



VIA EMAIL

December 17, 2021

Legislative Reference Library

sonars@lrl.leg.mn

Re: In the Matter of the Proposed Permanent Rules Relating to the Minnesota Labor Relations Act and the Public Employment Labor Relations Act; Revisor's ID No. R-4677; OAH Docket No. 82-9047-37318

Dear Legislative Reference Library:

The Minnesota Bureau of Mediation Services intends to adopt rules on the Minnesota Labor Relations Act and the Public Employment Labor Relations Act. We will publish a Dual Notice in the *State Register* on December 20, 2021.

As required under Minnesota Statutes, section 14.131, we are sending the library an electronic copy of the Statement of Need and Reasonableness.

If you have any questions, please contact me at ian.lewenstein@state.mn.us or 651-539-1414.

Sincerely,

Ian Lewenstein, State Program Administrator Principal

Enclosure: Statement of Need and Reasonableness

**STATEMENT OF NEED AND
REASONABLENESS**

**PROPOSED PERMANENT RULES
RELATING TO THE MINNESOTA
LABOR RELATIONS ACT AND THE
PUBLIC EMPLOYMENT LABOR
RELATIONS ACT; REVISOR'S ID
No. R-4677; OAH DOCKET
No. 82-9047-37318**

DECEMBER 17, 2021

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GENERAL INFORMATION

Availability: All required rulemaking notices and documents, including the SONAR and the proposed rule, are available on the bureau's website (<https://mn.gov/bms>). The SONAR has been available for public review as of December 17, 2021.

Rule records: You can track this rulemaking proceeding and search past bureau rulemaking records by using the Minnesota Rule Status System, located on the revisor's office website (<https://www.revisor.mn.gov/rules/status/>).

Agency contact for alternative format: If you would like this SONAR in another language or an alternative format, such as large print, braille, or audio, please contact Ian Lewenstein, State Program Administrator Principal, ian.lewenstein@state.mn.us, 651-539-1414, or the Bureau of Mediation Services, 1380 Energy Lane, Suite Two, St. Paul, MN 55106, 1-800-627-3529.

ABBREVIATIONS

APA: Administrative Procedure Act

MMB: Minnesota Management and Budget

OAH: Office of Administrative Hearings

PELRA: Public Employment Labor Relations Act

SONAR: Statement of Need and Reasonableness

Statute- and Rule-Level Tags

Table 1

Statute	Rule
Subdivision: 1, 2, 3, etc.; Subdivision 1 and then Subd. 2, Subd. 3, etc.	Subpart: 1, 2, 3, etc.; Subpart 1 and then Subp. 2, Subp. 3, etc.
Paragraph: (a), (b), (c), etc.	Item: A., B., C., etc.
Clause: (1), (2), (3), etc.	Subitem: (1), (2), (3), etc.
Item: (i), (ii), (iii), etc.	Unit: (a), (b), (c), etc.
Unit: (A), (B), (C), etc.	Subunit: i., ii., iii., etc.

Shorthand	Shorthand
<i>Minn. Stat. § 179A.04, subd. 3(a)(1):</i> Minnesota Statutes, section 179A.04, subdivision 3, paragraph (a), clause (1)	<i>Minn. R. 5530.0800, subp. 10(C)(1):</i> Minnesota Rules, part 5530.0800, subpart 10, item C, subitem (1)

INTRODUCTION AND OVERVIEW

I. The Bureau of Mediation Services promotes highly successful and vital labor-management relations.

The Bureau of Mediation Services was established in 1939 under the Minnesota Labor Relations Act to peacefully settle labor-management disputes; these disputes resulted from the growing size and strength of Minnesota's private-sector labor movement. The bureau's mission and functions were substantially expanded in 1971, when PELRA was enacted to extend collective bargaining to the public sector. Importantly, PELRA:

- 1) gave public employees the right to unionize and collectively bargain;
- 2) established criteria for forming bargaining units;
- 3) provided procedures for employees to elect exclusive representatives; and
- 4) emphasized the need and right to resolve contract grievances and other labor-management disputes.

Under **PELRA**, the bureau oversees collective-bargaining issues for over 200,000 union-represented public employees. In fiscal year 2020, the bureau successfully mediated 97% of collective-bargaining disputes.

Governed by the Minnesota Labor Relations Act and PELRA, the bureau's mission is clear: promote stable, constructive labor-management relations—with an emphasis on alternative dispute resolution—and establish and offer collaborative processes in areas other than labor management. The bureau accomplishes its critical mission:

- 1) through mediation, labor-management programs, training, and alternative dispute resolution;
- 2) by adjudicating representation issues;
- 3) by holding hearings and elections; and
- 4) by developing and maintaining three rosters of labor arbitrators.¹

¹ In addition to its general arbitration roster, the bureau maintains two separate specialized rosters: one for teacher discharge or termination hearings, and one for peace-officer discipline grievances. For more on the bureau's functions, see Appendix A.

II. To best fulfill its mission, the bureau seeks to update and enhance five of its six rule chapters to simplify, clarify, and streamline requirements on arbitration, mediation, and collective bargaining.

The bureau has not substantially amended its rules in over 30 years. Accordingly, much of the bureau's proposed rule amendments update obsolete, duplicative, and unnecessary language; the bureau also focuses on style-and-form and plain-language changes to make it easier for the public to read and comply with the rules. Overall, the bureau seeks to update its rules and enhance the bureau's ability to carry out its statutorily required labor-management duties.

The bureau's proposed rule amends five of its rule chapters:

- 1) Chapter 5500: governs (a) proceedings under the Minnesota Labor Relations Act involving mediation and labor referees, and (b) arbitration proceedings under PELRA.
- 2) Chapter 5505: governs investigating and certifying collective-bargaining representatives under the Minnesota Labor Relations Act, including hearings and elections.
- 3) Chapter 5510: governs representation issues, negotiation, mediation, contract grievances, and other labor-management provisions under PELRA.
- 4) Chapter 5530: governs the bureau's general arbitration roster.
- 5) Chapter 7315: governs independent review of grievances of nonunion, public-sector employees.

Because much of the bureau's work is predicated on preventing strikes and on arbitration, it is critical for the bureau to update and modernize its rules to improve its ability to efficiently and effectively manage public- and private-sector labor-management relations, which in turn results in saved time and money for employees and employers, better worker productivity, and higher morale.

III. In addition to amending its rule chapters, the bureau is adding training requirements for peace-officer arbitrators.

The bureau is adding training requirements for peace-officer arbitrators because the legislature passed the Minnesota Police Accountability Act of 2020, in

July 2020.² As part of the act, the legislature established a new independent roster of arbitrators to arbitrate disputes solely on peace-officer discipline grievances. And part of the act requires peace-officer arbitrators to complete training in two areas:

- At least six hours on cultural competency, racism, implicit bias, and recognizing and valuing community diversity and cultural differences.
- At least six hours on the daily experience of peace officers, which may include ride-alongs with on-duty officers or other activities that provide exposure to the environments, choices, and judgments required of officers in the field.³

To ensure that peace-officer arbitrators receive training that helps them fairly arbitrate discipline grievances, the legislature gave the bureau the discretion to adopt training requirements through rulemaking; accordingly, the bureau is proposing modest training requirements to guarantee that the arbitrators receive consistent training on the statutorily required topics. While some stakeholders may be disappointed in the scope of the Minnesota Police Accountability Act, the bureau is limited by what the legislature passed into law and cannot go beyond the bureau's statutory authority and enabling legislation.

IV. The bureau has actively solicited public participation and comments and has collaborated with its key stakeholders.

In addition to posting the required rulemaking notices under the APA, the bureau has sent rule drafts and solicited comments from its rulemaking list and key stakeholders representing both employers and labor unions. The bureau also posted rule drafts on its website.

Throughout the rulemaking process, the bureau has consulted with its arbitration advisory committee,⁴ which provides general assistance to the commissioner. The committee includes three labor advocates, three management advocates, and two arbitrators from the bureau's arbitration rosters. The committee has

² See 2020 Minn. Laws 2nd SS, ch. 1. Under the act, peace-officer arbitrators arbitrate only discipline grievances.

³ Minn. Stat. § 626.892, subd. 10(a). Unless otherwise noted, all statute and rule citations are to the current editions of *Minnesota Statutes* and *Minnesota Rules*.

⁴ This committee has been established according to Minn. Stat. § 15.014.

recommended and reviewed the proposed rule changes and has given valuable input.

Arbitration Advisory Committee

Table 2

Name	Representation
David Aron	Education Minnesota
Kim Sobieck	Law Enforcement Labor Services, Inc.
Brian Aldes	Teamsters, Local 320
Beth Belle-Isle	Hennepin County Labor Relations
Susan Hansen	Madden, Galanter, Hansen LLP
Jim Jorstad	Minnesota State Colleges and Universities
Stephen Befort	Arbitrator
Steven Hoffmeyer	Arbitrator

SUMMARY OF PROPOSED RULE CHANGES

The bureau is amending five chapters—5500, 5505, 5510, 5530, and 7315. The lone chapter not being amended is chapter 5520.

I. Changes applicable to all chapters.

- Removing redundant, obsolete, and duplicative language.
- Redrafting rules in plain language and removing legalese.
- Resolving conflicts with the bureau’s statutory chapters, Minnesota Statutes, chapters 179 and 179A.
- Updating definition parts.
- Making hearing language consistent for proceedings under the Minnesota Labor Relations Act and PELRA.
- Adding provision that allows for a virtual hearing if the parties agree.
- Adding *calendar days* when referencing counting time and to reflect long-standing practice.
- Adding requirements for email addresses to be included in petitions and adding consistent language on serving and filing documents; allowing for electronic service and requiring an electronic signature for documents filed electronically.
- Changing provisions that allow unfettered commissioner discretion that would not currently pass muster under the APA. Changing this language precludes potential litigation challenging the commissioner’s unfettered discretion and updates the language to current APA standards.

II. Changes under Chapter 5500, Minnesota Labor Relations Act and Arbitration.

- No substantive changes regarding Minnesota Labor Relations Act.
- Moving some arbitration language from chapter 5530. For example, language on an arbitrator’s duties during an arbitration hearing and resolving arbitrator fee disputes. Moving this language logically puts together all provisions on arbitration hearings.

- Adding requirement to have arbitration awards served simultaneously on the parties and the commissioner.
- Updating language on parties submitting written briefs to an arbitrator.
- Removing the 90-day retention requirement for an arbitrator-recorded hearing.
- Removing an obsolete requirement in which the arbitrator serves on the parties a copy of the relevant arbitration rules.
- Amending language on requesting transcripts.
- For reconsideration requests, requiring them to be filed within ten calendar days after an arbitrator's award is filed and allowing for written briefs instead of a hearing.

III. Changes under Chapter 5505, Minnesota Labor Relations Act.

- Adding a new requirement that requires a hearing recording of bureau proceedings to be kept for 90 days.
- Adding a new requirement that the record for hearings before the commissioner must be maintained for 90 days, which reflects bureau practice throughout its rule chapters.

IV. Changes under Chapter 5510, PELRA.

- Removing obsolete references to fair-share-fee challenges.
- Adding a new requirement that a request for reconsideration must be served on all other parties, not only the commissioner, and that the grounds for reconsideration are according to those listed for arbitration-related requests for reconsideration.

V. Changes under Chapter 5530, arbitration roster.

- Changing provision allowing commissioner to waive residency requirement for individuals who have served at least three years on the current or immediately preceding bureau roster; the provision is amended so that the commissioner can waive the requirement for individuals who have not served at least three years.
- Removing language requiring the commissioner to add additional members based on referrals from the preceding 12 months.

- Changing publication notice of roster applications from the *State Register* to the bureau's website; no longer requiring applicants to be interviewed.
- Making arbitrator application fees consistent with statute and removing a conflict between statute and rule.
- Removing redundant and obsolete language on an arbitrator's timeliness and on other arbitration data that the bureau no longer tracks.
- Requiring arbitration awards to be electronically submitted to the commissioner.
- Adding new language on training requirements for peace-officer arbitrators. The language conforms to new statutory language and provides the broadest level of flexibility while ensuring arbitrators receive training from a qualified provider.

VI. Changes under Chapter 7315, independent review.

- Making language consistent with PELRA provisions under chapter 5510.
- Removing obsolete references to the Public Employment Relations Board.
- To reflect current bureau practice, updating how the commissioner may hear an independent-review grievance.

STATUTORY AUTHORITY

The bureau has six standing sources of statutory authority to amend its rules and one new source of statutory authority to adopt rules on training for peace-officer arbitrators:

- The Minnesota Labor Relations Act:
 - rules governing proceedings before the commissioner under the act (chapters 5500 and 5505);⁵
 - rules governing applications for area/statewide industry labor-management committee grants (chapter 5520);⁶ and
 - rules governing appointments to, removals from, and administering the bureau’s arbitration roster (chapter 5530).⁷
- PELRA:
 - rules relating to administering PELRA and conducting hearings and elections (chapters 5500 and 5510);⁸
 - rules governing grievance procedures that are available to any employee in a unit not covered by a contractual grievance procedure (chapter 5510);⁹ and
 - rules establishing criteria to be followed in determining whether an extension should be granted in arbitration decisions (chapter 5510).¹⁰
- Minnesota Police Accountability Act: rules governing training for peace-officer arbitrators (chapter 5530).¹¹

⁵ Minn. Stat. § 179.02, subd. 3.

