

In the Matter of
Proposed Rules and
Amendments of the Public
Employment Relations Board
Governing Arbitration Policies,
Issues and Appeals, Meeting Procedures,
Code of Ethics, and Independent Review

STATEMENT OF NEED
AND REASONABLENESS

GENERAL

The Public Employment Relations Board has jurisdiction in three distinct areas. (1) to hear and decide appeals from the Bureau of Mediation Services relating to unit determinations, fair share fee challenges and definitions of supervisor, confidential, essential and professional employees; (2) to maintain roster of qualified arbitrators and provide referral arbitration panels to the parties; and (3) to provide independent review to an individual who has a dispute with their employer over the interpretation or adherence of a term and condition of employment if no other procedure exists for the independent review of such grievance. Minn. Stat. §§179A.05 and 179A.25.

The authority to promulgate these amendments to the rules are Minn. Stat. §§179A.05, subds. 3,5,6, 179A.25, and 14.06. For the most part, these proposed rules are amendments to existing rules. However, Rules part 7306.0100 through 7306.0600 and 7320.1300 through 7320.0220 are new rules. 7306.0100 through 7306.0600 govern the Board's administrative procedures as required by Minn. Stat. §179A.05, subd. 3. While the statutory section was adopted in 1971 (Extra Session, 1971, Chap. 33, Section 12), it appears that administrative procedural rules were never formally adopted. However, the 180 day deadline in Minn. Stat. §14.12 is not applicable because it (§14.12) was not passed until 1980 (Laws of 1980, Chapter 615, Section 10). To apply the 180 day deadline to a law passed nine years earlier would be retroactive application of the law in violation of Minn. Stat. §645.21. For these reasons, the section 14.12 notice was not sent out.

The amendments to the Appeals, Independent Review and Board Procedures do not effect small businesses as only bargaining representatives, public employees or public employers have appeal and hearing rights under PELRA. Therefore, Minn. Stat. §14.115 does not apply to those chapters. Furthermore, individual arbitrators, not their firms or businesses, are included on the arbitrator roster. Even if small businesses were remotely affected by these rules, to the extent possible, the Board adopted the least stringent deadline and requirements for all entities subject to the rules. The proposed amendments do not establish reporting requirements for businesses, or establish any performance standards. Nor do the arbitration rules impose any additional requirements beyond that required by other state and federal agencies that empanel labor arbitrators.

NEED AND REASONABLENESS OF INDIVIDUAL RULES

7300.0100 DEFINITIONS

Need to assure that the terms of the rule are consistent with the terms of the statute and that new terms are adopted to facilitate understanding and uniform application. The rule is reasonable in that it provides clarification, eliminates duplication and defines terms and phrases in a manner consistent with general and customary labor relations usage and practice.

IN 7300.0100, subparts 1 through 6 and throughout the entire rule "Director" of the Bureau of Mediation Services was replaced with "Commissioner" pursuant to Laws of 1987, Chap. 186, Section 15.

7300.0100, Subp. 7a. Executive Director

For ease in identification and to avoid duplication in the rule, executive director is defined.

7300.0100, Subp. 7b. Holiday or legal holiday.

Need to assure that there is no dispute as to whether a day is a holiday or not. It is reasonable to adopt the definition of the executive branch because it accomplishes this task.

7300.0100, Subp. 8. Party.

The amendment limits the definition of a party to the public employer, an employee organization and the exclusive representative. Under the old rule, every member of the bargaining unit had the right to initiate an appeal with the Board. Both the BMS and National Labor Relations Board limits party status to the exclusive representative, an employee organization and employer with respect to unit determinations and clarifications. It would be inconsistent and unworkable to provide that an individual has standing at the appeal level, when that individual would not have standing at the initial level before the Bureau. Furthermore, amending this rule to be in line with common labor law practice fosters constructive relationships under PELRA.

7300.0100, Subp. 11. Service.

The definition of service was changed to include regular mail as a sufficient method of service and to emphasize that service is effective upon receipt by the recipient. The method of delivery is not important since the service is effective upon receipt. The rule clarifies that facsimile transmissions will not be acceptable method since original documents must be filed and to avoid a flux of filing at the end of an appeal deadline.

7300.0110 COMPUTATION OF TIME

Need to assure that the method for computing time is readily understood and uniformly applied. The rule is reasonable in that it sets forth a consistent method for computation of time and is copied from Minn. Stat. §645.15 and Minn. R. Civ. P. 6.01.

7300.0300 SCOPE

As discussed previously, the term "director" was replaced with "commissioner" in accordance with Laws of 1987, Chap. 186, Sec. 15.

