

STATE OF MINNESOTA

COUNTY OF RAMSEY

BEFORE ANN WYNIA
COMMISSIONER OF HUMAN SERVICES

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 STATEMENT OF NEED
SALARY ADJUSTMENTS AND INCREASES, THE AND REASONABLENESS
COMPENSATION PLAN AND APPEALS AND HEARINGS

I. The following considerations constitute the 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 human services, public health and public safety 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 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 sec. 602 (a) (5)]
Food Stamps [7 USC sec. 2020 (e) (B)]
Medical Assistance - "MA" [42 USC sec. 1396 (a) (4) (A)]
Aid to the Blind [42 USC sec. 1202 (a) (5) (A)]
Aid to the Permanently and Totally Disabled [42 USC sec. 1352 (a) (5) (A)]
Aid to the Aged, Blind or Disabled [42 USC sec. 1382 (a) (5) (A)]
State and Community Programs on Aging [42 USC sec. 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 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 programs 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 nondiscriminatory treatment of applicants and employees with due regard to their privacy and constitutional rights (48 Fed. Reg. 9211 (March 4, 1983) codified at 5 CFR sec. 900.603).

4. In conformance with 5 CFR Part 900, Subpart F, the Minnesota Legislature enacted Minn Stat. sec. 12.22 Subd. 3, sec. 144.071 and sec. 256.01^{2/}2, which respectively authorize the Governor, the Commissioner of Health, and the Commissioner of Human Services 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. secs. 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 has upheld the authority of the Commissioner of Human Services and by implication that of the Commissioner of Health and the Governor to promulgate personnel rules and regulations. The Court quashed a writ of mandamus brought by the Hennepin County Welfare Board against the county auditor in attempting to force payment of salaries in excess of the maximum rates established by the Director of Social Welfare.^{4/} 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). The court stated:

.....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 plan so adopted was binding upon all county welfare boards within the stateIn 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.

3 / Minnesota Rules parts 9575.0010 - 9575.1580, parts 7520.0100 - 7520.1200, and parts 4670.0100 - 4670.4300.

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

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 Employment Labor Relations Act (Minn. Stat. secs. 179.61 - 179.77).

II. The justifications establishing the need for and the reasonableness of the specific substantive provisions of the proposed rules, all of which concern the Minnesota Merit System operation, are as follows:

A. Salary Adjustments and Increases

Minnesota Rules, parts 9575.0350, 4670.1320 and 7520.0650

An amendment is proposed to parts 9575.0350 subpart 3; 4670.1320 and 7520.0650 subpart 3 providing for a recommended general salary adjustment of 4 percent for all non-bargaining unit Merit System employees on Merit System professional, support, clerical and maintenance and trades salary schedules to be effective January 1, 1990. The amendment is necessary not only because it changes the recommended general salary adjustment percentage in these rule parts from that adopted for 1989 but also because there is a need to provide competitive salary adjustments in 1990 for employees covered by the Human Services, Health and Public Safety Merit System rules. The amendment is also reasonable based on a review of adjustments to salary levels by employers with similar and competing types of employment and trends in the Twin City Consumer Price Index.

Merit System rules require that the annual recommended general salary adjustment for employees be based on salary adjustments granted by employers with similar and competing types of employment and trends in the Twin City Consumer Price Index. Obviously, for the Merit System, employers with similar and competing types of employment means other public employers. Traditionally, other employers the

Merit System has looked to in developing a recommended general salary adjustment are the State of Minnesota and other counties with their own county personnel systems which are separate and apart from the Merit System.

The State of Minnesota has negotiated a contract with AFSCME Council 6 representing 18,401 state employees providing across-the-board salary adjustments of 5% effective July 1, 1989 and another 5% effective July 1, 1990. The state has also negotiated a contract with MAPE representing 6,066 professional employees providing across-the-board adjustments of 5% effective July 5, 1989, and another 5% effective July 4, 1990. Thirdly, the state has negotiated a contract with the Middle Management Association representing 2,589 employees also providing for across-the-board adjustments of 5% effective July 5, 1989, and 5% on July 4, 1990. St. Louis County agreed to an across-the-board salary adjustment of 4% effective January 1, 1990, for its employees. This represented the last adjustment in a three year contract covering 1988-90 but was not agreed to until February of 1989. Blue Earth county agreed to an across-the-board salary adjustment of 3% for all its employees effective January 1, 1990. Itasca county agreed to an across-the-board salary adjustment of 2.5% for all its employees effective January 1, 1990. In the case of these two latter counties, the adjustments were for the second year of a two year contract period covering 1989-90. None of the other counties with their own personnel systems with whom we have compared our salary proposals in the past have made any decisions regarding an across-the-board salary adjustment for either their exempt or non-exempt employees for 1990.

