

Report To The

LEGISLATIVE COMMISSION ON EMPLOYEE RELATIONS

State of Minnesota

REVIEW OF THE

PUBLIC EMPLOYMENT RELATIONS BOARD

Industrial Relations Associates, Inc.
Minneapolis, Minnesota
612/374-9100

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INTRODUCTION

This 1984 interim study project requested by the Legislative Commission on Employee Relations examines the Public Employment Relations Board and its possible elimination and/or consolidation with the Bureau of Mediation Services.

For several years, this issue has been an on-going concern of the Commission as well as many public sector employers, unions, arbitrators and advocates throughout the State.

This most recent study has been prompted by two factors: the newly established Court of Appeals in the State and the activity level of PERB in recent years. Arguably, this new Court could assume PERB's appeal function, of BMS decisions and rulings, and BMS could provide PERB's remaining functions, i.e., arbitration and independent review services.

This report is largely the result of personal interviews and telephone conversations that were held with key representatives from the State's labor-management community. While it was impossible to meet or talk with all of the various users of PERB's services, it is believed that the herein contained observations accurately summarize the concerns and suggestions of the major user groups and participants.

Relevant Minnesota Statutes

The Minnesota Public Employment Labor Relations Act, as amended and recodified, contains the following description of the make-up and mission of the Public Employment Relations Board:

Subdivision 1 (Membership). The public employment relations board is established with five members appointed by the governor. Two members shall be representative of public employees; two shall be representative of public employers; and one shall be representative of the public at large. Public employers and employee organizations representing public employees may submit for consideration names of persons representing their interests. The board shall select one of its members to serve as chairman for a term beginning May 1 each year.

Subdivision 2 (Terms, Compensation). The membership terms, compensation, removal of members, and filling of vacancies on the board shall be as provided in section 15.0575.

Subdivision 3 (Rules, Meetings). The board shall adopt rules governing its procedure and shall hold meetings as prescribed in those rules. The chairman shall preside at meetings of the board.

Subdivision 4 (Other Powers). In addition to the other powers and duties given it by law, the board has the following powers and duties.

(a) to hear and decide appeals from determinations of the director relating to "supervisory employee", "confidential employee", "essential employee"; or "professional employee";

(b) to hear and decide appeals from determinations of the director relating to the appropriateness of a unit;

(c) to hear and decide on the record, determinations of the director relating to a fair share fee challenge.

Subdivision 5 (Appeals). The board shall adopt rules under chapter 14 governing the presentation of issues and the taking of appeals relating to matters included in subdivision 4. All issues and appeals presented to the board shall be determined upon the record established by the director, except that the board may request additional evidence when necessary or helpful.

Subdivision 6 (List of Arbitrators). The board shall maintain a list of names of arbitrators qualified by experience and training in the field of labor management negotiations and arbitration. Names on the list may be selected and removed at any time by a majority of the board. In maintaining the list the board shall, to the maximum extent possible, select persons from varying geographical areas of the state.

Subdivision 7 (Arbitration). The board shall provide the parties with a list of arbitrators under Section 179A.16, subdivision 4.

Section 26 (179A.25) (Independent Review). It is the public policy of the State of Minnesota that every public employee should be provided with the right of independent review, by a disinterested person or agency, of any grievance arising out of the interpretation of or adherence to terms and conditions of employment. When such review is not provided under statutory, charter, or ordinance provisions for a civil service or merit system, the governmental agency may provide for such review consistent with the provisions of law or charter. If no other procedure exists for the independent review of such grievances, the employee may present his grievance to the public employment relations panel under procedures established by the board.

The Public Employment Relations Board also has written rules and regulations governing the presentation of issues and appeals, arbitration of terms and conditions of employment and grievances, and independent review. (See Attachment A)

PERB's Budget

The total budget for the PERB in fiscal year 1984 was \$53,347. Of that amount, \$34,647 was reserved for the salary and fringe benefits of the one, full-time staff person (Executive Director, Ms. Claudia Hennen). The remainder of the budget breaks down as follows:

Per Diem Payments		
(Board Members)	=	\$7,400 (amount reserved)
Expense/Contract Services	=	\$9,800 (amount reserved)
Supplies Account	=	\$ 500 (amount reserved)
Equipment Account	=	\$1,000 (amount reserved)

(See Attachment B for complete breakdown)

PERB's Activity

PERB's activity is broken down into the areas of: a) supplying the parties with arbitration panels (both grievance and contract/interest) b) hearing unit and fair share appeals from the Bureau of Mediation Services, and c) receiving petitions from individuals seeking "Independent Review".

(Arbitration Panels)

Section 179.05, Subdivision b (List of Arbitrators) states that the Board shall maintain a list of names of arbitrators qualified by experience and training in the field of labor management negotiations and arbitration. The Board presently maintains a list of such arbitrators to hear both interest arbitration (terms to be included in a contract) and grievance arbitration (disputes of interpretation or application of existing contractual terms and provisions). Section 179A.1b, Subdivision 1,

provides that once the Director of the BMS certifies a matter to the Board for binding interest arbitration between the public employer and union, the Board provides the parties a list of seven arbitrators from which to choose. In grievance matters, once the parties have exhausted their grievance procedures, they may contact the PERB directly, its Executive Director, for a list of arbitrators. Or, the parties may have designated BMS as the agency from which to gain a list of grievance arbitrators.

In fiscal year 1984, PERB sent out 61 panels involving interest (contract) arbitration and 145 panels in matters of grievance arbitration. The peak years for providing such panels by PERB, since 1973, were 1975 for interest panels (90) and 1982 for grievance panel requests (215). (See Attachment C for statistics.)

PERB's present method of providing the parties with qualified arbitrators and selection panels has not been without its critics. Prior to November of 1983, PERB's selection of individuals for placement on its arbitrator roster was a rather informal interview and review process, on a case-by-case basis. Arbitrators on the roster were then chosen for listing on a particular panel to be sent to the parties at the discretion and judgment of the Executive Secretary. Since November, 1983, PERB has used a "bingo" system of random selection to draw arbitrators for placement on individual panels. Also since that time, PERB has not added new arbitrators to its roster because it is considering the establishment of a more formalized method of considering candidates for inclusion on its roster, e.g., internships with established arbitrators, drafting practice awards, etc. (See Attachment D.)

The "bingo" system critics maintain that many panels sent to the parties now contain an abundance of unknown, less experienced arbitrators from which to choose. Five (5) "rookies" may appear on the same list.

Dissatisfaction with this new system may provide an explanation for the drop in the number of grievance arbitration panels sent out by PERB in fiscal year 1984 - 145, down from 197 in fiscal year 1983. PERB is presently considering abolishing or modifying the bingo system.

(Appeal Function)

179A.05, Subdivision 5, states that the Board shall adopt rules governing the appeal of decisions that are issued by the BMS Director. The law states that: "All issues and appeals presented to the Board shall be determined upon the record established by the Director, except that the Board may request additional evidence when necessary or helpful". BMS and its Director are not allowed party status in such appeals. The Director, at most, may apparently submit an amicus curiae, "friend of the court" brief, outlining the Bureau's position, rationale, etc.

Since 1978, a total of 133 appeals have been filed with PERB out of 1,945 BMS orders that were issued during this period, or 6.7%. Of these 133 appeals, only three cases resulted in PERB reversing, in whole or in part, the Director's decision, or 2.3%. (See Attachment E for statistics.)

A party not in agreement with the appeal decision of PERB may subsequently appeal through the courts, up to and including the Minnesota Supreme Court.

(Independent Review)

The Board's jurisdiction and duties with respect to Independent Review are unclear. From 1973 through fiscal 1984, only 33 petitions seeking such a review have been filed with PERB. The vast majority (27) have been dismissed by the Board on jurisdictional grounds. Five (5) petitions have been withdrawn by the petitioner and one (1) petitioner failed to show up at the scheduled hearing. No individual has ever been successful in pursuing a remedy under the Independent Review function of PERB. (See Attachment C for statistics.)

The narrow scope of PERB's jurisdiction is apparently attributable to the State Supreme Court's decision in Boe v. Polk County Library Board (217 NW 2nd 208, 1974). Therein, the Court found that because the petitioners "have not presented a grievance arising out of the interpretation or adherence to terms and conditions of employment", pursuant to the statutory language providing for Independent Review (179A.25), they were not entitled to the establishment of an adjustment panel. In other words, some type of contractual or tenure right must be present in the employment relationship. Absent such a right, the Court held that the relationship was terminable at the will of either party. (See Attachment F)

In sum, given the facts that: a) the vast majority of public sector employees in Minnesota are covered by a labor agreement and/or some civil service type of review board, and b) PERB has very limited jurisdiction in situations involving employees who are not so covered, PERB's independent review function is "deminimus" at best.

Elimination of PERB: Arguments in Support Of

Elimination of PERB is quite broadly supported by public sector labor organizations in Minnesota. While certain labor groups are more adamant than others, the following have indicated support for the elimination of PERB: AFL-CIO, AFSCME Council 6, AFSCME Council 14, Law Enforcement Services and the Minnesota Federation of Teachers.

Elimination of PERB is also supported by many of the State's established arbitrators. Undoubtedly, PERB's controversial selection and enpaneling procedures have contributed to, if not directly caused, this support.

The Director of the State's Bureau of Mediation Services (BMS) has also gone on record as being in support of eliminating PERB. The Director has expressed his position in writing in the Bureau's 1984-86 Action Plan,

Governor's Options Analysis, and to the members of the current PERB. (See Attachment G.)

The collective support in favor of the elimination of PERB can be summarized along the lines of the following arguments.

1. Retaining two administrative agencies to interpret public labor-management policy is unnecessary, cumbersome and even damaging to labor-management relations.