7300.0350 BARGAINING UNIT ACCRETION

Minn. Stat. §179A.09 provides that "other relevant factors" are to be considered in determining the scope of an appropriate unit. Since there may not be an election demonstrating the employees interest in being represented by an exclusive representative, the Board considers the employees "showing of interest" to be one of the relevant factors in determining whether to accrete the employees in an existing unit. Therefore, to inform and notify parties, as well as, the Bureau of the Board interpretation of relevant factors with respect to the determination of an amendment of a unit under the statutory criteria, the rule is proposed. Because Minn. Stat. §179A.12, subd. b, provides that signature cards are confidential, the rule cross-references the statute and provides only that the results of the showing of interest be disclosed.

7300.0500 PRESIDING OFFICER; BOARD OR PANEL

The proposed amendments codifies existing practice of the Board and corrects the language in mandating that the panel of three must consist of one member representing employers, one member representing employees and one member representing the public at large. This change assures that a panel of the Board consists of at least a quorum of the Board, assures a fair and balanced panel decision and to be consistent with the apparent statutory intent in the make-up of the Board.

7300.0600 PRESIDING OFFICER; ADMINISTRATIVE LAW JUDGE

Updates the rule to the current statutory terms and need to delete language that related to 7300.2050 which has been repealed. The rule is reasonable because it provides clarification and eliminates obsolete language.

7300.0700 INITIATING AN APPEAL

Subp. 1. Time limits.

A. The current rules are confusing as to the method of the calculation of days and the proposed amendments eliminate this confusion. The current rule provides that when a period of time is ten days or less, Saturdays, Sundays, and holidays are not included. In contrast, the Bureau rules and Court rules all provide a threshold of seven days. To avoid inconsistency, the rule as been changed to provide a threshold of seven days. Consequently, it is necessary to adjust the time for appeal under the new calculation method. In practice, the change only adds one day to the time for appeal, which is a

reasonable and ample time to file an appeal from the Bureau's decision. In addition, the proposed amendments here repeat part 7300.0100, subp. 11 that service is effective upon receipt, not upon mailing. Since failing to meet this requirement results in the Board dismissing the appeal and since it is different from the standard procedures of other entities such as the Courts, it is helpful to the parties to again repeat this crucial requirement here.

Subp. 1. Time limits

B. This new rule clarifies that when a party requests reconsideration by the Bureau, the time for appeal to the Board runs from the date of the reconsideration decision. This proposed rule changes the current requirement that a party moving reconsideration with the Bureau must simultaneously file an appeal with the Board to preserve their appeal rights. The rule is reasonable in providing clarification, eliminates duplication and provides for a more efficient process to the parties and the Board for the initiation of an appeal.

Subp. 2. Notice of Appeal (B and C)

The proposed amendment more clearly identifies whose names and addresses must be included in the notice of appeal. The rule is reasonable in that it provides clarification. In addition, the proposed amendments incorporate the new procedure of reconsideration by the Bureau in requiring copies of the reconsideration decision to be included in the notice of appeal along with the initial decision by the Bureau. Often, the reconsideration decision is the substantive decision being appealed and it is reasonable to require that this be included in the notice of appeal, so that the Board and the parties are informed as to what decision is being appealed.

7300.0800 ANSWER

Need to adjust the timeframe in light of the new calculation method. In addition, to assure that the timeframe is more clearly understood, throughout this chapter "day" is changed to "calendar day" when timeframes are established in rule. The rule is reasonable in that it provides clarification and attempts to make the process more accessible to the parties.

7300.0810 BRIEFS

Subp. 1 Establishment of the briefing schedule.

Need to provide procedures relating to the establishment of the briefing schedule. The rule is reasonable in that it provides clarification and codifies existing practice which the Board has found to be beneficial in the execution of its duties. Past practice has established that two weeks is sufficient time with which to submit briefs.

Subpart 2. Extension of the Briefing Schedule.

Again proposed rule codifies current practice and procedures regarding extensions. The rule is reasonable in allowing first time and short extensions to be resolved by the executive director and further extensions decided by the Board. The rule is reasonable resolution for handling requests for extensions and is patterned after court procedures.

7300.0850 AMICUS CURIAE STATUS

The rule is necessary to explain under what circumstances the Board will grant amicus curiae status. The standard is reasonable in permitting participation in the appeal only when it will be helpful to the Board's decision-making. Since the Bureau is the decision-maker of the decision being reviewed and ordinarily requests this status under compelling circumstances, it is reasonable for the Board to always grant the commissioner amicus curiae status. In addition, the Board needs to establish a timeframe for submission of the brief. The rule is reasonable in that it ties the timeframe for submission of the amicus brief to the briefs submitted by the parties to assure that all materials are before the Board at a time certain.