As indicated previously, proposed annual employee salary adjustments must also be based on the trends in the Twin City Consumer Price Index. The United States Department of Labor's Bureau of Labor Statistics calculates changes in that index for all urban consumers (covering approximately 80% of the total population) twice a year. For the period July, 1988, through June, 1989, the index increased 4.0%.

The Bureau also calculated changes in the Consumer Price Index for all urban consumers in the North Central Region which includes the State of Minnesota. For the period July, 1988, to July, 1989, the index increased 4.6%. A third Consumer Price Index calculated by the Bureau is a U.S. City average for all urban consumers in 85 urban areas throughout the county including the Twin Cities. For the period July, 1988, to July, 1989, this index increased 5.0%. These latter two indices were considered since they are relevant and are recalculated bimonthly rather than only twice a year. Another index was considered that reflects wage and salary progression patterns in the economy. It is published by the Bureau of Labor Statistics on a quarterly basis and is called the Employment Cost Index. Among other things, it measures the increase in wages and salaries nationwide for various groups of employees including state and local government workers. For the period June, 1988, to June, 1989, wages and salaries for state and local government workers rose 5.0%.

Given the information available to date regarding across-the-board salary adjustments agreed to by competing employees for 1989 and 1990 as well as other measures of salary progression and increases in various consumer price indices as indicated, it is reasonable to recommend that salaries of Merit System employees not covered by the terms and conditions of a collective bargaining agreement be increased by 4% effective January 1, 1990, or on the beginning date of the first payroll period following January 1, 1990, for those agencies on a biweekly or four-week payroll period.

It should be emphasized that the recommended general salary adjustment of 4% is simply that, a recommendation. It lacks the binding effect of a negotiated collective bargaining agreement. Agencies, even those where there is no collective bargaining agreement, are not required to adopt the Merit System recommended general salary adjustment but have the flexibility, under Merit System rules, to

adopt a different salary adjustment (or no adjustment at all) for agency employees.. Under whatever salary adjustment is finally adopted by an agency, the only salary increases that agencies are required to make are those necessary to bring the salaries of individual employees up to the new minimum salary rate for their classification on the Merit System compensation plan adopted by the agency for that classification.

Another important point to mention is that, under Merit System rules, Merit System compensation plan adjustments do not apply to employees in a formally recognized bargaining unit. There are 40 Merit System agencies where most of the agency employees are covered by a collective bargaining agreement and employee compensation is the product of negotiation between the appointing authority and the employee's exclusive representative. In these agencies, the only employees subject to 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

Minnesota Rules, parts 9575.1500, 4670.4200-4670.4240 and 7520.1000-7520.1100

Amendments proposed to these parts specifically recommend adjustments to the 1989 minimum and maximum salaries for all Merit System classes of positions covered by the Human Services, Health and Public Safety Merit System rules to be effective January 1, 1990. Merit System rules require that Merit System compensation plans be adjusted annually to reflect changes in the level of salary rates in business and government for similar and competing types of employment and to achieve equitable compensation relationships between classes of positions based on their comparable work value. Amendments to these parts are necessary to provide Merit System agencies with salary ranges for all classes that are competitive in terms of salary rates being offered by competing employers for comparable work elsewhere in

the public and private sector and also to comply with the provisions of Minn. Stat. Sections 471.991-471.999 requiring the establishment of equitable compensation relationships between classes of positions based on their comparable work value as determined by a formal job evaluation system.

The Merit System reviewed current compensation plans from competing employers such as the State of Minnesota and the counties of Hennepin, Ramsey, St. Louis, Anoka, Blue Earth, Olmsted, Scott, Washington and Itasca to determine their salary levels and consider them in proposing amendments changing the minimum and maximum salaries of Merit System comparable classifications for 1990.

Proposed amendments to parts 9575.1500, 4670.4200-4670.4240 and 7520.1000-7520.1100 adjust the minimum and maximum salaries for many, but not all, Merit System classes by 4%, the same percentage adjustment that is being recommended as a general salary adjustment for employees in all Merit System classifications. That kind of adjustment provides that employees will remain on the same salary step in their new salary range as they were on in their previous salary range. This is reasonable in terms of the practice in other public jurisdictions of adjusting salary ranges by the same percentage amount as the general salary adjustment granted to all employees of the jurisdiction. They are reasonable in light of the Merit System review of current salary ranges for comparable kinds of work in other public jurisdictions and by changes in general economic growth factors. They are adjustments necessary in order to maintain a competitive compensation plan providing equitable and adequate compensation for use by Merit System agencies covered by the plan.

Some proposed amendments to 9575.1500, 4670.4200-4670.4240 and 7520.1000-7520.1100 do not propose a 4% adjustment to the minimum and maximum salaries for certain classes of positions.