⁶ *Id.* § 179.82, subd. 2.

⁷ *Id.* § 179.02, subd. 4. This roster is also used under PELRA.

⁸ Minn. Stat. § 179A.04, subd. 3(a)(6). The bureau has two sources of statutory authority for its arbitration rules under Minn. R. 5500.2200-.2800.

⁹ Minn. Stat. § 179A.04, subd. 3(a)(8).

¹⁰ *Id.* § 179A.16, subd. 7.

¹¹ *Id.* § 626.892, subd. 10(a). This section was effective September 1, 2020, except that subdivision 2, paragraph (b), was effective the day following final enactment (July 23, 2020).

REGULATORY ANALYSIS

As part of its SONAR, the bureau must analyze eight factors.¹²

(1) a description of the classes of persons who probably will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule

The bureau's proposed rules are likely to affect:

- 1) public employers and employees;
- 2) labor organizations, including labor unions and independent, nonunion associations or organizations;
- 3) arbitrators on the bureau's arbitration rosters;
- 4) prospective applicants for placement on the bureau's general arbitration roster;
- 5) attorneys and consultants representing clients before the bureau;
- 6) private-sector employers and employees; and
- 7) individuals or organizations that provide training on cultural competency or the daily experience of peace officers.

Classes that will bear costs from the proposed rules:

The bureau estimates that there are no identifiable, substantive costs associated with the proposed rule changes, as the bureau is mostly making style-and-form updates, plain-language changes, or other clerical-type changes. In fact, the bureau estimates that most affected classes will likely see cost savings, as the rules will (1) be clearer and easier to understand, and (2) allow for technological updates such as electronic filing and virtual hearings. Furthermore, all arbitrator application fees will now be consistent with statute.¹³

One new cost stems from the Minnesota Police Accountability Act, which requires the bureau to maintain a separate arbitration roster strictly for peace-officer discipline grievances.¹⁴ Under the act, arbitrators for peace-officer discipline

¹² *Id.* § 14.131.

¹³ *See id.* § 179A.04, subd. 3(a)(10).

¹⁴ *See* pages 4 and 5.

grievances must complete initial training on cultural competency and the daily experience of peace officers and must bear all costs associated with the required initial training.¹⁵ The bureau's proposed rules on training requirements add no new substantive costs for peace-officer arbitrators; rather, the bureau's rules simply delineate a broad range of acceptable training providers and establish basic record-keeping requirements at a minimal cost to the arbitrators.

Classes that will benefit from the proposed rule:

All classes of affected persons will benefit because the bureau is streamlining its rules and making them more understandable, in addition to removing duplicative, obsolete, and unnecessary language. Furthermore, peace officers and their employers will benefit from having a dedicated arbitration roster solely for peace-officer discipline grievances, with the arbitrators receiving training from qualified instructors; this training will help ensure that grievance disputes are timely and fairly resolved.

(2) the probable costs to the agency and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues

The bureau estimates there to be no increased costs to the agency or other state agencies, including MMB, which administers state-employee contracts. No other agencies are substantially affected by the proposed rules, and none of the changes will result in a more-than-minimal increased cost. Additionally, the proposed rules do not affect state revenue.

Overall, the bureau anticipates that the rule changes will result in decreased costs because of new provisions allowing for electronic filing and service delivery and because the bureau is shifting publication notice of arbitrator-roster applications from the *State Register* to the bureau's website.

¹⁵ Minn. Stat. § 626.892, subd. 10(c).

(3) a determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule

The bureau proposes the rule changes to provide the least-costly methods or least-intrusive methods for achieving the purpose of the five amended rule chapters, which is to promote stable and constructive labor-management relations.

The bureau's rules on training requirements for peace-officer arbitrators offer maximum flexibility at no cost to the state and no additional costs to arbitrators.

(4) a description of any alternative methods for achieving the purpose of the proposed rule that were seriously considered by the agency and the reasons why they were rejected in favor of the proposed rule

The bureau considered splitting the rulemaking into two separate proceedings: one for its existing chapters, and another for the new training language for peace-officer arbitrators. But given the narrow scope of the new language, the bureau decided it was more efficient to combine the new language into a broader rulemaking.

On the new training language, the bureau did not seriously consider any alternative method for achieving the purpose of the proposed rule, as any substantive alternative method is limited or prohibited by statute.

The legislature gave the bureau the option to adopt training requirements for arbitrators overseeing peace-officer discipline grievances. And the bureau decided to adopt training requirements to best fulfill the legislature's intent of having arbitrators immersed in cultural competency and police work. Furthermore, the bureau wants to ensure that peace-officer arbitrators have clear requirements for receiving the statutorily required training and can efficiently and effectively resolve peace-officer discipline grievances.

(5) the probable costs of complying with the proposed rule, including the portion of the total costs that will be borne by identifiable categories of affected parties, such as separate classes of governmental units, businesses, or individuals

For peace-officer arbitrators, training costs are mandated by statute, but the bureau estimates that a peace-officer arbitrator—on average—will have to pay a minimal amount for the 12 hours of required training. For example, the six arbitrators on the roster received free training from the state and from other arbitrators on the bureau’s general roster.¹⁶ Other arbitrators received training from instructors of continuing-legal-education courses, some of which are free and some of which require a small fee.

No other affected classes will see increased costs; instead, the classes will see lower costs from clearer rules that reflect current bureau practice and don’t conflict with statute.

(6) the probable costs or consequences of not adopting the proposed rule, including those costs or consequences borne by identifiable categories of affected parties, such as separate classes of government units, businesses, or individuals

First, the bureau anticipates that there would be increased costs from unevenly trained peace-officer arbitrators because they would not have consistently developed the skills and tools needed to efficiently arbitrate discipline grievances. Arbitration is used so that courts are not overwhelmed with cases and is relied on for being quick, efficient, and economical. Without clear training requirements, the skills of peace-officer arbitrators could be severely curtailed.

Second, the bureau’s current rule chapters will continue to contain inaccurate, obsolete, archaic language, which prohibits the bureau and its stakeholders from

¹⁶ The arbitrators have received state training through MMB, the Department of Health, and the Office of the Attorney General. Arbitrators have also received training from CLE providers such as Minnesota CLE and Lawline. One arbitrator received training from the Minnesota Justice Research Center. For an explanation of acceptable providers, see pages 55 and 56.

timely resolving labor disputes. Any substantial increase in the time to resolve labor disputes invites frustration and increased costs for all parties.

(7) an assessment of any differences between the proposed rule and existing federal regulations and a specific analysis of the need for and reasonableness of each difference

There are no identifiable differences between the proposed rule and existing federal regulations. PELRA is a state statute governing public employees and employers, while private-sector employees now mostly follow federal regulations under the National Labor Relations Act.

The amended rules establish two small differences between the National Labor Relations Act and the Minnesota Labor Relations Act, however.

- 1) The bureau's new filing and service requirements are slightly different than rules under the National Labor Relations Act.
- 2) New bureau requirements on record retention differ from federal laws such as the Freedom of Information Act or Federal Records Act.

These two differences are due to internal bureau procedure and efforts to make bureau rules consistent for its public- and private-sector stakeholders. The differences are also due to the larger size and scope of federal rules and their applicable statutes. The differences are not substantial and are needed to ensure consistency throughout the bureau's rules.

Additionally, private-sector parties may choose whether to proceed under the National Labor Relations Act or the Minnesota Labor Relations Act, so parties would not be burdened from following two different rule requirements.

(8) an assessment of the cumulative effect of the rule with other federal and state regulations related to the specific purpose of the rule

The only cumulative effect concerns the application fee for arbitrators to be placed on the Federal Mediation and Conciliation Services' arbitration roster, which is over \$100 per year. The bureau's arbitrators are not required to be on the federal roster, however, so this cumulative effect only applies to arbitrators who apply to be placed on the federal roster.

PERFORMANCE-BASED RULES

The bureau must describe how it considered and implemented performance-based standards that emphasize (1) superior achievement in meeting the bureau's regulatory objectives, and (2) maximum flexibility for the regulated party and the bureau in meeting these goals.¹⁷

When developing the proposed rule changes, the bureau encouraged its stakeholders to submit comments for updating and modernizing the rule chapters and encouraged public participation. The bureau consulted with its arbitrators and arbitration advisory committee to vet the rule changes and analyze whether the rule changes would help the bureau continue to ensure performance-based rules. Furthermore, the new training language promotes flexible yet clear guidelines for peace-officer arbitrators to receive their statutorily required training.

¹⁷ Minn. Stat. §§ 14.002, .131.

ADDITIONAL SONAR REQUIREMENTS

Consulting with MMB on local government impact

The bureau must consult with MMB to help evaluate the fiscal impact and benefits of the proposed rule on units of local governments.¹⁸ To consult with MMB, the bureau sent MMB the SONAR and proposed rules to help it determine the impact and benefits of the proposed rule on units of local governments.

Cost of complying for small business or small city

The bureau must determine if the cost of complying with the proposed rule in the first year after the rule is effective will exceed \$25,000 for (1) a business that has less than 50 full-time employees, or (2) a statutory or home rule charter city that has less than ten full-time employees.¹⁹

The cost of complying with the proposed rule will not exceed \$25,000 for any of the bureau's stakeholders that use the arbitration roster for grievance or interest arbitration or that use any of the bureau's proceedings.²⁰

Determining whether the rules require local implementation

The bureau must determine if a local government will be required to adopt or amend an ordinance or other regulation to comply with the bureau's proposed rule.²¹ The bureau has determined that the proposed amendments do not affect local ordinances or regulations.

Impact on farming operations

The proposed rule does not affect farming operations.

¹⁸ *See id.* § 14.131.

¹⁹ *Id.* § 14.127.

²⁰ *See* Exhibit 1 for MMB's determination.

²¹ Minn. Stat. § 14.128.

Witness list

If 25 or more persons request a hearing, the bureau will hold a hearing under Minnesota Statutes, section 14.14. The bureau anticipates the following agency and nonagency witnesses will testify at the hearing:

- Deputy Commissioner Michael Stockstead
- Ian Lewenstein, State Program Admin. Principal.

ADDITIONAL NOTICE PLAN

The bureau's Additional Notice Plan gives notice to persons or classes of persons that may be affected by the proposed rules. The bureau emailed the rules, SONAR, and Dual Notice to the legislature and everyone registered on the bureau's rulemaking list.²² The bureau did not notify the commissioner of agriculture because the rules do not affect farming operations.

The bureau's Additional Notice Plan complies with the APA because the bureau published notice of the proposed rules and SONAR in the *State Register*; emailed copies of the notice, proposed rules, and SONAR to the bureau's rulemaking list; and published notice of the rules in the *Minneapolis Labor Review* (December 18, 2021 publication), a labor newsletter.

The bureau's rulemaking list includes:

- 1) significant users of bureau services, including:
 - a. public employers and their representatives and advocates, including the League of Minnesota Cities, the Association of Minnesota Counties, the Minnesota Association of Townships, and the Minnesota School Boards Association;
 - b. labor organizations, including labor unions; and
 - c. independent attorneys and consultants representing clients before the bureau;
- 2) all individuals on the bureau's arbitration rosters;
- 3) all individuals on the bureau's arbitration advisory committee; and
- 4) all individuals who requested to be added to the rulemaking list.

The proposed rules, SONAR, and other notices will be published on the bureau's website (<https://mn.gov/bms/legislationrulespolicies/>). Additionally, an announcement about the rules will be posted on the website's home page.

²² See *id.* §§ 14.14, subd. 1a(a), .116(b), (c).

RULE-BY-RULE ANALYSIS

I. Each proposed rule requirement must be needed and reasonable.

The most critical requirement of the SONAR is the rule-by-rule analysis, which explains the bureau's reasoning behind every proposed rule requirement. For each proposed rule requirement, the bureau must explain two key elements: why the rule is (1) needed, and (2) reasonable.

A rule is reasonable if it is based on an affirmative presentation of facts and evidence that rationally connect with the bureau's proposed regulatory choice. The bureau's proposed regulatory choice does not need to be the "best," but the proposed choice must be one that a rational person could have made and one that is not arbitrary or otherwise devoid of articulated reasons.

For example, the bureau's proposed rule listing the acceptable training providers for peace-officer arbitrators may not comprehensively list every possible training provider. But the rule is reasonable because it reflects the training current peace-officer arbitrators have already received and is flexible yet committed to ensuring that the arbitrators receive high-quality training.

II. The rule-by-rule analysis is organized in order of the bureau's rule chapters.

At the beginning of each rule chapter, the bureau establishes a general overview of the need for the rule amendments within the chapter. This overview is meant to better inform the public about the bureau's duties and help establish—on the record—the bureau's argument for adopting the proposed rules.

Last, the bureau goes through a detailed rule-by-rule analysis within each rule chapter in which the bureau argues for the need and reasonableness of each rule amendment.

