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LEGISLATIVE COMMISSION ON EMPLOYEE RELATIONS

Nicholas D. Coleman, Chairman - Room 208 State Capitol Building - Saint Paul 55155

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August 15, 1980

TO: Members, Legislative Commission on Employee Relations  
FROM: Mark Shepard, House Research Legislative Analyst  
RE: Summary of "Structure and Duties of Minnesota Labor Relations Agencies"

Responsibility for regulating and facilitating public sector labor relations in Minnesota is divided among three impartial bodies: The Bureau of Mediation Services (BMS), the Public Employment Relations Board (PERB), and the district courts. This report discusses the manner in which these responsibilities are allocated, problems with the current system, and alternatives.

I. PRESENT DUTIES OF BMS, PERB AND DISTRICT COURT

A. BMS: BMS is an executive branch agency headed by a director who serves at the pleasure of the Governor. The Bureau's most important duties are:

1. Representation Issues: BMS determines appropriate units for public sector collective bargaining to the extent that units are not established in statute. In identifying which employees will be assigned to a particular unit, BMS must decide which employees are "supervisory," "confidential," "essential," and "professional." BMS also conducts any elections needed to determine representation.
2. Fair Share: BMS hears and decides all fair share fee challenges.
3. Mediation and Arbitration: BMS provides mediators who can suggest settlements to parties when negotiations deadlock. When arbitration is agreed to or required by law, BMS certifies to PERB those matters which are not agreed to.

B. PERB: The Board is composed of five members appointed by the Governor to four year terms. Two are representative of public employees, two of public employers, and one of the public at large. PERB's most important duties are:

1. Appeals from BMS: PERB hears appeals from BMS appropriate unit determination decisions, including decisions made by BMS as to the meaning of "supervisory," "confidential," "essential," or "professional." PERB also hears appeals from BMS fair share fee decisions.
2. Arbitration: PERB maintains lists of qualified arbitrators for both impasse and grievance arbitration. BMS also maintains a list of arbitrators for grievance arbitration.

C. District Courts: In addition to jurisdiction to review PERB decisions and BMS decisions regarding elections, the district courts have original jurisdiction over alleged unfair labor practices.

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## II. PERCEIVED PROBLEMS WITH THE PRESENT SYSTEM

A number of practitioners feel that the current distribution of duties of BMS, PERB and district courts results in problems. The following are some of the problems mentioned in discussions with practitioners:

### A. Handling of Unfair Labor Practices

- District court judges, who have initial jurisdiction, are not experts in labor law and decisions often reflect a lack of understanding of PELRA.
- Since unfair labor practice charges are filed in district courts throughout the state, there are inconsistent decisions, and more litigation is encouraged. It is not practicable to gather information on the results of these cases.
- It is too costly to bring unfair labor practice charges in district court.

### B. Relationship of BMS, PERB and the Courts

- The process of unit determination and fair share appeals takes too long because BMS decisions can be appealed to PERB, and in turn to the district courts and Supreme Court. The lengthy appeal process can be very costly.
- BMS hearing officers are generally experts in labor relations but often are not specialized in conducting hearings.
- BMS mediation abilities may be weakened by the fact that the Bureau must decide cases (e.g. representation cases) which involve the same parties for whom it also attempts to mediate disputes.

## III. ALTERNATIVES TO THE PRESENT STRUCTURE

A. NLRA Model: The National Labor Relations Act and the laws of many states provide for one administrative agency to handle all adjudicatory matters and another agency to provide mediation services. As applied to Minnesota, this would mean that a multi-member board (probably full-time) would have responsibility for unit determination, fair share challenges, elections, and unfair labor practices. The only major responsibility of an agency such as BMS would be to provide mediation services.

B. Single Agency Model: In some states, such as Wisconsin, one board has jurisdiction not only over all adjudicatory decisions, but also over mediation. Applying this model to Minnesota, all BMS and PERB public sector responsibilities would become subject to one board. The board would also handle unfair labor practices.

C. Other Alternatives: These alternatives are less comprehensive than those presented above.

1. Give an administrative agency, instead of the district courts, initial jurisdiction over unfair labor practices.
2. Abolish PERB, so that BMS decisions would be final unless appealed to court.
3. Eliminate district courts from the appeal process so that appeals from PERB decisions would proceed directly to the Supreme Court.
4. Leave jurisdiction over unfair labor practices in district court, but give PERB, instead of BMS, initial jurisdiction over other adjudicatory matters such as unit determination and fair share challenges.