Advocates of elimination feel that one, unified agency could more efficiently interpret and apply public sector labor policy, avoiding the possibility for conflicting policies. The public's confidence in the process is diminished when one agency ruling contradicts the holding of the other. BMS and PERB are and have been in conflict in a number of significant rulings on policy. (See Attachment H for examples.) "The left hand doesn't know what the right hand is doing", according to one individual.

Advocates of PERB's elimination question the expertise of PERB members to interpret public policy. BMS personnel apply labor statutes and deal with matters of collective bargaining, unit determinations, elections of unions, etc. on a full-time, day-to-day basis. PERB members spend perhaps one day a month studying and/or reviewing these specialized issues. In addition, PERB members frequently possess limited, if any, experience with such labor policy issues during the course of their regular occupations.

Supporters of elimination also point to private sector labor relations where labor issues are dealt with through one unified agency: National Labor Relations Board (NLRB). The NLRB not only

deals with issues of representation (elections, unit determinations and clarifications) but also unfair labor practice charges. Appeals from NLRB rulings are handled through the U.S. Circuit Court of Appeals. In Minnesota, public sector unfair labor practice charges are filed immediately within the court system and are not examined by an administrative agency.

In many other states, one unified agency is responsible for the entire spectrum of public sector labor relations activities. Alaska, Connecticut, Hawaii, Illinois, Iowa, California, Ohio, Maine, Massachusetts, Michigan, Montana, New Jersey, Oregon, Pennsylvania, Washington and Wisconsin have one agency that oversees elections, unit and fair share determinations, unfair labor practices, mediation and/or fact finding and arbitration services. These agencies are frequently headed by appointed board members and are called PERB's Commissions, etc. Appeals from these agency rulings are directed to district or circuit courts within the state. These states do not maintain a separate agency for the purpose of hearing appeals from decisions of another state agency, as is the case in Minnesota.

2. The infrequent appeals of BMS rulings could be handled by the Circuit Court of Appeals.

Statistics in Attachment E show that few BMS decisions are appealed to PERB. In 1983, (16) appeals were filed, 1982 (20), 1981 (15), etc. Approximately 6.8% of BMS orders have been appealed to PERB since 1978. Moreover, during this period of time, PERB only reversed BMS, whole or in part, in three cases; or 0.2% of BMS orders. These statistics support the contention that BMS decisions have been reasonable, consistent and not in need of review by another

administrative agency. Appeals should be directed to the Court instead.

Critics of the existing appeals process maintain that the PERB-level appeal is too often employed by the parties as simply a delay tactic; additional time to avoid compliance with an unfavorable BMS decision. This ultimately frustrates the rights and responsibilities of the persons and parties which PELRA (Public Employment Labor Relations Act) was enacted to protect. An inexpensive, informal type of PERB appeal may invite a number of appeals that are based solely on delay objectives as opposed to concerns over merit.

Supporters of a direct court appeal from BMS also maintain that circuit court judges are better qualified and experienced to hear the types of issues appealed than are typical PERB members. Analytical skills and knowledge in such areas as statutory law, rules of evidence, case law, etc., are often not evident at the PERB level of appeal.

3. BMS could provide PERB's arbitration services.

The current arbitration services provided by BMS and PERB are duplicative. Both agencies maintain rosters of supposedly qualified arbitrators and both agencies distribute panels of these arbitrators to parties upon request.

Both agencies have experience in providing arbitrators for interest as well as grievance disputes. In interest cases, PERB provides panels as required under PELRA and BMS provides such panels under the Charitable Hospitals Act. In grievance matters, parties may designate either PERB or BMS as the agency from which to request a panel of arbitrators. Unlike PERB, BMS also provides its arbitration services to private sector employers and union.

In fiscal 1984, BMS distributed 189 arbitration panels to private sector parties and 151 to public sector users for a total of 340. PERB distributed 206 panels, all to public sector parties.

Recently, BMS has compiled and distributed summaries of PERB and BMS arbitration awards to interested parties. This service allows the subscribing parties to review arbitrators' awards for guidance in selecting arbitrators, preparing cases, administering contracts, etc.

In short, BMS appears to possess the necessary experience and trained staff to assume the existing arbitration service of PERB.

4. Independent review could be handled by BMS.

PERB's statutory duty of providing for independent review is insignificant. BMS staff would appear to be better equipped than PERB to handle the few cases that do arise. Mediators at BMS are frequently called upon by both private and public sector parties to mediate, and sometimes arbitrate, grievance disputes - including discipline cases.

5. Eliminating PERB would result in a cost savings to the State.

This is perhaps the least persuasive argument in support of eliminating PERB. The Director of BMS has projected cost savings of 15.1 and 15.5 thousand dollars in fiscal years 1986 and 1987 respectively. (See Attachment G.)

Elimination of PERB: Arguments Against

The elimination of PERB and dispersing its functions to BMS and the court(s) is opposed by the following contacted groups and individuals:

all five (5) members of the existing PERB, Minnesota Public Employers Labor Relations Association and the Minnesota Teamsters Public and Law Enforcement Employees Union Local No. 320. (David Morris, present PERB member, is Secretary-Treasurer of Local 320.) The Minnesota School Employees Association also opposes the elimination of PERB and, instead, supports the establishment of a professional, full function (NLRB-type) PERB.

Organizations and individuals assuming an essentially neutral position on the issue include the State Negotiator's Office and the Minnesota Education Association.

Arguments put forth by those opposing PERB's elimination include the following:

1. PERB plays the role of "public watchdog".

Nearly all of the groups and individuals who oppose the elimination of PERB use the phrase "public watchdog" to describe the primary justification for PERB. These individuals and groups believe that PERB serves to effectively monitor the decisions that are rendered through BMS. More specifically, they believe that PERB keeps the Director of BMS from becoming too powerful - a checks and balances system. While no interviewed individuals expressed a concern that the existing Director would become abusive of power in the absence of PERB, many expressed concern over the potential abuse by future Directors who may be less impartial than the present Director.

Those in opposition to eliminating PERB do not believe that the courts would be as effective as PERB in checking the power of BMS and

its Director. Particularly in the area of rule making, some opponents feel that the Director would not be closely checked and monitored in PERB's absence. (It should be noted, however, that this concern is of questionable foundation, as PERB has no powers of review in the area of BMS rule making. BMS rule making is governed by the Administrative Procedure Act.)

2. PERB represents an essential non-judicial citizens board.

Opponents of elimination state that the public interest is well served by a balanced review board comprised of two citizens representing labor, two representing management and one neutral. It is also claimed that the parties feel more comfortable presenting issues on appeal to these citizen representatives for consideration than immediately proceeding to the formalities associated with a judicial review.

3. PERB appeal decisions are less costly and of higher quality than decisions rendered by a court.

Many opponents of elimination maintain that PERB appeals do not require parties to engage the services of high priced attorneys often used in court appeals. Small employers and labor organizations with limited resources may, therefore, not appeal a BMS decision to a court strictly on the basis of cost, not merit - which may give an unfair advantage to the larger organization in any given dispute.

Numerous advocates of retaining PERB also believe that PERB members have a better understanding of the issues that come up for appeal than do judges. A distinction is made between statutory laws interpreted by judges and the "law of the shop" that the parties have

developed and lived by in labor-management relations. PERB is thus compared to the role of an arbitrator, who supposedly is better equipped than a judge to decide matters involving labor agreement disputes. The PERB members: two labor, two management and one neutral, thus comprise a sort of arbitration panel that is sensitive to the needs of the labor management community. Judges would not have that sensitivity.

4. PERB's infrequent overturn of BMS decisions is evidence of PERB's success.

Advocates of abolishing PERB point to the fact that PERB has only overturned a BMS decision three times in the past six years. They interpret this statistic as evidence of quality, well reasoned BMS decisions. Advocates for retaining PERB interpret that statistic quite differently: BMS decisions are usually fair and well reasoned because PERB exists as a watchdog and source of appeal. No watchdog may result in inferior quality BMS decisions.

In the words of several PERB supporters: "You don't abolish the Supreme Court because it infrequently, if ever, overturns a decision of the lower court", "Does PERB have to overturn a certain number of BMS decisions to justify its appeal function?", "The system works, why 'fix' it?"

5. PERB is cost-effective.

Advocates of PERB point to the small budget of PERB, 53.5 thousand (fiscal year 1984), as significant. If BMS assumes PERB's arbitration function and appeals are immediately placed with the court, total costs to the State and the parties would rise, perhaps

significantly - according to PERB supporters. If enough appeals are taken to the circuit court, additional judges would have to be hired. (See Attachment I.)

Summary - Conclusions

At the time of this writing, no mandate to abolish PERB is evident among the participants of Minnesota's public sector labor relations community. In fact, a good deal of skepticism exists within the community concerning such an abolition. It is difficult to gauge how much of this skepticism is based upon reasoned analysis by the contacted parties or is due to normal resistance to change. The latter explanation appears to be the more likely in the majority of cases.

The perception of PERB's effectiveness and usefulness has undoubtedly been tarnished by its relatively recent problems with providing arbitration services to the parties. There is some evidence that the parties have diminished their usage of PERB for that service and have switched to alternative sources, e.g., BMS.

Based upon the foregoing arguments and observations, the following course of action may be considered for implementation at this point in time, and may receive support from both opponents as well as supporters of eliminating PERB.

1. Reduce the duties and responsibilities of PERB to include only that of serving as a source of appeal from BMS decisions.
2. Allow BMS party status on PERB appeals.

If BMS was permitted to effectively argue in support of its decision, explain the reasons therefore, and thus clearly communicate

its position to the PERB reviewers, the potential for conflicting rulings and misunderstandings between the agencies should be diminished. (The NLRB assumes such a party status in the private sector.) PERB would still serve in its role as "watchdog", but would, perhaps, become a more informed watchdog; cognizant of how a particular case ruling fits in with previously decided cases or pending decisions.

