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STATE OF MINNESOTA

COUNTY OF RAMSEY

BEFORE ARTHUR E. NOOT
COMMISSIONER OF PUBLIC WELFARE

BEFORE GEORGE R. PETTERSEN, M.D.
COMMISSIONER OF HEALTH

BEFORE ALBERT H. QUIE
GOVERNOR

IN THE MATTER OF THE PROPOSED ADOPTION OF RULES OF THE MINNESOTA MERIT SYSTEM GOVERNING COMPENSATION PLAN; LEAVES OF ABSENCE; AND INTER-AGENCY OPERATIONS.

STATEMENT OF NEED AND REASONABLENESS

I. The following considerations constitute the statutory and regulatory authority upon which the above-cited rule amendments are based:

1. Federal law requires that in order for Minnesota to be eligible to receive grant-in-aid funds for its various public welfare, public health and civil defense programs, it must establish and maintain a merit system for personnel administration. See, e.g. 42 USC Ch. 62.[1/]

1/ Also see sections of the United States Code cited hereinafter where the following programs have a statutory requirement for the establishment and maintenance of personnel standards on a merit basis:

Aid to Families With Dependent Children - "AFDC" [42 USC § 602 (a) (5)]
Food Stamps [7 USC § 2020 (e) (6) (B)]
Medical Assistance - "MA" [42 USC § 1396a (a) (4) (A)]
Social Services [42 USC § 1397b (d) (1) (D)]
Comprehensive Mental Health Services [42 USC § 2689T (a) (I) (d)]
Aid to the Blind [42 USC § 1202 (a) (5) (A)]
Aid to the Permanently and Totally Disabled [42 USC § 1352 (a) (5) (A)]
Aid to the Aged, Blind or Disabled [42 USC § 1382 (a) (5) (A)]
Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation [42 USC § 4573 (a) (5)]
Drug Abuse Prevention [21 USC § 1176 (e) (8)]
Health Resources Development [42 USC § 300o-2 (b)]
Civil Defense Personnel and Administrative Expenses [50 USC Appx. § 2286 (a) (4)]
Medical Facilities Assistance [42 USC §300o-1 (b)]
Maternal and Child Health Services/Crippled Children Services [42 USC § 705 (a) (3) (a)]
State and Community Programs on Aging [12 USC § 3027 (a) (4)]

2. Pursuant to such congressional action the Office of Personnel Management, acting under authority transferred to the United States Civil Service Commission from the Departments of Health, Education and Welfare, Labor, and Agriculture by the Intergovernmental Personnel Act (IPA) of 1970 and subsequently transferred on January 1, 1979, to the Office of Personnel Management by the Reorganization Plan Number Two of 1978, promulgated the Standards for a Merit System of Personnel Administration 5 CFR Part 900, Subpart F, 44FR 10238, February 16, 1979, which imposes on the State of Minnesota general requirements for a merit system of personnel administration in the administration of the federal grant-in-aid programs. (See, Footnote 1 Supra.)

3. Under the aforementioned grant-in-aid programs the State of Minnesota, through its appropriate agencies, is the grantee of federal program and administrative funds and, accordingly, the State is under an affirmative obligation to insure that such monies are properly and efficiently expended in compliance with the applicable federal standards. Those standards require that in order for the agencies under the Minnesota Merit System to be eligible to receive federal grant-in-aid funds the Minnesota Merit System rules must specifically include, among other things, an active recruitment, selection and appointment program (5 CFR 900.602 - 900.603), current classification and compensation plans (5 CFR 900.604), training (5 CFR 900.605), retention on the basis of performance (5 CFR 900.606) and fair, non-discriminatory treatment of applicants and employees with due regard to their privacy and constitutional rights (5 CFR 900.607).

4. In conformance with 5 CFR Part 900, Subpart F, the Minnesota Legislature enacted Minn. Stat. § 12.22 subd. 3, § 144.071 and § 256.012,[2/] which respectively authorize the governor, the commissioner of health, and the commissioner of public welfare to adopt necessary methods of personnel administration for implementing merit systems within their individual agencies. Collectively, the resulting programs are referred to as the "Minnesota Merit System".

2/ See also Minn. Stat. §§ 393.07 (5), 256.01 (4), 393.07 (3) and 256.011.

