioner or petitioners.

(3) The name, address, and telephone number of the opposite party, if known.

(4) Type of governmental agency involved.

(5) A statement of the proposed unit, or units, and the approximate number of employees involved.

(6) The name, address, and telephone number of any other employee organization known to represent employees in the proposed unit.

(7) Such other information as the Director may require from time to time.

(e) **Petition for Certification as Exclusive Representative.** If the petition submitted by an employee organization requests certification as an exclusive representative, in addition to the information defined in 103(d), evidence must be submitted with the petition that at least 30% of the employees in the proposed unit wish to be represented by the petitioning employee organi-

zation. Authorization signatures so submitted shall be dated within six months prior to the receipt of the petition.

(f) **Joint Request for Certification of Exclusive Representative.** If the petition submitted is a joint request for certification of an exclusive representative, in addition to the information defined in 103(d), the petition form must be notarized and evidence must be submitted with the petition that more than 50% of the employees in the proposed unit wish to be represented by the employee organization. The employee organization is further required to submit a copy of its constitution and bylaws. Such petition shall be in writing in the form prescribed, which form may be obtained from the Bureau.

BMS 104 Investigation and Hearings on a Petition for Determination of Appropriate Unit

(a) **Notice of Hearing.** Upon receipt by the Bureau of a petition in proper form, the Director shall investigate to determine if sufficient evidence of a question of representation exists and hold hearings as necessary to determine the appropriate unit. Notice of any such hearing will be served on all parties named in the petition and any other party known to the Director to have a substantial interest. Copies of the notice of hearing shall be posted by the employer immediately upon receipt of same in a conspicuous place at the work location or locations. A copy of the petition filed by the petitioner shall be included with the notice of hearing.

(b) **Order Maintaining Status Quo.** Following receipt of the petition, the Director may issue a cease and desist order directing maintenance of the status quo in part or in whole, with respect to terms and conditions of employment or contract negotiations. Such order shall not conflict with existing contract or statutory provisions.

(c) **Hearing on Petition for Determination of Appropriate Unit.** The hearing shall be conducted by a hearing officer with a reporter making a stenographic record of the proceeding. The hearing will be conducted as follows:

(1) All hearings shall be public meetings except when otherwise provided by the Director.

(2) It shall be the duty of the hearing officer to inquire fully into the facts in dispute, to call, examine, and cross-examine witnesses and to require the production of documentary or other evidence as he may deem necessary to fully acquaint himself with all facts relating to the case.

(3) Any party shall have the right to appear at the hearing in person or be represented by an agent to present pertinent evidence and testimony that is competent, relevant and material to the issues.

(4) The public employer shall provide the names and job classifications of employees within the suggested appropriate unit and make available such information to all parties submitting a 30% showing of interest.

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

(6) The hearing officer may adjourn the hearing from day to day or from time to time and from place to place as he may deem proper upon appropriate notice thereof to the parties to the proceeding.

(7) At the close of the hearing, the hearing officer may allow the parties to submit written arguments. The hearing officer shall fix the time for the filing of the arguments.

005300 (d) Record. The record shall consist of the following:

(1) The petition of determination.

(2) The notice of hearing.

(3) Proof of service of such notice upon the parties to the proceeding.

(4) The objections of any person to the proceedings.

(5) All stipulation between the parties.

(6) Exhibits.

(7) Documentary evidence.

(8) Depositions.

(9) Memoranda submitted by the parties.

(10) Upon appeal, the transcript, or parts thereof, as determined pursuant to BMS 112.

(11) Any information obtained during investigations. (Such information shall be made available to all parties prior to a determination).

(c) **Determination of Unit.** The Director will determine the appropriate unit or units on the basis of the record.

(f) Effective Date of Unit Determination

(1) Determination of an appropriate unit shall take effect 10 days after notice to the parties unless appealed to the Board. Copies of the unit determination shall be posted by the employer immediately upon receipt of same in a conspicuous place at the work location or locations of the employees involved.

