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MINNESOTA CODE OF AGENCY RULES

RULES OF THE PUBLIC EMPLOYMENT RELATIONS BOARD

1982 Reprint



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PUBLIC EMPLOYMENT RELATIONS BOARD

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PUBLIC EMPLOYMENT RELATIONS BOARD

Chapter One 8 MCAR §§ 3.001-3.029: Rules Governing Issues and Appeals Presented to the Public Employment Relations Board Pursuant to the Public Employment Labor Relations Act

see 3.001-3.029

§ 3.001 Application. These rules shall apply to:

A. Issues relating to the meaning of the terms supervisory employee, confidential employee, essential employee or professional employee.

B. Appeals from determinations of the Director relating to the appropriateness of a unit or determination of supervisory employee.

C. Appeals from determinations of the Director relating to a fair share fee challenge.

§ 3.002 Policy. These rules shall be liberally construed to effectuate the purposes and provisions of the Public Employment Labor Relations Act. All parties who present issues and appeals to the Board shall be provided a fair, just and timely hearing.

see 3.003

§ 3.003 Definitions.

A. Board. "Board" means Public Employment Relations Board.

B. Bureau. "Bureau" means Bureau of Mediation Services.

C. Director. "Director" means the Director of the Bureau of Mediation Services.

D. Party. "Party" means any person, public employee, public employer, exclusive representative of public employees, public employee organization or public employer organization whose legal rights, duties or privileges will be directly determined in an appeal.

E. Appeal. "Appeal" means (1) issues relating to the meaning of the terms supervisory employee, confidential employee, essential employee or professional employee, (2) appeals from determinations of the Director relating to the appropriateness of a unit or determination of supervisory employee, and (3) appeals from determinations of the Director relating to a fair share fee challenge.

F. Arbitrator. "Arbitrator," when referred to in 8 MCAR §§ 3.030-3.040 means one or a panel of three arbitrators.

G. Supervisory employee. "Supervisory employee," as defined in Minn. Stat., § 179.63, subd. 9, means:

1. when the reference is to other than essential employees:

Any person having authority in the interests of the employer to hire, transfer, suspend, promote, discharge, assign, reward or discipline other employees or responsibly to direct them or adjust their grievances on behalf of the employer, or to effectively recommend such action, if in connection with the foregoing the exercise of such authority is not merely routine or clerical in nature but requires the use of independent judgment. Any determination of "supervisory employee" may be appealed to the public employment relations board.

2. when the reference is to essential employees:

The administrative head and his assistant of a municipality, municipal utility, police or fire department, or any person having authority in the interests of the employer to hire, transfer, suspend, promote, discharge, assign, reward, or discipline other employees or responsibly to direct them or adjust their grievances on behalf of the employer, if in connection with the foregoing the exercise of such authority is not merely routine or clerical in nature but requires the use of independent judgment. Any determination of "supervisory employee" may be appealed to the public employment relations board.

H. Confidential employee. "Confidential employee," as defined in Minn. Stat., § 179.63, subd. 8, means:

Any employee who works in the personnel offices of a public employer or who has access to information subject to use by the public employer in meeting and negotiating or who actively participates in the meeting and negotiating on behalf of the public employer.

I. Essential employee. "Essential employee," as defined in Minn. Stat., § 179.63, subd. 11, means:

Any person within the definition of subdivision 7 whose employment duties involve work or services essential to the health or safety of the public and the withholding of such services would create a clear and present danger to the health or safety of the public.

J. Professional employee. "Professional employee," as defined in Minn. Stat., § 179.63, subd. 10, means:

1. any employee engaged in work (i) predominantly intellectual and varied in character as opposed to routine mental, manual, mechanical, or physical work; (ii) involving the consistent exercise of discretion and judgment in its performance; (iii) of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time; (iv) requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning or a hospital, as distinguished from a general academic education or from an apprenticeship or from training in the performance of routine mental, manual or physical processes;

2. any employee, who (i) has completed the courses of specialized intellectual instruction and study described in clause (iv) of paragraph 1., and (ii) is performing related work under the supervision of a professional person to qualify himself to become a professional employee as defined in paragraph 1.