5. Pursuant to such statutory authority those state agencies have adopted comprehensive administrative rules which regulate administration of the Minnesota Merit System.[3/]

6. The Minnesota Supreme Court upheld the authority of the Commissioner of Public Welfare and by implication that of the Commissioner of Health and the Governor to promulgate personnel rules and regulations in quashing a writ of mandamus brought by the Hennepin County Welfare Board against the county auditor in an attempt to force payment of salaries in excess of the maximum rates established by the Director of Social Welfare.[4/]

> . . . . it is clear that the Director of Social Welfare was clearly right in adopting and promulgating a merit plan which includes initial, intervening, and maximum rates of pay for each class of position of the county welfare board system included within the plan and that the plan so adopted was binding upon all county welfare boards within the state . . . . . . In our opinion the federal and state acts, properly construed, provide that the Federal Security Administrator as well as the Director of Social Welfare shall have authority to adopt rules and regulations with respect to the selection, tenure of office and compensation of personnel within initial, intervening and maximum rates of pay but shall have no authority or voice in the selection of any particular person for a position in the state welfare program nor the determination of his tenure of office and individual compensation.

State ex rel. Hennepin County Welfare Board and another v. Robert F. Fitzsimmons, et al., 239 Minn. 407, 420, 58 N.W. 2d 882, (1953).

7. The above-cited proposed rule amendments are promulgated in accordance with the provisions of applicable Minnesota statutes and expressly guarantee the rights of public employers and Minnesota Merit System employees in conformance with the terms of the state's Public Employee Labor Relation Act (Minn. Stat. §§ 179.61 - 179.77).

3/ 12 MCAR SS 2.490-2.841, 11 MCAR §§ 1.2090-1.2141 and 7 MCAR §§ 1.235-1.315.

4/ "Director of Social Welfare" was the former title of the Commissioner of Public Welfare.

II. The justification establishing the reasonableness of the specific substantive provisions of the proposed rules, all of which concern the Minnesota Merit System operation, is as follows:

A. COMPENSATION PLAN

1. 12 MCAR § 2.494, 7 MCAR § 1.239 and 11 MCAR § 1.2094.

The first proposed amendment is to 12 MCAR § 2.494 A. 1., 7 MCAR § 1.239 A. and 11 MCAR § 1.2094 A. 1. and changes the format of the Merit System compensation plans contained in 12 MCAR § 2.840, 7 MCAR § 1.314 and 11 MCAR § 1.2140. Current Merit System compensation plans provide minimum, intervening and maximum rates of pay for each class of positions. The rules provide that agencies without an exclusive representative (non-unionized agencies) shall choose a salary plan for each occupational grouping of classes from among the compensation plans provided by the Merit System. The rules also provide that within the minimum and maximum salaries for classes on the Merit System plans adopted by the agencies, appointing authorities shall designate the minimum, intervening and maximum salary rates to be paid for each class of positions used by the agency.

Each year the Merit System adjusts its salary rates either as a result of a salary survey or in response to changes in the Twin City Consumer Price Index. Considerable staff time and effort is spent in both deleting the old rates and calculating the new rates provided in 12 MCAR § 2.840, 7 MCAR § 1.314 and 11 MCAR § 1.2140. While it is imperative that minimum and maximum salary rates be continued as part of the Merit System compensation plans, it is not necessary that the intervening rates of pay be maintained in the rules as part of the plans. The proposed amendment is reasonable as a cost-effective measure and necessary in order to implement the revised format for Merit System compensation plans. As provided under 12 MCAR § 2.841, 7 MCAR § 1.315 and 11 MCAR § 1.2141, the Merit System will continue to publish suggested monthly salary rates as part of the salary conversion tables contained in the Public Welfare, Health and Public Safety Merit System manuals. Merit System agencies may refer to the rates in these tables when adopting salary ranges for their classes of positions as required by 12 MCAR § 2.494 B. 2., 7 MCAR § 1.2391 B. and

11 MCAR § 1.2094 B. 2. Incidentally, of the 47 agencies adopting Merit System compensation plans, 27 agencies have adopted salary steps that coincide with Merit System salary steps while 20 agencies have adopted steps that differ from those in the Merit System compensation plans. The trend in recent years has been for more agencies to adopt their own salary ranges that meet their own particular needs within the Merit System minimum and maximum salaries on the plans adopted by the agency.

Other proposed amendments to 7 MCAR § 1.239 A. and 11 MCAR § 1.2094 A. 1. are minor in nature and serve to clarify that amendments to the compensation plan are subject to the public hearing process contained in the Administrative Procedure Act and, in that respect, to provide consistent language with that contained in 12 MCAR § 2.494.

A minor amendment is proposed to 12 MCAR § 2.494 A. 3., 7 MCAR § 1.239 C. and 11 MCAR § 1.2094 A. 3. changing the current rule reference and is necessary in light of the proposed amendments to 12 MCAR § 2.494 A. 1., 7 MCAR § 1.239 A. and 11 MCAR § 1.2094 A. 1. It clarifies the fact that the compensation plan rules will contain only minimum and maximum salary steps for each class of positions and that recommended intervening salary steps will be contained in the respective merit system manuals.

