

STATE OF MINNESOTA

COUNTY OF RAMSEY

BEFORE LEONARD W. LEVINE  
COMMISSIONER OF PUBLIC WELFARE

BEFORE SISTER MARY MADONNA ASHTON  
COMMISSIONER OF HEALTH

BEFORE RUDY PERPICH  
GOVERNOR

IN THE MATTER OF THE PROPOSED ADOPTION OF  
RULES OF THE MINNESOTA MERIT SYSTEM GOVERNING  
THE COMPENSATION PLAN.

STATEMENT OF NEED  
AND REASONABLENESS

I. The following considerations constitute the statutory and regulatory authority upon which the above-cited rule amendments are based:

1. Federal law requires that in order for Minnesota to be eligible to receive grant-in-aid funds for its various public welfare, public health and civil defense programs, it must establish and maintain a merit system for personnel administration. See, e.g. 42 USC Ch. <sup>1/</sup>62.

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1/ Also see sections of the United States Code and Code of Federal Regulations cited herein where the following programs have a statutory or regulatory requirement for the establishment and maintenance of personnel standards on a merit basis:

Aid to Families With Dependent Children - "AFDC" [42 USC § 602 (a) (5)]  
Food Stamps [7 USC §2020 (e) (6) (B)]  
Medical Assistance - "MA" [42 USC § 1396a (a) (4) (A)]  
Aid to the Blind [42 USC § 1202 (a) (5) (A)]  
Aid to the Permanently and Totally Disabled [42 USC § 1352 (a) (5) (A)]  
Aid to the Aged, Blind or Disabled [42 USC § 1382 (a) (5) (A)]  
State and Community Programs on Aging [12 USC § 3027 (a) (4)]  
Adoption Assistance and Foster Care [42 USC 671 (a) (5)]  
Old-Age Assistance [42 USC 302 (a) (5) (A)]  
National Health Planning and Resources Development, Public Health Service Act [42 USC 300m-1 (b) (4) (B)]  
Child Welfare Services [45 CFR 1392.49 (c)]  
Emergency Management Assistance [44 CFR 302.5]

2. Pursuant to such congressional action the Office of Personnel Management, acting under authority transferred to the United States Civil Service Commission from the Departments of Health, Education and Welfare, Labor, and Agriculture by the Intergovernmental Personnel Act (IPA) of 1970 and subsequently transferred on January 1, 1979, to the Office of Personnel Management by the Reorganization Plan Number Two of 1978, promulgated the Standards for a Merit System of Personnel Administration 48 Fed. Reg. 9209-9212 (March 4, 1983) (to be codified at 5 CFR Part 900, Subpart F), which imposes on the State of Minnesota general requirements for a merit system of personnel administration in the administration of the federal grant-in-aid programs. (See, Footnote 1 Supra.)

3. Under the aforementioned grant-in-aid programs the State of Minnesota, through its appropriate agencies, is the grantee of federal program and administrative funds and, accordingly, the State is under an affirmative obligation to insure that such monies are properly and efficiently expended in compliance with the applicable federal standards. Those standards require that in order for the agencies under the Minnesota Merit System to be eligible to receive federal grant-in-aid funds the Minnesota Merit System rules must specifically include, among other things, an active recruitment, selection and appointment program, current classification and compensation plans, training, retention on the basis of performance and fair, non-discriminatory treatment of applicants and employees with due regard to their privacy and constitutional rights (48 Fed. Reg. 9211 (March 4, 1983) (To be codified at 5 CFR § 900.603)).

4. In conformance with 5 CFR Part 900, Subpart F, the Minnesota Legislature enacted Minn. Stat. § 12.22 subd. 3, § 144.071 and § 256.01<sup>2/</sup>2, which respectively authorize the governor, the commissioner of health, and the commissioner of public welfare to adopt necessary methods of personnel administration for implementing merit systems within their individual agencies. Collectively, the resulting programs are referred to as the "Minnesota Merit System".

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2/ See also Minn. Stat. §§ 393.07 (5), 256.01 (4), 393.07 (3) and 256.011.

5. Pursuant to such statutory authority those state agencies have adopted comprehensive administrative rules which regulate administration of the Minnesota Merit System.<sup>3/</sup>

6. The Minnesota Supreme Court upheld the authority of the Commissioner of Public Welfare and by implication that of the Commissioner of Health and the Governor to promulgate personnel rules and regulations in quashing a writ of mandamus brought by the Hennepin County Welfare Board against the county auditor in an attempt to force payment of salaries in excess of the maximum rates established by the Director of Social Welfare.<sup>4/</sup>

. . . . . it is clear that the Director of Social Welfare was clearly right in adopting and promulgating a merit plan which includes initial, intervening, and maximum rates of pay for each class of position of the county welfare board system included within the plan and that the plan so adopted was binding upon all county welfare boards within the state . . . . . In our opinion the federal and state acts, properly construed, provide that the Federal Security Administrator as well as the Director of Social Welfare shall have authority to adopt rules and regulations with respect to the selection, tenure of office and compensation of personnel within initial, intervening and maximum rates of pay but shall have no authority or voice in the selection of any particular person for a position in the state welfare program nor the determination of his tenure of office and individual compensation.

State ex rel. Hennepin County Welfare Board and another v. Robert F. Fitzsimmons, et al., 239 Minn. 407, 420, 58 N.W. 2d 882, (1953).<sup>5/</sup>

7. The above-cited proposed rule amendments are promulgated in accordance with the provisions of applicable Minnesota statutes and expressly guarantee the rights of public employers and Minnesota Merit System employees in conformance with the terms of the state's Public Employee Labor Relations Act (Minn. Stat. §§ 179.61 - 179.77).