These adjustments relate to classes of positions where a 4% adjustment is inappropriate because of a need to establish equitable compensation relationships between classes of positions based on their comparable work value or where labor market data would indicate an adjustment of something other than 4% to be proper. Subsequent to passage of Minn. Stat. Sections 471.991-471.999, the Merit System conducted a formal job evaluation study which determined the comparable work value of all Merit System classes of positions. A basic principle of pay equity is that classes with identical or similar work values should have identical or similar salary ranges. The results of the study revealed a large number of situations where classes of positions with similar comparable work values had quite disparate salary ranges. These situations represented compensation inequities and, in the past four years, the Merit System proposed and had adopted a significant number of comparability adjustments to either equalize or reduce the differences between salary ranges for classes with identical or similar comparable work values. It is necessary to continue this process in 1990 to attain the statutorily-mandated requirement to establish equitable compensation relationships between all classes of positions. Practically all of the proposed varying adjustments are based on attaining the objective of having an internally consistent Merit System compensation plan with reasonable compensation relationships existing between classes of positions based on their comparable work value which is obviously consistent with the objective of the Local Government Pay Equity Act (Minn. Stat. Sections 471.991-471.999).

It is reasonable that these adjustments that are necessary to achieve pay equity be phased in gradually over a period of time. When the Local Government Pay Equity Act was passed, the Legislature did not provide for an appropriation to assist counties, particularly those that were and still are economically depressed, with the cost of implementing pay equity. Given these circumstances, it was and is

prudent to carefully plan and implement pay equity gradually over time. A comparison can be made to pay equity in the state personnel system. When the Legislature passed a bill calling for pay equity in the state personnel system, it also provided an appropriation to assist in its implementation. Even with the appropriation, the state implemented its pay equity system over the course of four years.

Minnesota Rules, part 9575.1500 includes the Department of Human Services Merit System compensation plan. The plan contains three separate salary schedules (designated as Plan A, B and C) for professional, support and clerical classes of positions and two separate salary scheduled (designated as Plan A and B) for maintenance and trades classes of positions. It is important this be noted since the proposed adjustments for some classes are not the same on all plans.

Adjustments proposed to minimum and maximum salaries for Human Services Merit System professional classifications are 4% with the following exceptions:

1. Accounting Supervisor, Auditor, Director of Public Health Nursing I, Fiscal Supervisor II, Human Services Supervisor II, Nutrition Project Director, Social Services Supervisor III and Staff Development Specialist, Senior minimum and maximum salaries are adjusted approximately 6% on all salary schedules.
2. County Agency Social Worker, County Agency Social Worker (Child Protection Specialist), Director of Business Management I, Fiscal Supervisor I and Mental Health Program Manager minimum salaries are adjusted 4% and maximum salaries are adjusted 8% on all salary schedules.
3. Mental Health Worker minimum salary is adjusted approximately 8% and the maximum salary is adjusted 4% on all salary schedules.
4. Psychologist II minimum salary is adjusted approximately 2% and the maximum salary is adjusted approximately 6% on all salary schedules.

5. Employment Guidance Counselor minimum salary is adjusted 4% and the maximum salary is reduced to the nearest step on the 1990 salary schedules (approximately .6% reduction).
6. Family Service Coordinator II minimum salary is reduced to the nearest step on the 1990 salary schedules (approximately .5% reduction) and the maximum salary is adjusted 4% on all salary schedules.
7. Methods and Procedures Analyst and Staff Development Specialist minimum and maximum salaries are reduced to the nearest step on the 1990 salary schedules (approximately .2% and .6% reductions).
8. Assistant Welfare Director minimum and maximum salaries are adjusted approximately 11% on all salary schedules.

Adjustments proposed to minimum and maximum salaries for Human Services Merit System support classifications are 4% with the following exceptions:

1. Computer Operations Specialist minimum and maximum salaries are adjusted approximately 2% on all salary schedules.
2. Senior Citizen's Aide minimum salary is adjusted approximately 13% and the maximum salary is adjusted 4% on all salary schedules.
3. Coordinator of Aging minimum salary is adjusted approximately 8% and maximum salary is adjusted 4% on the A plan and both minimum and maximum salaries are adjusted 4% on the B and C plans.
4. Family Service Aide I, Family Service/Home Health Aide and Home Health Aide minimum salaries are adjusted approximately 8% and maximum salaries are adjusted 4% on the A and B plans and the minimum and maximum salaries are adjusted 4% on the C plan.
5. Community Service Aide and Public Health Aide minimum and maximum salaries are adjusted 4% on the A plan and minimum salaries are adjusted approximately 8% and maximum salaries are adjusted 4% on the B and C plans.