7300.0900 NOTICE OF HEARING

Need to assure that the timeframes are more clearly understood and to require that notice of hearing will be by certified mail to the parties. The rule is reasonable in that it provides clarification and codifies an existing practice which the Board has found beneficial in executing its duties.

7300.1000 CONTINUANCE OF A HEARING

The current rule regarding continuances is incomplete and must be amended and clarified to codify existing practice and procedures. The proposed rule is reasonable in providing the method of when the executive director will approve continuances and when a continuance must be considered by the Board. The standard of "good cause" is a term adopted by the Courts in determining whether to grant continuances and is reasonable for the Board to adopt that standard here.

7300.1200 INFORMAL AND SUMMARY DISPOSITION

Again "director" is changed to "commissioner" in accordance with Laws of 1987, Chap. 186, Sec. 15.

7300.1500 SUBSTITUTION OF PARTY'S REPRESENTATIVE

Necessary to correct the rule as it is not possible to substitute a party. Rule as been amended to permit the substitution of a party's representative. In addition, the timeframe has been changed to reflect the new calculation method, but the change does not alter the amount of time. The rule is reasonable in that it provides clarification and eliminates incorrect language.

7300.1700 REMAND

Subp. 1. Remand to Commissioner.

The rule is amended to codify Board practice to allow parties to make a motion to remand. In addition, the clause "at any time prior to its decision" was deleted as incorrect.

When the Board reverses the Bureau's decision, it remands the case to the Bureau to bring the matter into compliance with the Board's decision. Therefore, the existing rules were incorrect in providing remands may occur only before a decision, and thus, was deleted to allow the Board to remand upon its decision.

Subp. 2. Circumstances for Remand.

It's necessary to provide criteria by which the Board will consider whether to remand a matter to the Bureau. Each of the enumerated circumstances are situations where another hearing is necessary and reasonable for the Board's decision. The Board is not a hearing examiner, but rather is required to review matters of the record established by the Bureau. The proposed criteria is patterned after Minn. R. Civ. P. 59.01 and thus is a reasonable practice to consider remands for hearing.

Subp. 3. Appeal on Remand.

Explains the status of the appeal before the Board while the Commissioner is considering the remand and the status upon the Commissioner's issuance of the decision. The procedures are reasonable by providing that if the Commissioner's decision differs as a result of the remand, the nature of the appeal has changed warranting more information. It is necessary and reasonable to explain the procedure so that the parties understand their responsibilities under the circumstance of a remand.

7300.1910 THE BOARD RECORD

Need to use simpler words in the rule for easier understanding, to assure that the terms of the rule are consistent with the terms of the statute and provide that the reconsideration decision will be part of the record. The rule is reasonable in that it provides clarification.

7300.2100 TRANSCRIPT OF BOARD HEARING

Change to make the rule more easily understood and in lay person's terms.

7300.2600 BOARD DECISIONS AND ORDERS

Change to make the rule more easily understood and in lay person's terms. In addition, changing "director" to "commissioner" in accordance with Laws of 1987, Chap. 186, Sec. 15.

7300.2800 REQUEST FOR REHEARING

Need to correct poor language and provide additional language to assure that the rule is clearly understood and to change the number of days for such requests under the new calculation of days. The rule is reasonable in that it provides clarification.

7300.2900 PETITION FOR REHEARING

7300.3100 NOTICE OF REHEARING

7300.3200 REHEARING PROCEDURE

7300.3300 DECISION AFTER REHEARING

Change to make rule more easily understood and in lay person's terms.

7306.0100 PURPOSE AND CONSTRUCTION

Need to articulate the Board's purpose for the establishment of a code of ethics and the underlying construction of this chapter. The rule is reasonable because it accomplishes this task. The rules 7306.0100 through 7306.0400 have been patterned after Chapter 7845 which contain Standards of Conduct for the Public Utilities Commission.

7306.0150 DEFINITIONS

Need to assure that the terms are understood and uniformly applied. Provides a cross-reference to the definitions in 7300.0100 so that the same terms apply in both chapters of the rules. The rule is reasonable in that it provides clarification, eliminates repetition and provides for consistent definitions of terms and phrases.

7306.0200 CONFLICT OF INTEREST: IMPROPRIETY

Need to set standards for the Board relating to its actions so as to ensure public confidence in the integrity and impartiality of the Board's decision-making process.

