

STATE OF MINNESOTA

COUNTY OF RAMSEY

IN THE MATTER OF THE PROPOSED ADOPTION
OF RULES OF THE MINNESOTA MERIT SYSTEM
GOVERNING HOLIDAYS AND OPTIONAL
LEAVE POLICY

BEFORE LEONARD W. LEVINE

COMMISSIONER OF HUMAN SERVICES

BEFORE SISTER MARY MADONNA ASHTON

COMMISSIONER OF HEALTH

STATEMENT OF NEED
AND REASONABLENESS

1. 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 and public health programs, it must establish and maintain a merit system for personnel administration. See e.g. 42 USC Ch. ^{1/}62.

^{1/} Also see sections of the United States Code and Code of Federal Regulations cited herein. 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 Section 900.603).

4. In conformance with 5 CFR Part 900, Subpart F, the Minnesota Legislature enacted Minn. Statutes, sections 144.071 and 256.^{2/}012, which respectively authorize the commissioner of health and the commissioner of human services 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".

^{2/} See also Minn. Stat. sections 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.^{3/}

6. The Minnesota Supreme Court upheld the authority of the Commissioner of Human Services and by implication that of the Commissioner of Health 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.^{4/}

.....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).

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 Employment Labor Relations Act (Minn. Stat. sections 179A.01-179A.25).

3/ Minn. Rules parts 9575.0010-9575.1580; and Minn. Rules parts 4670.0100-4670.4300.

4/ "Director of Social Welfare" was the former title of the Commissioner of Human Services.

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

A. Holidays

Minnesota Rules, parts 9575.1070 and 4670.3070

The first rule amendment provides new language clarifying that the holidays specified in the rule pertain only to employees not represented by an exclusive representative. The Merit System's position has always been that the holiday rule does not apply to employees covered by a collective bargaining agreement. That position is reinforced by other rule language in Minn. Rules parts 9575.1000 and 4670.3000, which provide that the Merit System rule provisions governing leave policies shall apply to all employees except when otherwise negotiated by the appointing authority with an exclusive representative. Holidays are obviously a term and condition of employment and therefore a proper subject for collective bargaining under the provisions of the Public Employee Labor Relations Act. However, the proposed language is needed to eliminate any confusion that may still exist as to the application of the rule, and represents a reasonable means of clarifying its applicability to certain Merit System employees not covered by a collective bargaining agreement.

Amendments are proposed deleting current rule language in 9575.1070 subpart 1 and 4670.3070 subpart 1, which provide that employees whose normal work day falls on a holiday shall receive time off with pay. It is necessary and reasonable that this language be deleted in view of the overall intent of these amendments to the holiday rule, which is to allow the appointing authority to determine whether or not employees shall be paid for a holiday. An appointing authority is defined in the rules as a county board, county welfare board, human service board or other board or officer authorized by statute or lawfully delegated authority to make appointments to positions under the merit systems for human services or health. The reasonableness of this change is discussed in further detail infra, at pages 6 and 7.

An amendment is proposed to these two rules allowing the appointing authority to adopt, as an additional holiday for Merit System employees, any day other than just those that are statutorily defined as holiday in Minn. Statutes, section 645.44 subd. 5. Several agencies provide their employees with one or more "floating" holidays per year that can be taken anytime that is mutually agreeable to the employee and employer. Also, it is not uncommon for appointing authorities to designate all or part of Christmas Eve day and/or New Year's Eve day as a holiday. The proposed new language is reasonable because it gives the appointing authority greater flexibility to provide Merit System employees with other holidays in addition to those provided by statute.

An amendment is being proposed that grants authority to local appointing authorities to determine whether or not Merit System employees not represented by an exclusive representative shall be paid for any holidays designated by statute. The current holiday rule language, which would be deleted if the proposed amendment is adopted, provides that employees shall receive time off with pay if the holiday falls on their normally scheduled work day. Minnesota Statutes, section 645.44 subd. 5 which defines holidays makes no reference to payment or non-payment of employees on a holiday. It merely provides that "no public business shall be transacted on a holiday except in cases of necessity and except in cases of public business transacted by the legislature nor shall any civil process be served thereon."