K. Presiding officer. "Presiding officer" means the Board, one or more of its members or a hearing examiner appointed by the Board who may hear the appeal.

L. 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.

M. Time. In computing any period of time prescribed or allowed by these rules, the day of 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. For any time period of 10 days or less, Saturdays, Sundays or legal holidays shall not be included in computing the period of time.

§ 3.004 Presiding officer.

A. Conducting hearings. The Board may hear appeals as a full body or may delegate to one or more of its members the authority to hear an appeal. The Board may also appoint a hearing examiner to hear an appeal.

B. Authority of hearing examiner. The appointment of the hearing examiner shall, to the extent permitted by law, grant the hearing examiner such authority as the Board deems necessary and appropriate to hear the appeal. The hearing examiner shall not have authority to make the final decisions on the appeal.

C. Function of hearing examiner. The hearing examiner shall hear the appeal consistent with law and the terms of his appointment. His functions shall include, but not be limited to, to hear and rule on preliminary motions, conduct the hearing and prepare findings of fact. The final decision on the appeal shall in all cases be made by the Board.

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 § 3.005 Initiating an appeal. Any party, or parties, may initiate an appeal by serving a copy of a notice of appeal upon all other parties with a copy to the Director and filing the original with the Board within 10 days of a determination by the Director. A notice of appeal shall contain:

A. The name and address of the applicant;

B. A statement of the nature of the decision requested, the reasons therefor and the BMS case number;

C. The names and addresses of all parties who were parties to the determination by the Director, and all other parties known to the applicant who will be directly affected by such appeal; and

D. The signature of the applicant or his representative.

§ 3.006 Answer. Within 10 days after service of a notice of appeal, all other parties may submit a concise answer to the notice of appeal. A copy of such answer shall be served on all parties to the appeal and filed with the Board. Failure to submit an answer shall not be deemed as an admission of any statement contained in the issue of appeal or waiver of any rights afforded to respondent in any statute or rule.

§ 3.007 Notice of hearing. Within 15 days following receipt of a notice of appeal the Board shall serve upon all known parties not less than 10 days prior to hearing a notice stating:

A. The date, place and time of hearing;

B. The rights of the parties to representation (see 8 MCAR § 3.009);

C. That failure to appear or submit positions may prejudice the party's rights (see 8 MCAR § 3.011).

A copy of these rules shall be included with the notice of hearing.

§ 3.008 Continuance of hearing. No request for continuance of a scheduled hearing will be granted within 7 days of a hearing unless exceptional circumstances are shown. A request for continuance shall be made in writing and served upon the other party or parties and filed with the Board.

§ 3.009 Right to representation. Any party may be represented by a designated agent in an appeal before the Board.

§ 3.010 Informal and summary disposition.

A. Informal disposition. Informal disposition may be made of any appeal of any issue therein by stipulation, settlement or agreement at any point in the proceedings so long as said stipulation, settlement or agreement does not violate any provisions of law and is approved by the Board.

B. Summary disposition. The Board, on its own motion or on motion of any party, may dismiss an appeal, or may summarily affirm the order or decision below if the Board lacks jurisdiction or if it clearly appears that the appeal presents no question of substantial merit, or may limit the issues to be considered on appeal to those which present a substantial question. In case of obvious error the Board may summarily reverse or remand for additional proceedings or grant other appropriate relief.

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§ 3.011 **Default.** The Board may dispose of an appeal adverse to a party who fails to appear after receiving due notice and an opportunity for hearing.

§ 3.012 **Intervention.** The Board may, upon timely application, allow a person or organization to intervene in an appeal upon a showing of substantial interest in the outcome of the appeal.

§ 3.013 **Substitution of party.** Substitution of a party or their representative may be allowed only if notice of the substitution is served on all other parties, at least 5 days prior to the hearing date, and filed with the Board.

§ 3.014 **Consolidation.**

A. **Basis.** The Board may, prior to hearing, consolidate cases either on its own motion or upon petition by any party, if it determines (1) that separate appeals present substantially the same issues, (2) that a decision in one case would affect the rights of parties in another case, and (3) that consolidation would not substantially prejudice any party. Notwithstanding the requirements of this rule, the parties may stipulate and agree to consolidation subject to Board approval.