PLAIN LANGUAGE

I. Rule writing is difficult, but state agencies must write for the public, not just themselves.

It is difficult to write, especially law. And for state agencies, it is even more difficult to write the law, including rules, clearly and concisely enough so that affected parties can easily understand it. It may be obvious or expected who the affected parties are, but not always. So given that an agency can never account for every potential affected or interested party, it is best to write in plain language—that is, to follow well-established, century-old writing principles:²³

- Write in short and medium-length sentences
- Put the subject near the beginning of the sentence
- For the subject, use a character or actor that the reader will easily recognize
- Use active voice and verbs, not abstract nouns or nominalizations
- Keep the subject and verb close together
- Keep the verb close to its object
- Use familiar words and phrases
- Eschew jargon and legalese and explain technical terms when needed
- Don't write in alphabet-soup style by using endless initialisms
- Omit unnecessary words and wordy phrases

²³ Agencies should follow these time-tested principles because judges use most of them to help interpret law. For example, eliminating unnecessary words and being consistent are important because judges generally give effect to every word and assume a word used in one place has the same meaning when used elsewhere.

Even Minnesota judges are not averse to chiding state agencies for obfuscated writing:

I write separately, however, to note my concern about the quality and effectiveness of the disqualification notices that the Department of Human Services (Department) sent to Jackson, and the difficulty that lay people like Jackson would have in understanding what they must do to timely challenge the disqualification and the consequences that follow if they fail to act within the required time limits. . . . I believe that the Department can and should do better in helping Minnesotans, who are typically unrepresented by attorneys, know what is at stake if they do not challenge the Department's action within the required 30-day timeline. *Jackson v. Comm'r of Human Services*, 933 N.W.2d 408, 417 (Minn. 2019) (Chutich, concurring).

- Hyphenate phrasal adjectives
- Be consistent

II. Writing in plain language is most needed and most beneficial when writing law, including rule writing.

A. In Minnesota, writing in plain language is already encouraged.

For state agencies, adhering to plain-language principles is not a new concept. For example, former governor Mark Dayton issued an executive order in 2014 requiring state agencies to communicate in plain language to Minnesotans; this executive order was subsequently reissued by Governor Walz. And there are several plain-language requirements in *Minnesota Statutes*, including one requiring state agencies to write rules in plain language.²⁴

B. Writing in plain language saves time and money for all Minnesotans.

Writing in plain language allows affected consumers, regulatory parties, and state agencies to easily grasp the law and how it applies. Critically for rule writing, all parties—the public, regulated parties, and state agencies—need to understand how the law affects them, including their duties, rights, and remedies. An unclear law is less effective, and, consequently, a time-consuming and costly process ensues:

- The public and regulated parties spend extra time reading and trying to understand the law.
- The public and regulated parties can't understand or misinterpret the law and so hire lawyers, who in turn spend costly time reading, understanding, and interpreting the law.
- State agencies identify drafting errors, including style-and-form errors, grammatical errors, and, most important, errors that result in ambiguity and vagueness. Then the agencies must spend time and resources to fix the errors.
- Agencies may not fix all the drafting errors, and the unfixed errors then engender litigation, which in turn costs much time and money.

²⁴ See Minn. Stat. § 14.07, subd. 3(3).

- The public and regulated parties lose trust in the state agencies, as does the legislature.

Furthermore, writing in plain language makes the law more precise and freer of errors, ambiguities, and vagueness, allowing the law to be consistently interpreted and applied. In turn, the public, regulated parties, and agencies make fewer mistakes—and have fewer questions—when following the law. And agencies benefit from:

- less confusion;
- fewer complaints;
- less litigation;
- increased public and regulated-party satisfaction; and
- more trust and credibility.

C. There are two other reasons to write in plain language: public accessibility and social equity.

Who does law affect? Most broadly, law affects the public; because law *is* for the public, state agencies must make every effort to write in plain language. And because agencies administer the law, writing unclearly and ambiguously serves no purpose when agencies must interpret or enforce the law. Ultimately, clear, well-drafted law benefits everyone:

The law should be drafted in such a way as to be intelligible, above all, to those directly affected by it. If it is intelligible to them, lawyers and judges should have no difficulty in understanding it and applying it.²⁵

Because the law is for the public, the law should not be obfuscated, turgid, or otherwise inaccessible. If state agencies eschew plain language, they are telling the public that only agencies should be capable of understanding and interpreting the law. In other words, the public is not entitled to understand the law. This strong whiff of elitism only further separates the public from the agencies that regulate them and the law that affects their daily lives.

²⁵ Law Reform Commn. of Victoria, *Plain English and the Law* 50 (1987; repr. 1990).

III. To best serve Minnesotans, the bureau strives to write in plain language.

The bureau's SONAR and proposed rules follow plain-language principles. By following these principles, the bureau hopes to establish a best-practice model for other state agencies and show how much more effective and beneficial—and fulfilling—it is to write in plain language. Writing in plain language makes the bureau's SONAR and rules easier to understand and follow and, ultimately, fulfills the primary goals of rulemaking: public accountability, access, and transparency.

IV. Many of the bureau's proposed changes are needed to make the law clearer by following plain-language principles.

The bureau's plain-language revisions are needed to make the law clearer and easier to follow. All the changes are reasonable because they (1) serve to inject the benefits of plain language directly into the bureau's rules, and (2) follow the important work of well-respected plain-language advocates, who are referenced on pages 67 and 68.

CHAPTER 5500

I. Chapter 5500 governs three different proceedings before the bureau and arbitration proceedings.

Chapter 5500 is broken into four parts, the first three of which involve proceedings under the Minnesota Labor Relations Act:

The **Minnesota Labor Relations Act** governs collective bargaining and labor disputes for private-sector employers and employees. Few cases are referred to the bureau, as most private employers and employees are covered under the National Labor Relations Act.

- Part 1 involves petitions for mediation to negotiate a collective-bargaining agreement, changes in an existing collective-bargaining agreement, and other collective-bargaining issues.²⁶
- Part 2 governs proceedings involving labor disputes affecting public interests before a commissioner-appointed fact-finding commission.²⁷
- Part 3 involves proceedings before labor referees involving jurisdictional controversies over questions of labor-organization representation.²⁸

While the first three parts of chapter 5500 govern rules on the Minnesota Labor Relations Act, part 4 applies solely to arbitration proceedings under the act and PELRA.²⁹ For example, when a labor dispute under PELRA is referred to arbitration, an arbitrator or arbitrator panel from the bureau's arbitration roster conducts an arbitration hearing.

²⁶ See Minn. R. 5500.0100-.0500; Minn. Stat. § 179.06, subd. 1.

²⁷ See Minn. R. 5500.0600-.1100; Minn. Stat. §§ 179.07, .08.

²⁸ See Minn. R. 5500.1200-.2100; Minn. Stat. § 179.083.

²⁹ See Minn. R. 5500.2200-.2800; Minn. Stat. §§ 179.09, .38, 179A.16, .20, .21, .54, subd. 7. The bureau has not certified matters to private-sector arbitration for several decades.

II. The proposed changes to chapter 5500 are reasonable changes needed to clean up obsolete language, remove legalese, and improve consistency with the governing statute.

A. Part 1: Petitions for mediation

- a) *5500.0100*. This part is extended to apply through part 5500.2100, allowing duplicative definition parts to be repealed—parts 5500.0600 and 5500.1200.
- b) *5500.0200*. This part is amended to remove legalese *shall* and *thereby* and to more clearly express the part’s meaning. An unnecessary reference to the *commissioner’s agent* is removed.
- c) *5500.0210*. This part is added to ensure consistency with the proposed filing requirements under part 5510.0320. But because the specific filing method is specified in statute,³⁰ the bureau is not cross-referencing language on the filing method, including electronic filing, under part 5510.0320.
- d) *5500.0300*. This part is amended to cite the statute involving petitions for mediation under the Minnesota Labor Relations Act. Part of the petition must now include the petitioner’s email address, a change that aligns with proposed amendments elsewhere in the bureau’s rule chapters and a change that also reflects modern practice and communication. The part is also amended to use consistent terminology when referencing multiple employers, referred to as *employers associations* in statute.³¹

Other plain-language changes are made to make the part flow better.

The language on forms being available from the bureau is stricken, as the language is unnecessary and not a rule.

- e) *5500.0400*. This part is repealed because it repeats language under part 5500.0300, item E.
- f) *5500.0500*. This part is reorganized into two subparts to help the public easily find information. The reference to the commissioner arranging a *meeting* to

³⁰ See Minn. Stat. § 179.06, subd. 1: “In either case the petition shall be served by delivering it to the commissioner in person or by sending it by certified mail addressed to the commissioner at the commissioner’s office.” Similarly, this statute’s filing method applies to labor disputes affecting public interests under Minn. Stat. §§ 179.07, .08.

³¹ See Minn. Stat. § 179.10, subd. 2.

resolve a dispute is changed to *conference*, which reflects the statutory terminology.

Language is added to allow a virtual conference, which is made for consistency throughout the rule in which virtual hearings are added to allow flexibility to the parties.

Other plain-language changes are made such as removing *shalls* and nominalizations.

B. Part 2: Labor disputes affecting public interests

- a) *5500.0700*. This part is amended to remove legalese *shall* and *thereby* and to more clearly express the part's meaning. Items are added for structure.
- b) *5500.0800*. This part is reorganized into subparts and makes plain-language changes. Subpart 1 clarifies a vague pronoun and removes an unnecessary word.

In subpart 2, the reference to the commissioner is stricken to reflect the statute and other relevant rule parts on labor disputes, as the commissioner chooses to appoint a commission, which is then responsible for adjudicating the labor dispute. Subpart 2 is also amended to better clarify when the commission can permit an appearance by a party indirectly affected by a dispute. The current discretion is tightened to ensure that the commission follows clearly defined standards.

- c) *5500.0900*. This part strikes the language and refers to the language in part 5505.0700. This change ensures consistency with other proceedings under the Minnesota Labor Relations Act and removes duplicative language.
- d) *5500.1000*. This part strikes the language and refers to the language in part 5505.0800. This change ensures consistency with other proceedings under the Minnesota Labor Relations Act and removes duplicative language.
- e) *5500.1100*. This part strikes some language and repeals subparts 2 to 8, instead referring to the language in part 5505.0600. This change ensures consistency with other proceedings under the Minnesota Labor Relations Act and removes duplicative language. New language is added to reference the statutory requirement that the commission must meet and issue a report on the dispute.

Subpart 9 is amended because the record under this part is different from the record under part 5505.0600, so that part cannot be cross-referenced.

C. Part 3: Proceedings before labor referees

- a) *5500.1300*. This part is amended to remove legalese *shall* and *thereby* and to more clearly express the part’s meaning. Items are added for structure.
- b) *5500.1400*. This part removes language that repeats statutory language, removes legalese, and adds the email requirement for a notice filed with the commissioner. The part also makes a term change and removes unnecessary language requiring the notice to be addressed to the commissioner—this requirement is already stated according to the filing requirements under part 5500.1600, subpart 1—and by extension, part 5510.0320.
- c) *5500.1500*. This part is repealed because it duplicates statutory language.
- d) *5500.1600*. This part is reorganized to better present and consolidate the information. The definition of *serve* used elsewhere in bureau rules is added, as the term is used in the relevant rule parts on labor referees.

In subpart 2, the reference to the governor is changed to the commissioner to reflect that the commissioner appoints the labor referee.³²

The part also makes plain-language changes.

- e) *5500.1700*. This part strikes the language and refers to the language in part 5505.0600. This change ensures consistency with other proceedings under the Minnesota Labor Relations Act and removes duplicative language.

Item H is amended because the record under this part is different from the record under part 5505.0600, so that part cannot be cross-referenced.
- f) *5500.1800*. This part strikes the language and refers to the language in part 5505.0700. This change ensures consistency with other proceedings under the Minnesota Labor Relations Act and removes duplicative language.
- g) *5500.1900*. This part strikes the language and refers to the language in part 5505.0800. This change ensures consistency with other proceedings under the Minnesota Labor Relations Act and removes duplicative language.

³² The relevant statute, section 179.083, was amended under 1987 Minn. Laws, ch. 45, to make the commissioner responsible for appointing the labor referee.

- h) *5500.2000*. This part is amended to add items and vertical lists, and plain-language changes are made.

Item A adds a requirement that the determination must be simultaneously filed with the parties and commissioner (also added in item B), a reasonable addition that ensures the parties receive the determination on the controversy and also ensures consistency with other proposed amendments on filings. Additionally, the *determination* replaces the *record*, which reflects current practice and is consistent with bureau rules and how third parties such as arbitrators file an award or determination rather than a record.

- i) *5500.2100*. This part is reorganized into subparts, items, and vertical lists; a helpful internal cross-reference is added.

Subpart 1, item B, adds a new requirement that a request for reconsideration must be filed within ten calendar days after the labor referee's final determination. Currently, there is no deadline to request reconsideration, and this change is also needed and reasonable because it conforms with bureau practice in its other rule chapters on reconsideration requests.

Item D clarifies that an amended determination must be filed simultaneously with the commissioner and the parties. Because the original determination must be filed with the parties and commissioner, it is reasonable for an amended determination to also be filed with them.