3. Transfer PERB's arbitration services to BMS.

BMS clearly has the staff, resources, and experience to perform this function to the parties' satisfaction. Currently, PERB and BMS are engaged in a unnecessary duplication of this service. PERB's current struggle in remodeling its system of listing and enpaneling arbitrators would end. PERB members may welcome this loss.

4. Transfer, or Abolish, PERB's duty to provide for independent review.

What little activity that does arise under this statutory right could easily be assumed by the staff at BMS. Moreover, little opposition can be expected to its outright abolishment given the record of usage.

5. Eliminate the Executive Director position of PERB.

If PERB's only function will be to hear appeals, a full-time position is clearly not warranted. Rather, a part-time secretary could perform the necessary paperwork and administrative duties.

b. Transfer the existing Executive Director to BMS.

The existing Executive Director, Claudia Hennen, receives high marks from both supporters and opponents of eliminating PERB. Her experience with the arbitration services of PERB and dealings with the user parties would be beneficial to BMS in assuming PERB's duties. She may also prove to be an effective liaison between PERB and BMS when appropriate.

It is believed that the above suggestions form the basis for an effective and timely compromise in assessing the pro's and con's of completely eliminating Minnesota's PERB.

PERB: Rules and Regulations

Following are the rules and regulations issued by the Public Employment Relations Board, governing presentation of issues and appeals, arbitration of terms and conditions of employment and grievances, and independent review, as last amended effective October 2, 1978.

**Ch. 1—Rules and Regulations
Governing Issues and Appeals
Presented to the Public Employment
Relations Board Pursuant to the
Public Employment Labor Relations
Act**

PERB 1. Application.—A. Issues relating to the meaning of the terms supervisory employee, confidential employee, essential employee or professional employee.

B. Appeals from determinations of the Director relating to the appropriateness of a unit or determination of supervisory employee.

C. Appeals from determinations of the Director relating to a fair share fee challenge.

PERB 2. Policy.—These rules shall be liberally construed to effectuate the purposes and provisions of the Public Employment Labor Relations Act. All parties who present issues and appeals to the Board shall be provided a fair, just and timely hearing.

PERB 3. Definitions. — (a) Board. "Board" means Public Employment Relations Board.

(b) Bureau. "Bureau" means Bureau of Mediation Services.

(c) Director. "Director" means the Director of the Bureau of Mediation Services.

(d) Party. "Party" means any person, public employee, public employer, exclusive representative of public employees, public employee organization or public employer organization whose legal rights, duties or privileges will be directly determined in an appeal.

(e) Appeal. "Appeal" means (1) issues relating to the meaning of the terms supervisory employee, confidential employee, essential employee or professional employee, (2) appeals from determinations of the Director relating to the appropriateness of a unit or determination of supervisory employee, and (3) appeals from determinations of the Director relating to a fair share fee challenge.

(f) Arbitrator. "Arbitrator," when referred to in PERB 30 through 40 means one or a panel of three arbitrators.

(g) Supervisory employee. "Supervisory employee," as defined in Minnesota Statutes, Sec. 179.63, Subd. 9, means:

(1) when the reference is to other than essential employees:

Any person having authority in the interests of the employer to hire, transfer, suspend, promote, discharge, assign, reward, or discipline other employees or responsibility to direct them or adjust their grievances on behalf of the employer, or to effectively recommend such action, if in connection with the foregoing the exercise of such authority is not merely routine or clerical in nature but requires the use of independent judgment. Any determination of "supervisory employee" may be appealed to the public employment relations board.

(2) when the reference is to essential employees:

The administrative head and his assistant of a municipality, municipal utility, police or fire department, or any person having authority in the interests of the employer to hire, transfer, suspend, promote, discharge, assign, reward, or discipline other employees or responsibly to direct them or adjust their grievances on behalf of the employer, if in connection with the foregoing the exercise of such authority is not merely routine or clerical in nature but requires the use of indepen-

dent judgment. Any determination of "supervisory employee" may be appealed to the public employment relations board.

(h) Confidential employee. "Confidential employee," as defined in Minnesota Statutes, Sec. 179.63, Subd. 8, means:

Any employee who works in the personnel offices of a public employer or who has access to information subject to use by the public employer in meeting and negotiating or who actively participates in the meeting and negotiating on behalf of the public employer.

(i) Essential employee. "Essential employee," as defined in Minnesota Statutes, Sec. 179.63, Subd. 11, means:

Any person within the definition of subdivision 7 whose employment duties involve work or services essential to the health or safety of the public and the withholding of such services would create a clear and present danger to the health or safety of the public.

(j) Professional employee. "Professional employee," as defined in Minnesota Statutes, Sec. 179.63, Subd. 10, means:

(1) any employee engaged in work (i) predominantly intellectual and varied in character as opposed to routine mental, manual, mechanical, or physical work; (ii) involving the consistent exercise of discretion and judgment in its performance; (iii) of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time; (iv) requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning or a hospital, as distinguished from a general academic education or from an apprenticeship or from training in the performance of routine mental, manual or physical processes;

(2) any employee, who (i) has completed the courses of specialized intellectual instruction and study described in clause

(iv) or paragraph (a), and (ii) is performing related work under the supervision of a professional person to qualify himself to become a professional employee as defined in paragraph (1).

(k) Presiding officer. "Presiding officer" means the Board, one or more of its members or a hearing examiner appointed by the Board who may hear the appeal.

(l) Service; serve. "Service" or "serve" means service of a document required by these rules, by person or certified United States mail, with return requested, postage prepaid and addressed to the party at his last known address, unless some other manner of service is required by law. Certified mail means mail which must be signed for by the addressee upon receipt of said mail.

(m) Time. In computing any period of time prescribed or allowed by these rules, the day of act or event from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday or a legal holiday. For any time period of 10 days or less, Saturdays, Sundays or legal holidays shall not be included in computing the period of time.

PERB 4. Presiding officer. — (a) Conducting hearings. The Board may hear appeals as a full body or may delegate to one or more of its members the authority to hear an appeal. The Board may also appoint a hearing examiner to hear an appeal.

(b) Authority of hearing examiner. The appointment of the hearing examiner shall, to the extent permitted by law, grant the hearing examiner such authority as the Board deems necessary and appropriate to hear the appeal. The hearing examiner shall not have authority to make the final decisions on the appeal.

(c) Functions of hearing examiner. The hearing examiner shall hear the appeal

consistent with law and the terms of his appointment. His functions shall include, but not be limited to, to hear and rule on preliminary motions, conduct the hearing and prepare findings of fact. The final decision on the appeal shall in all cases be made by the Board.

PERB. 5. Initiating an appeal. — Any party, or parties, may initiate an appeal by serving a copy of a notice of appeal upon all other parties with a copy to the Director and filing the original with the Board within 10 days of a determination by the Director. A notice of appeal shall contain:

(a) The name and address of the applicant;

(b) A statement of the nature of the decision requested, the reasons therefor and the BMS case number;

(c) The names and addresses of all parties who were parties to the determination by the Director, and all other parties known to the applicant who will be directly affected by such appeal; and

(d) The signature of the applicant or his representative.

PERB. 6. Answer. — Within 10 days after service of a notice of appeal, all other parties may submit a concise answer to the notice of appeal. A copy of such answer shall be served on all parties to the appeal and filed with the Board. Failure to submit an answer shall not be deemed as an admission of any statement contained in the issue of appeal or waiver of any rights afforded to respondent in any statute or rule.

PERB 7. Notice of hearing. — Within 15 days following receipt of a notice of appeal the Board shall serve upon all known parties not less than 10 days prior to hearing a notice stating:

(a) The date, place and time of hearing;

(b) The rights of the parties to representation (see PERB 9);

(c) That failure to appear or submit positions may prejudice the party's rights (see PERB 11).

A copy of these rules shall be included with the notice of hearing.

PERB 8. Continuance of hearing. — No request for continuance of a scheduled hearing will be granted within seven days of a hearing unless exceptional circumstances are shown. A request for continuance shall be made in writing and served upon the party or parties and filed with the Board.

PERB 9. Right to representation. — Any party may be represented by a designated agent in an appeal before the Board.

PERB 10. Informal and summary disposition. — A. Informal disposition. Informal disposition may be made of any appeal or any issue therein by stipulation, settlement or agreement at any point in the proceedings so long as said stipulation, settlement or agreement does not violate any provisions of law and is approved by the Board.

B. Summary disposition. The Board, on its own motion or on motion of any party, may dismiss an appeal, or may summarily affirm the order or decision below if the Board lacks jurisdiction or if it clearly appears that the appeal presents no question of substantial merit, or may limit the issues to be considered on appeal to those which present a substantial question. In case of obvious error the Board may summarily reverse or remand for additional proceedings or grant other appropriate relief.

PERB 11. Default. — The Board may dispose of an appeal adverse to a party who fails to appear after receiving due notice and an opportunity for hearing.

PERB 12. Intervention. — The Board may, upon timely application, allow a person or organization to intervene in an appeal upon a showing of substantial interest in the outcome of the appeal.

PERB 13. Substitution of party. — Substitution of a party or their representative may be allowed only if notice of the substitution is served on all other

parties, at least five days prior to the hearing date, and filed with the Board.

PERB 14. Consolidation. — (a) Basis. The Board may, prior to hearing, consolidate cases either on its own motion or upon petition by any party, if it determines (1) that separate appeals present substantially the same issues, (2) that a decision in one case would affect the rights of parties in another case, and (3) that consolidation would not substantially prejudice any party. Notwithstanding the requirements of this rule, the parties may stipulate and agree to consolidation subject to Board approval.

(b) Notice. Within five days following an order for consolidation the Board shall serve on all parties a notice of consolidation.