7306.0300 QUASI-JUDICIAL RESPONSIBILITIES

Need to articulate the Board's responsibilities relating to inappropriate influences and orderly proceeding. The rule is reasonable because it accomplishes this task.

7306.0400 DISQUALIFICATION

Need to provide criteria for which a member must disqualify themselves from participating in an action before the Board. The rule is reasonable because it provides clarification and in part codifies an existing practice which the Board has found beneficial in executing its duties.

7306.0500 OFFICERS AND DUTIES

Subp. 1. Officers; Subp. 2. Electing the chair and vice-chair;
Subp. 3. Vacancies; Subp. 4. Removal. Subp. 5. Duties of chair;
Subp. 6. Duties of vice-chair.

Need to establish procedures for the election and removal of the a chair and vice-chair and set forth duties of each office. Rules 7306.0500 through 7306.0600 were patterned after the working rules of the Ethical Practices Board. The rule is reasonable in that it provides clarification and uniformity with respect to certain duties of the Board's officers.

7306.0600 MEETING

Subp. 1. Meeting Time.

Need to assure that standards and procedures are established for conduction of the Board's meetings. The rule is reasonable because it provides clarification and uniformity as to how the Board will conduct its meetings.

Subp. 2. Quorum.

Need to codify the number necessary for a quorum and to codify the apparent intent of the legislature in its make-up of the Board that the quorum must have representative of each of the three interests. The rule is reasonable in that it provides clarification and is consistent with the statute.

Subp. 3. Agenda notice; Subp. 4. Distribution of agenda; Subp. 7. Meeting minutes and open meeting law.

Merely repeats the requirements of the open meeting law which must be followed by the Board.

Subp. 6. Voting; Subp. 8. Reconsideration of a decision. Subp. 9. Parliamentary procedure.

Eestablishes procedures in accordance with Robert's Rules, and thus are well established, widely adopted and a reasonable practice.

7315.0210 SCOPE

Change to make rule more easily understood and in lay-person's terms.

7315.0400 DEFINITIONS

Need to delete person from definition of party. The independent review statute covers only public employees, therefore it was incorrect for the current rule to include "person" having party status for these cases. The rule is reasonable in that it is consistent with the statute and provides clarification.

7315.0500 PETITION

Subp. 1. Authority to petition; Subp. 2. Petition contents.

Change to make the rule more easily understood and in lay person's terms.

7315.0650 ANSWER

Changed the timeline to reflect the new counting method and to round the count to fifteen days. Also, change to make the rule more easily understood and in lay person's terms. The rule is reasonable in that it provides clarification and consistency.

7315.0900 PRESIDING OFFICER: BOARD OR PANEL

Need to assure that the composition of the panel is balanced and is consistent with the apparent statutory intent of the make up of the Board. Furthermore, the change to three panel members is so that a quorum of the Board decides the appeal and thereby provide equal representation of the interests which are required by statute. The rule is reasonable in that it provides consistency and uniformity.

7315.1000 PRESIDING OFFICER; ADMINISTRATIVE LAW JUDGE

Updates the terms of the rule with the terms of the statute. The rule is reasonable in that it provides consistency.

7315.1100 BRIEFS

Since independent review hearings are evidenciary hearings, briefs are not necessary. In addition, the Board desires to keep the costs and the procedures for the parties as low and as easily understood as possible. However, if it is necessary to assist the Board in their decision-making, it may request post-hearing briefs. This is reasonable and notifies the parties that post-hearing briefs may be necessary under the circumstances.

7315.1200 NOTICE OF HEARING

Again clarifies the timeline, that fifteen days means calendar days and change to make the rule more easily understood in lay person's terms. Finally, to assure that all parties received notice of the hearing, the Board elects to send these notices by certified mail. The rule is reasonable in that it provides consistency and clarification.

7315.1300 CONTINUANCE OF HEARING

The existing rule was ambiguous and did not provide a working framework from which to grant continuances. The proposed language for continuances is identical to proposed rule 7300.1000 and thus, the need and reasonableness for the proposed rule equally applies to this rule.

7315.1800 SUBSTITUTION OF PARTY'S REPRESENTATIVE

Need to assure that the language is correct, as it is not possible to substitute a party. Rule as been amended to permit the substitution of a party's representative. In addition, in light of the change in the method of calculation of days, five working days was changed to seven clalendar days. The rule is reasonable in that it provides clarification and corrects the language of the rule.

7315.1900 CONSOLIDATION

Change to make the rule more easily understood and in lay person's terms. In addition, in light of the change in the method of calculation, five working days is changed to seven calendar days to be consistent with the rest of the rule. The rule is reasonable in that it provides consistency and clarification.