D. Part 4: Arbitration under PELRA

If the proposed rule is approved by OAH and adopted by the bureau, parts 5500.2200 to 5500.2850 will be recoded in editing by the revisor. Mixing PELRA language with language from the Minnesota Labor Relations Act in one chapter is confusing and illogical. The bureau proposes to combine the language on arbitration into its PELRA chapter, chapter 5510. For more on this editing change, see page 65.

- a) *5500.2200*. New language is added to clarify that single arbitrators can be appointed to hear arbitration cases. This clarification reflects current practice and statutory language and mitigates the need to amend all references to “a panel” by adding *or arbitrator*.

This part is also amended to reflect that Minnesota Statutes, chapter 179A, is not the only statute that the bureau’s arbitration rules apply to—for example, various statutory provisions refer parties to bureau rules.³³

- b) *5500.2210*. This new part is needed to define terms used in the relevant parts on arbitration. The terms are needed and reasonable because they cross-reference terms already used in bureau rules or are defined to fit the context.

Arbitrator is defined to apply to an arbitrator on all three of the bureau’s arbitration rosters.

Commissioner is defined because the term is the same throughout bureau rules and is simple enough to not require a cross-reference.

Party is defined because the term has a different meaning as it relates to arbitration rather than other contexts under bureau rules.

- c) *5500.2220*. Two subparts from part 5530.1000 are moved to this new part. The subparts relate to arbitration hearings and logically fit with other arbitration-hearing requirements rather than with the rule chapter on the bureau’s general arbitration roster (5530).

Subpart 1 is amended to replace the vague *adequate* by referencing the bureau rules on arbitration—a hearing is “adequate” if it complies with bureau rules.

Subpart 2 is amended to remove the 90-day retention requirement for an arbitrator-recorded hearing. Many arbitrators immediately destroy their recordings after issuing an award, and there is no need for a retention policy because the recording is the arbitrator’s personal property.

- d) *5500.2300*. This part is reorganized into subparts and items. The incorrect term *board* is stricken and replaced with *panel*. References to a “first hearing” are also stricken, as there is only a single arbitration hearing. If there were more than one hearing, the language would still apply to subsequent hearings.

Subpart 1 removes an obsolete requirement in which the arbitrator must serve on the parties a copy of the relevant arbitration rules; most arbitrators do not follow this requirement, and bureau rules—and other agency rules—are easily accessible online.

³³ See, e.g., Minn. Stat. §§ 43A.33, 122A.40, .41.

A new subpart 2 is added to allow for virtual hearings, but only if all parties agree. This new subpart reflects a new bureau practice implemented during the Covid-19 pandemic. A virtual hearing provides flexibility to the parties without mandating that a virtual hearing occur. The new language on virtual hearings is added elsewhere in bureau rules.

A new subpart 4 is moved from part 5530.1000, as the transcript language logically fits with other requirements in this part. Item C is amended so that a copy of the transcript automatically goes to the arbitrator but only to the other party upon the party's request. Because a transcript is expensive, it is unreasonable for one party to automatically receive a free copy when the other party has already paid and arranged for the transcript.

- e) *5500.2400*. This part is organized into subparts, items, and vertical lists. Subpart 1, item B, is moved from part 5500.2500, which contains evidence requirements. Moving this language is reasonable because it fits logically with the rest of the part on conducting a hearing.

Subpart 1, item A, removes unnecessary language and language that is moved to subpart 2.

Subparts 2 and 3 make plain-language changes. Item E was moved from existing language in subpart 3.

Subpart 2, item A, amends the phrase *moving party* to *party with the burden of proof* (and also *defending party* to *responding party*). This needed change reflects how the party that presents its case first depends on whether the case is interest or grievance arbitration. For example, unions are almost always the moving party, but in a grievance arbitration, the employer presents its case first.

- f) *5500.2500*. To better organize the part, it is amended by adding items. Item C is reworded to remove vague language such as *as far as possible* and clarify when a party must provide evidence requested by an arbitrator.
- g) *5500.2510*. This new part is moved from part 5530.1000 and amended to remove unenforceable language on *encouraging* briefs—and other vague language—to state that parties can decide whether to submit briefs. This language reflects long-standing practice in which the parties must agree on whether to submit briefs to the arbitrator; the arbitrator cannot independently order briefs but can still resolve any disputes or disagreements on briefs.

h) *5500.2600*. Plain-language edits are made to this part. This part is also amended to reflect that any amendment to a dispute that the parties agree on should be filed before the record closes, not before an arbitrator is about to file the decision. This is a reasonable change that saves time and money for the parties.

i) *5500.2700*. This part is reorganized into subparts and removes legalese.

Subpart 2 adds that an arbitration award must be filed simultaneously with the commissioner and the parties. The bureau frequently encounters problems in which arbitrators belatedly file the awards months after the parties have received it. It is reasonable to require arbitrators to file an award simultaneously given the statutory language and overall authority the bureau has overseeing arbitration. A cross-reference to chapter 5530 is added to ensure that the award is filed electronically and according to other requirements in the chapter.

Subpart 3 makes a similar change that requires the parties to notify the commissioner if they have resolved the dispute. This is a reasonable change that ensures that the commissioner is properly informed of matters that have been submitted to arbitration.

j) *5500.2800*. This part is reorganized into subparts, items, and vertical lists. Subpart 1, item B, adds a new requirement that a request for reconsideration must be filed within ten calendar days after an arbitrator's award is filed. Currently, there is no deadline to request reconsideration, and this change is also needed and reasonable because it conforms with bureau practice in its other rule chapters, specifically PELRA under chapter 5510.

Subpart 2, item B, allows a reconsideration request to proceed under written briefs or a hearing with briefs. Allowing written briefs without a hearing reflects current bureau practice and saves parties the cost of holding another hearing. Item C then specifies that if a hearing is held, it must be held according to the initial arbitration hearing.

Item D cross-references language on filing an award under part 5500.2700; this new language ensures that all awards are consistently filed.

k) *5500.2850*. This new part on disputes over arbitrator fees and costs is moved from part 5530.1000. This part is better organized under the language on arbitration proceedings rather than the chapter on the arbitration roster (5530).

Subpart 2 does not substantively amend current requirements; plain-language and organizational changes are made to clarify the language.

CHAPTER 5505

I. Chapter 5505 governs proceedings under the Minnesota Labor Relations Act for investigating and certifying collective-bargaining representatives.

Unlike chapter 5500, chapter 5505 deals exclusively with the Minnesota Labor Relations Act. Specifically, chapter 5505 contains rules needed to enforce one section of the act dealing with collective-bargaining representatives.³⁴ A collective-bargaining representative that is designated or selected by a majority of employees in a bargaining unit is the exclusive representative for the bargaining unit. An exclusive representative bargains on behalf of the bargaining unit for pay, work hours, and other employment-related conditions.

Yet an employee, group of employees, labor organization, or employer may raise a question of representation about the exclusive representative and may petition the commissioner to investigate. Subsequently, the commissioner may require a hearing and schedule a secret ballot to determine the appropriate exclusive representative. Chapter 5505 provides the rules for the petition, hearing, ballot, and other procedures for investigating and certifying collective-bargaining representatives.

II. The proposed changes to chapter 5505 clarify definitions, remove unnecessary language, and remove overly discretionary provisions.

- a) *5505.0100*. This part is amended to define some terms individually instead of cross-referencing to statute. This is a needed change because this chapter has several terms not found in statute (*dispute*, *party*, *serve*, for example); the other terms cross-reference statute.

Commissioner is defined because the term is the same throughout bureau rules and is simple enough to not require a cross-reference.

Dispute refers to the relevant statute on representation controversies and is needed to give meaning to the term used in this chapter.

Party gives meaning to people involved in a dispute.

³⁴ See Minn. R. 5505.0100-.1500; Minn. Stat. § 179.16.

Serve is needed to ensure consistency with other bureau rule chapters on how documents are served on the bureau and other parties.

Unit references employees under Minnesota Statutes, section 179.16.

- b) *5505.0200*. This part is amended to remove legalese *shall* and *thereby* and to more clearly express the part’s meaning. Items are added for structure.
- c) *5505.0210*. This part is added to ensure consistency with the new filing requirements under part 5510.0320.
- d) *5505.0300*. This part is amended to strike language that repeats statute and to cross-reference to the statute instead. Rule language should not repeat statutory language because repeated statutory language does not meet the definition of a rule and may become obsolete—or conflict with the statute—if the statutory language is later amended.
- e) *5505.0400*. This part is amended to add the email requirement for petitions; other grammatical changes are made, and an example in item A is removed because it is unnecessary. Another example in item G is removed.
- f) *5505.0500*. This part is reorganized into coherent subparts and items. Plain-language changes are also made. Unnecessary references to a commissioner’s agent are removed for consistency with other bureau rules; it is also understood in executive-branch rules that commissioners may delegate duties.

Subpart 3 adds a new requirement mandating that a hearing recording be kept for 90 days. Currently, the language does not specify how long the bureau must keep a recording—previously referred to as a *stenographic report*—so the change is needed to ensure that a recording is kept for a specified period, which is consistent with bureau rules on keeping hearing recordings and the record.

- g) *5505.0600*. This part is amended to make plain-language and organizational changes. These changes make the part easier to read and understand. Other rule parts in chapter 5500 reference this part, so the changes make hearings under the Minnesota Labor Relations Act consistent. References to *recording* (instead of *hearing*) are made in the rest of the part because of the change in part 5505.0500, subpart 3.

Subpart 2 removes statutory language and cross-references to the relevant statute.

A new subpart 2a is added to allow for virtual hearings, but only if all parties agree. The new language on virtual hearings is added elsewhere in the proposed rules.

Subpart 3 uses items to organize the subpart and removes duplicative language.

Subparts 4 to 6 and 8 make clarifying plain-language changes.

Subparts 7 and 9 use items to organize the subparts and include useful cross-references to other rule parts. Subpart 9 adds clarifying language that the record must be kept for 90 days, consistent with bureau rules on keeping records.

- h) *5505.0700*. This part makes plain-language changes. Other rule parts in chapter 5500 reference this part, so the changes make hearings under the Minnesota Labor Relations Act consistent.
- i) *5505.0800*. This part is amended to make plain-language and organizational changes. Other rule parts in chapter 5500 reference this part, so the changes make hearings under the Minnesota Labor Relations Act consistent.
- j) *5505.0900*. This part is amended to use vertical lists to better show the requirements, and the relevant statute is cross-referenced to indicate how the commissioner determines the exclusive representative.
- k) *5505.1000*. This part is reorganized into subparts and items to better structure the language. In subpart 1, the relevant statute is cross-referenced to clarify that the commissioner may take a secret ballot.

Subpart 3 adds a vertical list and removes unnecessary and duplicative language.

- l) *5505.1100*. This part is amended to make plain-language changes and to add clarifying internal cross-references. Subparts and items are added for better structure.
- m) *5505.1200*. Subpart 1 makes changes to ensure defined terms are used and to remove redundant information. Item B strike a phrase and colon that leads to nowhere and that is also unnecessary and redundant.

Subpart 2 removes duplicative language and legalese. New language is added to specify what must be included in the notice for the consent election. It is

reasonable that employees know when the election will be held and that they can file objections.

Subpart 3 removes discretionary language and makes plain-language changes.

Subpart 4 makes changes to filing an objection to be consistent with other bureau language on filing. A more specific internal cross-reference is added.

- n) *5505.1300*. This part removes legalese and makes plain-language changes.
- o) *5505.1400*. This subpart is reorganized into subparts, and plain-language changes are made.
- p) *5505.1500*. This part strikes duplicative and redundant language and uses economical cross-references to refer the reader to the appropriate rule parts. Subparts are added to better organize the part.

CHAPTER 5510

I. Chapter 5510 governs three different provisions under PELRA.

Chapter 5510 is divided into three parts, all of which involve PELRA:

- 1) Part 1 involves proceedings before the commissioner on representation issues, including petitions:
 - for certifying and decertifying an exclusive representative;
 - for clarifying an appropriate bargaining unit; and
 - on other certification issues.³⁵

Included with the rules on petitions are rules on hearings for investigating the petitions; for holding elections, if needed; and for filing charges of unfair election practices. Part 1 also includes rules on fair-share-fee issues, which the bureau is removing because of a 2018 Supreme Court ruling.³⁶

- 2) Part 2 governs notices and petitions for mediation between an exclusive representative and an employer. If the exclusive representative and employer cannot successfully mediate, the commissioner may certify unresolved disputes to interest arbitration. Last, part 2 has a small part on notices to strike and dates for the right to strike.³⁷

PELRA governs collective bargaining and labor disputes for public employees such as state workers, firefighters, teachers, and peace officers. About 99% of the bureau's work involves PELRA.

- 3) Part 3 also deals with arbitration. But unlike the rules in part 2 on interest arbitration, the rules in this part help resolve disputes referred to grievance arbitration, including rules establishing a contract grievance procedure for

³⁵ See Minn. R. 5510.0110-.2310; Minn. Stat. §§ 179A.06, subd. 2, .12.