(c) Objection to consolidation. Within five days of receipt of notice of consolidation any party may file with the Board a petition for severance from consolidation which shall include the BMS case number and reasons for objection.

PERB 15. Remand. — At any time prior to its decision, the Board may remand to the Director all or part of the appeal for rehearing or the taking of specified additional evidence.

PERB 16. Extension of time. — The parties, with the approval of the Board or its designee, may stipulate and agree to extend any time period provided in these rules.

PERB 17. The hearing. — (a) Review procedure. Appeals shall be determined upon record established by the Director provided that the Board at its discretion may request additional evidence. Oral and written argument may be allowed upon request of a party.

(b) Hearing procedure. (1) The hearing shall include the following:

(aa) The presiding officer shall open the hearing and introduce the following exhibits:

(i) Notice of appeal and supporting documents if any;

(ii) If consolidation has occurred, notice of consolidation, supporting documents, if any;

(iii) Notice of hearing, supporting documents, if any, and affidavits of service;

(iv) Any stipulations, settlements or agreements entered into by any of the parties prior to the hearing; and

(v) The record of the hearing held before the Director.

(bb) Oral arguments shall not exceed 30 minutes per party;

(cc) Five minutes may be allowed for rebuttal;

(dd) The presiding officer may allow filing of memoranda by the parties.

(2) If additional oral evidence is to be taken, the hearing shall be conducted as follows:

(aa) The presiding officer shall open the hearing;

(bb) All parties may present evidence in conformance with the Board's request for additional evidence;

(cc) All witnesses must be sworn and are subject to cross-examination by all parties;

(dd) The rules of evidence as set forth in PERB Rule 17(e) will be followed;

(ee) Written matter may be marked as an exhibit and offered into evidence;

(ff) The presiding officer shall introduce the following exhibits:

(i) Notice of appeal and supporting documents, if any;

(ii) If consolidation has occurred, notice of consolidation, supporting documents, if any;

(iii) Notice of hearing, supporting documents, if any, and affidavits of service;

(iv) Any stipulations, settlements or agreements entered into by any of the parties prior to the hearing;

(v) The record established by the Director;

(gg) Unless otherwise directed by the presiding officer, the party who initiated the appeal shall begin the presentation of evidence and shall be followed by the

other parties in a sequence determined by the presiding officer;

(hh) Cross-examination shall be conducted in a sequence determined by the presiding officer;

(ii) Rebuttal evidence and final argument shall be allowed;

(jj) Oral arguments shall not exceed 30 minutes per party;

(kk) Five minutes may be allowed for rebuttal;

(ll) The presiding officer may allow filing of memoranda by the parties.

(c) The Record. (1) Board prepares record. The Board shall prepare an official record in each appeal.

(2) What the record shall contain. The record in an appeal shall contain:

(aa) All pleadings, motions and intermediate rulings;

(bb) Evidence received or considered;

(cc) A statement of matters noticed;

(dd) Proposed findings and exceptions;

(ee) Any decision, opinion or report by the presiding officer; and

(ff) The record established by the Director.

(3) Transcript. A verbatim record of the hearing shall be taken by a hearing reporter and/or recording equipment.

(d) Witnesses. When oral evidence is taken, any party may be a witness or may present witnesses on its behalf at the hearing and such testimony shall be under oath.

(e) Rules of evidence. (1) General rules. The presiding officer may admit and consider evidence which possesses probative value commonly accepted by reasonably prudent persons in the conduct of their affairs. The presiding officer shall give effect to the rules or privilege recognized by law. Evidence which is incompetent, irrelevant, immaterial or repetitious shall be excluded.

(2) Record of bureau. The official record of the proceeding conducted by the Bureau shall be competent evidence.

(3) Evidence must be offered to be considered. All evidence to be considered in the case, including all records and documents in the possession of the Board, shall be offered and made part of the record in the case. No other evidence or factual information, except as provided in (5) below, shall be considered in the determination of the case.

(4) Documentary evidence. Documentary evidence in the form of copies or excerpts may be received or incorporated by reference in the discretion of the presiding officer or upon agreement of the parties.

(5) Notice of facts. The presiding officer may take notice of general, technical or scientific facts within his specific knowledge. The presiding officer shall notify the parties of any facts that are to be so noticed.

(6) Depositions. Upon a showing of good cause the presiding officer may allow the taking of depositions to preserve testimony in the same manner as prescribed by the Minnesota Rules of Civil Procedure.

(f) Decorum. (1) The presiding officer may prohibit the operation of a television, newsreel, motion picture, still or other camera and mechanical recording devices, in the hearing room while the hearing is in progress, if such operation has a significantly adverse effect on the hearing.

(2) No person shall interfere with the free, proper and lawful access to or egress from the hearing room. No person shall interfere with the conduct of, disrupt or threaten interference with the hearing.

PERB 18. The board decision.—(a) Basis for determination. No factual information or evidence which is not part of the record shall be considered by the Board in the determination of an appeal.

(b) Decisions and orders. (1) Formal decisions or order with reasons required. All decisions or orders rendered by the

Board in an appeal shall be in writing and shall be accompanied by a statement of the reasons therefor.

(2) Service and contents. All decisions or orders shall be served on all parties to the appeal and a copy filed with the Bureau. It shall contain:

(aa) A statement of the decision or order in the case;

(bb) A statement of the reasons therefor;

(cc) An affidavit of service.

(c) Default. When a party with adequate notice fails to plead or otherwise appear within the time allowed by these rules or by statute, decision by default may be entered against him.

PERB 19. Rehearing.—(a) Board right to rehear. The Board may upon request and for good cause shown or on its own motion, reopen, rehear and redetermine an appeal. The petition for rehearing must be filed with the Board within 30 days of the determination of the initial hearing.

(b) Obtaining a rehearing. (1) A party to such appeal may request a rehearing by filing a petition. Such petition shall contain:

(aa) The name and address of the petitioner;

(bb) The Board designation for the case;

(cc) The reasons in support of the petition for rehearing.

(2) Determination. The Board shall grant or deny a petition for rehearing as a part of the record in the case. Such petition shall be granted only if the petition or the record reveals irregularities in the proceedings, errors of law occurring during the proceedings, newly discovered material evidence, a change in existing law or good cause for failure to appear or plead. Evidence and argument may be presented at the discretion of the Board in written or oral form or both by any party to the appeal with respect to the petition.

(c) Notice of rehearing. A notice of rehearing will be provided in the same manner prescribed for a notice of hearing.

(d) Rehearing procedure. A rehearing of an appeal will be conducted in the same manner prescribed for a hearing.

(e) Decision after rehearing. The decision after rehearing shall be made in the same manner prescribed for the decision after a hearing.

**Ch. 2—Rules and Regulations
Governing the Arbitration of Terms
and Conditions of Employment
Pursuant of Minnesota Statutes, Sec.
179.72**

PERB 30. Application.—These rules shall apply to the procedures governing the creation of an arbitration panel to hear and decide disputes concerning the terms and conditions of employment.

PERB 31. Policy.—These rules shall be liberally construed to effectuate the purposes and provisions of the Public Employment Labor Relations Act.

PERB 32. Definitions.—The words, terms and phrases in these rules shall have the same meaning and definition as defined in PERB 3.

PERB 33. Binding arbitration.—(a) Non-essential employees. If the Director has received from the employer a petition for binding arbitration or a petition from the employee representative for binding arbitration and said petition has been agreed upon by the employer representative within the requisite 15 days, and the Director has certified a dispute to the Board pursuant to Minnesota Statutes, Sec. 179.69, subds. 3 or 5, the Board shall submit to the parties a list of seven arbitrators.

(b) Essential employees. If the exclusive representative to a dispute involving any essential employees has requested arbitration and the Director has so certified, the Board has jurisdiction of the matter and shall proceed in accordance

with Minnesota Statutes, Sec. 179.72, subd. 6.

(c) Statutory time limitations. If the parties to a dispute fail to execute a contract within the time periods prescribed by Minnesota Statutes, Sec. 179.69, subd. 4, they must submit their final positions to the Director pursuant to Minnesota Statutes 179.69, subd. 5. Upon receipt of the final positions, the Director may then submit the final positions to the Board for binding arbitration or he may retain jurisdiction and require the parties to mediate or continue to mediate the dispute.

PERB 34. Certification of impasse.—A certification by the Director pursuant to Minnesota Statutes, Sec. 179.69, subds. 3 or 5, shall contain the following:

(a) The petition or petitions requesting arbitration.

(b) A concise written statement by the Director indicating that an impasse has been reached and that further mediation efforts would serve no purpose.

(c) A determination by the Director of matters not agreed upon based upon his efforts to mediate the dispute.

(d) The final positions submitted by the parties.

(e) Those agreed-upon items to be excluded from arbitration. The Director shall file the certification with the Board and notify the parties by certified mail of the said certification.

PERB 35. Selection of an arbitrator.—

(A) The Board shall maintain a master list of available arbitrators. This list shall be made up of qualified persons who have submitted an application in writing to the Board and have been approved. These applications shall be submitted to each member of the Board prior to any action being taken by the Board for approval of the applicant. A majority vote of the Board shall be required for placement or removal from the list.

(B) The Chairman of the Board or his designee shall select seven names for

consideration as the arbitrator, but the final selection of a seven-member list shall be made by at least an affirmative vote of three members of the Board which shall include the public member. In selecting the seven names, the Board shall endeavor whenever possible to include names of persons from the general geographic area in which the public employer is located. After the seven arbitrators have been selected, the Board shall submit the said names to the parties. Within five days thereafter, the parties shall, under the direction of the Chairman of the Board or his designee, who need not be physically present, alternately strike names from the list. If either party requests a single arbitrator, the parties shall alternately strike names from the list until only one name remains. If neither party requests a single arbitrator, the parties shall alternately strike names from the list until three names remain, which three persons shall constitute the panel. If the parties are unable to agree on who shall strike the first name, the question shall be decided by the flip of a coin. Notice of the selection of the arbitrator shall be immediately transmitted to the Board by the parties. The notice shall contain the name or names of the arbitrator selected and the name of the arbitrator selected by the parties as the convenor of the panel. If the parties fail to agree upon a convenor, the parties shall each strike, in the continued order of striking, one name from the arbitration panel. The remaining arbitrator shall act as the convenor for the arbitration panel for the purpose of commencing the proceeding.