7315.2100 HEARING; 7315.2200 BOARD DECISIONS AND ORDERS

Change to make the rule more easily understood and in lay person's terms.

7315.2300 REQUEST FOR REHEARING

Need to provide that the Board on its own motion or by petition of a party may rehear an independent review. This procedure is the same as 7300.2800 allowing the Board to rehear an appeal. Because that rule has functioned satisfactorily for appeals, it is proposed to be used for the independent review section.

7315.2400 PETITION FOR REHEARING

Need to define the content of a petition for rehearing of an independent review. This procedure is the same as 7300.2900 which allows for the rehearing of an appeal. Because that procedure has functioned satisfactorily for appeals, it is proposed for the independent review section. All of the requested information is necessary and reasonable for the Board to make its determination whether to rehear the matter.

7315.2500 CONSIDERATION

Need to assure that consideration for rehearing of an independent review can be granted upon evidence in a written or oral form. This is the same rule that is provided in 7300.2950 of the appeals section. Because that rule has functioned satisfactorily for appeals, it is proposed for the independent review section.

7315.2600 DETERMINATION

Need to provide criteria for granting a rehearing of an independent review. This criteria is the same as set forth in 7300.3000 of the appeal section. Because that rule has functioned satisfactorily, it is proposed for the independent review section. This criteria is patterned after Minn. R. Civ. P. 59.01 and thus it is reasonable to adopt a well established and widely adopted standard.

7315.2700 NOTICE OF REHEARING

Need to provide a procedure for the notice of a rehearing. This rule is the same as provided for in 7300.3100 of the appeal section. Because that rule has functioned satisfactorily for appeals, it is proposed for the independent review section. Once the Board has determined to rehear a matter, notice and opportunity for the parties to be heard must be provided.

7315.2800 REHEARING PROCEDURE

Need to provide procedures for conducting a rehearing of an independent review. This rule is the same as provided in 7300.3200 of the appeal section. Because that procedure functioned satisfactorily for an appeal, it is proposed for the independent review section.

7315.2900 DECISION AFTER REHEARING

Need to provide a procedure for the issuance of an independent review decision with respect to a rehearing. This procedure is the same as provided for in 7300.3300 of the appeal section. Because that procedure functioned satisfactorily for appeals, it is proposed for the independent review section. It is reasonable to issue the rehearing decision in the same manner as the original decision.

7320.0030 DEFINITIONS

Need to provide definitions that are exclusive to the arbitration section and to also provide other definitions that are consistent with the appeal section. The rule is reasonable in that it provides clarification and defines terms and phrases that are consistent with general and customary labor relations usage and practice.

Subp. 1a. Arbitration panel; Subp. 11. Referral arbitration panel.
Need to distinguish between an arbitration panel that is submitted to the parties for a selection of an arbitrator (referral arbitration panel) and an arbitration panel that has been selected by the parties to hear and decide a matter (arbitration panel). The rule is reasonable in that it eliminates confusion and provides consistency and clarification.

Subp. 3a. Bureau; Subp. 5a. Commissioner.

Short terms relating to the Bureau of Mediation Services and its head for ease of rules.

Subp. 6a. Holiday or legal holiday.

Need to assure that there is no dispute as to whether a day is a holiday or not. It is reasonable to adopt the definition of the executive branch because it accomplishes this task. This is the same definition proposed in 7300.0100 of the appeal section.

Subp. 10. Parties or parties.

Need to provide separate definitions for a party involved in grievance and interest arbitration as each form of arbitration requires differing response from the Board in its submission of a referral arbitration panel to the parties. An individual does not have contractual right to select an arbitrator in an interest matter. Whereas, in grievance arbitration individual members of the bargaining unit do sometimes have contractual rights to select an arbitrator. Rules 7305.0100, subp.1 and 7310.0100 were repealed and reinserted in the arbitration section. The rule is reasonable in that it provides for an orderly submission of referral panels to the parties in both types of arbitration to the parties in both types of arbitration.

Subp. 12. Service or serve.

The definition of service is the same as provided in 7300.0100 of the appeal section and thus the need and reasonableness for that proposed rule also applies here.

7320.0040 COMPUTATION OF TIME

Need to provide a method for the computation of time. This rule is the same as provided for in the appeal section in proposed rule 7300.0100. Therefore, the need and reasonableness for that proposed rule also applies here.

7320.0090 ARBITRATOR CONDUCT, STANDARDS, AND RESPONSIBILITIES

Subp. 7. Prehearing conduct.