Amendments are proposed to 12 MCAR § 2.494 F. 3., 7 MCAR § 1.2395 C. and 11 MCAR § 1.2094 F. 3. changing the general salary adjustment recommended for Merit System employees from eight percent to 7.8 percent and is necessary in order to comply with Merit System rules governing recommended salary adjustments in even-numbered years. Language contained in 12 MCAR § 2.494 C. 4., 7 MCAR § 1.2392 D. and 11 MCAR § 1.2094 C. 4. describes the process to be followed in even-numbered years for recommending increases in the rates of pay for Merit System classifications and general salary adjustments for employees. The recommendation is arrived at by following a formula specified in the above rules involving changes in the consumer price index for urban wage earners and clerical workers for Minneapolis-St. Paul, as published by the Bureau of Labor Statistics, new series index (1967=100). The formula

requires the supervisor to recommend that all rates of pay for all classifications be adjusted by an amount equal to 80 percent of the increase in the consumer price index between June of the current year and June of the preceding year with the amount being rounded to the nearest tenth of a percent, not to exceed nine percent. The rule further provides that the same percentage increase recommended for all rates of pay shall also be recommended as a general salary adjustment for all employees. The Bureau of Labor Statistics June consumer price index report for Minneapolis-St. Paul showed an increase in the consumer price index for the period June, 1981 to June, 1982 of 9.8 percent. Eighty percent of this increase equals 7.8 percent rounded to the nearest tenth of a percent and so, under the formula, the recommended general salary adjustment for employees is 7.8 percent.

It should be emphasized that the Merit System recommended salary adjustment does not apply to employees in a formally recognized bargaining unit. There are 29 Merit System agencies where employees are covered by a collective bargaining agreement and employee compensation is the product of negotiations between the appointing authority and the exclusive representative. Even in agencies with no collective bargaining agreement, appointing authorities are not required to adopt the Merit System recommended salary adjustment but have the flexibility, under the rules, to adopt a different salary adjustment for their employees. If an agency does adopt the Merit System recommended salary adjustment, the only salary adjustments that are required are those necessary to bring individual employees up to the new minimum salary rate for their classification on the Merit System compensation plan adopted by their agency.

B. Leaves of Absence

1. 12 MCAR § 2.504 and 7 MCAR § 1.250. (Under the provisions of 11 MCAR § 1.2091 B. the Department of Public Welfare Rules 12 MCAR §§ 2.495-2.510 also apply to the Department of Public Safety's county and local agencies.) Amendments being proposed to 12 MCAR § 2.504 A., 3. a. and 4. a. and 7 MCAR § 1.250 A., D. 1. and E. 1. relate to vacation and sick leave accrual rates for employees covered by the Merit System rules. The proposed new language provides appointing authorities in agencies without a formal collective bargaining agreement with the authority to develop and adopt consistent county-wide vacation and sick leave accrual rate policies that would apply to all employees covered by the Merit System rules.

Good personnel management practice dictates that certain basic personnel policies applicable to all employees of a given employer be administered on a consistent basis. Vacation and sick leave are two basic fringe benefits enjoyed by all employees. The current Minnesota Merit System rules provide that employees covered by the rules shall accrue vacation and sick leave at the rate of one working day for each full month of service. This rate was established as a minimum standard in the rules after public hearing in August 1970, although, for some 18 years prior to that time, the same rate was in the rules as a recommended minimum standard. In practice, most agencies provide employees with increasingly higher vacation leave accrual rates related to length of employment in the agency. It should be pointed out that, in the 29 Merit System agencies where employees are included in a formally recognized bargaining unit represented by an exclusive representative, the minimum vacation and sick leave accrual rate contained in the rules do not apply. Instead, the rules themselves allow for the negotiation of leave policies between the employer and an exclusive representative.

It is the position of the department that employers should treat all their employees in a consistent manner relative to basic personnel policies. To the extent that department rules inhibit the consistent application of these policies, the rules should be changed at least to allow for the desired level of flexibility in administration. The department believes that the language contained in the proposed amendment addresses this issue by not only encouraging consistency in developing a personnel policy governing vacation and sick leave accrual but also increasing the opportunities for administrative decision-making at the local operating level which has been expressed as a concern, from time to time, by some county commissioners.

