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RECEIVED
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ADMINISTRATIVE
HEARINGS

STATE OF MINNESOTA
COUNTY OF RAMSEY

BEFORE LEONARD W. LEVINE
COMMISSIONER OF PUBLIC WELFARE

BEFORE SISTER MARY MADONNA ASHTON
COMMISSIONER OF HEALTH

BEFORE RUDY PERPICH
GOVERNOR

IN THE MATTER OF THE PROPOSED ADOPTION OF
RULES OF THE MINNESOTA MERIT SYSTEM GOVERNING
THE COMPENSATION PLAN.

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. ^{1/}62.

1/ Also see sections of the United States Code and Code of Federal Regulations cited herein where the following programs have a statutory or regulatory 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)]
- 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)]
- State and Community Programs on Aging [12 USC § 3027 (a) (4)]
- Adoption Assistance and Foster Care [42 USC 671 (a) (5)]
- Old-Age Assistance [42 USC 302 (a) (5) (A)]
- National Health Planning and Resources Development, Public Health Service Act [42 USC 300m-1 (b) (4) (B)]
- Child Welfare Services [45 CFR 1392.49 (c)]
- Emergency Management Assistance [44 CFR 302.5]

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 48 Fed. Reg. 9209-9212 (March 4, 1983) (to be codified at 5 CFR Part 900, Subpart F), 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, current classification and compensation plans, training, retention on the basis of performance and fair, non-discriminatory treatment of applicants and employees with due regard to their privacy and constitutional rights (48 Fed. Reg. 9211 (March 4, 1983) (To be codified at 5 CFR § 900.603).

4. In conformance with 5 CFR Part 900, Subpart F, the Minnesota Legislature enacted Minn. Stat. § 12.22 subd. 3, § 144.071 and § 256.01^{2/}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).^{5/}

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 Relations Act (Minn. Stat. §§ 179.61 - 179.77).

^{3/} 12 MCAR §§ 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.

^{5/} The authority of the Merit System to promulgate rules establishing minimum and maximum salary scales and minimum fringe benefits is currently being challenged. County of Le Sueur, et al. v. Levine, et al., Civil File No. 461543 (Ramsey County District Court). Plaintiffs' motions for a temporary restraining order and a temporary injunction enjoining the Merit System from enforcing the compensation plans currently in effect were both denied. Defendants have moved for summary judgment and a decision is currently pending. In the meantime, of course, the challenged rules remain in force and effect.

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

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

The only proposed amendments to these rules are to 12 MCAR § 2.494 F. 3., 7 MCAR § 1.2395 C. and 11 MCAR § 1.2094 F. 3. and change the general salary adjustment being recommended for Merit System employees on all salary schedules from 7.8 percent to 4 percent. These amendments are necessary in order to provide competitive salary adjustments in 1984 for those employees covered by the Merit System compensation plans. They are also reasonable when compared to 1984 agreed-upon adjustments in other public personnel jurisdictions to which the Merit System has traditionally compared its salaries as well as to other measures of general wage increases in the economy and the escalation in the cost of living.

Several public jurisdictions have not as yet finalized any general wage and salary adjustment for 1984. However, the state of Minnesota has recently negotiated collective bargaining agreements with several bargaining units representing some 25,000 state employees that provide for general salary adjustments of 4% effective in July, 1983, and an additional 4.5% effective in July, 1984. Hennepin County has agreed to a general salary adjustment of 5% or 35 cents per hour, whichever is greater, for its organized employees to be effective January 8, 1984. Dakota County has agreed to a general salary adjustment of 4.1% for the organized employees in its human service agency effective January 1, 1984. The city of St. Paul will be granting a salary adjustment of 7.5% to its professional/supervisory employees effective January 1, 1984.

The recommended 4% increase is also reasonable relative to other indices affecting the level of salary rates. The Consumer Price Index for Urban Wage Earners and Clerical Workers increased 2.4% nationwide from June, 1982, to June, 1983, while the Twin City Index for Urban Wage Earners and Clerical Workers rose 2.6% during the same period of time. The Employment Cost Index, developed and published by the Bureau of Labor Statistics, United States Department of Labor, measures changes in straight time average hourly wages and salaries as well as changes in compensation costs that include wages, salaries and employer costs for employee benefits. That index shows that for the twelve month period ending June, 1983, wage and salary rates for state and local government workers increased by 6.4% nationwide while compensation costs for these employees rose 7.1% nationwide. The Bureau of Labor Statistics Area Wage Survey for Minneapolis-St. Paul shows that salaries for office clerical employees in the Twin City area increased by 7.8% from January, 1982, to January, 1983.