(2) If requested by the Director, the employer, following the receipt of the appropriate unit determination, shall provide the addresses of employees within the appropriate unit to employee organization(s) on the ballot.

(g) **Orders Pending Appeal of Unit Determination.** At the request of the Board, the Director shall issue such orders as are request by the Board pending the determination of an appeal to the Board.

BMS 105 Petition for Certification or Decertification.

(a) **Certification Petition.** A petition for certification as an exclusive representative in an appropriate unit shall be filed in person or by certified mail with the Bureau by the employee organization, showing evidence that at least 30% of the employees wish to be represented by the petitioner or by a joint request of the employer and the organization.

The petition filed by the employee organization shall be in writing in the form prescribed in Sections 103(d) and 103(e). Forms for filing this information may be obtained from the office of the Bureau of Minnesota. All Rights Reserved.

The joint request of the employer and the employee organization shall be in writing in the form prescribed in Sections 103(d) and 103(f), which form may be obtained from the Bureau.

(b) **Decertification Petition.** A petition for decertification of an exclusive representative in an appropriate unit shall be filed in person or by certified mail with the Bureau showing evidence that at least 30% of the employees in the unit wish to decertify. Such petition shall be in writing in the form prescribed in Section 103(d). Forms for filing this information may be obtained from the office of the Bureau.

(c) **Incumbent Representative.** An incumbent exclusive representative shall by virtue of its certification be considered a party and be entitled to be on the ballot.

BMS 106 Investigation and Hearing on a Petition for Certification or Decertification.

(a) **Notice of Hearing.** Upon receipt of a certification or decertification petition in proper form, the Director shall investigate to determine if sufficient evidence on the question of 30% interest exists and hold hearings as necessary. Notice of any such hearing will be served on all parties named in the petition and any other party known to the Director to have a substantial interest. Copies of the notice of hearing shall be posted by the employer immediately upon receipt of same in a conspicuous place at the work location or locations. A copy of the petition filed by the employee organization or employees shall be included with the notice of hearing.

(b) **Order Maintaining Status Quo.** Following receipt of the petition, the Director may issue a cease and desist order directing maintenance of the status quo, in part or in whole, with respect to terms and conditions of employment or contract negotiations. Such order shall not conflict with existing contract or statutory provisions.

(c) **Hearing.** All hearings shall be conducted in conformity with BMS 104(c).

(d) **Record.** The record shall consist of those items outlined in BMS 104(d).

(e) **Determination.** Based upon the record, the Director shall determine in the appropriate case:

(1) Whether the decertification petition should be granted or denied.

(2) Whether a secret ballot election should be held pursuant to the certification or decertification petition.

BMS 107 Combined Hearings. The Director may combine hearings in determination of appropriate units and certification procedures.

BMS 108 Representative Elections

(a) **Election Order.** Upon proper showing the Director shall issue an election order, requiring that a secret ballot election be held. The election order shall contain a sample ballot and a list of eligible voters. The order shall be sent to the parties at least 10 days prior to balloting. Said order and

accompanying documents shall be posted by the employer immediately upon receipt of same in a conspicuous place at the work location or locations of the employees involved.

(b) **Voter Eligibility.** The right of any employee to vote at an election will be determined by the Director as a result of the hearing procedure herein prescribed. Upon the determination by the Director of the appropriate representation unit, and the determination of the employees eligible to vote, such determination will be contained in the election order sent to the parties involved. Any employee listed as an eligible voter who has been terminated voluntarily or involuntarily and who has not appealed that termination between the eligibility date and the date of the election is ineligible to vote. Eligible voters should be permitted to vote during their work hours without loss of pay.

(c) **Election Ballot.** The ballot shall provide a choice, in addition to the incumbent representative, if there be one, of as many employee organizations as have demonstrated they represent 30% or more of the employees in the appropriate unit, and a choice for "No Representation." Absentee ballots will be provided in all elections.

(d) **Election Procedures**

(1) **Time and Place.** The election shall be held during such hours as the Director may determine, on the premises where the voters are employed, unless the Director determines that the election can be more fairly held at another location or by mail ballot.