Change is not substantive, provides clarification that the reference to panel is an arbitration panel selected to hear and decide the matter.

Subp. 8. Hearing conduct.

Need to assure that either party may arrange for the official transcript of an arbitration hearing. This rule is reasonable in that it is consistent with the practice of the parties and provides clarification.

Subp. 11. Jurisdiction.

Need to assure that the arbitrator cites in the award those certified issues which have been resolved by the parties. This language does not require the terms of the agreement for each issue resolved by the parties, but rather a mere listing of those issues that were settled. The rule is reasonable in that it provides clarification and is consistent with the practice of the arbitrators.

7320.0110 SELECTION RATE OF ARBITRATORS

Need to assure that the Board maintains data relating to the frequency with which individuals are selected from the roster to hear and decide an arbitration case and to establish criteria for removal from the roster with respect to the selection rate of the arbitrator. In order to maintain qualified arbitrators on the roster and since the arbitration roster is limited to 40 names, it is reasonable to remove arbitrators who show low acceptability to the parties. The rule is reasonable in that it provides criteria that can be uniformly applied and provides notice to the arbitrators and the parties of this new criterion.

7320.0120 REFERRAL ARBITRATION PANELS

Subp. 1. Random selection; Subp. 5. Replacements of referral arbitration panels; Subp. 6 Selection of referral arbitration panels; Subp. 7. Arbitrator requests for inactive status.

Need to assure that whenever there is a reference in the rule to an arbitration panel that will be utilized by the parties for the selection of an arbitrator, that the arbitration panel be identified as a referral arbitration panel. The rule is reasonable in that it provides consistency and clarification and also distinguishes an arbitration panel that is utilized for selection of an arbitrator (referral arbitration panel) from an arbitration panel composed of three arbitrators to decide a matter (arbitration panel).

7320.0130 INTEREST ARBITRATION

Need to assure that certain subparts are referenced as relating to interest arbitration rather than grievance arbitration as the Board's procedures for submission of a referral arbitration panel differ with respect to each type of arbitration. The rule is reasonable in that it provides clarification and consistency.

7320.0140 CERTIFICATION OF IMPASSE

Subp. 1. Contents.

Need to assure that the content of the certification of impasse complies with a PELRA amendment contained in Laws of Minnesota 1990, Chap. 547, Sec. 7. This rule was previously cited as 7305.0500, Subp. 1 and has been repealed and reinserted here. The change to the rule relates to the PELRA amendment and requires that the content of the certification of impasse include, if applicable, a notice that the parties have mutually selected an arbitrator from the Board's roster. This action on the part of the parties, releases the Board from its responsibility to submit a referral arbitration panel to the parties. The rule is reasonable in that it provides clarification, uniformity and is in compliance with the PELRA statute.

Subp. 2. Filing.

This is old language previously cited as rule 7305.0500, subp. 2, and has been reinserted in this section. The old rule as been amended to omit the requirement that the Bureau serve the certification of impasse upon the parties. The Bureau's rules address the procedure for transmission of the certification of impasse, and thus it is not necessary for the Board to make such a requirement. The rule is reasonable in that it provides clarification and eliminates language that is not necessary.

Subp. 3. Final Positions

This is a new subpart that assures that procedures are in place in the event that the parties mutually select an arbitrator pursuant to Minn. Stat. §179A.16, subd. 4. The rule also provides a procedure should one party fail to submit its final position to the Bureau. In that circumstance, the Board must instruct the selected arbitrator that the final position is nonpublic and confidential under the Data Privacy Act. The rule is reasonable in that it provides uniformity, clarification and complys with the statute.

Subp. 4. Mutual selection of an arbitrator.

This is a new subpart that assures that procedures are in place should the parties opt to mutually select an arbitrator pursuant to Minn. Stat. §179A.16, subd. 4, by requiring that the Bureau provide written notification in its certification of impasse that mutual selection of an arbitrator has occurred at the Bureau level. The rule is reasonable in that it provides clarification and uniformity .

7320.0150 SELECTION OF ARBITRATOR

Subp. 1. Submission of panel.

This is old language previously cited as 7305.0610 and has been reinserted in this section. The old rule has been divided into two subparts. This subpart is amended to bring it into conformity with two PELRA amendments. Laws of Minnesota 1989, Chapter 255, Sec. 10, provides a PELRA amendment which no longer requires a party in an interest arbitration matter, to notify the Board if they wish to select a single arbitrator. Under the old PELRA statute it was assumed that the parties would utilize a three member arbitration panel. As amended, PELRA assumes the parties will utilize a single arbitrator, and thus only require notification to the Board if there is mutual agreement for a three member arbitration panel. In addition, Laws of Minnesota 1990, Chap. 547, Sec. 7, permit mutual selection of an arbitrator at the Bureau level. The rule has been amended to reflect both of these statutory changes. The rule is reasonable in that it provides clarification, uniformity and is in compliance with the PELRA statute.