³⁶ *Janus v. AFSCME Council 31*, 138 S. Ct. 2448 (2018).

³⁷ See Minn. R. 5510.2410-.3005; Minn. Stat. §§ 179A.14, .15, .16, subds. 1-3, .18.

a public employer and exclusive representative who do not have access to a contract grievance procedure.³⁸

While many of the rules under chapter 5510 mirror the rules under chapters 5500 and 5505, it is important to recognize that chapter 5510 deals exclusively with PELRA and public employers and employees, while chapters 5500 and 5505 deal almost exclusively with the Minnesota Labor Relations Act and private-sector employers and employees.

II. The proposed changes to chapter 5510 are wide ranging and involve allowing for electronic service, removing obsolete references and legalese, fixing issues of excessive commissioner discretion, and clarifying the relationship between the rule and the governing statute.

A. Part 1: Representation matters and proceedings

- a) *5510.0110*. This part strikes an obsolete reference to fair-share-fee challenges and shortens a defined term.
- b) *5510.0210*. This part is reorganized into items, and legalese is removed.
- c) *5510.0310*. Unless otherwise specified, plain-language and grammatical changes are made in this part.

Subpart 1a is moved from subpart 4, which is then repealed. This change puts the term in alphabetical order and takes out the unnecessary *as amended* and date of the act. Statute already provides that a cross-reference includes any subsequent amendments to the cross-referenced law.

Subpart 3a is added to provide a needed definition for a key term in the chapter. The definition is reasonable because it cross-references an existing statutory term.

Subpart 8 strikes *which is presently unrepresented*, a phrase that is already logically expressed in the term.

Subpart 9 adds a vertical list for readability.

Subparts 12a to 12d define key terms used in the chapter. The definitions are reasonable because they cross-reference existing statutory terms.

³⁸ See Minn. R. 5510.5110-.5190; Minn. Stat. §§ 179A.20, .21.

Subpart 19 adds a requirement allowing for electronic service. This change aligns with bureau amendments elsewhere in the proposed rule and reflects current bureau practice. Part 5510.0320 establishes the relevant filing and service requirements.

Subpart 21 is repealed and added as a new part 5510.0330; this change is done for styling consistency with part 5510.5130 and to better explain the provision.

- d) *5510.0320*. This part is needed to clarify when a document either filed or served is effective. For purposes of the bureau's rule chapters and even its statutory chapters, both terms are used interchangeably (service constitutes filing); accordingly, both filing and service have the same meanings in this part.

Currently, service is effective upon receipt; this language does not reflect current bureau practice and must be updated. And there is no language on when a filed document is effective. Given the important deadlines for various bureau actions, such as notice to strike or a request for reconsideration, the bureau finds that this part is needed to establish clear requirements on how to file documents and for when a filing is effective.

Subpart 2 closely follows OAH language under part 1400.2030. For example, a document received before 4:30 p.m. is considered timely filed. Holidays and weekends do not count because the bureau would not be in the office to process the petitions, requests, strike notices, and other related documents that the bureau must process according to its rules. The proposed language reflects long-standing bureau practice and stakeholder expectations.

Subpart 3 establishes how a document may be filed, which reflects the current bureau definition of service, except that electronic filing is added. Item D adds suggested OAH language from a Public Employment Relations Board rule.³⁹ Because this language was suggested to cure a defect—and was ultimately used—it is reasonable to use the suggested language.

Subpart 4 requires an electronic signature for electronic filings, a needed and reasonable requirement to ensure that an electronic filing is signed just as a paper filing would be. The cross-reference to a statutory definition is

³⁹ See OAH 68-9010-33057, April 20, 2016, pg. 24.

reasonable because it is used under the Uniform Electronic Transactions Act; this definition is also used in rules under the National Labor Relations Act.

- e) *5510.0410*. This part makes grammatical and organizational changes and strikes an obsolete reference to fair-share-fee assessments. Subpart 3 adds a clarifying statutory cross-reference, and subpart 4 adds the email requirement for petitions and removes duplicative language.
- f) *5510.0510*. This part makes plain-language and grammatical changes. Subpart 2 adds a clarifying statutory cross-reference. Subpart 5 is repealed because it is an obsolete subpart on fair-share fees. Subpart 7 adds a helpful internal cross-reference and strikes an obsolete reference to fair-share-fee assessments.
- g) *5510.0610*. This part adds items to better structure the subparts and removes legalese. Internal cross-references are also added for clarity.
- h) *5510.0710*. This part adds the email requirement for petitions and removes legalese. Subpart 2 adds items for better organization.

A new subpart 3 is added: Under statute, an employer must provide a labor organization requested personnel data if the data “is necessary to conduct elections, notify employees of fair share fee assessments, and implement the provisions of chapters 179 and 179A.”⁴⁰

A labor organization contacted the bureau to advocate for including a provision in rule to further specify this statutory authority because the organization—and other labor organizations—request home addresses so they can contact new members. Labor organizations have relied on a rule subpart that is being repealed (5510.1410, subpart 2) and have advised members and employers while referencing the subpart. This new subpart allows for similar language to remain in rule.

This is a needed and reasonable addition to provide greater clarity (1) in data-practices requests before the bureau, or (2) when a labor organization requests from an employer the data referenced in the new subpart.

⁴⁰ Minn. Stat. § 13.43, subd. 6.

- i) *5510.0810*. This part makes plain-language changes and adds the email requirement for petitions. Subpart 1 removes an unnecessary statutory cross-reference, and duplicative statutory language is removed in subpart 2.
Subpart 3 changes an internal cross-reference that was incorrect.
- j) *5510.0910*. This part makes grammatical changes.
- k) *5510.1110*. This part makes organizational changes and adds a clarifying statutory cross-reference. A reference to the *bureau* is replaced with the *commissioner* because the commissioner is the main actor and responsible party.
- l) *5510.1210*. This part makes grammatical changes and removes legalese. A reference to the *bureau* is replaced with the *commissioner* for consistency.
- m) *5510.1310*. This part makes grammatical changes and removes legalese.
- n) *5510.1810*. This part strikes unnecessary language, as joint-party petitions are already subject to requirements under this chapter.
- o) *5510.1910*. Unless otherwise specified, plain-language and grammatical changes are made in this part.

Subpart 1 removes vague, unenforceable, and nonrule language.

Subpart 2a is added to allow for virtual hearings, but only if all parties agree. This new subpart reflects a new bureau practice implemented during the Covid-19 pandemic. A virtual hearing provides flexibility to the parties without mandating that a virtual hearing occur. The new language on virtual hearings is added elsewhere in the proposed rule.

Subpart 4 adds clarifying cross-references, items, and a vertical list.

Subpart 5 adds items and a vertical list. Item B adds language to clarify when a commissioner may require prehearing statements.

Subpart 6 adds items and a vertical list and fixes an incorrect reference to the Minnesota Rules of Civil Procedure; a requirement is added to ensure that a subpoena's costs are paid when it is served, consistent with part 5505.0800.

Subpart 10 adds a vertical list and a new requirement that the record must be maintained for 90 days, which reflects bureau practice. Obsolete language relating to audiomagnetic and stenographic recordings are stricken and replaced with *recording* or *transcript*.

Subpart 11, item A, removes nonrule language.

Subpart 12, item H, is stricken, with a simpler requirement added in item G. Now, the commissioner or a bureau mediator will notify the parties at the hearing when the record closes. Current language in item H did not accurately reflect scenarios when the record wouldn't close, and the new language sets a better practice that allows parties to be directly notified at the hearing when the record will close.

Subpart 13 is amended to remove obsolete language and replace it with more succinct, modernized language. This change also ensures consistency with similar bureau language on recording devices in part 5510.2810, subpart 5. Additionally, language is added that allows a party to record the hearing if all parties and the commissioner agree.

Subpart 15 removes an obsolete reference to fair-share-fee challenges.

- p) *5510.2010*. Unless otherwise specified, plain-language and grammatical changes are made in this part. Items and vertical lists are also added to better organize the part.

Subparts 2 and 4 add a clarifying statutory cross-reference and internal reference, respectively.

Subpart 13 makes a conforming change that election ballots and materials are kept for 90 days.

A new subpart 16 is added to logically complete the progression for the part and what happens after an election. The statutory cross-reference clarifies how the commissioner must certify the exclusive representative.

- q) *5510.2110*. This part is amended to incorporate items and vertical lists. Plain-language changes are made, and legalese is removed. Subpart 1, item D, is stricken because it circularly refers to an already-defined term under part 5510.0310.
- r) *5510.2210*. This part adds helpful internal cross-references and makes plain-language changes.

Subpart 3 adds a new requirement that a request for reconsideration must be served on all other parties, not only the commissioner, and that the grounds for reconsideration are according to those listed for arbitration-related requests for reconsideration under chapter 5500. These changes are needed to ensure consistency throughout bureau rules on reconsideration requests and to ensure

reconsideration requests are based on a legitimate reason and are not frivolous or used as a delaying tactic.

Subpart 4 is amended so that the commissioner must stay an order if the request for reconsideration raises the required grounds under subpart 3.

- s) *5510.2310*. This part is reorganized to better structure the information. Item C removes an obsolete reference to fair-share fees.

B. Part 2: Mediation, certifying to arbitration, and right to strike

- a) *5510.2410*. This part is reorganized into a vertical list with items, and the internal cross-reference is changed to account for repealed rule parts.
- b) *5510.2510*. This part is reorganized into items, plain-language changes are made, and internal references are updated.
- c) *5510.2520*. This new part is added to have filing requirements under part 5510.0320 apply, ensuring consistency with the rest of the chapter.
- d) *5510.2610*. This part updates an internal cross-reference and removes unnecessary language.
- e) *5510.2710*. Subpart 1 makes it mandatory for a party to file a mediation notice using a bureau form and adds the email requirement for a petition. The bureau wants parties to use its mediation forms because it helps the bureau more efficiently process mediation requests and collect information needed to start a case file.

Subparts 2 and 3 are repealed because they contain duplicative statutory language.

Subpart 4 adds items and makes plain-language changes. When appropriate, clarifying statutory cross-references are added to more clearly incorporate statutory language as it relates to fines. Subpart 4 also replaces duplicative statutory language with a statutory cross-reference.

- f) *5510.2810*. Subparts 1 and 2 remove unnecessary or duplicative statutory language and add statutory cross-references.

Subparts 3 and 4 make plain-language changes.

Subpart 5 is amended to conform to statute. Item A is amended to reflect the statutory requirement under Minnesota Statutes, section 179A.15, that the

commissioner must schedule a mediation conference after determining that mediation would be useful.

Item B adds a clarifying statutory cross-reference that says that mediation sessions “are public meetings except when otherwise provided by the commissioner.”⁴¹ The rule is amended to remove the discretionary *may* and make mediation sessions closed to the public by default. This change reflects current bureau practice and stakeholder expectations and preference.

Amending this language in rule makes the requirement transparent to the public and stakeholders and establishes that the commissioner is otherwise providing for closed meetings, as permitted by statute.

Subpart 5a makes similar changes to those in subpart 5. Items B and C are rewritten from the negative to the positive according to drafting best practices, and *bureau* is replaced with *commissioner* for consistency with earlier changes in the chapter. Item D changes the discretionary *may* to *must* because currently the commissioner can elect not to authorize a closed meeting even if the two conditions are met.

- g) *5510.2905*. Subpart 1 reorganizes language and adds items and a vertical list. Duplicative statutory language is removed and replaced by statutory cross-references; an unnecessary reference to the commissioner’s *authorized agent* is removed.

Subpart 2 reorganizes language and adds items and a vertical list.

- h) *5510.2915*. This part makes plain-language changes and adds items for structure.
- i) *5510.2930*. Subpart 1 removes duplicative statutory language and replaces it with statutory cross-references. Items and vertical lists are added to improve readability. Language at the end of item B is stricken because it duplicates statutory language.

Subpart 2 hyphenates *final-offer* to be consistent with statute.

Subpart 3 removes legalese and adds a clarifying statutory cross-reference.

⁴¹ *Id.* § 179A.14, subd. 3.

Subpart 4 removes legalese and adds items and a vertical list. Item A, subitem (2), is amended to have the final positions submitted to the commissioner according to the filing requirements under part 5510.0320. This change ensures that the final positions are filed according to bureau requirements and are consistent with other bureau rules on filing documents.

Subpart 6 makes plain-language changes and adds items and a vertical list.

A new subpart 6a is added to better organize the part by having separate subparts for final-offer arbitration and conventional arbitration.

Subpart 7 makes clarifying changes and removes unnecessary language.

- j) *5510.3005*. This part makes plain-language changes and removes legalese.

C. Part 3: Contract grievance procedure

- a) *5510.5110*. This part makes a small plain-language change and amends the cross-reference to reflect the repeal of part 5510.5190.
- b) *5510.5120*. This part makes several plain-language changes and amends the cross-reference to reflect the repeal of part 5510.5190.
- c) *5510.5130*. Subparts 1a, 2a, and 3a are added to define key terms used in the relevant rule parts. These terms are reasonable because they reference statutory definitions or are common sense—for example, the definition of *commissioner*.

Subpart 5 is reorganized into a vertical list to improve readability, and plain-language changes are also made.