(2) **Conducted by Bureau.** The Director may conduct the election directly or assign an agent to conduct the election for him.

(3) **Observers.** The parties to the election may each designate an observer who shall be permitted to be present at each place of the election during the casting of the ballots and the counting thereof by the Director or his agents. The observers named by the parties involved shall have the right to object to the conduct of the election including the right to question the identities of the persons eligible to vote.

(4) **Tally of Ballots.** Upon the conclusion of the election, the Director or his agent shall prepare a report containing a tally of the ballots and the results of the election. Immediately upon the completion of the tally of the ballots cast, the agent shall place all ballots cast and a copy of the tally sheet in an envelope which shall be sealed by the agent and signed by the observers. Said envelope shall be retained by the Director for a period of not less than 60 days. The observers at the election shall be furnished with a tabulation of the ballots cast in the election and the results.

(e) **Run-Off Election.** In the event none of the choices on the ballot receives a majority of the votes cast of the employees in the appropriate unit, a run-off election shall be conducted with the ballot listing only the two choices receiving the greatest number of votes.

(f) **Bar on Elections**

(1) The Director shall not consider a petition for an election for a period of one year following an election.

(2) The Director shall not consider a petition for a decertification or certification election during the effective term of a contract except for a

period for not more than 120 days to not less than 60 days before its date of termination except in the case of teachers, when the period shall be not more than 180 days to not less than 120 days before its date of termination.

BMS 109 Election Prohibitions. Public employers, or their agents, and employee organizations, or their agents, and public employees are prohibited from:

- (1) Campaigning on the day or days of the election.
- (2) Congregating in the polling place during the time polls are open.
- (3) Refusing to comply with such other provisions contained in the election order or a subsequent order issued by the Director or his agent conducting the election.
- (4) Coercing or intimidating or otherwise unlawfully attempting to influence any eligible voter during an election.

BMS 110 Unfair Election Practices.

(a) **Violation.** A violation of any of the prohibitions outlined in BMS 109 or any other unfair labor practice which affects the results of an election shall constitute an unfair election practice.

(b) **Charges.** An employer, employee, employee organization or any other person or organization aggrieved by an alleged unfair election practice may file a charge in person or by certified mail with the Director. The charge shall be filed in writing stating the name and address of the party against whom the charge is filed and shall contain a clear and concise statement of the facts constituting the alleged unfair election practice. A copy of the charge shall be sent by the charging party by certified mail to the party against whom the alleged charges are made. If a charge is filed alleging an unfair election practice which may affect the results of an election to be held, the Director may: 1) hold the election and conduct a hearing at a later date to determine whether the election should be voided, 2) hold the election and seal the ballots until a hearing has determined the issue, or 3) postpone the election until the Director issues his decision.

(c) **Investigation and Hearing.** Upon receipt by the Director of an alleged unfair election practice(s), he shall investigate the issue(s) and hold hearings as necessary. Notice of such hearing shall be served by certified mail on all parties. All hearings shall be conducted in accordance with BMS 104(c).

(d) **Determination.** The Director will issue his findings and such orders as he deems appropriate. If an unfair election practice is found by the Director to have affected the results of the election, he may void such election result and order a new election.

BMS 111 Certification

(a) **Order.** The Director shall, upon completion of the election, certify to the parties in writing the name of the exclusive representative, if any. Where certification is made effective upon a joint request, the certification shall not become effective for a period of 10 days following issuance.

(b) Objections to Certification. An objection to certification, to be valid, must be in writing and postmarked to the Director within 10 days from the receipt of the certification order. If it appears to the Director that such objection may raise substantial material issues with respect to the correctness of said certification, he shall serve upon the parties a notice fixing a time and place of a hearing upon said objections. All hearings shall be conducted in accordance with BMS 104(c). If the Director determines, after the close of such hearing, upon the record made therein, that such objections are valid, he shall declare the certification void and shall proceed in the same manner as though no certification had been made. Upon an objection to the certification, the Director may stay the order of certification until a hearing and determination of the objections to the original order of certification have been made.