Given the magnitude of general salary adjustments agreed to by other public jurisdictions as well as other measures of economic growth and salary progression, it is reasonable to recommend that the salaries of employees covered by Merit System compensation plans be increased by 4% effective January 1, 1984, or on the beginning date of the first payroll period following January 1, 1984, for those agencies on a biweekly or four-week payroll period.

It should be emphasized that the recommended salary adjustment of 4% is simply that, a recommendation. It lacks the binding effect of a negotiated collective bargaining agreement provision. Agencies are not required to adopt the Merit System recommended salary adjustment but have the flexibility, under the rules, to adopt a different salary adjustment (or no adjustment at all) for their employees. Under whatever salary adjustment is finally adopted by an agency, the only salary increases that the agency is required to make 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 for that classification.

Another point deserving of mention is that under the Merit System rules, the Merit System compensation plans do not apply to employees included in a formally recognized bargaining unit (12 MCAR § 2.494 A. 1., 7 MCAR § 1.239 A. and 11 MCAR § 1.2094 A. 1.). There are 31 Merit System agencies where employees are covered by a collective bargaining agreement and employee compensation is the product of negotiation between the appointing authority and the exclusive representative. In these agencies, the only employees subject to the Merit System compensation plans are those in positions that are excluded from the bargaining unit by virtue of being supervisory or confidential in nature.

B. Compensation Plan

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

These rules encompass the compensation plan for all classes of positions covered by the Public Welfare, Health and Public Safety Merit System rules. Amendments to these rules are necessary in order to provide Merit System agencies with salary rates being offered for comparable work elsewhere in both the public and private sector.

The Merit System rules require that, in every odd-numbered year, the Merit System supervisor conduct a review of changes in the level of salary rates in the labor market since the preceding adjustment of the compensation plan (12 MCAR § 2.494 C. 2., 7 MCAR § 1.2392 B. and 11 MCAR § 1.2094 C. 2.). The review should utilize data and findings of other labor market surveys and, to the extent possible, be based upon similar surveys and data used in previous reviews. The 1983 salary survey conducted by the Merit System did utilize data and findings of other labor market surveys and was based, to the extent possible and practicable, on the same sources of data and surveys used in past studies to measure changes in salary rates for comparable kinds of employment. A principal reason for the amendments that are being proposed to 12 MCAR § 2.840, 7 MCAR § 1.314 and 11 MCAR § 1.2140 are minimum and maximum salaries being paid by business and government for jobs comparable to those in the Merit System as determined by the 1983 salary survey.

A second, and equal important, reason for the proposed amendments to the three compensation plan rules are the Federal Standards for a Merit System of Personnel Administration referred to earlier in this Statement of Need and Reasonableness which impose certain general requirements for a merit system of personnel administration in the administration of federal grant-in-aid programs. One of those standards refers to "Providing equitable and adequate compensation." If the Merit System is not in compliance with the standards, agencies covered by our rules are no longer eligible to receive federal grant-in-aid funds. Since it is a responsibility of the Merit System to provide equitable and adequate compensation, we are obligated to review and adjust our compensation plans on a periodic basis to ensure their being current and reasonably competitive. Apart from any obligation, it also simply makes good sense from a personnel management standpoint to review the organization's compensation plan on some kind of regular, recurring basis. Every public and private organization interested in maintaining a competitive position in attracting new employees as well as keeping employees in its labor force engages in the same practice.

To summarize, the proposed amendments to 12 MCAR § 2.840 A., B., C. and D., 7 MCAR § 1.314 A., B., C. and D. and 11 MCAR § 1.2140 A. and B. are the result of salary comparisons made by the Merit System of Merit System salaries to salaries paid by other competing public and private employers for similar kinds of positions, a review of salary surveys covering similar kinds of positions and a review of other general economic indicators.

Current compensation plans from other jurisdictions utilized in the 1983 salary survey include those from Hennepin, Ramsey, St. Louis, Anoka, Blue Earth, Olmsted, Scott and Washington counties; the city of St. Paul and the state of ^{6/} Minnesota. Salary surveys utilized and organizations contacted to obtain salary data used in making salary range recommendations included the Stanton survey, the state Department of Economic Security survey, the Endicott Report, the College Placement Council report, the Bureau of Labor Statistics area wage survey, the Child Welfare League survey, the United Way survey, Veterans Administration hospital salaries, current Minnesota Licensed Practical Nursing Association and Minnesota Nurses Association salary rates and two Minnesota Merit System salary surveys of other county clerical and maintenance and trades employees and public health nurses employed in county public health agencies.

6/ The 1983 Minnesota Merit System salary survey is being entered into the record as an exhibit.