Subpart 8 is amended to ensure consistency with other bureau rules involving service.

- d) *5510.5131*. This part removes legalese.

<p>Interest arbitration involves disputed issues while a contract is being formed or bargained. Conversely, grievance arbitration involves disputed issues after a contract is formed and executed.</p>

- e) *5510.5140-.5160*. These parts are amended to add subparts and items and remove legalese. Plain-language changes are also made, and the term *grievance* is added throughout for consistency—as opposed to saying *matter*.

- f) *5510.5170*. Subparts 1 to 3 make plain-language changes and add clarifying internal cross-references.

Subpart 4 removes legalese. A new item B is added to define *request for clarification*, a phrase used in item A. It is both needed and reasonable for the bureau to define this phrase so that parties will know what constitutes a “request for clarification.” The defined phrase reflects current bureau practice and stakeholder expectations.

Subpart 5 removes nonrule language and instead adds new language on transcripts and briefs used in chapter 5500. The new language ensures consistency across all bureau rules and reflects current practice.

Item A cross-references to the amended briefing language under part 5500.2510, and item B adds the same language on requesting a transcript.

Subpart 6 removes the 90-day retention requirement for arbitrators to keep recordings. This language is unnecessary because the recording and the notes are the arbitrator’s person property; it is the arbitrator’s decision for how long to keep personal notes. This stricken language is also removed from the arbitration language under chapter 5500.

- g) *5510.5180*. Subparts 1 and 3 are rewritten to remove legalese, make plain-language changes, and add items and vertical lists.
- h) *5510.5190*. This part is repealed because it applies to old effective dates from 1987; there are no effective collective-bargaining agreements from 1987.

CHAPTER 5520

The Minnesota Labor-Management Committee grant program is a grant program under the Minnesota Labor Relation Act; the program was developed to help create and support labor-management committees comprised of multiple employers and labor organizations within a geographic area or statewide employment sector.⁴²

One example of a committee within a geographic area is the Iron Range Construction Liaison Council, which includes both construction unions and contractors. The Iron Range Construction Liaison Council helps develop and provide information to the public on the construction industry in the Iron Range.⁴³ Committees like the Iron Range Construction Liaison Council demonstrate the importance of the grant program, which is to improve labor-management relations and enhance economic development in a geographic area or economic sector.

Because the bureau is attempting to make statutory changes to the grant program, the bureau has decided not to amend this chapter.

⁴² See Minn. R. 5520.0100-.0800; Minn. Stat. §§ 179.81-.85.

⁴³ The two other committees are the Labor-Users-Contractors Council and the Twin Ports Construction Liaison Council.

CHAPTER 5530

I. Chapter 5530 governs how arbitrators are appointed to the bureau's general arbitration roster and establishes requirements on arbitrator conduct and qualifications.

Chapter 5530 serves as a critical component for ensuring that the bureau can successfully provide services such as arbitration to the bureau's stakeholders and fulfill its statutorily required duties. For example, chapter 5530 deals exclusively with rules for arbitrators, including:

- 1) referring and removing arbitrators from the roster;
- 2) establishing qualifications for an arbitrator to be placed on the roster;
- 3) setting the size of the roster and determining how the commissioner appoints arbitrators to the roster;
- 4) establishing best-practice standards of arbitrator conduct;
- 5) detailing how arbitrators are selected by parties to a dispute, either through a commissioner appointment or selection from an arbitrator panel;
- 6) establishing arbitrator performance measures; and
- 7) detailing how the commissioner may suspend or remove an arbitrator from the roster.

Additionally, the bureau is adding a new part on training requirements for arbitrators of peace-officer discipline grievances.⁴⁴

II. The proposed changes (a) add new language specifying training requirements for peace-officer arbitrators, and (b) account for technology improvements and general societal changes, allowing the bureau's stakeholders to more easily comply with the arbitration process and providing for a more-diverse arbitration roster.

- a) *5530.0100*. This part is reorganized into items and vertical lists. Item A clarifies which commissioner-maintained arbitration lists the chapter applies to and corrects an erroneous statutory reference.

⁴⁴ See pages 4 and 54.

- b) *5530.0200*. This part removes legalese and vague language. Items are added for structure.
- c) *5530.0300*. Subpart 1a specifies a statutory citation and makes plain-language changes. Substantive language on the advisory committee is moved to a new part *5530.0410*.

A new subpart 2a is added to define a key term. This is a needed and reasonable definition that reflects that an arbitrator can either be selected or appointed to adjudicate a labor dispute.

Subpart 3 removes unnecessary language and makes changes to make terms consistent throughout the chapter.

A new subpart 3a is added to define a key term. This is a needed and reasonable definition that reflects current stakeholder and bureau understanding of what constitutes an award. This definition also covers how arbitration may either be mandated or optional for the parties.

Subpart 5 is repealed because the term is not used in the chapter.

Subpart 6 is amended to remove unnecessary language.

A new subpart 6a is added to define a key term. This is a needed and reasonable definition that cites a statutory definition.

Subparts 8 and 9 are repealed because the terms are not used in the chapter.

A new subpart 9a is added to define a key term. This is a needed and reasonable definition that cites a statutory definition.

Subpart 10 is amended to make language consistent with other term changes in the chapter.

Subpart 11 adds a vertical list to better organize the subpart.

Subpart 12 is repealed because the term is not used in the chapter.

Subpart 13 removes unnecessary language.

A new subpart 14 is added to define a key term. This is a key term undefined in the chapter, and it is needed and reasonable to define the term to differentiate a roster member from an applicant not yet on the roster. Sometimes in the chapter, not all arbitrators are roster members, while a roster member includes an arbitrator who is on the general roster.

- d) *5530.0400*. This part is reorganized into items and vertical lists to improve readability; plain-language changes are also made.
- e) *5530.0410*. This new part is added to move a substantive requirement from the definition in part 5530.0300, subpart 1a—language that does not belong in a definition. The commissioner created this advisory committee in the 1980s, and it has continued since then.⁴⁵
- f) *5530.0500*. This part is amended to make consistent term changes and plain-language changes. A vague internal cross-reference is replaced with a specific internal cross-reference.
- g) *5530.0600*. Subpart 1 is amended to remove duplicative statutory language and instead cite to the applicable statutory reference. A reference to the private sector is removed because all arbitrators under the roster arbitrate only public-sector disputes under PELRA—although they may arbitrate private-sector disputes; private-sector parties would use the federal list under the Federal Mediation and Conciliation Service.

Subpart 2 is reorganized into a vertical list; term changes are also made for consistency.

Subpart 3 is repealed because it is moved to a new part 5530.0610.

Subpart 4 is reorganized into items and vertical lists. In item A, unnecessary and vague language is stricken. Item B is rewritten to make it mandatory that an applicant demonstrate qualifications according to subitems (1) to (6).

Currently, the language implies that an applicant may demonstrate qualifications in another manner than what the rule requires. Other vague language is removed, and plain-language changes are made.

⁴⁵ The commissioner has the authority to create an advisory task force under Minn. Stat. § 15.014, subd. 2. No law prevents the commissioner from reauthorizing the task force. For more on this authority, *see* Minn. Stat. § 15.059, subd. 6:

If the existence of a task force is authorized but not mandated by statute, the task force shall expire at the pleasure of the person or group which creates the task force, or two years after the first members of the task force are appointed, whichever is sooner. A person or group mandated or with discretionary authority to create a task force may create another task force to continue the work of a task force which expires, unless the enabling legislation specifies an expiration date or creation of another task force is prohibited by other law.

Subitem (6) references a course or internship, but this language is incorrect because there is no course and the internship is a mentorship in which an applicant shadows a roster member. The language is rewritten to better reflect the bureau's intent and practice.

Subpart 5 makes plain-language changes and adds items for structure. The subpart is also amended to remove the three-year limitation on when the commissioner can waive the residency requirement. Because residency flexibility is important to help keep qualified arbitrators on the roster, this amendment is needed. The bureau's arbitration advisory committee recognizes the bureau's difficulty in finding qualified applicants and agrees with the change. Arbitrators would still need to comply with other qualification requirements under this chapter.

- h) *5530.0610*. This language was moved from part 5530.0600, subpart 3, because the bureau is no longer prohibiting an applicant from advocating for either labor or management. The bureau is making this change to help attract more applicants for the roster; the current language is too restrictive and disqualifies otherwise qualified applicants.

Because the advocacy provision now applies only to roster members, it is needed and reasonable to have the provision located in a new part, and not a part on applicant qualifications. But for roster members, the bureau is broadening the prohibition from only discharge and disciplinary proceedings. This change sets a higher ethical standard to ensure that arbitrators on the roster are truly neutrals between labor and management.

Subpart 2 is needed to apply the domicile requirements to roster members. As in subpart 1, this change separates requirements on applicants and roster members into separate rule parts for clearer organizational structure.

- i) *5530.0700*. Subpart 1 makes grammatical changes and removes the requirement that the commissioner must annually determine whether to add roster members according to referrals. This requirement is stricken because of a significant decrease in arbitration cases and a commensurate decrease in the opportunity for referrals; the amendment also allows for a greater diversity of arbitrators because newer arbitrators with less experience are less likely to get referred than more-experienced arbitrators.

Subpart 2 is reorganized into items and vertical lists. Item A is amended to reflect what the commissioner must do to increase the size of the roster if it falls below the minimum 25 roster-member threshold.

In subitem (1), the bureau no longer publishes notice in the *State Register* when the bureau is accepting roster applications and instead posts notice on its website, as applicants—many of whom are retired bureau clients—are more familiar with the bureau website than the *State Register*.

In subitem (2), the bureau no longer interviews applicants and instead assesses applicants according to subpart 6.

Subitem (4) adds a clarifying statutory cross-reference.

Subitem (5) adds a clarifying statutory cross-reference and also moves language to a new item B, which removes excessive commissioner discretion and adds specific conditions when the applicant must provide additional information to the commissioner. This is a needed and reasonable change that will apply to all applicants and allows the commissioner to get additional information if the initial application is insufficient or otherwise incomplete.

Subpart 3 is reorganized into items for readability, adds an internal cross-reference, and makes plain-language changes.

Subpart 4 makes plain-language changes.

Subpart 5 removes conflicting language on fees and inserts a statutory cross-reference; this amendment reflects the required fee according to statute and is not a new cost.

Subpart 6 is reorganized into items and vertical lists; plain-language changes are also made and clarifying internal cross-references added.

Subpart 7 reorganizes the subpart into items, makes plain-language changes, and adds clarifying internal cross-references.

Subpart 8 removes legalese.

- j) *5530.0800*. Subpart 1 is amended for consistency with defined terms, and unnecessary language is removed.

Subpart 2 updates an incorporation by reference.

Subpart 3 makes term changes and grammatical changes.

A new subpart 3a is added to move a requirement from part 5530.0900, subpart 7. The transferred language is reorganized into items and a vertical list to improve readability. Language on providing the biographic sketch to parties

is removed because it is unnecessary; parties can find the sketch on the bureau's website.

Other language is removed: the bureau no longer maintains the mean number of calendar days required by each arbitrator to issue an award during the preceding year because the bureau uses other performance metrics under this chapter and the data were not helpful to the bureau.

Subpart 4 is reorganized into items, and term changes are made. Incorrect internal references are corrected. Item B adds an exception to the prohibition on *ex parte* communications. This exception is widely practiced by arbitrators in Minnesota and follows the code of professional responsibility incorporated under subpart 2.

Subpart 6 strikes vague and unnecessary language and inserts a clarifying statutory cross-reference.

Subpart 7 is reorganized for clarity, and another seven calendar days is added to the notice requirement under item B. This addition gives parties more time to reach a voluntary settlement.

Subpart 8 removes legalese and updates a cross-reference to account for other rule changes.

Subpart 9 adds an electronic-filing requirement for arbitration awards. This new requirement reflects current bureau practice and ensures consistency with other proposed language on electronic filing.

Subpart 10 removes unnecessary language and reorganizes language on the fee-and-summary report.

k) *5530.0810*.

Subpart 1: this subpart is needed to establish that the training requirements apply only to peace-officer arbitrators and not to arbitrators under PELRA or arbitrators for teacher discharges or terminations.

Subpart 2: this subpart is needed to establish terms that apply only to this part. The definitions are reasonable because they define key terms needed to understand the proposed rules, especially in the context of educational-training requirements. The terms are already defined in statute or are commonly understood educational terms—for example, *CE* and *CLE*.

Subpart 3: this subpart is needed to clarify that all training-related requirements under statute still apply in the context of the rule part.

Subpart 4: Together with subparts 5 and 6, this subpart establishes new language that fulfills the commissioner's authority to establish training requirements. Overall, this subpart establishes who can provide the training. While the bureau proposes a wide range of acceptable providers, the bureau also wants to prevent arbitrators from receiving training from fly-by-night operations or other training providers that may not be as capable of or dedicated to providing high-quality training that the legislature intended when passing the Minnesota Police Accountability Act.

Item A

Subitem (1) allows arbitrators to receive training from three leading arbitration/mediation organizations, including two federal agencies. These three providers already provide arbitration and mediation training and are well-equipped to provide the required training.