BMS 112 Transcripts And Record For Appeal.

(a) **Transcripts.** Within 10 days after service of the notice of appeal the appealing party shall in writing, with a copy to the Executive Secretary of the Public Employment Relations Board and all parties or their representatives of record, order from the Bureau of Mediation Services a transcript of such parts of the proceedings not already part of the record as it deems necessary for inclusion in the record. Unless the entire transcript is to be included, the appealing party, within said 10 days, shall file and serve on the respondent a description of the parts of the transcript which it intends to include in the record and the statement of the issues it intends to present on appeal. If the respondent deems a transcript of other parts of the proceedings to be necessary it shall within 10 days of service of such description order such parts from the Bureau of Mediation Services or serve and file a motion with the Bureau of Mediation Services for an order requiring the appealing party to do so. At the time of ordering, a party must make satisfactory arrangements with the Bureau of Mediation Services for the payment of the cost of the transcript and all necessary copies. The Bureau of Mediation Services shall promptly acknowledge receipt of said order and its acceptance of it, in writing, with copies to the Executive Secretary of the Public Employment Relations Board and all parties or their representatives of record and in so doing shall state the date by which the transcript will be furnished. The Bureau of Mediation Services shall file with the Executive Secretary of the Public Employment Relations Board the transcript with a certificate evidencing the date of the delivery of the transcript. Parties may order copies of the transcript from the Bureau.

(b) **Transcript And Record Fees.** Fees for the preparation of the transcript and for the machine copies of the "record" as required under BMS and PERB rules for appeal, shall be established by the Bureau.

II. Rules of Procedure for Negotiations Under the Public Employment Labor Relations Act.

BMS 120 Application. These rules govern the conduct of negotiations between a certified exclusive representative and a public employer.

BMS 121 Policy. These rules shall be liberally construed to effectuate the purposes and provisions of the Public Employment Labor Relations Act. Any requirements of these rules may be waived by agreement of all parties and the approval of the Director.

BMS 122 Definitions. The words, terms and phrases in these rules shall have the same meaning and definition as contained in BMS 102.

BMS 123 Negotiation Procedure

(a) **Notice.** A notification of the desire to meet and negotiate shall be filed by the exclusive representative with the public employer or by the public employer with the exclusive representative. In all cases, the notice shall be filed with the Bureau. Upon receipt of the notice, the Bureau shall acknowledge the notice.

(b) **Contents of Notice.** The notice shall be in writing and contain the following:

(1) The name, address and telephone number of the party filing the notice.

(2) The name, address and telephone number of the agent of the party filing the notice.

(3) The name, address and telephone number of the other party of agent to the negotiation.

(4) The type of governmental agency or agencies involved.

(5) The date the employer is required by statute, charter, ordinance or resolution, to submit his tax levy or budget, or certify the taxes voted, to the appropriate public officer, agency, public body or office.

(6) The number of employees involved.

Forms for filing this information may be obtained from the Bureau.

BMS 124 Notice of Settlement and Contract Transmittal. Upon the culmination of negotiations resulting in a written contract or memorandum of contract, it shall be the duty of the employer to notify the Bureau that an agreement has been reached and submit a copy of the contract or memorandum of contract.

III. Rules of Procedure Governing Mediation Under the Public Employment Labor Relations Act.

BMS 130 Application. These rules govern the conduct of proceedings before the Bureau involving mediation between a certified exclusive representative of public employees and a public employer.

BMS 131 Policy. These rules shall be liberally construed to effectuate the purposes and provisions of the Public Employment Labor Relations Act. Any requirements of these rules may be waived by agreement of all parties and the approval of the Director.

BMS 132 Definitions. The words, terms and phrases in these rules shall have the same meaning and definition as contained in BMS 102.