PERB 36. Submission to arbitrator.—

After the arbitrator has been selected, the Board shall submit to the arbitrator the certification of impasse by the Director. The arbitrator shall then proceed to hold hearings and make deliberations necessary to render an award.

PERB 37. Panel chairman.—In the event of a three member arbitration panel, the panel shall, at its initial session, select one member as Chairman to serve throughout.

In the event the members cannot agree, the Chairman shall be selected by the same procedure as set forth in PERB 35, subdivision (b) above.

PERB 38. Arbitration procedures—(a) Attendance and testimony of witnesses. The arbitrator may issue subpoenas requiring the attendance and testimony of witnesses and the production of evidence which relates to any matter involved in any dispute before it. Forms for subpoenas may be obtained from the Bureau of Mediation Services. The arbitrator may administer oaths and affidavits, and may examine witnesses. Attendance of witnesses and the production of evidence may be required from any place in the state at any designated place of hearing; provided, however, the arbitration meeting shall be held in the county in which the principal administrative offices of the employer are located, unless another location is selected by agreement of the parties.

(b) Guidelines in rendering an award. In considering a dispute and issuing its award the arbitrator shall give due considerations to the statutory rights and obligations of public employers to efficiently manage and conduct its operations within the legal limitations surrounding the financing of such operations. The arbitrator's awards shall be issued by a majority vote of its members considering a given dispute. The arbitrator shall have no jurisdiction over nor authority to entertain any matter or issue not within the definition stated in Sec. 179.63, subd. 18; provided, however, items not within terms and conditions of employment may be included in an arbitration award if such items are contained in the employer's final position. Any award or part thereof issued by the arbitrator

determining any matter not included under Sec. 179.63, subd. 18 or the employer's final position shall be void and of no effect.

(c) Uniform Arbitration Act. The arbitrator may avail himself of the procedures provided for in the Uniform Arbitration Act (Minnesota Statutes 572.08-.30) as long as the procedures stated therein do not conflict with any provisions of the Public Employment Labor Relations Act.

PERB 39. Arbitration awards.—(a) Final and binding. The arbitrator's award shall be final and binding upon the parties. Provided, however, that no award of the panel which violates any provision of the laws of Minnesota or rules or regulations promulgated thereunder or municipal charters or ordinances or resolutions enacted pursuant thereto, or which causes a penalty to be incurred thereunder, shall have any force or effect. Any provision of any contract required by Sec. 179.70, which of itself or in its implementation would be in violation of or in conflict with any statute of the state of Minnesota or a municipal home rule charter or ordinance or resolution adopted pursuant thereto, or rule of any state board or agency governing licensure or registration of an employee, provided such rule, regulation, home rule charter, ordinance, or resolution is not in conflict with Sec. 179.61 to 179.66 and shall be returned to the arbitrator for an amendment to make the provisions consistent with the statute, rule, regulation, charter, ordinance or resolution.

(b) Procedure. The arbitrator shall render his award within 10 days from the date that all arbitration proceedings have been concluded, but in any event must issue his award by the last date the employer is required by statute, charter, ordinance or resolution to submit its tax levy or budget or certify its taxes voted to the appropriate public officer, agency, public body or office, or by November 1,

whichever date is earlier. The arbitrator's award shall be for such period as the arbitrator shall direct, except that awards determining contracts for teacher units shall be effective to the end of the contract period as determined by Sec. 179.70, subd. 1. Upon issuing its award, the arbitrator shall transmit the award and any written decision explaining the award to the Board and to the parties.

(c) Settlement. Should any issues submitted to arbitration be settled voluntarily before the arbitrator issues his award, notice of such settlement shall be made by the arbitrator in a report issued to both the Board and Director.

PERB 40. Payment of arbitrator or panel.— All expenses and costs of the arbitrator or panel shall be shared and assessed equally to the parties to the dispute. The term "consideration of a dispute," as used in Minnesota Statutes, Sec. 179.72, subdivision 6, includes, but is not limited to, time incurred in preparation, conduct of hearings, deliberations and preparation of the decision.

PERB 41. Professional responsibility.— In arbitrating disputes concerning terms and conditions of employment pursuant to Minnesota Statutes, Sec. 179.72, arbitrators shall conform to the standards and procedures set forth in the Code of Professional Responsibility for Arbitrators of Labor-Management Disputes as approved by the National Academy of Arbitrators, American Arbitration Association, and Federal Mediation and Conciliation Service on April 28, 1975, incorporated herein by reference, to the extent not inconsistent with the provisions of the Public Employment Labor Relations Act, PERB 30 [to] 40, or other applicable law or rule, provided that:

A. Part 5(B)(1)(c), paragraph 112, of the Code of Professional Responsibility should not be construed as limiting the right of the parties to order a copy of the hearing transcript; and

B. Part 6(A)(1)(b), paragraph 124, of the Code of Professional Responsibility should not be construed as limiting the right of the parties to submit written briefs to the arbitrator.

Ch. 3—Rules and Regulations Governing the Arbitration of Grievances Pursuant to Minnesota Statutes 179.70, Subd. 4

PERB 50. Application.—These rules shall apply only when the parties are unable to agree upon an arbitrator as provided by contract grievance procedures or the procedures established by the Director.

PERB 51. Policy.—These rules shall be liberally construed to effectuate the purposes and provisions of the Public Employment Labor Relations Act.

PERB 52. Definitions.—The words, terms and phrases in these rules shall have the same meaning and definition as defined in PERB 3.

PERB 53. Petition.—In the event the parties are unable to agree upon an arbitrator or arbitrators as provided by contract grievance procedures or the procedures established by the Director, the parties may petition, in writing, the Board for a list of five arbitrators. The petition shall contain:

(a) The name and address of the petitioner;

(b) The names and addresses of the adverse parties; and

(c) A concise statement of the nature of the grievance, the provisions of the contract applicable to the grievance and the relief requested.

PERB 54. Selection of the arbitrator.—(a) The Board shall maintain a master list of available arbitrators. The list shall be made up of qualified persons who have submitted an application in writing to the Board and have been approved. These applications shall be submitted to every member of the Board prior to any action being taken by the Board for approval of the applicant. A majority vote of the

Board shall be required for placement or removal from the list.

(b) The Chairman of the Board, or his designee, shall select five names for consideration as the arbitrator, but final selection of the five-member list shall be made by at least an affirmative vote of three members of the Board which shall include the public member, a public employee member and a public employer member. In selecting the five names, the Board shall endeavor whenever possible to include names of persons from the general geographic area in which the public employer is located.

(c) Once the five arbitrators have been selected, the Board shall notify the parties of the names of the five arbitrators. Within five days the parties shall, under the direction of the Chairman or his designee, who need not be physically present, alternately strike names from the list of five arbitrators. Until only one name remains. If the parties are unable to agree on who shall strike the first name, the question shall be decided by the flip of a coin.

(d) Notice of the selection of the arbitrator shall be immediately transmitted to the Board by the parties. The notice shall contain the name of the arbitrator selected and the date for commencement of arbitration proceedings.

(e) Upon rendering any award, the arbitrator shall transmit both to the Board and to the Director a copy of his award and any written explanation thereof. Should any issues submitted to arbitration be settled voluntarily before the arbitrator issues his award, notice of such settlement shall be made by the arbitrator in a report issued both to the Board and to the Director.

PERB 55. Professional responsibility.—In arbitrating grievances pursuant to Minnesota Statutes, Sec. 179.70, arbitrators shall conform to the standards and procedures set forth in the Code of

Professional Responsibility for Arbitrators of Labor-Management Disputes as approved by the National Academy of Arbitrators, American Arbitration Association, and Federal Mediation and Conciliation Service on April 28, 1975, incorporated herein by reference, to the extent not inconsistent with the provisions of the Public Employment Labor Relations Act, PERB 50 [to] 54, or other applicable law or rule, provided that:

A. Part 5(B)(1)(c), paragraph 112, of the Code of Professional Responsibility should not be construed as limiting the right of the parties to order a copy of the hearing transcript; and

B. Part 6(A)(1)(b), paragraph 124, of the Code of Professional Responsibility should not be construed as limiting the right of the parties to submit written briefs to the arbitrator.

Ch. 4—Rules and Regulations Governing Independent Review Pursuant to Minnesota Statutes 179.76

PERB 60. Application.—The rules and regulations governing independent review and the establishment of a Public Employment Relations Panel shall apply only when no other procedure exists for the independent review for a public employee of a grievance or grievances arising out of the interpretation of or adherence to terms and conditions of employment.

PERB 61. Policy.—These rules shall be liberally construed to effectuate the purposes and provisions of the Public Employment Labor Relations Act.

PERB 62. Definitions.—The words, terms, and phrases in these rules shall have the same meaning and definition as defined in PERB 3.

PERB 63. Petition.—Any public employee may petition the Public Employment Relations Panel for independent review of a grievance arising out of the interpretation of or adherence to terms and conditions of employment when no

other such procedure exists to hear that grievance. The petition shall contain:

(a) The name, address and telephone number of the petitioner;

(b) The name, address and telephone number of the public employer;

(c) A certification that independent review of the grievance is not available under any other procedure; and

(d) A concise written statement of the grievance or grievances arising out of the interpretation of or adherence to terms and conditions of employment and the relief requested.