Subitem (2) is reasonable because it recognizes that other Minnesota agencies such as MMB already provide some of the required training. Allowing arbitrators to take advantage of training from other state agencies is reasonable and economical; other state agencies may have well-developed training that could be a viable option for arbitrators.

Subitem (3) allows arbitrators to get training from CLE or CE providers that provide training to licensed professionals such as teachers or peace officers. This is another reasonable training option.

Subitem (4) uses the expertise of the state's Office of Higher Education to vet colleges and universities that provide training. For instance, the Office of Higher Education licenses schools or requires them to register with the office, so arbitrators are assured of receiving training from accredited or state-approved schools.

The bureau also seeks to use Minnesota State schools and their various training offerings and curriculums as a cost-efficient option for arbitrators. For example, a Minnesota State task force is reviewing its 22 peace-officer education programs to better incorporate training on cultural competency, systemic racism, and social justice. These curriculum changes would smoothly align with the required training, as the task force seeks to infuse "cultural

competency and anti-racist concepts into all law enforcement and criminal justice programs . . .”⁴⁶

Subitem (5) recognizes that there are many nonprofit organizations or training providers that provide diversity, equity, and inclusion (DEI) training—for example, the American Association for Access, Equity and Diversity; the Minnesota Justice Research Center; and the Government Alliance on Race and Equity. The bureau believes its proposed language is reasonable because it favors nonprofits committed to DEI or peace-officer training versus training providers or nonprofits that may offer DEI or peace-officer training but are not as well-versed in DEI and peace-officer concepts or assiduously committed to them.

Under statute, the bureau may establish reasonable training requirements, requirements that help ensure that peace-officer arbitrators are receiving well-established, comprehensive training that allows them to fulfill the legislature’s goals of trained arbitrators attuned to both DEI issues and peace-officer issues.

The bureau’s list of training providers is reasonable because the bureau is fulfilling the APA’s purpose of providing regulatory parties maximum flexibility. Listing *all specific* providers would be onerous and costly and practically force the bureau to engage in constant rulemaking to update a list of training providers. Listing all providers also assumes that the bureau knows all providers that fit its proposed criteria. The bureau instead believes that its proposed language provides an easily understandable list of acceptable providers and allows providers that may not exist when the rule is published to still fit the acceptable criteria. Furthermore, all the peace-officer arbitrators have already received their training from some of the proposed training providers.

The bureau will post examples on its website of acceptable providers. This guidance will provide clarity and transparency and reflects agency best practice in providing easily accessible rule guidance to help regulated parties understand rule requirements.

⁴⁶ Ryan Faircloth, “For Aspiring Cops, Anti-Racism Focus.”

And agencies frequently post approved CLE or CE providers—for example, the Peace Officer Standards and Training Board or the Professional Educator Licensing and Standards Board.

Item B

This item is needed to cross-reference the required training topics to the statute. It is reasonable and efficient for the bureau to reference the statute instead of repeating statutory language in rule.

Item C

This item provides arbitrators additional flexibility because it allows them to receive training from more than one provider. For instance, to fulfill the DEI training requirement, an arbitrator could take a four-hour CLE from one provider and then a two-hour CLE from another provider. Essentially, this prevents an arbitrator from being hamstrung from choosing a training provider that does not offer at least six hours of training.

Item D

This item clarifies that if an arbitrator is taking a college course, which could be for a quarter or a semester, the arbitrator must still complete the required hours of training according to statutory deadlines.

Subpart 5: This subpart is needed to establish basic documentation requirements. It is reasonable that an arbitrator keeps appropriate and relevant records of completed training. This information, if needed, allows the commissioner to verify that the arbitrator has completed the required training.

Item A

The required information in subitems (1), (2), (4), and (5) is needed to provide the commissioner with easily identifiable information on the training. This required information is reasonable to help establish proof of training.

Subitem (3): this provision is needed to establish useful data on the training format. It is a reasonable requirement that does not pose an undue burden on an arbitrator.

After receiving feedback from peace-officer arbitrators, the bureau added *if available* in subitem (5) to reflect that not all training providers provide the listed information.

Items B and C

This item states that the commissioner has the authority to determine if an arbitrator has complied with the training requirements. It is reasonable for the commissioner to have this authority because it allows the commissioner to ensure that arbitrators are complying with the training requirements, including statutory requirements that the legislature directed arbitrators to fulfill. Any corrective action is strictly limited by the statute, as the commissioner is limited to ensuring that the arbitrator completes the statutorily required training.

Subpart 6:

It is reasonable for the bureau to require an arbitrator to maintain proof of training as long as the arbitrator is appointed—if needed, the commissioner may need to verify that the arbitrator has completed the required training.

Given the public-policy importance of the arbitration system for peace officers, the bureau's proposed rules establishing training requirements are needed and reasonable to equitably balance both sides of a public-policy spectrum. First, from the peace-officer side, arbitration provides disciplined peace officers with due process. Second, from the public side, arbitration may create a broader public distrust in the judicial system and whether peace officers are being held accountable for their actions. By establishing consistent training requirements, the bureau can play a small yet vital role in ensuring that peace-officer arbitrators have the best-available tools to understand both sides of the public-policy spectrum and to instill confidence that the bureau's arbitrators will capably and fairly perform their duties for all stakeholders.

- 1) *5530.0900*. Subpart 1 removes nonrule language—examples—and makes term changes and plain-language changes. A new requirement for including an email address on a request for an arbitrator is added to reflect current practice and ensure consistency with other proposed rule changes.

Subpart 2 is reorganized into items and vertical lists; plain-language changes are also made.

Item A clarifies when the panel-selection process does not apply—for example, when statute or rule specifies otherwise.

Item B strikes language requiring the commissioner to appoint roster members according to their longevity on the roster. This language is stricken to give new arbitrators opportunities to be on a panel list and to diversify arbitration panels with newer arbitrators.

Subpart 3 makes term changes and removes legalese. A clarifying statutory cross-reference is added to reference a statute that provides for direct commissioner appointments.

Subpart 4 makes term changes, removes legalese, and removes vague or discretionary language. Language on conflict of interest is stricken because it is duplicative language from similar language elsewhere in the chapter, including in this subpart.

Subpart 5 adds internal cross-references and removes duplicative language; legalese is removed.

Subpart 6 makes plain-language changes, and item B adds a vertical list and makes clarifying term changes.

Subpart 7 is repealed because it was moved to part 5530.0800, subpart 3a.

Subpart 8 makes plain-language changes and removes unnecessary language.

m) *5530.1200*. Subpart 1 makes plain-language changes.

Subpart 2 is reorganized into items and a vertical list. Item A adds additional ways in which arbitrators are selected. Item B adds an extra year on selection frequency to account for fewer arbitration cases and strikes the language on arbitrators who are selected for less than three cases in a 12-month period; this change is made because the bureau doesn't keep this data—the bureau tracks other performance measures that it finds more useful.

Subpart 3 makes term changes and replaces a vague requirement (“reasonable number”) with a more-specific requirement. The 60-day requirement is changed to 90 days to reflect current practice.

Subpart 4 is repealed because it is an outdated requirement that the bureau no longer follows and does not have the capacity to track.

Subpart 5 removes vague and obsolete language on arbitrator evaluations; the bureau is making it optional for parties to evaluate an arbitrator, instead of mandatory, because most parties do not submit evaluations. Evaluations may still be useful to the commissioner, however, and other performance measures

under this part allow for the commissioner to evaluate an arbitrator's performance.

Subpart 6 is repealed because it is an outdated requirement that the bureau no longer follows and does not have the capacity to track.

Subpart 7 makes plain-language changes and corrects an internal reference. Specific language is added to better clarify what types of information and reports must be submitted.

- n) *5530.1300*. This part makes plain-language changes and removes legalese. Nonrule language is also removed, and other changes are made to ensure consistency with other changes in the chapter.

CHAPTER 7315

I. Chapter 7315 governs the bureau’s procedures for overseeing independent reviews of grievances from nonunion, public employees.⁴⁷

The state allows nonunion, public employees to have a grievance over an employment contract heard by the bureau. But the bureau can only hear the grievance—known as independent review—if another procedure for hearing the grievance does not exist.⁴⁸

Initially, the Public Employment Relations Board was responsible for hearing independent reviews. The board first adopted rules on independent reviews in 1983, and then amended the rules again in March 1991. Yet in 1992, the legislature amended the independent-review statute—section 179A.25—replacing the board with the bureau, and giving the bureau the authority over independent-review grievances.⁴⁹ At the same time, the legislature repealed the board’s rulemaking authority under section 179A.05.

It wasn’t until 2001, when the legislature repealed the board’s remaining rules.⁵⁰ But because in 1992 the board’s rules on independent review were transferred to the bureau,⁵¹ the legislature did not repeal the rules on independent review under chapter 7315.

⁴⁷ See Minn. Stat. § 179A.25.

⁴⁸ *Id.*

⁴⁹ 1992 Minn. Laws, ch. 582.

⁵⁰ 2001 Minn. Laws, ch. 23, § 1. The rules were rendered obsolete and unenforceable in 1992, when the board’s rulemaking authority was repealed.

⁵¹ See, e.g., Minn. Stat. § 15.039, subd. 1: “The provisions of this section apply whenever the responsibilities of an agency are transferred by law to another agency unless the act directing the transfer provides otherwise.” See also *id.*, subd. 3:

All rules adopted pursuant to responsibilities that are transferred to another agency remain effective and shall be enforced until amended or repealed in accordance with law by the new agency. Any rulemaking authority that existed to implement the responsibilities that are transferred is transferred to the new agency.

The transfer of the board’s independent-review rules to the bureau was recognized in *Cross v. County of Beltrami*, 606 N.W.2d 732, 735 (Minn. Ct. App. 2000).

Until now, the bureau has not amended chapter 7315, which still incorrectly refers to the board and contains other obsolete or conflicting requirements with the bureau's rules. The bureau seeks to update these rules and ensure that they reflect current bureau practice. The rules will then be recoded by the revisor's office into the bureau's PELRA chapter, 5510.

II. The amendments are needed to conform to PELRA, current bureau practice, and other changes made in the proposed rules.

- a) *7315.0210*. This part removes legalese.
- b) *7315.0300*. This part removes legalese and makes an internal cross-reference change.
- c) *7315.0400*. Subpart 1 updates an internal cross-reference and removes unnecessary language, while subpart 2 makes a grammatical change.
- d) *7315.0410*. This new part is added to ensure consistency with filing and serving requirements elsewhere in the proposed rule.
- e) *7315.0500*. Subpart 1 removes unnecessary and obsolete language and makes grammatical and term changes. References to the Public Employment Relations Board are removed and replaced with references to the *commissioner*.

Subpart 2 adds the email requirement for petitions and makes grammatical changes. Several term changes are made; for example, *practice* is replaced with *policy* to align with the bureau's internal guidelines and for better consistency with the list of "law, contract provision, or policy."

- f) *7315.0650*. This part makes term changes and grammatical changes.
- g) *7315.0750*. This part updates requirements to conform to current bureau policy. The commissioner has two options to dismiss a petition and the flexibility to choose which option depending on how complex a jurisdictional issue is.
- h) *7315.0900*. This part replaces outdated language with current language that reflects bureau policy. Subpart 1 allows the commissioner to conduct a hearing or select an arbitrator to adjudicate the dispute. Both options conform with bureau procedures in statute and rule.

Subpart 2 states that an arbitrator has the same powers as the commissioner when holding a hearing and that the arbitrator's costs must be paid equally by the parties; this requirement is consistent with statute and rule.

- i) *7315.1000*. This part is repealed because the bureau does not appoint administrative law judges from OAH to hear grievances; instead, the bureau relies on its experience conducting hearings under PELRA or on arbitrators.
- j) *7315.1100*. This part adds items and makes plain-language and term changes. Item B establishes a reasonable requirement that parties serve their briefs on all other parties and file proof of service with the commissioner.
- k) *7315.1200*. This part is reorganized into subparts, with language on serving documents added in subpart 1. Obsolete and unnecessary language on the commissioner providing to the parties a copy of the chapter is stricken, as the relevant rules are easily available online.

Subpart 2 is added for consistency with new bureau language on virtual hearings.

- l) *7315.1300*. This part adds an internal cross-reference to ensure consistency with bureau language on continuing hearings; the six-day requirement is consistent with the cross-referenced language.
- m) *7315.1400*. This part removes unnecessary language.
- n) *7315.1500*. This part updates the language on informal disposition, requiring that an informal disposition is made part of the record, consistent with bureau requirements elsewhere. It is needed and reasonable to limit informal disposition before a final determination is made, because at that time any informal disposition is moot.
- o) *7315.1600*. This part makes a term change.
- p) *7315.1700*. This part adds items and removes excessive discretion. It is reasonable for the commissioner to allow a person to intervene before a hearing begins and after determining that the person's legal rights will be determined at the hearing. This language is consistent with bureau language elsewhere on intervention.
- q) *7315.1800*. The bureau has no reason to prevent a party from substituting its representation, but it is reasonable for the party to notify the bureau and other parties when the representative is substituted. The seven-day deadline is removed to allow parties greater flexibility when substituting representation, but it is reasonable to prevent the party from substituting once a hearing starts, as a hearing does not last longer than a day. Substituting representation during a hearing would be disruptive to all parties.