BMS 133 Petition for Mediation. A petition for mediation to the Bureau may be filed by an exclusive representative or by a public employer and shall be in writing and shall contain the following:

- (1) The name, address and telephone number of the party or parties filing the petition.
- (2) The name, address and telephone number of the agent representing the petitioner.
- (3) The name, address and telephone number of the adverse party.
- (4) The name, address and telephone number of the agent for adverse party, if known.
- (5) If either party is a member of a multi-employer or multi-employee organization, the name, address and telephone number of the employer or employee organization shall be included with the petition.
- (6) The type of governmental agency involved in the dispute.
- (7) The number of employees involved in the dispute, and description of the appropriate unit.
- (8) A clear and concise statement of the terms and conditions of employment in dispute and the demands of the party filing the petition.

Forms for filing this information may be obtained from the Bureau.

BMS 134 Mediation

(a) **Notice.** The Bureau, upon receiving such petition, shall fix the time and place for meetings of the parties to the dispute and shall notify the parties. It shall be the duty and obligation of the parties to the dispute to comply with the notice of mediation meeting and the duty to meet and negotiate in good faith continues through the mediation process.

(b) **Conduct of Meeting.** Mediation meeting shall be informal and limited by the mediator assigned to matters relevant and material to the settlement of the dispute. Recording devices, stenographic records, or other similar devices are prohibited in mediation meetings unless allowed by the Director and agreed to by the parties. The parties shall respond to the summons of the Director for joint and separate conferences and continue in

such conferences until excused by the mediator. The Director will maintain mediation jurisdiction over the parties until such time as the parties reach an agreement, including assisting in drafting a contract.

BMS 135 Director Initiation of Mediation. When the Director deems it to be in the public interest, he may initiate mediation without a petition. Such mediation shall be instituted by notification to the parties.

IV. Rules of Procedure Governing Certification of a Dispute to the Public Employment Relations Board.

BMS 140 Policy. These rules shall be liberally construed to effectuate the purposes and provisions of the Public Employment Labor Relations Act. Any requirements of these rules may be waived by agreement of all parties and the approval of the Director.

BMS 141 Definitions. The words, terms and phrases in these rules shall have the same meaning and definition as contained in BMS 102.

BMS 142 Certification to the Board.

(a) **Jurisdiction of the Board.** The Director shall only certify a dispute to the Public Employment Relations Board when he has determined that an impasse has been reached and that further mediation efforts would serve no purpose.

(b) **Certification.** A certification shall contain the following:

(1) The petition or petitions requesting arbitration.

(2) A concise written statement by the Director indicating that an impasse has been reached and that further mediation efforts would serve no purpose.

(3) A determination of matters not agreed upon based upon the Director's efforts to mediate the dispute.

(4) The final positions of the parties.

(5) Those agreed upon items to be excluded from arbitration.

(c) Petition for Binding Arbitration/Other-Than-Essential Employees

(1) Any petition for binding arbitration must be filed with the Director. All such petitions, except joint petitions, must be served on all other parties to the dispute.

(2) The Director, within 10 days of receipt of a petition for binding arbitration, shall determine and notify the parties as to whether further mediation efforts would serve a purpose. If further mediation efforts would serve a purpose he may reject the petition.

(3) If the Director determines that further mediation efforts would serve no purpose he shall so notify the parties within 10 days of a receipt for binding arbitration. The notification shall contain the Director's determination of the matters not agreed upon based upon his efforts to mediate the dispute, request the filing of final positions from the parties within 15 days and thereafter the Director shall certify the dispute to the Board for binding arbitration in accordance with BMS 142(b).

(4) The 15-day periods defined in Minn. Stat. 179.69 subd. 3, 5 and 6 shall in no event begin to run until the parties have been notified by the Director that further mediation efforts would serve no purpose.