B. **Notice.** Within 5 days following an order for consolidation the Board shall serve on all parties a notice of consolidation.

C. **Objection to consolidation.** Within 5 days of receipt of notice of consolidation any party may file with the Board a petition for severance from consolidation which shall include the BMS case number and reasons for objection.

§ 3.015 **Remand.** At any time prior to its decision, the Board may remand to the Director all or part of the appeal for rehearing or the taking of specified additional evidence.

§ 3.016 **Extension of time.** The parties, with the approval of the Board or its designee, may stipulate and agree to extend any time period provided in these rules.

§ 3.017 **The hearing.**

A. **Review procedure.** Appeals shall be determined upon record established by the Director provided that the Board at its discretion may request additional evidence. Oral and written argument may be allowed upon request of a party.

B. **Hearing procedure.**

1. The hearing shall include the following:

a. The presiding officer shall open the hearing and introduce the following exhibits:

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- (1) Notice of appeal and supporting documents if any;
 - (2) If consolidation has occurred, notice of consolidation, supporting documents, if any;
 - (3) Notice of hearing, supporting documents, if any, and affidavits of service;
 - (4) Any stipulations, settlements or agreements entered into by any of the parties prior to the hearing; and
 - (5) The record of the hearing held before the Director.
- b. Oral arguments shall not exceed 30 minutes per party;
 - c. Five minutes may be allowed for rebuttal;
 - d. The presiding officer may allow filing of memoranda by the parties.
2. If additional oral evidence is to be taken, the hearing shall be conducted as follows:
- a. The presiding officer shall open the hearing;
 - b. All parties may present evidence in conformance with the Board's request for additional evidence;
 - c. All witnesses must be sworn and are subject to cross-examination by all parties;
 - d. The rules of evidence as set forth in 8 MCAR § 3.017 E. will be followed;
 - e. Written matter may be marked as an exhibit and offered into evidence;
 - f. The presiding officer shall introduce the following exhibits:
 - (1) Notice of appeal and supporting documents, if any;
 - (2) If consolidation has occurred, notice of consolidation, supporting documents, if any;
 - (3) Notice of hearing, supporting documents, if any, and affidavits of service;
 - (4) Any stipulations, settlements or agreements entered into by any of the parties prior to the hearing;

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(5) The record established by the Director;

g. Unless otherwise directed by the presiding officer, the party who initiated the appeal shall begin the presentation of evidence and shall be followed by the other parties in a sequence determined by the presiding officer;

h. Cross-examination shall be conducted in a sequence determined by the presiding officer;

i. Rebuttal evidence and final argument shall be allowed;

j. Oral arguments shall not exceed 30 minutes per party;

k. Five minutes may be allowed for rebuttal;

l. The presiding officer may allow filing of memoranda by the parties.

C. The record.

1. Board prepares record. The Board shall prepare an official record in each appeal.

2. What the record shall contain. The record in an appeal shall contain:

a. All pleadings, motions and intermediate rulings;

b. Evidence received or considered;

c. A statement of matters noticed;

d. Proposed findings and exceptions;

e. Any decision, opinion or report by the presiding officer; and

f. The record established by the Director.

3. Transcript. A verbatim record of the hearing shall be taken by a hearing reporter and/or recording equipment.

D. Witnesses. When oral evidence is taken, any party may be a witness or may present witnesses on its behalf at the hearing and such testimony shall be under oath.

E. Rules of evidence.

1. General rules. The presiding officer may admit and consider evidence which possesses probative value commonly accepted by reasonably prudent persons in the conduct of their affairs. The presiding officer shall give effect

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to the rules or privilege recognized by law. Evidence which is incompetent, irrelevant, immaterial or repetitious shall be excluded.

2. Record of Bureau. The official record of the proceeding conducted by the Bureau shall be competent evidence.

3. Evidence must be offered to be considered. All evidence to be considered in the case, including all records and documents in the possession of the Board, shall be offered and made part of the record in the case. No other evidence or factual information, except as provided in 5. below, shall be considered in the determination of the case.

4. Documentary evidence. Documentary evidence in the form of copies or excerpts may be received or incorporated by reference in the discretion of the presiding officer or upon agreement of the parties.