PERB 64. Public employment relations panel.—The Board, after determining that independent review was not available to the petitioner, shall within a reasonable time establish a Public Employment Relations Panel or decide the matter as a full Board. If a Panel is established, it shall consist of one member of the Board who represents public employers, one member of the Board who represents public employees and the Chairman of the Board.

PERB 65. Hearing.—(a) The Board or Panel may hear the grievance as a full body or may delegate to one or more of its members the authority to hear the grievance. The Board or Panel may appoint a qualified hearing examiner to

conduct the hearing and prepare findings of fact. The Board or Panel reserves the authority to make the final determination of the case.

(b) Within 15 days of selection of a Panel, or a determination that a full Board will hear the matter, the Board or Panel shall serve notice on all parties to the case. Such notice shall contain:

(1) The time and place of the hearing;

(2) The grievance or grievances to be determined;

(3) The procedure for the hearing; and

(4) A copy of these rules.

(c) All parties shall be entitled to representation at the hearing.

PERB 66. Board or panel decisions.—Every decision rendered by the Board or Panel shall be in writing and shall be accompanied by a statement of the reasons therefor. Every decision shall be binding on both parties and served on all parties to the case. It shall contain:

(a) A statement of the decision or order in the case;

(b) A statement of the reasons therefor; and

(c) An affidavit of service.

A majority vote of the Board or Panel shall constitute a decision of the Board or Panel

PERB BUDGET

Fiscal Year 1984

TOTAL BUDGET \$53,347.00
 EXPENDITURES \$43,189.55
 BALANCE \$10,157.45

SALARIES ACCOUNT

Amount Available _____ \$42,047.00

	<u>Amount Reserved</u>	<u>Amount Expended</u>	<u>Amount Remaining</u>
Salary & Fringe Benefits-----	\$34,647.00	\$30,727.00	\$ 3,920.00
Per Diem Payments-----	7,400.00	3,920.00	3,480.00
	<u>\$42,047.00</u>	<u>\$34,647.00</u>	<u>\$ 7,400.00</u>

Unobligated Balance _____ \$ --

EXPENSE/CONTRACT SERVICES ACCOUNT

Amount Available _____ \$9,800.00

	<u>Amount Reserved</u>	<u>Amount Expended</u>	<u>Amount Remaining</u>
Rental of office space-----	\$2,012.40	\$1,844.70	\$ 167.70
Central duplicating-----	50.00	--	50.00
Xerox charges-----	1,400.00	1,182.89	217.11
Postage-----	1,200.00	796.50	403.50
Telephone-----	600.00	509.70	90.30
Out-of-state travel-----	1,500.00 =	1,216.39	283.61
In-state travel-----	800.00	672.95	127.05
Membership, tuition & fees-----	1,000.00 =	997.75	2.25
Rental of typewriter-----	900.00 =	604.10	295.90
State Register-----	100.00	54.60	45.40
Equipment repair-----	200.00	--	200.00
	<u>\$9,762.40</u>	<u>\$7,879.58</u>	<u>\$1,882.82</u>

Unobligated Balance _____ \$ 37.60

SUPPLIES ACCOUNT

Amount Available _____ \$500.00

	<u>Amount Reserved</u>	<u>Amount Expended</u>	<u>Amount Remaining</u>
Office supplies-----	\$1,100.00	\$ 662.97	\$ 437.03

Unobligated Balance _____ -\$600.00

EQUIPMENT ACCOUNT

Amount Available-----\$1,000.00

	<u>Amount Reserved</u>	<u>Amount Expended</u>	<u>Amount Remaining</u>
Purchase of typewriter-----	\$890.00	\$ --	\$890.00

Unobligated Balance-----\$ 110.00

STATE OF MINNESOTA
PUBLIC EMPLOYMENT RELATIONS BOARD

ACTIVITY REPORT

	<u>FY 73</u>	<u>FY 74</u>	<u>FY 75</u>	<u>FY 76</u>	<u>FY 77</u>	<u>FY 78</u>	<u>FY 79</u>	<u>FY 80</u>	<u>FY 81</u>	<u>FY 82</u>	<u>FY 83</u>	<u>FY 84</u>
<u>ARBITRATION</u>												
<u>CONTRACT -</u>												
State	0	3	5	1	6	0	12	0	1	1	0	0
University	0	0	0	1	0	0	0	0	0	0	0	1
County	1	6	4	7	16	13	10	14	17	18	17	19
Municipality	5	11	18	18	25	18	20	20	23	13	37	33
School District:												
Teachers	9	0	46	26	0	31	1	38	0	6	0	3
Non-teachers	0	3	17	26	15	22	10	12	7	6	10	5
Other	1	0	0	1	1	1	1	2	1	0	0	0
TOTAL	16	23	90	80	63	85	54	86	49	44	64	61
<u>GRIEVANCE -</u>												
State	0	0	0	0	1	2	6	1	0	21	0	1
University	0	0	1	3	5	3	5	5	14	22	18	7
County	0	4	2	4	7	18	24	36	19	43	45	41
Municipality	1	6	18	10	23	21	25	26	40	60	58	50
School District:												
Teachers	7	21	40	38	33	45	40	62	68	55	50	31
Non-teachers	0	0	7	6	3	6	8	11	18	9	21	14
Other	0	1	1	1	0	2	2	2	3	5	5	1
TOTAL	8	32	69	62	72	97	110	143	162	215	197	145
<u>UNIT & FAIR SHARE APPEALS</u>												
State	1	4	4	4	2	0	2	0	1	3	2	0
University	2	0	1	0	0	2	0	1	1	0	0	0
County	4	1	1	5	7	10	8	8	5	6	1	5
Municipality	8	6	2	4	2	4	6	9	1	2	5	2
School District:												
Teachers	0	1	1	0	3	5	10	7	4	4	5	2
Non-teachers	1	1	1	2	4	1	1	4	1	1	3	2
Other	0	0	0	0	0	1	1	0	1	1	0	0
TOTAL	16	13	10	15	18	23	28	29	14	17	16	11

ATTACHMENT C

	<u>FY 73</u>	<u>FY 74</u>	<u>FY 75</u>	<u>FY 76</u>	<u>FY 77</u>	<u>FY 78</u>	<u>FY 79</u>	<u>FY 80</u>	<u>FY 81</u>	<u>FY 82</u>	<u>FY 83</u>	<u>FY 84</u>
<u>INDEPENDENT REVIEW</u>												
State	0	0	1	0	0	0	0	0	2	0	1	3
University	0	0	0	0	0	0	0	0	0	1	0	0
County	1	3	1	0	0	1	0	0	1	0	0	2
Municipality	1	0	2	0	1	0	0	0	1	0	0	1
School District:												
Teachers	0	0	0	0	0	0	0	0	0	0	0	0
Non-teachers	0	0	2	0	1	0	0	0	0	2	0	0
Other	0	0	2	0	0	1	0	2	0	0	0	0
TOTAL	2	3	8	0	2	2	0	2	4	3	1	3
CASE TOTALS	42	71	177	157	155	207	192	260	229	279	278	223

*Petition
all
dismiss*

STATE OF MINNESOTA - PUBLIC EMPLOYMENT RELATIONS BOARD

CASELOAD ACTIVITY FOR FISCAL YEARS 1972 THROUGH 1984

PARTY INITIATING APPEALS BEFORE PERB

	<u>Number</u>	<u>Percent</u>
Unions	93	44%
Employers	80	38%
Employees	37	18%
TOTAL	210	

CASELOAD ACTIVITY BY TYPE OF GOVERNMENTAL AGENCY

	<u>APPEALS</u>		<u>INTEREST ARBITRATION</u>		<u>GRIEVANCE ARBITRATION</u>		<u>TOTALS</u>	
							<u>Number</u>	<u>Percent</u>
State	23	(11%)	29	(4%)	32	(2%)	84	4%
University of Minnesota	7	(3%)	2	(0.2%)	83	(6%)	92	4%
County	61	(29%)	142	(19.8%)	243	(19%)	446	20%
Municipality	51	(24%)	241	(34%)	338	(26%)	630	28%
School District	64	(31%)	293	(41%)	593	(45%)	950	42%
Other	4	(2%)	8	(1%)	23	(2%)	35	2%
TOTAL	210		715		1312		2237	

**STATE OF MINNESOTA
PUBLIC EMPLOYMENT RELATIONS BOARD**

Suite 205 Summit Bank Building
205 Aurora Avenue
Saint Paul 55103
PHONE: 612-296-8947

RECEIVED OCT 10 1984

NOTICE OF ARBITRATION MEETING

The Public Employment Relations Board is conducting a meeting with labor and management representatives and arbitrators on the Board's roster as follows:

DATE: Thursday, November 8, 1984

TIME: 9:00 - 11:00 a.m.

PLACE: Room 118 State Capitol
St. Paul, Minnesota

The purpose of the meeting is to discuss the following topics relating to the Board's arbitration function:

1. New requirements for placement on PERB arbitrator roster

On June 14, 1984, the Board added the following qualification to its requirements for placement on its arbitrator roster:

To be admitted to the Board's roster, an applicant must furnish evidence of:

- a) A minimum of nine (9) Minnesota public sector arbitration cases in which the applicant served as an intern to a minimum of three (3) arbitrators, and in which at least four (4) of the cases involved grievance arbitration and four (4) of the cases involved interest arbitration. Service as an intern includes the drafting of a mock award.

- or -

- b) A minimum of nine (9) arbitration assignments involving the Minnesota public sector in which a hearing was held and a written decision was issued by the applicant.



An applicant shall bring to the Board interview copies of the actual or mock arbitration awards written pursuant to the nine (9) cases. An applicant who has interned with arbitrators must also bring to the interview statements evaluating his/her qualifications from those arbitrators.