Considerable concern has been expressed by appointing authorities over the current holiday rule language requiring time off with pay for Merit System employees not covered by the terms and conditions of a collective bargaining agreement. The primary concern expressed by the appointing authorities is that the current language inhibits their flexibility to establish a policy regarding payment for holidays that treats, in a like manner, unionized and non-unionized employees in a county's total work force as well as unionized and non-unionized employees in the same county welfare agency. Under the current rule language, it is possible,

within the same unionized welfare agency, that confidential and supervisory employees who are excluded from the bargaining unit would receive the holiday off with pay while the balance of the employees who are covered by the collective bargaining agreement might receive the holiday off without pay. Similarly, in a non-unionized welfare agency, all agency employees would receive the holiday off with pay while all other county employees might receive the holiday off without pay.

The Departments of Human Services and Health believe there is considerable merit to this concern. Merit System employees affected by the holiday rule are not employees of the Minnesota Merit System. Rather, like all other county employees who work in the county highway department, county courthouse and elsewhere in county government, they are employees of the appointing authority. Certain personnel management policies that impact all county employees should be left to the discretion of the appointing authority to develop and implement on a county-wide basis. Payment for holidays is one of those best left to local appointing authorities to administer.

The objective of the Merit System, as referenced in the Merit System rules, is to provide appointing authorities with an effective system of personnel administration based on merit principles. The Merit System has always encouraged the establishment and implementation, to the maximum extent possible, of sound personnel policies and practices within county government. One way to encourage this is to allow flexibility in implementing policies that treat, in a like manner, unionized and non-unionized Merit System employees and that also integrate well with similar policies governing other county employees having the same appointing authority. To the extent that all county employees with the same appointing authority can be treated alike with respect to commonly provided fringe benefits, it reduces potential friction between groups of Merit System employees as well as with other groups of county employees based on their organizational status. Merit System rule provisions that foster the possibility of allowing for disparate treatment among groups of county employees do not contribute

to an effective personnel management system for employees having the same appointing authority. The current rule language does allow for disparate treatment to occur by requiring that Merit System employees not represented by an exclusive representative shall receive time off with pay for holidays that fall on their normally scheduled work day. Since this language does not further the objective of having a consistent policy regarding holiday pay for both Merit System employees and other county employees, all of whom have the same appointing authority, it is reasonable to delete the current language and replace it with language that does further that objective. The Departments believe the proposed rule language providing that payment for holidays be determined by the appointing authority is reasonable in terms of furthering that objective.

An amendment is proposed to 9575.1070 subpart 2 substituting "Sunday" for "Monday." Minnesota Statutes, Section 645.44 subd. 5 defining holidays refers to holiday that fall on Sunday or Saturday rather than Monday and Saturday. This amendment is necessary to ensure that the rule language is consistent with statutory language regarding holidays that fall on Sunday and Saturday.

Amendments are proposed deleting all of the current language in subparts 3, 4 and 5 of 9575.1070 and subparts 4, 5 and 6 of 4670.3070. These subparts deal with the eligibility for holiday pay of Merit System employees not represented by an exclusive representative. The purpose of the amendments to 9575.1070 subpart 1 and 4670.3070 subpart 1 providing that payment for holidays be determined by the appointing authority is to allow flexibility for the establishment and implementation of a policy regarding holiday pay that treats, in a like manner, all county employees having the same appointing authority. The Departments of Human Services and Health believe this is a positive objective and that it is therefore reasonable to delete the aforementioned subparts to ensure that the Merit System rules do not place any unnecessary restrictions on the flexibility necessary to accomplish that objective.

Since Merit System employees have the same appointing authority as all other county employees, it is appropriate that Merit System rule language regarding holidays facilitate, rather than hinder, the appointing authority's ability to treat all employees alike with respect to fringe benefits that impact all employees.

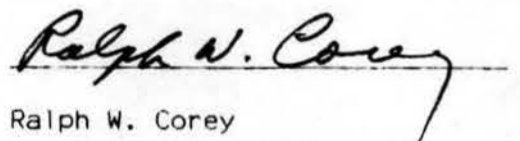
In short, the proposed amendments to the holiday rule do not affect the requirement that counties must recognize the holidays defined by statute. They simply allow appointing authorities to freely address the question of payment for those holidays on a uniform basis for all employees. The Departments believe these changes are a reasonable means of allowing appointing authorities to develop uniform and comprehensive holiday leave plans for all of their employees in a manner that is still consistent with the mandate of Minn. Statutes, Section 645.44, subd. 5 and other provisions of law.

B. Optional Leave Policy

Minnesota Rules, parts 9575.1080 and 4670.3080

An amendment is proposed deleting all of the current language in subpart 3 of these rules. The proposed new language to be included in 9575.1070 subpart 1 and 4670.3070 subpart 1 has the same effect as the language in subpart 3 and, therefore, makes the language in subpart 3 unnecessary.

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: June 5, 1986