Subp. 2. Striking of names.

This is old language previously cited as 7305.0610 and has been reinserted in this section without amendment. The rule provides procedures for the striking of names from a referral arbitration panel and for the designation of a convenor of a three member arbitration panel. The rule is reasonable in that it provides clarification and uniformity.

7320.0160 SELECTION OF CHAIR

This is old language previously cited as 7305.0800 and has been reinserted in this section. The rule has been amended to provide for ease of reading rather than reflecting a substantive change. The rule provides a procedure for the selection by the parties of a chair when the parties have selected a three member arbitration panel. The rule is reasonable in that it provides clarification and uniformity.

7320.0170 SUBMISSION TO THE ARBITRATOR

This is old language previously cited as 7305.0700 and has been repealed and reinserted in this section. The rule has been changed to provide for ease of reading and replaces the term "director" to "commissioner" in accordance with Laws of Minnesota 1987, Chap. 186, Sec. 15. The rule provides for the submission of the Certification of Impasse by the Board to the arbitrator selected by the parties. The rule is reasonable in that it provides clarification and consistency.

7320.0180 ARBITRATION PROCEDURES

This is old language previously cited as 7305.0910 and has been repealed and reinserted in this section. The rule as been amended to require that arbitration procedures be conducted pursuant to 7320.0090 in addition to the PELRA statute and the Uniform Arbitration Act. The rule is reasonable in that it provides uniformity and clarification.

7320.0190 GRIEVANCE ARBITRATION

This is old language previously cited as 7310.0200 and has been repealed and reinserted in this section. The rule has been amended to provide for ease in reading rather than reflecting a substantive change. The rule is reasonable in that it provides clarification.

7320.0200 PETITION FOR GRIEVANCE ARBITRATION

Subp. 1. Authority to petition.

This is old language previously cited as 7310.0400, subp. 1 and has been repealed and reinserted in this section without amendment. The rule provides for a party to petition the Board for a referral arbitration panel and also requires that the party serve notice of the petition on all parties. The rule is reasonable in that it provides uniformity.

Subp. 2. Contents of petition.

This is old language previously cited as 7310.0400, Subp. 2 and has been repealed and reinserted in this section. The rule is amended to delete the requirement that the parties include in their petition for a referral arbitration panel a copy of the provisions of the contract applicable to the grievance. In practice the parties rarely include this item but rather, cite the contract provision in their statement of the nature of the grievance. This response is adequate in providing the information needed to process the request of the party. The rule is reasonable in that it eliminates an unnecessary requirement.

7320.0210 SELECTION OF AN ARBITRATOR

This is old language previously cited as 7310.0500 and has been repealed and reinserted in this section. The rule is amended to delete the requirement that the parties select an arbitrator within five days of receipt of the referral arbitration panel. This requirement is rarely met by the parties and would be very difficult for the Board to force compliance. The rule is reasonable in that it eliminates an unnecessary requirement.

7320.0220 ARBITRATION PROCEDURES

This is old language previously cited as 7310.0550 and 7310.0600 which have been repealed and reinserted in this section. The rule has been amended and reflects a consolidation of the two rules under the old chapter. The rule requires that arbitrators be in compliance with the Uniform Arbitration Act except where the act conflicts with PELRA and further requires that arbitration procedures be in compliance with PELRA and the Professional Responsibility for Arbitrators of Labor-Management Disputes. Rule 7320.0090 references this code, and is thereby included as a procedural requirement when an arbitrator conducts grievance hearings which originate from the Board. The rule is reasonable in that it provides uniformity and consistency.

REPEALERS

7300.0400 COMPUTATION OF TIME

When the Board established a new method for the computation of time, it was necessary to repeal this part and revise the rule as 7300.0110. The repeal is reasonable because it accomplishes this task.

7300.1800 EXTENSION OF TIME

Need to repeal this part because it conflicts with the newly revised rules 7300.0810 BRIEFS and 7300.1000 CONTINUANCE OF HEARING which establish procedures for extensions of the timeframes under the appeals section. The repeal is reasonable in that it eliminates conflicting procedures.