(5) **Statutory Time Limitations.** In the event the employer and the exclusive representative fail to execute a contract at least 90 days prior to the last date the employer is required by statute, charter, ordinance, or resolution, to submit its tax levy or budget or certify its taxes voted to the appropriate public officer, agency, public body or office, or by September 1, whichever date is earlier, they must submit their respective final positions on those terms and conditions of employment not agreed upon to the Director at least 75 days prior to the last date the employer is required to submit its tax levy or budget, or certify its taxes voted to the appropriate public officer, agency, public body or office or by October 1, whichever date is earlier, except in the case of the executive branch of state government, where such final date shall be November 15 of even numbered years. The Director may then submit the final positions to the Board for binding arbitration or he may retain jurisdiction and require the parties to mediate or continue to mediate the dispute. However, either or both parties, except for essential employees, may after this time petition the Director for binding arbitration stating that an impasse has been reached. The procedures to be followed are those defined in BMS 142(b) and 142(c).

(d) Petition for Binding Arbitration/Essential Employees

(1) Any petition for binding arbitration must be filed with the Director. All such petitions, except joint petitions, must be served on all other parties to the dispute.

(2) The Director, within 10 days of receipt of a petition for binding arbitration, shall determine and notify the parties as to whether further mediation efforts would serve a purpose. If further mediation efforts would serve a purpose he may reject the petition. If the Director received a petition for binding arbitration from an exclusive representative of essential employees and he determines that further mediation efforts would serve no purpose he shall determine matters not agreed upon based upon his efforts to mediate the dispute, request the filing of final positions from the parties within 10 days and thereafter certify the dispute for binding arbitration in agreement with BMS 142(b).

(3) **Statutory Time Limitations.** In the event the employer and the exclusive representative fail to execute a contract at least 90 days prior to the last date the employer is required by statute, charter, ordinance, or resolution, to submit its tax levy or budget or certify the taxes voted to the appropriate public officer, agency, public body or office, or by September 1, whichever date is earlier, they must submit their respective final positions on those terms and conditions of employment not agreed upon to the Director at least 75 days prior to the last date the employer is required to submit its tax levy or budget, or certify its taxes voted to the appropriate public officer, agency, public body or office or by October 1, whichever date is earlier, except in the case of the executive branch of state government, where such final date shall be November 15 of even numbered years. The Director may then submit the final positions to the Board for binding arbitration or he may retain jurisdiction and require the parties to mediate or continue to mediate the dispute. However, the exclusive representative may, after this time, petition the Director for binding arbitration, stating that an impasse has been reached. The procedures to be followed are those defined in BMS 142(d).

BMS 150

V. Rules of Procedure for Challenge of a Fair Share Fee Assessment Under the Public Employment Labor Relations Act.

BMS 150 Application.

These rules govern a challenge by an employee or by a person aggrieved by a fair share fee assessment.

BMS 151 Policy.

These rules shall be construed to effectuate the purposes and provisions of the Public Employment Labor Relations Act.

BMS 152 Definitions.

The words, terms and phrases in these rules shall have the same meaning and definition as contained in BMS 102.

BMS 153 Fair share fee notice form.

The advance written notice of a fair share fee assessment required by Minnesota Statutes Section 179.65, subd. 2, shall consist of the following information:

(a) The name, address and telephone number of the exclusive representative.

(b) The amount of the regular dues of the exclusive representative.

(c) The amount of the fair share fee assessment.

(d) A statement of any benefits available only to members of the exclusive representative and the portion of the regular membership dues attributable to each of those benefits.

(e) A statement as follows: "Within 30 days after receipt of this notice, an employee or person aggrieved by the assessment may challenge the assessment, specifying those portions of the assessment challenged and the reasons therefore." Forms for challenges may be obtained from the Bureau of Mediation Services, Veterans Service Building, St. Paul, Minnesota 55155.

BMS 154 Challenge of a fair share fee assessment.

(a) A petition asserting a challenge to a fair share fee assessment by an employee(s) or person(s) aggrieved by the assessment shall be filed in person or by certified mail with the Director. Such petition shall be in writing in the form prescribed and obtainable from the Bureau.

(b) A petition asserting a challenge to a fair share fee assessment must be filed within 30 calendar days after receipt of the written notice of the assessment. Receipt of the petition by all parties will be presumed effective on the date the petition is received by the Director.