5. Notice of facts. The presiding officer may take notice of general, technical or scientific facts within his specific knowledge. The presiding officer shall notify the parties of any facts that are to be so noticed.

6. Depositions. Upon a showing of good cause the presiding officer may allow the taking of depositions to preserve testimony in the same manner as prescribed by the Minnesota Rules of Civil Procedure.

F. Decorum.

1. The presiding officer may prohibit the operation of a television, newsreel, motion picture, still or other camera and mechanical recording devices in the hearing room while the hearing is in progress, if such operation has a significantly adverse effect on the hearing.

2. No person shall interfere with the free, proper and lawful access to or egress from the hearing room. No person shall interfere with the conduct of, disrupt or threaten interference with the hearing.

§ 3.018 The Board decision.

A. Basis for determination. No factual information or evidence which is not part of the record shall be considered by the Board in the determination of an appeal.

B. Decisions and orders.

1. Formal decision or order with reasons required. All decisions or orders rendered by the Board in an appeal shall be in writing and shall be accompanied by a statement of the reasons therefor.

2. Service and contents. All decisions or orders shall be served on all parties to the appeal and a copy filed with the Bureau. It shall contain:

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- a. A statement of the decision or order in the case;
 - b. A statement of the reasons therefor;
 - c. An affidavit of service.

C. **Default.** When a party with adequate notice fails to plead or otherwise appear within the time allowed by these rules or by statute, decision by default may be entered against him.

§ 3.019 Rehearing.

A. **Board right to rehear.** The Board may, upon request and for good cause shown or on its own motion, reopen, rehear and redetermine an appeal. The petition for rehearing must be filed with the Board within 30 days of the determination of the initial hearing.

B. Obtaining a rehearing.

1. A party to such appeal may request a rehearing by filing a petition. Such petition shall contain

- a. The name and address of the petitioner;
- b. The Board designation for the case;
- c. The reasons in support of the petition for rehearing.

2. **Determination.** The Board shall grant or deny a petition for rehearing as a part of the record in the case. Such petition shall be granted only if the petition or the record reveals irregularities in the proceedings, errors of law occurring during the proceedings, newly discovered material evidence, a change in existing law or good cause for failure to appear or plead. Evidence and argument may be presented at the discretion of the Board in written or oral form or both by any party to the appeal with respect to the petition.

C. **Notice of rehearing.** A notice of rehearing will be provided in the same manner prescribed for a notice of hearing.

D. **Rehearing procedure.** A rehearing of an appeal will be conducted in the same manner prescribed for a hearing.

E. **Decision after rehearing.** The decision after rehearing shall be made in the same manner prescribed for the decision after a hearing.

§§ 3.020-3.029 Reserved for future use.

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Chapter Two 8 MCAR §§ 3.030-3.049 Rules and Regulations Governing the Arbitration of Terms and Conditions of Employment pursuant to Minn. Stat., § 179.72

§ 3.030 Application. These rules shall apply to the procedures governing the creation of an arbitration panel to hear and decide disputes concerning the terms and conditions of employment.

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

§ 3.032 Definitions. The words, terms and phrases in these rules shall have the same meaning and definition as defined in 8 MCAR § 3.003.

Repealed 8,5K 293 8-22-83

§ 3.033 Binding arbitration:

A. Non-essential employees. If the Director has received from the employer a petition for binding arbitration or a petition from the employee representative for binding arbitration and said petition has been agreed upon by the employer representative within the requisite 15 days, and the Director has certified a dispute to the Board pursuant to Minn. Stat., § 179.69, subds. 3 or 5, the Board shall submit to the parties a list of 7 arbitrators.

B. Essential employees. If the exclusive representative to a dispute involving any essential employees has requested arbitration and the Director has so certified, the Board has jurisdiction of the matter and shall proceed in accordance with Minn. Stat., § 179.72, subd. 6.

C. Statutory time limitations. If the parties to a dispute fail to execute a contract within the time periods prescribed by Minn. Stat., § 179.69, subd. 4, they must submit their final positions to the Director pursuant to Minn. Stat., § 179.69, subd. 5. Upon receipt of the final positions, 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.