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<sup>3/</sup> 12 MCAR §§ 2.490-2.841, 11 MCAR §§ 1.2090-1.2141 and 7 MCAR §§ 1.235-1.315.

<sup>4/</sup> "Director of Social Welfare" was the former title of the Commissioner of Public Welfare.

<sup>5/</sup> The authority of the Merit System to promulgate rules establishing minimum and maximum salary scales and minimum fringe benefits is currently being challenged. County of Le Sueur, et al. v. Levine, et al., Civil File No. 461543 (Ramsey County District Court). Plaintiffs' motions for a temporary restraining order and a temporary injunction enjoining the Merit System from enforcing the compensation plans currently in effect were both denied. Defendant's motion for summary judgment was denied and the case is still pending. In the meantime, of course, the challenged rules remain in force and effect.

II. The justification establishing the reasonableness of the specific substantive provisions of the proposed rules, all of which concern the Minnesota Merit System operation, is as follows:

A. Salary Adjustments and Increases; Recommended Adjustments

1. Minnesota Rules, parts 9575.0350, subpart 3; 4670.1320 and 7520.0650, subpart 3. Amendments are proposed to parts 9575.0350, subpart 3; 4670.1320 and 7520.0650, subpart 3. changing the Merit System general salary adjustment recommended for employees on all salary schedules from four percent to 4.4 percent. These amendments are necessary in order to comply with Merit System rule provisions governing recommended salary adjustments for employees in even-numbered years. Language contained in Minnesota Rules, part 9575.0310, subpart 4; part 4670.1200, subpart 4 and part 7520.0620, subpart 4 describes the process to be followed by the supervisor during even-numbered years in recommending increases in the rates of pay for Merit System classifications and general salary adjustments for employees. The recommendation is arrived at by following a formula specified in these rules involving changes in the consumer price index for urban wage earners and clerical workers for Minneapolis-St. Paul, as published by the Bureau of Labor Statistics, new series index (1967=100). The formula requires the supervisor to recommend that all rates of pay for all classifications be adjusted by an amount equal to 80 percent of the increase in the consumer price index between June of the current year and June of the preceding year with the recommended amount being rounded to the nearest tenth of a percent, not to exceed 9 percent. The rules further provide that the same percentage increase recommended for all rates of pay shall also be recommended as a general salary adjustment for all employees.

The Bureau of Labor Statistic's June 1984 consumer price index report for Minneapolis-St. Paul showed an increase in the consumer price index for the period June, 1983, to June, 1984, of 5.5 percent for urban wage earners and clerical workers. Eighty percent of this increase equals 4.4 percent rounded to the nearest tenth of a percent and so, under the formula, the recommended general salary adjustment for employees is 4.4 percent to be effective January 1, 1985. In order to comply with current rule language, which has the force and effect of law, the proposed amendment must be 4.4 percent.

It should be pointed out that the Merit System recommended salary adjustment does not apply to employees included in a formally recognized collective bargaining unit. There are 32 Merit System agencies in which employees are covered by a collective bargaining agreement and employee compensation is the product of negotiations between the appointing authority and the exclusive representative. Even in agencies without a collective bargaining agreement, appointing authorities are not required to adopt the Merit System recommended salary adjustments but have the flexibility, under the rules, to adopt a different salary adjustment for their employees. If an agency does adopt the Merit System recommended salary adjustment, the only salary adjustments that are required are those necessary to raise individual employees' salaries up to the new minimum salary rate for their classification on the Merit System compensation plan adopted by their agency.

B. Compensation Plan

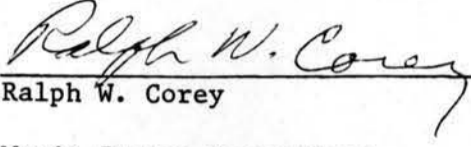
1. Minnesota Rules, parts 9575.1500, 4670.4200 to 4670.4240 and 7520.1000 to 7520.1100.

Proposed amendments to these rules are necessary in order to adjust salary rates for all Merit System classifications for 1985 in accordance with the formula contained in Minnesota Rules, part 9575.0310, subpart 4; part 4670.1200, subpart 4 and part 7520.0620, subpart 4. The application of that formula yields a recommended 4.4% increase in the 1984 minimum and maximum salary rates for all Merit System classifications. Therefore, the proposed amendments to parts 9575.1500, 4670.4200 to 4670.4240 and 7520.1000 to 7520.1100 represent minimum and maximum salary rates for all Merit System classifications that are 4.4 percent higher than the 1984 rates.

Proposed minor amendments to parts 9575.1500, 4670.4200 to 4670.4240 and 7520.1000 to 7520.1100 are necessary to identify the compensation plans as being for 1985 rather than 1984.

Finally, amendments are proposed to part 9575.1500 that are necessary to provide class titles and minimum and maximum salary rates for six new classes established in 1984. New classes established include Collections Officer, Computer Operations Specialist, Gerontology Counselor, Housing Rehabilitation Specialist, Legal Secretary and Staff Development Specialist. These amendments are necessary in order to maintain a current compensation plan with class titles and minimum and maximum salaries that are reflective of the various functions actually being performed by Merit System employees.

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

  
Ralph W. Corey  
Merit System Supervisor

Dated: August 31, 1984