The awards will be returned to the applicant and not retained on file in the Board's office. Similarly, an arbitrator's evaluation will be returned to the arbitrator who completed it if such a request is made by the arbitrator.

2. Recertification of placement on arbitrator roster

This fall, the Board will begin the process of reviewing the status of every arbitrator on its roster and determining whether placement will be continued or discontinued. To accomplish this task, the Board will conduct an interview with each arbitrator and evaluate that arbitrator's performance during the preceding one-year period. That evaluation will include a review of the arbitrator selection rates and the arbitrator evaluation forms submitted by labor and management representatives. The evaluation will result in either recertification of an arbitrator's placement on the roster or removal of an individual from the roster.

3. Method of proposing lists of arbitrators

The Board is considering implementation of a new method of proposing lists of arbitrators whereby a subcommittee of PERB's members would draw up panels of arbitrators which would be sent out on a random basis as requests for lists of arbitrators are received in the office.

4. Charging a fee for placement on the arbitrator roster

The Board is considering assessing an annual fee for placement of an arbitrator's name on the roster.

PERB Arbitration Meeting
November 8, 1984
Page Three

Public Comment

The Board is inviting public comment on the above four topics at the November meeting.

- Will the new requirements for placement on the arbitrator roster ensure a pool of qualified arbitrators?
- What criteria besides arbitrator selection rates and arbitrator evaluation forms should the Board use in evaluating its arbitrators for removal from or recertification of placement on the roster?
- Will the new method of proposing lists of arbitrators meet the users' needs?
- Should the Board charge an annual fee for placement on the arbitrator roster?

The Board welcomes any written comments you may wish to share prior to the meeting. Please submit such comments to the Board by Monday, October 22, 1984.

If you have any questions, kindly feel free to contact me.



Claudia M. Hennen
Executive Director

Dated at Saint Paul, Minnesota,
October 4, 1984

STATE OF MINNESOTA
BUREAU OF MEDIATION SERVICES
Public Sector Hearings and Appeal Activity
January 1, 1978 thru May 31, 1984

UNIT DETERMINATIONS - Establishment of original units for collective bargaining purposes.

<u>Year</u>	<u>Petitions Filed</u>	<u>Withdrawn/ Dismissed</u>	<u>BMS Orders Issued</u>	<u>PERB Appeals Filed</u>	<u>Cases Reversed (Whole or Part)</u>
1978	196	37	115	9	0
1979	175	17	142	4	0
1980	205	59	145	5	0
1981	120	16	103	2	1
1982	59	5	54	1	0
1983	56	1	55	5	0
1984 (Part)	18	2	10	0	0
Totals	829	137	624	26	1

UNIT, CLARIFICATIONS - Amend of existing unit; determination of subsequent supervisory/
confidential positions.

<u>Year</u>	<u>Petitions Filed</u>	<u>Withdrawn/ Dismissed</u>	<u>BMS Orders Issued</u>	<u>PERB Appeals Filed</u>	<u>Cases Reversed (Whole or Part)</u>
1978	81	20	73	11	2
1979	115	25	88	9	0
1980	162	35	112	9	0
1981	133	24	126	4	0
1982	199	29	150	1	0
1983	426	17	154	9	0
1984 (Part)	168	3	30	2	0
Totals	1284	153	733	45	2

FAIR SHARE FEE CHALLENGES

<u>Year</u>	<u>Challenges Filed</u>	<u>Withdrawn/ Dismissed</u>	<u>BMS Orders Issued</u>	<u>PERB Appeals Filed</u>	<u>Cases Reversed (Whole or Part)</u>
1978	167	28	139	7	0
1979	331	241	90	7	0
1980	337	63	274	5	0
1981	145	106	39	7	0
1982	17	10	7	17	0
1983	28	18	3	2	0
1984 (Part)	4	1	0	0	0
Totals	1029	467	552	45	0

OTHER/MISCELLANEOUS DETERMINATIONS

<u>Year</u>	<u>Petitions Filed</u>	<u>Withdrawn/ Dismissed</u>	<u>BMS Orders Issued</u>	<u>PERB Appeals Filed</u>	<u>Cases Reversed (Whole or Part)</u>
1978	18	4	7	6	0
1979	17	2	6	1	0
1980	22	1	6	7	0
1981	26	0	6	2	0
1982	15	1	4	1	0
1983	5	0	5	0	0
1984 (Part)	5	0	2	0	0
Totals	108	8	36	17	0

TOTAL PUBLIC SECTOR ACTIVITY

<u>Year</u>	<u>Petitions Filed</u>	<u>Withdrawn/ Dismissed</u>	<u>BMS Orders Issued</u>	<u>PERB Appeals Filed</u>	<u>Cases Reversed (Whole or Part)</u>
1978	462	89	334	33	2
1979	638	285	326	21	0
1980	726	158	537	26	0
1981	424	146	274	15	1
1982	290	45	215	20	0
1983	515	36	217	16	0
1984 (Part)	195	6	42	2	0
Totals	3250	765	1945	133	3

Appeals Filed--

As a percent of petitions - 4.1%

As a percent of BMS orders - 6.8%

BMS Decisions Reversed (In whole or in part)--

As a percent of petitions - 0.1%

As a percent of BMS orders - 0.2%

As a percent of appeals filed - 2.3%

Avis BOE and Cleo McDonald, Appellants,

v.

POLK COUNTY LIBRARY BOARD, a Department of Polk County, Respondent.

No. 43974-5.

Supreme Court of Minnesota.

April 10, 1974.

Appeal from an order of the District Court, Polk County, Warren A. Sactre, J., denying request for establishment of an adjustment panel under the Public Employees Labor Relations Act. The Supreme Court held that library board did not violate any right of library employees when it discharged them so that employees were not entitled under Act to establishment of adjustment panel to hear their grievance.

Affirmed.

1. Master and Servant §3(2)

Rights of an employee must be ascertained by nature of contract of employment.

2. Labor Relations §434.8

Where employees of county library board did not have any contractual or tenure rights and employer-employee relationship was terminable at will of either party, library board did not violate any rights of such employees when it discharged them so that employees in regard to discharge did not have a "grievance arising out of the interpretation of or adherence to terms and conditions of employment" within meaning of Public Employees Labor Relations Act, which gives every public employee right of independent review by disinterested person or agency of any such grievance, and were thus not entitled to establishment of adjustment panel. M.S.A. §§ 179.6-179.77; Minn.St.1969, § 179.571.

Newton S. Friedman, Duluth, for appellants.

John A. Winters, County Atty., Crookston, for respondent.

Considered and decided by the court

ATTACHMENT F

Petitioners, Cleo McDonald and Avis Boe, each sought an order requiring the establishment of an adjustment panel under the Public Employees Labor Relations Act, now Minn.St. §§ 179.61 to 179.77. The district court denied relief. We affirm.

1. Minn.St.1969, § 179.571, provided: "It shall be public policy of the state of Minnesota that every public employer should be provided with the right of independent review, by a disinterested person or agency, of any grievance arising out of the interpretation of or adherence to terms and conditions of employment. When such review is not provided under statutory, charter, or ordinance provi-

217 N.W.2d-14

NTY LIBRARY BOARD

Minn. 209

17 N.W.2d 208

Both petitioners were employed by Polk County. Cleo McDonald, the Polk County librarian, was discharged on April 30, 1972. Avis Boe, also an employee of the Polk County Library Board, was discharged on March 15, 1972. As a result of their discharges, Mrs. McDonald and Mrs. Boe allege a controversy requiring an independent review under Minn.St.1969, § 179.571.¹ The library board refused to appoint a member to the panel or submit the matters leading to the discharges to a panel.

[1] The petitioners have not properly invoked either Minn.St.1969, § 179.571, which was repealed as of July 1, 1972, by Ex.Sess.L.1971, c. 33, § 17, or Minn.St. § 179.76, the present statute. Both statutes provide for a right of review "of any grievance arising out of the interpretation of or adherence to terms and conditions of employment." Each employee had for many years been in the employ of the library board. Their rights must be ascertained by the nature of their contract of employment. Cedarstrand v. Lutheran Brotherhood, 263 Minn. 520, 117 N.W.2d 213 (1962). In Cedarstrand this court said (263 Minn. 532, 117 N.W.2d 221):

"The usual employer-employee relationship is terminable at the will of either; the employer can summarily dismiss the employee, the employee is under no obligation to remain at the job. *Brown v. Safeway Stores, Inc.* (E.D.N.Y.) 190 F.Supp. 295. A hiring for an indefinite term is terminable at will. *Skagerberg v. Blandin Paper Co.*, 197 Minn. 291, 266 N.W. 872. Unless plaintiff can establish that she was to be dismissed only for cause by proving a contract to that effect, her employment

could be terminated at any time and without cause."

[2] Concededly, neither of the petitioners had any contractual or tenure rights. The employer-employee relationship was terminable at the will of either party. There were no rights to be protected and none were violated by the library board. The petitioners have not presented a "grievance arising out of the interpretation of or adherence to terms and conditions of employment." Minn.St.1969, § 179.571, and Minn.St. § 179.76.

Since no controversy exists concerning the terms and conditions of employment, this action cannot properly be based on either the repealed statute, Minn.St.1969, § 179.571, or the present statute, Minn.St. § 179.76. The district court's denial of the petitions for establishment of a panel for an independent review is affirmed.

Affirmed.

ATTACHMENT G

OPTION TITLE:
PERB/BMS Consolidation

Option requires statutory change: YES
Statutes affected: Chapter 179A

Abolish the Public Employment Relations Board, transferring its staff and administrative responsibilities to the BMS and providing for appeals from BMS decisions to be made directly to the State Court of Appeals.