Economic indicators considered in making compensation plan recommendations included changes in the Twin City Consumer Price Index, changes in the Employment Cost Index as measured by the Bureau of Labor Statistics and general wage adjustments agreed to for 1984 by other public jurisdictions with similar positions. Those public jurisdictions that are committed to providing a general wage adjustment in January 1984 will also adjust most of their salary ranges for their classes by the same percentage amount at the same time. The only exceptions to this would be those classes where a greater or lesser percentage adjustment is called for in order to maintain a competitive salary for that kind of employment in the agency.

Proposed amendments to 12 MCAR § 2.840, 7 MCAR § 1.314 and 11 MCAR § 1.2140 adjust the minimum and maximum salary rates for all classes on all salary schedules by 4% effective January 1, 1984, with the following exceptions:

- a. Welfare classes of Welfare Director I, II, III and IV minimum and maximum salaries adjusted approximately 6%.
- b. Welfare and Public Health classes of Public Health Nurse, Public Health Nurse (Team Leader), Registered Nurse and Senior Public Health Nurse minimum salaries adjusted 4% and maximum salaries adjusted approximately 8% on the A and B plans; minimum salaries adjusted approximately 8% and maximum salaries adjusted approximately 13% on the C plan.
- c. Welfare and Public Health classes of Assistant Director of Public Health Nursing, Community Health Services Supervisor and Director of Public Health Nursing I minimum salaries adjusted 4% and maximum salaries adjusted approximately 8% on the A and B plans; minimum and maximum salaries adjusted approximately 8% on the C plan.

The differing adjustments proposed for the above listed classifications are deserving of some additional comment. The proposed adjustment for Welfare Director I, II, III and IV is based on data from the 1983 salary survey, particularly from the Child Welfare League survey that reviews salaries for agency heads, showing that Merit System salaries for these classes are low. In addition, there have been some difficulties in recruiting

qualified applicants for these classes, particularly at the two lower levels (I and II). Due to overlapping salary ranges, well-qualified and experienced supervisors find it not particularly attractive to aggressively seek a promotion to an administrative position as agency head. Hopefully, this proposed adjustment will help alleviate some of these recruiting problems.

The proposed adjustments for Public Health Nurse, Public Health Nurse (Team Leader), Registered Nurse and Senior Public Health Nurse are based on 1983 salary survey data from other jurisdictions which showed that Merit System minimum and maximum salaries for these classes are low. The basis for the greater proposed adjustment for these classes on the C plan is that we attempt to keep salary rates in this plan (the highest paying plan) reasonably competitive with Twin City salary rates for comparable positions.

The proposed adjustments for Assistant Director of Public Health Nursing, Community Health Services Supervisor and Director of Public Health Nursing I are based on attempting to maintain current salary relationships, particularly at the minimum salary levels, between the various levels in the nursing series of classes. Incumbents of these classes function as supervisors of employees in the previously-mentioned group of classes.

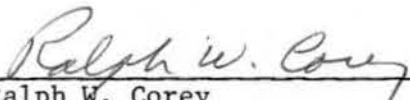
The proposed 4% general adjustment in minimum and maximum salaries for almost all Merit System classifications is reasonable in light of salaries being paid for comparable work by other public and private organizations as well as changes in general economic growth indicators. They are necessary in order to maintain a competitive compensation plan providing equitable and adequate compensation for Merit System employees covered by Merit System compensation plans.

Amendments are proposed to 12 MCAR § 2.840 that are necessary to provide class titles and minimum and maximum salary rates for several new classes established during 1983. New classes established include Accountant, Accounting Supervisor, Administrative Secretary, Data Entry Supervisor, Day Care Center Teacher, Food Stamp Quality Control Reviewer, Mental Health Program Manager, Office Services Supervisor I, Office Services Supervisor II and Resident Activity Coordinator.

Minimum and maximum salary rates for these classes have been determined by reviewing salaries paid by other jurisdictions for comparable work and by observing internal salary relationships between classes in the Merit System compensation plan.

Finally, amendments are proposed to 12 MCAR § 2.840, 7 MCAR § 1.314 and 11 MCAR § 1.2140 deleting the class title and minimum and maximum salaries for several classes abolished during 1983. Classes abolished include Clerk Specialist, Clerk Stenographer III, Clerk Supervisor, Home Care Coordinator, Maintenance Worker, Occupational Supervisor-Instructor I, Occupational Supervisor-Instructor II, Social Welfare Supervisor Trainee, Social Worker Trainee, Transportation Coordinator and Welfare Fraud Unit Supervisor. There are no employees in these classes and there are no plans to utilize them in the future. These amendments are necessary in order to maintain a current compensation plan that is reflective of the various functions actually being performed by Merit System employees.

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



Ralph W. Corey
Merit System Supervisor

Dated: *Aug - 25, 1983*