It should be noted that the proposed language does not mandate consistency. This should not be interpreted as any lessening of the department's desire for consistency but rather a recognition of what currently exists in the counties in terms of leave policies. Some counties have consistent leave policies applied on a county-wide basis while others do not. Of those counties lacking a consistent policy, some have indicated it is a matter of concern on the part of appointing authorities while others do not view it as a concern. An objective of the department as stated in the rules is to

provide appointing authorities with an effective system of personnel administration based on merit principles. While the ultimate employer of all personnel covered by the rules is the county board, county welfare board or human services board, members of these boards are not affected by the provisions of the Merit System rules whereas the rules directly affect all agency employees including, in many cases, the agency head. Therefore, in drafting this proposed rule language, the department attempted to be cognizant not only of the current situation as it exists as well as the desire for increased flexibility and avoidance of unnecessary mandates in the rules but also mindful of the somewhat divergent opinions held by rank and file employees, agency administrators and county commissioners relative to the proposed rule change.

In summary, the proposed rule amendments represent an effort by the department to provide more flexibility to appointing authorities in determining policy as well as to promote consistency without mandating it. The proposed language, in and of itself, does not reduce in any way the minimum vacation and sick leave accrual rates being earned by Merit System employees since 1970 under current rule language. At the same time, the language does provide appointing authorities with the authority to deviate from the rule minimums, in the interest of attaining county-wide consistency, without requiring that such action be taken. Since the proposed new language does not mandate any change in current leave policy, it is both necessary and reasonable to retain the minimum vacation and sick leave accrual rates in rule language to ensure that those benefits are both consistent and clearly spelled out at least for those county employees covered by the Merit System rules.

There is widespread support from outside the department for a change in rule language as evidenced by the resolutions from 20 counties as well as the letter from MACSSA (Minnesota Association of County Social Service Administrators). There are some comments appropriate to the resolutions which the department would like to make. In six of the counties which submitted resolutions (Aitkin, Beltrami, Freeborn, Houston, Itasca and Waseca), employees covered by the Merit System rules are also covered by a collective bargaining agreement. Since the rules already provide that leave policies in these agencies may be negotiated with the exclusive representative, their positions on the proposed change are less than relevant. While it is true that Minn. Stat. § 256.012

does not specify that the rules shall address minimum vacation and sick leave accrual rates or other fringe benefits, it is equally true that Minn. Stat. § 256.012 does not forbid the commissioner from promulgating rules addressing minimum vacation and sick leave accrual rates or other fringe benefit matters. The federal standards for a merit system of personnel administration do not specifically mention fringe benefits but do specifically require maintenance of a compensation plan. To an employer fringe benefits represent compensation, albeit indirect rather than direct compensation. The proposed rule change does represent increased flexibility for policy-making at the local level and the opportunity, at least, for reducing administrative costs. Finally, the Merit System rules cover 76 agencies representing employees in 80 counties. Of the total, 29 agencies have formal collective bargaining agreements while 47 do not. While 14 counties having non-organized social service agencies submitted resolutions, 33 agencies representing 39 counties did not take similar action even though contacted and asked to consider adopting a resolution.

The department recognizes that alternative language could have been proposed that would have more drastically altered the impact of the rule on county agencies. With this proposal, the department has attempted to address legitimate questions and concerns that have been raised about the rule. The proposed rule language does provide the needed flexibility to those appointing authorities who wish to develop and implement a consistent county-wide policy with respect to employee vacation and sick leave accrual rates. By the same token, it does not mandate any change in current policy by those appointing authorities who do not have a concern with or a desire to deviate from current Merit System accrual rates. We believe this proposed rule change to be not only necessary in order to provide increased flexibility for policy-making at the county level but also reasonable in terms of its approach to the issue which represents a recognition of the differing views on the subject held by all affected groups.

On August 26, 1982, the Merit System Council met in an open meeting to consider the department's proposed amendments and to take testimony relative to the proposal. The Council unanimously recommended that the amendments be adopted as proposed by the department.

C. Inter-agency Operations

1. 12 MCAR § 2.509 and 7 MCAR § 1.255 (Under the provisions of 11 MCAR § 1.2091 B. the Department of Public Welfare Rules 12 MCAR §§ 2.495-2.510 also apply to the Department of Public Safety's county and local agencies.)

Several minor amendments are proposed to 7 MCAR § 1.255 A. 1. and C. 1. substituting "commissioner" for "secretary and executive officer" in identifying the administrative head of the Health Department. The old title of this position was "secretary and executive officer." Minnesota Laws 1977, Chapter 305 eliminated all references to the Board of Health and the Secretary and Executive Officer. Minnesota Laws 1977 § 305.39 amended Minn. Stat. § 144.011 (1976) by abolishing the State Board of Health and transferring all powers and duties to the Commissioner of Health. That statutory change makes these proposed amendments necessary.