	FY83	FY84	FY85	FY86	FY87
PERB Budget	44.9	53.5	55.2	56.6	57.1
Costs if transferred to BMS	N/A	N/A	N/A	41.5	41.6
Net Savings	-	-	-	15.1	15.5

BMS Cases	n/a	157	78	201	367	360	63	19	32
PERB Appeals Filed	n/a	2	5	10	6	3	9	7	0
Successful Appeals	n/a	0	0	0	0	0	0	0	0

	<u>FY76</u>	<u>FY77</u>	<u>FY78</u>	<u>FY79</u>	<u>FY80</u>	<u>FY81</u>	<u>FY82</u>	<u>FY83</u>	<u>FY84</u>
<u>Arbitration Cases</u>									
BMS - Private Sector	190	167	204	195	210	195	143	176	189
BMS - Public Sector	122	114	156	152	134	147	126	183	151
PERB - Public Sector	142	135	182	164	229	211	259	261	206

BACKGROUND:

Created with the enactment of the Public Employment Labor Relations Act of 1971, PERB is a five-member Board whose members are appointed by the Governor, subject to the advice and consent of the Senate. Two members must be representatives of labor, two must represent management, and one member represents the general public. PERB has a full-time Executive Director, who is the only employee of the agency.

Since its inception, PERB has had a limited and narrow role in the labor relations process. The Board primarily decides appeals from BMS decisions on unit determination and fair share fee challenge matters. (PERB decisions on such cases are appealable to the State Court of Appeals.) PERB also maintains and makes referrals from a list of arbitrators (primarily a staff function in accordance with policies established by the Board) and is designated to provide independent reviews under M.S. 179A.25.

RATIONALE:

The insignificant number of appeals taken from BMS decisions, coupled with the even less significant number of appeals resulting in a reversal, in whole or in part, confirms that BMS decisions are and have historically been well-founded in fact and the record. These statistics also support the notion that many appeals may be dilatory or frivolous in nature. By providing direct appeal of BMS decisions to the State Court of Appeals, parties will retain their due process rights for a review of those decisions--but in a forum more likely to deter unnecessary or frivolous appeals.

Since BMS already performs arbitration referral services for private and public sector clients, the transfer of PERB's responsibilities in this area reduces duplication of effort and services and is easily accommodated by the BMS.

ADDITIONAL INFORMATION:

There have been previous unsuccessful proposals to abolish PERB initiated at the legislative level. There is some reason to believe that the failure of these proposals to address the future

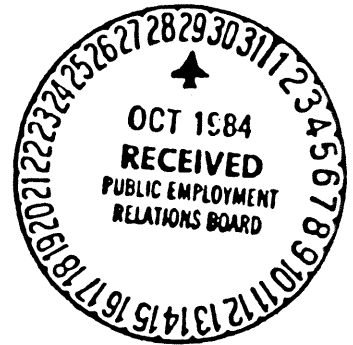
status of the PERB Executive Director is at least partially related to the failure of these proposals to receive further attention.

The Legislative Commission on Employee Relations has recently authorized a study on this question. The study is being conducted by Industrial Relations Associates, Inc., the firm which also did a study the last time this matter was being considered in the legislature. There is every reason to believe that the consultant's report will support the abolition of PERB, as it did a few years ago.

Current PERB members will probably oppose abolition of the Board and there may be some opposition from public employer groups. The AFL-CIO will be considering a resolution in support of abolition at its September 1984 convention.

STATE OF MINNESOTA
BUREAU OF MEDIATION SERVICES

205 AURORA AVENUE
SAINT PAUL 55103
PHONE 612-296-2525



October 26, 1984

Susan Ode, Chair
PUBLIC EMPLOYMENT RELATIONS BOARD
205 Aurora Ave
St. Paul, MN 55103

Dear Ms. Ode:

Although I have previously failed in an effort to address this problem with PERB, I would again ask the Board to consider granting party status to the Bureau in certain appeals which come before you.

It is my firm belief that the Bureau is in a unique position to provide analysis, rationale and understanding of its decisions, not only with respect to the case on appeal, but in the context of their broad and universal implications upon all of the players in the public sector labor relations field--a perspective which I fear is not readily available, and perhaps even impossible to achieve, under current PERB appeal procedures.

The Board, appropriately, is limited in its review to the record established by the parties to the appeal during their original hearing before the Bureau. While the Bureau may--and does--make note of other cases and implications in deciding a particular case, there appear to be procedural as well as mechanical problems in the ability of PERB to notice such cases and include them in its deliberations.

The rumored decision of the Board in MSEA and ISD 810, Plainview is a case in point. This case centers upon the meaning of the term "normal work week" as used in M.S. 179A.03, Subd. 14(e). Apparently accepting MSEA's reliance upon definitions excerpted from Webster's New Collegiate dictionary (but ignoring other definitions in the same source), the Board will apparently agree that the phrase means "average", rather than the "normal work week of full-time employees" as determined by the Bureau in this and other cases.



Ode
Page Two
October 26, 1984

It is unclear at this juncture just how the Board reached that conclusion. I would note for the record, however, that in a previous case on precisely this issue, AFSCME Council 65 and ISD 691, Aurora, BMS Case No. 84-PR-442-A, the Bureau applied the Canons of Construction for state statutes (M.S. 645.08) and research of the legislative history of M.S. 179A.03, Subd. 14(e) to reach an opposite conclusion. While the potential always exists, I suppose, for Webster's to be more controlling than the Canons of Construction and legislative history, I am concerned over the fact that the Board may not have had the benefits of our discussion in the seminal case when deciding one of its progeny.

Further, it is troublesome to note that while in Plainview the net effect of the Board's decision is marginal, the application of Plainview to Aurora would (will) be profound indeed. Plainview involves one employee in a unit of 20, Aurora involved 10 employees in a unit of 40. The impact of expanding a unit by 25%, by including employees who work as few as 2 hours per day, has significant potential impact upon the stability of the collective bargaining relationship and the potential bargaining agenda.

While I would hope that my personal bias in favor of the right of every worker to be represented by a union remains obvious, I have an even stronger bias in favor of a rational and workable system for collective bargaining. The very real potential for limited-hour part-time employees to outnumber regular full-time employees during collective bargaining, under the doctrine the Board is now espousing, has very serious ramifications for labor, management and the process itself. There are additional concerns regarding the legitimacy of subjecting such limited-hour workers to fair share fee assessments which approach 10% of gross earnings.

Clearly, the Board has every right to disagree with any and all arguments I might make in this regard. And, perhaps the Board does not share my alarm over the potentially unstabilizing impact of its Plainview decision. But, I believe that the overall labor relations practice and policy in the public sector would be better served if there were a rational forum through which the Bureau could at least share its concerns with the Board prior to a decision. Under present procedures I am forced to merely react to a decision--certainly made in good faith, but perhaps without benefit of all of the facts and implications.

Ode
Page Three
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If you continue to believe that your present rules do not permit our intervention as a party, I would ask that you propose an amendment to those rules or join me in seeking legislative action in this regard.

Sincerely,


Paul W. Goldberg
DIRECTOR

PWG:rma

cc: Plainview
MSEA
Simmoneau
Nelson

CHAPTER 480A

COURT OF APPEALS

480A.01 Court of appeals.
480A.02 Selection of judges.
480A.03 Chief judge.
480A.04 Clerk of court.
480A.05 Chambers.

480A.06 Jurisdiction.
480A.07 Transfer of cases.
480A.08 Decision of the court.
480A.09 Place of hearing oral argument.
480A.10 Further review in supreme court.
480A.11 Rules.

480A.01 COURT OF APPEALS.

Subdivision 1. One court. There shall be one court of appeals.

Subd. 2. Temporary number of judges. On July 1, 1983, the court of appeals shall consist of six judges. On January 1, 1984, an additional six judges shall be added.

~~Subd. 3. Establishing number of judges.~~ By January 15, 1985, the state court administrator shall certify to the governor, the president of the senate, and the speaker of the house of representatives, the number of appeals filed in the court of appeals in 1984. By January 15, 1987, and every two years thereafter, the state court administrator shall certify to the governor, the president of the senate, and the speaker of the house of representatives the average number of appeals filed in the court of appeals in each of the preceding two calendar years. Effective on the following July 1, the normal number of judges of the court of appeals shall be one judge for every 100 cases in that average. If this normal number increases the number of judges, new judges shall be appointed on or after July 1. If this normal number decreases the number of judges, the incumbent judges shall nevertheless continue to serve and to be eligible for reelection, but the first vacancies arising in at-large seats on the court shall not be filled, until the normal number of judges is reached.

History: 1982 c 501 s 3

NOTE: This section is effective July 1, 1983 if the constitutional amendment proposed in Laws 1982, Chapter 501, Section 1 is adopted.

480A.02 SELECTION OF JUDGES.

Subdivision 1. Oath. Before entering upon the duties of office, each judge shall take and subscribe an oath in the form prescribed by law for judicial officers.

Subd. 2. Election. Each judge shall be elected at the general election for a term of six years, beginning on the first Monday of the January next following his election and until his successor qualifies. Vacancies occurring between general elections shall be filled by appointment, as prescribed in the constitution.

Subd. 3. Eligibility. By January 1, 1984, one seat on the court shall be designated for each congressional district. Only persons who have resided in that congressional district for at least one year shall be eligible for election or appointment to that seat. A judge who is elected or appointed to a congressional district seat shall continue to be eligible for that seat without regard to any subsequent change of residence. All other seats shall be without restriction as to residence.

Subd. 4. Statewide elections. All judges shall be subject to statewide election, whether they serve in at-large or congressional district seats.

Subd. 5. Designation of judges. After each reapportionment, the chief judge shall designate a judge for each of the new congressional districts. The chief judge shall first redesignate the incumbent judges serving for the old congressional districts. If only one of them was, at the time of original election or appointment,