§ 3.034 Certification of impasse. A certification by the Director pursuant to Minn. Stat., § 179.69, subds. 3 or 5, shall contain the following:

A. The petition or petitions requesting arbitration.

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

C. A determination by the Director of matters not agreed upon based upon his efforts to mediate the dispute.

D. The final positions submitted by the parties.

E. Those agreed-upon items to be excluded from arbitration.

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The Director shall file the certification with the Board and notify the parties by certified mail of the said certification.

§ 3.035 Selection of an arbitrator.

A. The Board shall maintain a master list of available arbitrators. This list shall be made up of qualified persons who have submitted an application in writing to the Board and have been approved. These applications shall be submitted to each member of the Board prior to any action being taken by the Board for approval of the applicant. A majority vote of the Board shall be required for placement or removal from the list.

B. The Chairman of the Board or his designee shall select seven names for consideration as the arbitrator, but the final selection of a seven-member list shall be made by at least an affirmative vote of three members of the Board which shall include the public member. In selecting the seven names, the Board shall endeavor whenever possible to include names of persons from the general geographic area in which the public employer is located. After the seven arbitrators have been selected, the Board shall submit the said names to the parties. Within five days thereafter, the parties shall, under the direction of the Chairman of the Board or his designee, who need not be physically present, alternately strike names from the list. If either party requests a single arbitrator, the parties shall alternately strike names from the list until only one name remains. If neither party requests a single arbitrator, the parties shall alternately strike names from the list until three names remain, which three persons shall constitute the panel. If the parties are unable to agree on who shall strike the first name, the question shall be decided by the flip of a coin. Notice of the selection of the arbitrator shall be immediately transmitted to the Board by the parties. The notice shall contain the name or names of the arbitrator selected and the name of the arbitrator selected by the parties as the convener of the panel. If the parties fail to agree upon a convener, the parties shall each strike, in the continued order of striking, one name from the arbitration panel. The remaining arbitrator shall act as the convener for the arbitration panel for the purpose of commencing the proceeding.

§ 3.036 Submission to arbitrator. After the arbitrator has been selected, the Board shall submit to the arbitrator the certification of impasse by the Director. The arbitrator shall then proceed to hold hearings and make deliberations necessary to render an award.

§ 3.037 Panel chairman. In the event of a 3-member arbitration panel, the panel shall, at its initial session, select one member as Chairman to serve throughout.

In the event the members cannot agree, the Chairman shall be selected by the same procedure as set forth in 8 MCAR § 3.035, subd. B. above.

§ 3.038 Arbitration procedures. *(to top of next page)*

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A. Attendance and testimony of witnesses. The arbitrator may issue subpoenas requiring the attendance and testimony of witnesses and the production of evidence which relates to any matter involved in any dispute before it. Forms for subpoenas may be obtained from the Bureau of Mediation Services. The arbitrator may administer oaths and affidavits, and may examine witnesses. Attendance of witnesses and the production of evidence may be required from any place in the state at any designated place of hearing; provided, however, the arbitration meeting shall be held in the county in which the principal administrative offices of the employer are located, unless another location is selected by agreement of the parties.

B. Guidelines in rendering an award. In considering a dispute and issuing its award the arbitrator shall give due consideration to the statutory rights and obligations of public employers to efficiently manage and conduct its operations within the legal limitations surrounding the financing of such operations. The arbitrator's awards shall be issued by a majority vote of its members considering a given dispute. The arbitrator shall have no jurisdiction over nor authority to entertain any matter or issue not within the definition stated in section 179.63, subd. 18; provided, however, items not within terms and conditions of employment may be included in an arbitration award if such items are contained in the employer's final position. Any award or part thereof issued by the arbitrator determining any matter not included under section 179.63, subd. 18 or the employer's final position shall be void and of no effect.

C. Uniform arbitration act. The arbitrator may avail himself of the procedures provided for in the Uniform Arbitration Act (Minnesota Statutes 577.08-30) as long as the procedures stated therein do not conflict with any provisions of the Public Employment Labor Relations Act.

Repealed by SR 293 8-22-83
§ 3.039 Arbitration awards.