(c) The petition shall contain the following information:

(1) Certification that a written challenge has been filed with the employer and the exclusive representative of the unit.

(2) The name(s) of the employee(s) or person(s) aggrieved by the assessment and filing the petition.

(3) The name, address and telephone number of the agent/representative of the employee(s) or person(s) filing the petition, if any.

(4) The name of the exclusive representative.

(5) The name, address and telephone number of the agent/representative of the exclusive representative.

(6) The name of the public employer.

(7) The name, address and telephone number of the agent/representative of the public employer.

(8) The description of the bargaining unit of which the petitioner is a member.

(9) The amount of the regular membership dues in the unit.

(10) The amount which represents 85% of the regular membership dues in the unit.

(11) The amount of the fair share fee assessment.

(12) The percent of the regular membership dues represented by the fair share fee assessment.

(13) The benefits the petitioner asserts are financed through the membership dues and available only to members of the exclusive representative.

(14) An assertion that the cost of benefits available only to members of the exclusive representative exceeds the amount by which the regular membership dues were reduced in arriving at the fair share fee.

(d) Upon receipt of such a petition the employer shall hold the deductions for a fair share fee in escrow pending an order or decision by the Director.

(e) Upon receipt of such a petition the Director shall investigate to determine if sufficient evidence on or concerning

the question of the circumstances or the amount of the fair share fee assessment exists. If the Director determines that sufficient evidence exists:

(1) he may issue an order directing the employer to hold the fair share fee deductions, or the specific portion thereof which is challenged, in escrow pending a decision by the Director;

(2) he shall require a reply in writing by the exclusive representative of the unit in the form prescribed by the Bureau. The reply shall be filed in person or by certified mail with the Director;

(3) he shall conduct a hearing in accordance with BMS 104(c) (1)-(3) and (5)-(7). Hearings may be combined as deemed appropriate and notice of any such hearings will be served on the challenger(s), the exclusive representative and the employer.

(f) The Director shall decide the issues in a fair share fee challenge hearing on the basis of the record in accordance with BMS 104 (d), but the burden of proof relating to the amount of the fair share fee shall be on the exclusive representative. The decision and order shall be issued to the parties and take effect 10 days after issuance unless appealed to the Board.

BMS GRIEVANCE PROCEDURE

APPLICATION

This grievance procedure shall be applicable whenever a public employer and the exclusive representative of public employees cannot reach agreement on a grievance procedure as required by Minnesota Statutes § 179.70 subd. 1.

DEFINITIONS

Grievance. "Grievance" means a dispute or disagreement as to the interpretation or application of any term or terms of any contract required under Minnesota Statutes § 179.70 subd. 1.

Days. "Days" mean calendar days excluding Saturday, Sunday, and legal holidays as defined by Minnesota Statutes.

Service. "Service" means personal service or by certified mail.

Reduced to Writing. "Reduced to writing" means a concise statement outlining the nature of the grievance, the provisions(s) of the contract in dispute, and the relief requested.

Small Group of Employees. "Small group of employees" means a group of employees consisting of five (5) or less.

Answer. "Answer" means a concise response outlining the employer's position on the grievance.

STEP I.

Whenever any employee or small group of employees have a grievance, he or they shall meet on an informal basis with the employee's or employees' immediate supervisor in an attempt to resolve the grievance within twenty (20) days after the grievance occurred or twenty (20) days after the employee(s), through the use of reasonable diligence, should have had knowledge of the occurrence that gave rise to the grievance. If the grievance is not resolved within fifteen (15) days of the first informal meeting, the grievance may be reduced to writing by the exclusive representative and served upon the public employer's designate (see Step II). Service must be made within fifteen (15) days of the last informal meeting. The employer shall, within five (5) days of receipt of the written grievance, serve his answer upon the exclusive representative. In the event the exclusive representative refuses to process the grievance, the employee(s) may proceed with the grievance and if he so chooses, may select a designee to represent him.