- r) *7315.1900*. This part makes grammatical changes and term changes. Subpart 1 removes vague and unnecessary language.

Subpart 2 requires a stipulation to be in writing and filed with the commissioner; this requirement is consistent with other bureau language on stipulations.

Subpart 3 makes a term change and adds a helpful internal cross-reference.

Subpart 4 adds language expressing the commissioner's duty when receiving a severance from consolidation. New items B and C are needed to provide clarity and standards for all parties. The language is consistent with the rest of the subpart.

- s) *7315.2100*. This part is amended to ensure that the hearing process conforms with the bureau rules on hearings under chapter 5510; this change is both needed and reasonable to establish consistency in proceedings before the bureau.

Subpart 2 clarifies requirements on the hearing record; the added language is consistent with requirements under chapter 5510. The 90-day retention requirement reflects current bureau practice to keep a record beyond the statutorily mandated 60 days in case unanticipated problems on the case arise. The language on requesting a transcript is consistent with bureau language under chapter 5510.

Subpart 3 is repealed because its requirement is now covered by subpart 1 and is unnecessary.

- t) *7315.2200*. This part adds clarifying information on the commissioner's determination and adds items for organization. The commissioner must base the final determination on the record, a reasonable requirement consistent with other bureau rule language on final determinations.

- u) *7315.2300*. This part is amended and parts 7315.2400 to 7315.2900 are repealed to ensure consistency with bureau language on requests for reconsiderations. For example, the language is consistent with arbitration reconsiderations and other reconsiderations under chapters 5500 and 5505. Like with the hearing changes under part 7315.2100, these changes are needed and reasonable to ensure overall consistency across bureau rule chapters.

Item B clarifies that hearings and briefs are conducted according to this chapter.

RENUMBERING AND REPEALER

Renumbering

To better organize the bureau's rule chapters, the bureau will renumber the arbitration language under chapter 5500 and the independent-review language under chapter 7315 into the PELRA chapter, 5510. Because chapter 5510 contains all other PELRA provisions, it is reasonable to renumber other requirements scattered in chapters 5500 and 7315. Additionally, it is easier and cleaner to do this renumbering through a renumbering instruction instead of through striking and underscoring.⁵²

Repealer

The following parts and subparts are repealed:

- 5500.0400: duplicative part
- 5500.0600: duplicative definition part
- 5500.1100, subparts 2 to 8: duplicative hearing language
- 5500.1200: duplicative definition part
- 5500.1500: duplicative statutory language
- 5510.0310, subpart 4: definition is moved to subpart 1a and amended
- 5510.0310, subpart 21: definition is moved to new part 5510.0330
- 5510.0510, subpart 5: obsolete subpart
- 5510.5190: obsolete part
- 5510.1410, 5510.1510, 5510.1610, and 5510.1710: obsolete parts on fair-share-fee assessments
- 5510.2710, subparts 2 and 3: duplicative statutory language
- 5530.0300, subparts 5, 8, 9, and 12: obsolete terms

⁵² The revisor's office has the statutory authority to do renumbering instructions and make related editorial changes. *See* Minn. Stat. §§ 14.07, subd. 7, .47, subd. 5.

- 5530.0600, subpart 3: moved to part 5530.0610, subpart 1
- 5530.0900, subpart 7: moved to part 5530.0800, subpart 3a
- 5530.1000: moved to parts 5500.2200 to 5500.2850
- 5530.1200, subparts 4 and 6: obsolete subparts
- 7315.1000: obsolete part
- 7315.2100, subpart 3: duplicative subpart
- 7315.2400, 7315.2500, 7315.2600, 7315.2700, 7315.2800, and 7315.2900: duplicative parts.

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CONCLUSION

In the SONAR, the bureau has established the need for and the reasonableness of each of the proposed amendments to Minnesota Rules, chapters 5500, 5505, 5510, 5530, and 7315. The bureau has provided the necessary notice and complied with all applicable APA rulemaking requirements.

Based on the evidence and information in the SONAR, the proposed amendments are both needed and reasonable.

Janet L. Johnson, Commissioner
Bureau of Mediation Services

December 17, 2021

EXHIBITS

1. **Exhibit 1:** MMB cost estimate
2. **Exhibit 2:** Executive Order 14-07

APPENDIX

1. **Appendix A:** Bureau profile

Office Memorandum

Date: December 3, 2021

To: Ian Lewenstein
State Program Administrator Principal

From: Kwesi Pasley, Executive Budget Officer,
Minnesota Management and Budget

Subject: M.S. 14.131 – Review of Proposed Amendment to Minnesota Rules, Chapters 5500, 5505, 5510, 5530, and 7315

EXHIBIT 1

Background

The Bureau of Mediation Services (BMS) is proposing amendments to the rules relating to power plant or line application requirements, in Minnesota Rules, Chapters 5500, 5505, 5510, 5530, and 7315. Pursuant to M.S. 14.131, the Commissioner of Minnesota Management and Budget has been asked to help evaluate the fiscal impacts and benefits these changes may have on local units of government.

According to the Statement of Need and Reasonableness (SONAR) the proposed rule makes several changes to the Minnesota Labor Relations Act and Arbitration (chapters 5500 and 5505); the Minnesota Public Employment Labor Relations Act (chapter 5510); the arbitration roster (chapter 5530), and procedures related to overseeing independent reviews of grievances from nonunion, public employees (chapter 7315).

The changes recommended are mostly technical in nature, removing obsolete or redrafting language to conform with other sections of statute.

Evaluation

On behalf of the Commissioner of Minnesota Management and Budget, I have reviewed the proposed changes and the draft of the SONAR to explore the potential fiscal impact these changes may have on local governments. The changes that BMS proposes to all 5 Chapters are similar in that they incorporate statutory requirements and several technical and conforming changes.

Local units of government are not expected to incur costs as a result of the proposed rule changes to Chapters 5500, 5505, 5510, 5530, and 7315.

cc: Casey Mock, Executive Budget Coordinator, Minnesota Management and Budget

STATE OF MINNESOTA

EXECUTIVE DEPARTMENT



EXHIBIT 2

MARK DAYTON
GOVERNOR

Executive Order 14-07

Implementing Plain Language in the Executive Branch

I, Mark Dayton, Governor of the State of Minnesota, issue this Executive Order, which requires the Office of the Governor and all Executive Branch agencies to communicate with Minnesotans using Plain Language.

Plain Language is a communication, which an audience can understand the first time they read or hear it. Plain Language will provide Minnesotans better state services by reducing confusion, saving time, and improving customer satisfaction.

I order the Governor's Office and Executive Branch Agencies to take the following steps:

- Use language commonly understood by the public;
- Write in short and complete sentences;
- Present information in a format that is easy-to-find and easy-to-understand; and
- Clearly state directions and deadlines to the audience.

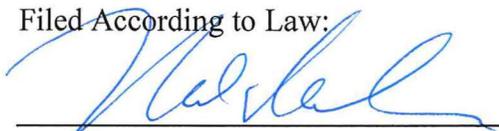
The Office of the Governor will provide guidance for implementing Minnesota's Plain Language policy. This Executive Order is effective fifteen days after publication in the State Register and filing with the Secretary of State.

In Testimony Whereof, I have set my hand this 4th day of March, 2014.



Mark Dayton
Governor

Filed According to Law:



Mark Ritchie
Secretary of State

mn.gov/bms/

AT A GLANCE

- The Bureau of Mediation Services (BMS) oversees the collective bargaining relationship between all public sector employers, charitable hospitals and nursing homes, some private sector employers and their unionized employees.
- Of the 310,600+ MN Public Employees; over 2/3 work under nearly 4,000 union contracts.
- In FY20 the BMS received 2,854 requests for service and during the same period there were two strikes, fifty-nine arbitrations (of which 12 were contract arbitrations) and six veterans' preference hearings.
- While the BMS did not have a chance to mediate every case presented to arbitration; including cases arbitrated but not mediated, a 97% success rate was achieved.
- The BMS conducted in FY20, 1,196 mediation meetings, 120 trainings and facilitations, 35 election tabulations and 30 representation hearings and pre-hearings.

PURPOSE

The BMS mission is to promote orderly and constructive labor-management relations and to advance the use of alternative dispute resolution and collaborative processes.

Labor-Management Relations

1. The BMS monitors collective bargaining disputes and works to prevent strikes and arbitration by directly mediating labor negotiations and grievances and by providing labor-management training.
2. Representation rights (employee's right to unionize or refrain from such) are regulated through a quasi-judicial administrative process including administrative investigations, hearings and elections.
3. BMS clients are: employers, labor organizations, employees, elected officials, labor attorneys and other labor relations professionals.

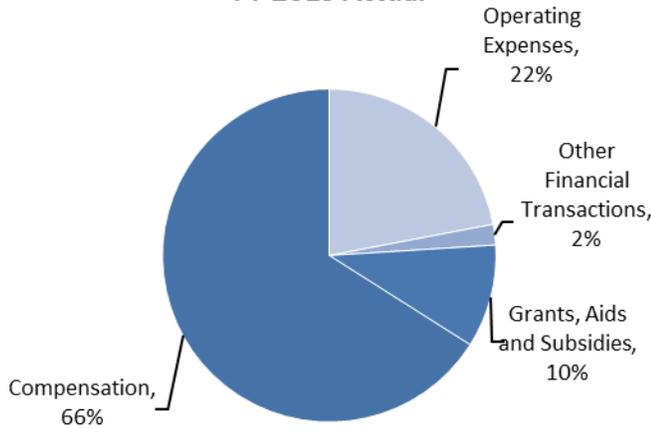
Training and Facilitation

1. The BMS has absorbed regional labor -management committee training previously conducted by Area Labor Management Committee consortiums.
2. The BMS provides committee effectiveness and co-chair training, conflict resolution training, Interest Based Bargaining Training, training on the Minnesota Public Employment Labor Relations Act, and training for Contract and Grievance Mediation.
3. For established labor-management committees and interest based bargaining groups, the BMS will provide facilitation for difficult issues.

APPENDIX A

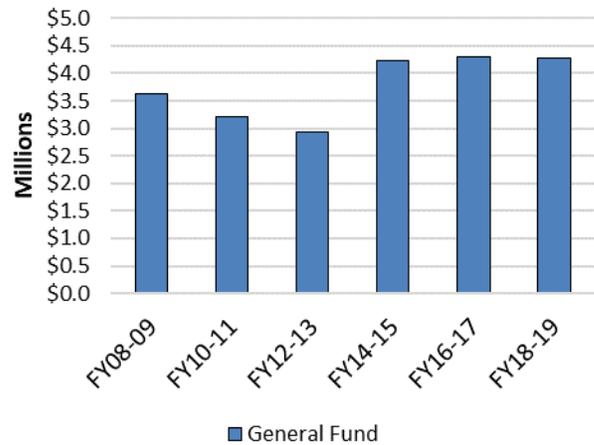
BUDGET

**Spending by Category
FY 2019 Actual**



Source: Budget Planning & Analysis System (BPAS)

Historical Spending



Source: Consolidated Fund Statement

STRATEGIES

The BMS contributes to statewide outcomes by:

- Mediating collective bargaining and grievance disputes and promoting voluntary resolution of representation questions.
- Promoting cooperation among labor and management through worksite labor management committees.
- Administering a statewide labor-management grant program.
- Maintaining a roster of qualified neutral arbitrators to hear and decide contract and grievance disputes that cannot be resolved through mediation.
- Training labor and management representatives in the skills of negotiation, mediation, conflict resolution, relationship management and interest focused bargaining.
- Ensuring the sustainable resolution of matters of disputes by providing collaborative problem-solving services to state and local government.

RESULTS

In FY20 BMS resolved a total of 439 grievance and contract cases improving the efficiency and effectiveness of the public and private sector due to stable labor management relations. This resulted in dollars and work hours saved by the prevention of strikes, arbitration, and litigation, and contributed to improved productivity and higher employee morale.

Measures of BMS work are successful case settlement rates, timely resolution of representation petitions and the quantity of successful community mediations.

<i>Type of Measure</i>	<i>Name of Measure</i>	<i>Previous</i>	<i>Current</i>	<i>Dates</i>
Quality	Percentage of collective bargaining contract and grievance disputes successfully settled through mediation	92%	97%	FY19, FY20
Quality	Percentage of representation elections successfully completed within 90 days	92%	91%	FY19, FY20

Type of Measure	Name of Measure	Previous	Current	Dates
Quantity	Number of Interest Based and Labor Management Cooperative Meetings Held	101	138	FY19, FY20

Bureau of Mediation Services Statutory Jurisdiction:

Minnesota Labor Relations Act – M.S. 179, <https://www.revisor.leg.state.mn.us/statutes/?id=179&view=chapter>

Public Employment Labor Relations Act – M.S. 179A, <https://www.revisor.leg.state.mn.us/statutes/?id=179A>

Data Practices Act – M.S. 13.37 – 13.43, <https://www.revisor.leg.state.mn.us/statutes/?id=13>