A. Final and binding. The arbitrator's award shall be final and binding upon the parties. Provided, however, that no award of the panel which 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, shall have any force or effect. Any provision of any contract required by section 179.70, which of itself or in its implementation would be in violation of or in conflict with any statute of the state of Minnesota or a municipal home rule charter or ordinance or resolution adopted pursuant thereto, or rule of any state board or agency governing licensure or registration of an employee, provided such rule, regulation, home rule charter, ordinance, or resolution is not in conflict with sections 179.61 to 179.66 and shall be returned to the arbitrator for an amendment to make the provisions consistent with the statute, rule, regulation, charter, ordinance or resolution.

B. Procedure. The arbitrator shall render his award within 10 days from the date that all arbitration proceedings have been concluded, but in any event must issue his award by the last date the employer is required by stat-

ute, 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 November 1, whichever date is earlier. The arbitrator's award shall be for such period as the arbitrator shall direct, except that awards determining contracts for teacher units shall be effective to the end of the contract period as determined by section 179.70, subd. 1. Upon issuing its award, the arbitrator shall transmit the award and any written decision explaining the award to the Board and to the parties.

C. Settlement. Should any issues submitted to arbitration be settled voluntarily before the arbitrator issues his award, notice of such settlement shall be made by the arbitrator in a report issued to both the Board and Director.

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§ 3.040 Payment of arbitrator or panel. All expenses and costs of the arbitrator or panel shall be shared and assessed equally to the parties to the dispute. The term "consideration of a dispute", as used in Minn. Stat., § 179.72, subd. 6, includes, but is not limited to, time incurred in preparation, conduct of hearings, deliberations and preparation of the decision.

§ 3.041 Professional responsibility. In arbitrating disputes concerning terms and conditions of employment pursuant to Minn. Stat., § 179.72, arbitrators shall conform to the standards and procedures set forth in the Code of Professional Responsibility for Arbitrators of Labor-Management Disputes as approved by the National Academy of Arbitrators, American Arbitration Association, and Federal Mediation and Conciliation Service on April 28, 1975, incorporated herein by reference, to the extent not inconsistent with the provisions of the Public Employment Labor Relations Act, 8 MCAR §§ 3.030-3.040, or other applicable law or rule, provided that:

A. Part 5(B)(1)(c), paragraph 112, of the Code of Professional Responsibility should not be construed as limiting the right of the parties to order a copy of the hearing transcript; and

B. Part 6(A)(1)(b), paragraph 124, of the Code of Professional Responsibility should not be construed as limiting the right of the parties to submit written briefs to the arbitrator.

§ § 3.042-3.049 Reserved for future use.

Chapter Three: 8 MCAR §§ 3.050-3.059 Rules and Regulations Governing the Arbitration of Grievances Pursuant to Minn. Stat. § 179.70, Subd. 4

§ 3.050 Application. 8 MCAR §§ 3.050-3.054 shall apply only when the parties are unable to agree upon an arbitrator as provided by contract grievance procedures or the procedures established by the Director.

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

§ 3.052 Definitions. The words, terms and phrases in these rules shall have the same meaning and definition as defined in 8 MCAR § 3.003.

§ 3.053 Petition. In the event the parties are unable to agree upon an arbitrator or arbitrators as provided by contract grievance procedures or the procedures established by the Director, the parties may petition, in writing, the Board for a list of five arbitrators. The petition shall contain:

- A. The name and address of the petitioner;
- B. The names and addresses of the adverse parties; and
- C. A concise statement of the nature of the grievance, the provisions of the contract applicable to the grievance and the relief requested.

§ 3.054 Selection of the arbitrator.

A. The Board shall maintain a master list of available arbitrators. The list shall be made up of qualified persons who have submitted an application in writing to the Board and have been approved. These applications shall be submitted to every member of the Board prior to any action being taken by the Board for approval of the applicant. A majority vote of the Board shall be required for placement or removal from the list.

B. The Chairman of the Board, or his designee, shall select five names for consideration as the arbitrator, but final selection of the five-member list shall be made by at least an affirmative vote of three members of the Board which shall include the public member, a public employee member and a public employer member. In selecting the five names, the Board shall endeavor whenever possible to include names of persons from the general geographic area in which the public employer is located.