If the grievance involves and affects more than five (5) employees, the grievance may be reduced to writing by the exclusive representative (or the employees or their designated representative in the event the exclusive representative has declined to proceed with the grievance) and must be served upon the employer within twenty (20) days after the grievance occurred or twenty (20) days after the grievants, through the use of reasonable diligence, should have had knowledge of the occurrence that gave rise to the grievance. The employer shall within five (5) days serve his answer upon the exclusive representative (or in the appropriate case, employee(s) or their designee).

STEP II.

The employer's representative shall meet with the exclusive representative (or in the appropriate case, employee(s) or their designee) within seven (7) days after receipt of the written grievance. The parties shall endeavor to mutually resolve the grievance. If a resolution of the grievance results, the terms of that resolution shall be written on or attached to the grievance and shall be signed by all parties. If no agreement is reached within fifteen (15) days of the first Step II meeting, the exclusive representative (or in the appropriate case, employee(s) or their designee), if he elects to proceed with the grievance, must proceed with Step III by serving a proper notification on the appropriate Step III official(s). The notification shall contain a concise statement indicating the intention of the party to proceed with the grievance, an outline of the grievance, the provision(s) of the contract in dispute, and the relief requested.

STEP III.

The employer, its chief administrator, or its special representative shall meet with the designated official of the exclusive representative (or in the appropriate case, employee(s) or their designee) within ten (10) days after receiving notice of intention to proceed with the grievance pursuant to Step II. If resolution of the grievance results, the parties shall reduce the resolution to writing and sign the memorandum as provided in Step II. If the parties are unable to reach agreement within ten (10) days after the first Step III meeting, either party may request arbitration by serving a written notice on the other party of their intention to proceed with arbitration.

If a grievance procedure is provided by a system of civil service or other such body, the exclusive representative or employee(s) must elect either to process the grievance through this procedure or the civil service's or other such body's procedure, and in no event may a grievant avail himself of both procedures.

STEP IV.

The employer and the employee representative shall endeavor to select a mutually acceptable arbitrator to hear and decide the grievance. If the employer and the employee representative are unable to agree on an arbitrator, they may request from the Director of the Bureau of Mediation Services, state of Minnesota, a list of five (5) names. The list maintained by the Director of the Bureau of Mediation Services shall be made up of qualified arbitrators who have submitted an application to the Bureau. The parties shall alternately strike names from the list of five (5) arbitrators until only one (1) name remains. The remaining arbitrator shall hear and decide the grievance. If the parties are unable to agree on who shall strike the first name, the question shall be decided by a flip of the coin. Each party shall be responsible for equally compensating the arbitrator for his fee and necessary expenses.

The arbitrator shall not have the power to add, to subtract from, or to modify in any way the terms of the existing contract.

The decision of the arbitrator shall be final and binding on all parties to the dispute unless the decision violates any provision of the laws of Minnesota or rules or regulations promulgated thereunder, or municipal charters or ordinances or resolutions enacted pursuant thereto, or which causes a

penalty to be incurred thereunder. The decision shall be issued to the parties by the arbitrator, and a copy shall be filed with the Bureau of Mediation Services, state of Minnesota.

Processing of all grievances shall be during the normal workday whenever possible, and employees shall not lose wages due to their necessary participation. For purposes of this paragraph, employees entitled to wages during their necessary participation in a grievance proceeding are as follows:

- a. The number of employees equal to the number of persons participating in the grievance proceeding on behalf of the public employer; or
- b. If the number of persons participating on behalf of the public employer is less than three, three employees may still participate in the proceedings without loss of wages.

The parties, by mutual written agreement, may waive any step and extend any time limits in a grievance procedure. However, failure to adhere to the time limits may result in a forfeit of the grievance, or, in the case of the employer, require mandatory alleviation of the grievance as outlined in the last statement by the exclusive representative or employee.

The provisions of this grievance procedure shall be severable, and if any provision or paragraph thereof or application of any such provision or paragraph under any circumstance is held invalid, it shall not affect any other provision or paragraph of this grievance procedure or the application of any provision or paragraph thereof under different circumstances.

Filed January 22, 1973