7300.2050 ADDITIONAL EVIDENCE

Need to repeal this part because changes to 7300.1700 provide for the circumstance of admitting additional evidence into the record under newly established criteria for remand to the Bureau. Under the new criteria the Board will grant a remand if it is shown that additional evidence, newly discovered exists and could not be produced at the hearing before the Bureau. Equally important, the Board in practice does not itself admit additional evidence. The practice has been to determine if there is a reason to admit additional evidence pursuant to the criteria of 7300.2050 and if so, remand the case to the Bureau for the purpose of admitting the additional evidence. Repeal of this rule clarifys the process and eliminates an unnecessary procedure. In addition, the revisions and repeal codifys an existing practice which the Board has found to be beneficial.

7305.0100 DEFINITIONS; 7305.0200 SCOPE; 7305.0500 CERTIFICATION OF IMPASSE; 7305.0610 SELECTION OF ARBITRATOR; 7305.0700 SUBMISSION TO ARBITRATOR; 7305.0800 PANEL CHAIR; 7305.0910 ARBITRATION PROCEDURES; 7305.1200 PROFESSIONAL RESPONSIBILITY; 7310.0100 DEFINITIONS; 7310.0200 SCOPE; 7310.0400 PETITION; 7310.0600 PROFESSIONAL RESPONSIBILITY.

The Board in revising its rules has also reorganized them, so as to place all rules relating to arbitration in the arbitration section. To accomplish that task the above rules have been repealed and re-enserted in Chapter 7320. In addition, these rules have been revised to reflect amendments to the PELRA statute and to codify existing practices which the Board has found to be beneficial to the parties and the process in the execution of its duties relating to the arbitration process.

7305.0300 POLICY and 7310.0300 POLICY

The policy statement the the Board will liberally construe its arbitration rules to effectuate the purposes and provision of PELRA is not necessary. The rules are adequate to assure that the rights of the parties and the arbitration process is protected and facilitated as is provided by the PELRA statute. The repeal is reasonable because it eliminates unnecessary language.

7305.1100 PAYMENT OF ARBITRATOR

Minn. Stat. 179A.16, subd. 8 provides for payment by the parties to anarbitrator for services rendered in the issuance of an arbitration award. The PELRA language is adequate, and thus, there is no need to establish a rule for the payment due an arbitrator. In addition, it is the practice of the Board not to intervene on the part of the parties or the arbitrator when issues relating to payment due or refused arise between the parties. The repeal is reasonable because it eliminates unnecessary language and removes any implication that the Board will intervene when these issues are evident.

7315.2000 EXTENSION OF TIME

Need to repeal this part because it conflicts with newly revised rules 7315.1100 BRIEFS and 7315.1300 CONTINUANCE OF HEARING which set forth procedures for the extension of timeframes which are established under the independent review section. The repeal is reasonable because it eliminates unnecessary language and provides clarification and uniformity.

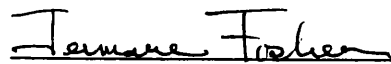
7320. 0030 DEFINITIONS Subp. 9 Panel

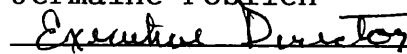
This part has been repealed and reinserted in 7320.0030, subp.11. It is necessary to distinguish between an arbitration panel submitted to the parties for the selection of an arbitrator and an arbitration panel composed of three arbitrators who have been selected to hear and decide the matter. The repeal is reasonable in that it permits this subpart to be relocated in the appropriate part of 7320.0030.

7320.0120 REFERRAL ARBITRATION PANELS; Subp. 2. Interest arbitration; Subp. 3. Grievance arbitration and Subp. 4. Assignment of panels to pending cases.

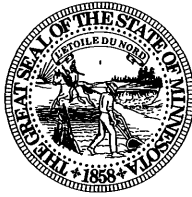
Need to assure that the Board utilizes the most effective type of a random selection process for the construction of referral arbitration panels. The repeal deletes language which limits the Board to a specific type of random selection process. The repeal is reasonable because it permits the Board to try other systems which may be easier to administer and generate more panels in a given period time than is possible under the old system.

Date: October 8, 1990



Jermaine Foslien


Executive Director



PUBLIC EMPLOYMENT RELATIONS BOARD

STATE OF MINNESOTA

October 8, 1990

Senator Gene Waldorf
Chair
Legislative Commission to
Review Administrative Rules
55 State Office Building
St. Paul, Minnesota 55155-1201

Dear Senator Waldorf:

Pursuant to Laws of Minnesota 1990, Chapter 422, Section 6, please find enclosed, a copy of the statement of need and reasonableness which was prepared by the Public Employment Relations Board.

Sincerely,

A handwritten signature in cursive script that reads "Jermaine Foslien".

Jermaine Foslien
Executive Director