C. Once the five arbitrators have been selected, the Board shall notify the parties of the names of the five arbitrators. Within 5 days the parties shall, under the direction of the Chairman or his designee, who need not be physically present, alternately strike names from the list of five arbitrators. Until only one name remains. If the parties are unable to agree on who shall strike the first name, the question shall be decided by the flip of a coin.

D. Notice of the selection of the arbitrator shall be immediately trans-

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mitted to the Board by the parties. The notice shall contain the name of the arbitrator selected and the date for commencement of arbitration proceedings.

E. Upon rendering any award, the arbitrator shall transmit both to the Board and to the Director a copy of his award and any written explanation thereof. Should any issues submitted to arbitration be settled voluntarily before the arbitrator issues his award, notice of such settlement shall be made by the arbitrator in a report issued both to the Board and to the Director.

§ 3.055 Professional responsibility. In arbitrating grievances pursuant to Minn. Stat., § 179.70, arbitrators shall conform to the standards and procedures set forth in the Code of Professional Responsibility for Arbitrators of Labor-Management Disputes as approved by the National Academy of Arbitrators, American Arbitration Association, and Federal Mediation and Conciliation Service on April 28, 1975, incorporated herein by reference, to the extent not inconsistent with the provisions of the Public Employment Labor Relations Act, 8 MCAR §§ 3.050-3.054, or other applicable law or rule, provided that:

A. Part 5(B)(1)(c), paragraph 112, of the Code of Professional Responsibility should not be construed as limiting the right of the parties to order a copy of the hearing transcript; and

B. Part 6(A)(1)(b), paragraph 124, of the Code of Professional Responsibility should not be construed as limiting the right of the parties to submit written briefs to the arbitrator.

§§ 3.056-3.059 Reserved for future use.

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Chapter Four 8 MCAR §§ 3.060-3.069 Rules and Regulations Governing Independent Review Pursuant to Minn. Stat. § 179.76

§ 3.060 Application. The rules and regulations governing independent review and the establishment of a Public Employment Relations Panel shall apply only when no other procedure exists for the independent review for a public employee of a grievance or grievances arising out of the interpretation of or adherence to terms and conditions of employment.

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

§ 3.062 Definitions. The words, terms and phrases in these rules shall have the same meaning and definition as defined in 8 MCAR § 3.003.

§ 3.063 Petition. Any public employee may petition the Public Employment Relations Panel for independent review of a grievance arising out of the interpretation of or adherence to terms and conditions of employment when no other such procedure exists to hear that grievance. The petition shall contain:

- A. The name, address and telephone number of the petitioner;
- B. The name, address and telephone number of the public employer;
- C. A certification that independent review of the grievance is not available under any other procedure; and
- D. A concise written statement of the grievance or grievances arising out of the interpretation of or adherence to terms and conditions of employment and the relief requested.

Repealed 85R 293 8-22-83

§ 3.064 Public Employment Relations Panel. The Board, after determining that independent review was not available to the petitioner, shall within a reasonable time establish a Public Employment Relations Panel or decide the matter as a full Board. If a Panel is established, it shall consist of one member of the Board who represents public employers, one member of the Board who represents public employees and the Chairman of the Board.

Repealed 85R 293 8-22-83

§ 3.065 Hearing.

A. The Board or Panel may hear the grievance as a full body or may delegate to one or more of its members the authority to hear the grievance. The Board or Panel may appoint a qualified hearing examiner to conduct the hearing and prepare findings of fact. The Board or Panel reserves the authority to make the final determination of the case.

B. Within 15 days of selection of a Panel, or a determination that a full Board will hear the matter, the Board or Panel shall serve notice on all parties to the case. Such notice shall contain:

Repealed

1. The time and place of the hearing;
 2. The grievance or grievances to be determined;
 3. The procedure for the hearing; and
 4. A copy of these rules.
- C. All parties shall be entitled to representation at the hearing.

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§ 3.066 Board or panel decisions. Every decision rendered by the Board or Panel shall be in writing and shall be accompanied by a statement of the reasons therefor. Every decision shall be binding on both parties and served on all parties to the case. It shall contain:

- A. A statement of the decision or order in the case;
- B. A statement of the reasons therefor; and
- C. An affidavit of service.

A majority vote of the Board or Panel shall constitute a decision of the Board or Panel.

§§ 3.067-3.069 Reserved for future use.