Several other minor amendments to all of the sections of 12 MCAR § 2.509 and 7 MCAR § 1.255 change "Supervisor" from upper-case to lower-case type making it consistent with other references to the position elsewhere in the rules.

Amendments are proposed to 12 MCAR § 2.509 C. 1. and 7 MCAR § 1.255 C. 1. relative to cooperation with other merit system jurisdictions that deletes some of the current rule language and proposes new language concerning transfers of employees from other jurisdictions. In spite of the current rule language, the Merit System has not, in the last eight years, added names from another jurisdiction's eligible register to one of our own eligible registers. There are potential problems with data privacy statutes in doing this. Quite frankly, the language has been found to be of no value and, therefore, we are proposing its abolishment.

We do believe the Merit System has a responsibility to facilitate the transfer of qualified employees when appropriate and in the best interest of Merit System agencies. Merit System appointing authorities are entitled to know that a prospective employee in another jurisdiction is performing work comparable in nature to the work to be performed in their agency and that the employee's performance was of a level to have warranted certification as a permanent employee. In addition, they need to be satisfied that the selection process for the employee's present position required the demonstration of knowledges, skills and abilities similar to those required in the selection process for the Merit System class to which transfer is being proposed. The proposed new language does require, as conditions for transfer, that there be comparability between the two positions involved in terms of their classification level, that the selection process used to appoint persons to the respective positions also be comparable and that the employee proposed for transfer has successfully completed a probationary period in his/her present position. We believe

the proposed language to be both necessary and reasonable in order to maximize, as much as possible, the chances that Merit System agencies will transfer in an employee with sufficient training and experience for success in the new position.

D. Compensation Plan

1. 12 MCAR § 2.840, 7 MCAR § 1.314 and 11 MCAR § 1.2140.

Proposed amendments to 12 MCAR § 2.840, 7 MCAR § 1.314 and 11 MCAR § 1.2140 are necessary in order to adjust salary rates for Merit System classes for 1983 in accordance with the formula contained in 12 MCAR § 2.494 C. 4., 7 MCAR § 1.2392 D. and 11 MCAR § 1.2094 C. 4. They are also necessary to carry out the intent of the proposed amendments to 12 MCAR § 2.494 A. 1., 7 MCAR § 1.239 A. and 11 MCAR § 1.2094 A. 1. to print only the minimum and maximum salaries for all classes in the compensation plan rule.

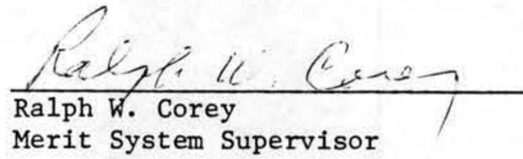
In the formula referred to above, the rules provide that the supervisor shall recommend an adjustment in salary rates for all classes equal to 80 percent of the increase in the Twin City consumer price index between June, 1981 and June, 1982 rounded to the nearest tenth of a percent, not to exceed 9 percent. Since the increase in the Twin City consumer price index between June, 1981 and June, 1982 was 9.8 percent and, since 80 percent of that increase rounded to the nearest tenth of a percent equals 7.8 percent, the 1983 salary rates contained in the compensation plan rules are 7.8 percent higher than the 1982 rates.

Proposed minor amendments to 12 MCAR § 2.840, 7 MCAR § 1.314 and 11 MCAR § 1.2140 are necessary to identify the compensation plans as being for 1983 and those adding the words "minimum" and "maximum" to the compensation plans are needed to clarify that these rates are, indeed, minimum and maximum salary rates for each class of positions.

Finally, amendments are proposed to 12 MCAR § 2.840 which are necessary to provide class titles and minimum and maximum salaries for several new classes established during 1982 and to delete from the compensation plan several classes abolished during 1982 since they are no longer being utilized by Merit System agencies. New classes established include Data Entry Operator, Fiscal

Manager and Personnel Aide while classes abolished include Administrative Services Director, Bookkeeping Machine Operator, Day Care Center Supervisor, Human Services Director I and II, Keypunch Operator, Medical Services Administrator, Nursing Care Advisor, Physical Therapist and Policy/Program Analyst. These amendments are necessary in order to maintain a current classification plan reflective of the various functions being performed by Merit System employees.

The aforegoing authorities and comments are submitted in justification of final adoption of the above-cited proposed rule amendments.



Ralph W. Corey
Merit System Supervisor

Dated: Oct. 7, 1982