Adjustments proposed to minimum and maximum salaries for Human Services Merit System clerical classifications are 4% with the following exception:

1. Administrative Secretary and Clerk Typist III minimum and maximum salaries are adjusted approximately 6% on the A plan and minimum salaries are adjusted approximately 2% and maximum salaries are adjusted approximately 6% on the B and C plans.

Adjustments proposed to minimum and maximum salaries for Human Services Merit System maintenance and trades classifications are 4% with the following exception:

1. Automobile Driver minimum and maximum salaries are adjusted 4% on the A plan and the minimum and maximum salaries are adjusted approximately 2% on the B plan.

Minnesota Rules, parts 4670.4200-4670.4240 includes the Department of Health Merit System compensation plan. It also contains three separate salary schedules (designated as Plan A, B and C) for professional, support and clerical classes of positions and two separate salary schedules (designated as Plan A and B) for building maintenance classes of positions. As with proposed amendments to the Human Services Merit System compensation plan, proposed amendments are not the same on all plans.

Adjustments proposed to minimum and maximum salaries for Health Merit System professional classes are 4% with the following exception:

1. Director of Public Health Nursing I minimum and maximum salaries are adjusted approximately 6% on all salary schedules.

Adjustments proposed to minimum and maximum salaries for Health Merit System support classifications are 4% with the following exceptions:

1. Home Health Aide minimum salary is adjusted approximately 8% and maximum salary is adjusted 4% on the A and B plans and the minimum and maximum salaries are adjusted 4% on the C plan.
2. Public Health Aide minimum and maximum salaries are adjusted 4% on the A plan and the minimum salary is adjusted approximately 8% and the maximum salary adjusted 4% on the B and C plans.

Adjustments proposed to minimum and maximum salaries for Health Merit System clerical classifications are 4% with the following exception:

1. Clerk Typist III minimum and maximum salaries are adjusted approximately 6% on the A plan and the minimum salary is adjusted approximately 2% and the maximum salary is adjusted approximately 6% on the B and C plans.

Minnesota Rules, parts 7520.1000-7520.1100 includes the Emergency Services Merit System compensation plan. It contains three separate salary schedules (designated as Plan A, B and C) for both professional and clerical classes of positions.

Adjustments proposed to minimum and maximum salaries for Emergency Services Merit System professional classifications are 4% for all classes. Adjustments proposed to minimum and maximum salaries for Emergency Services Merit System clerical classifications are 4% with the following exception.

1. Clerk Typist III minimum and maximum salaries are adjusted approximately 6% on the A plan and the minimum salary is adjusted approximately 2% and the maximum salary is adjusted approximately 6% on the B and C plans.

An amendment is proposed to Minnesota Rules, part 9575.1500 providing for a class title and minimum and maximum salaries for the following new classes established in response to a legitimate need for such new classes in one or more Merit System agencies: Collections and Accounting Unit Supervisor, Community Support Technician, Fiscal Manager, Public Health Nurse (Team Leader), Support Services and Accounting Supervisor and Welfare Director V. This amendment is both necessary and reasonable to ensure that the Human Services Merit System compensation plan reflects appropriate class titles and salary ranges that are current.

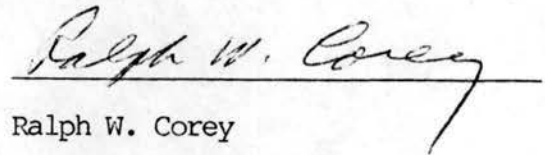
An amendment is proposed to Minnesota Rules, part 9575.1500 deleting the class titles and minimum and maximum salaries for the following classes that have been abolished because there are no employees in them and the employing agencies no longer intend to use the classes: Developmental Achievement Center Director, Developmental Achievement Center Instructor, Developmental Achievement Center Teacher, Food Stamp Corrective Action Specialist I, Food Stamp Corrective Action Specialist II, Systems Programmer Analyst, Telecommunications Analyst and Work Experience and Training Specialist. This amendment is both necessary and reasonable to ensure that Human Services Merit System compensation plan properly reflects current class titles and salaries that are reflective of functions actually being performed by Merit System employees.

An amendment is proposed to Minnesota Rules, part 9575.1500 retitling the class Welfare Director V to Welfare Director VI. This is both necessary and reasonable due to the establishment of the new class Welfare Director V.

Finally, an amendment is proposed to delete Minnesota Rules, parts 4670.3400-4670.3460. This is outdated language dealing with Appeals and Hearings which has been replaced with language in parts 4670.3500-4670.3550.

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

If this rule goes to public hearing, it is anticipated that there will be no expert witnesses called to testify on behalf of the agency. The small business considerations in rulemaking, Minnesota Statutes, section 14.115, do not apply to this rule amendment.



Ralph W. Corey

Merit System Supervisor

Dated: *September 25, 1989*