

Statement of Need & Reasonableness
Proposed Permanent Rules Relating to Negotiation, Mediation,
Impasse Certification, Arbitration and Intent to Strike Notice

General. The proposed rules are essentially a recodification of rules adopted in October, 1984. A major purpose for the amendments is to reorganize the rules so that they are more understandable and less redundant. Policy changes incorporated in this revision are more specifically discussed in the discussion of the part where such changes occur.

Part 5510.2410 APPLICATION

The proposed rule substitutes the phrase "unresolved issues" for the term "impasse". Since "impasse" is a term with special meaning and significance in the field of labor relations, and it is not the practice of the Bureau to "certify" that an "impasse" exists, except under very narrow circumstances contemplated by Minnesota Statute (1987) 179A.16, Subd. 1(a), the proposed language of the rule is a more accurate depiction of the application of these parts.

5510.2905 CONFIDENTIAL INFORMATION

Current rules, at parts 5510.2810, subp. 6, 5510.2910, subp. 6C, and 5510.3010, subp. 6, classify certain data as confidential information. These parts are not drafted in a manner consistent with the Minnesota Data Practices Act, and if literally applied, would prevent the Bureau from fulfilling its statutory obligation to provide information to the Public Employment Relations Board, and subsequently an arbitration panel, pursuant to § 179A.16. Such a result is absurd and inconsistent with the basic public policy goal of chapter 179A in resolving public sector labor disputes.

The proposed rule properly describes and classifies mediation information, and the extent to which the commissioner may release such data, in a manner consistent with Minnesota Statute (1987) § 13.75, subd. 2. The rule further clarifies the confidential nature of final positions filed with the Bureau pursuant to § 179A.16. This classification is essential to prevent one party from being unfairly disadvantaged in arbitration by being

forced to disclose final positions before the other party has prepared or filed them. Such classification is consistent with § 13.37, subd. 1 (c) and § 13.43, subd. 6, as well as the public policy interests of interest arbitration. The rule further provides that such data becomes public information once the legitimate public policy purpose of such classification has been met: Both final positions have been filed; or the arbitration hearing has begun.

5510.2915 MEDIATION PERIOD

The proposed rule consolidates the definition of the term "mediation period" for all classes of public employees into a single part. Under current rules, such definition is scattered over two parts (5510.2910, subp. 1 and 5510.3110, subp. 3).

5510.2930 REFERRAL TO ARBITRATION

Subp. 1. Referral. The proposed rule consolidates the provisions of former parts 5510.2910 and 5510.3010 which deal with the referral of matters to interest arbitration into one part. The proposed rule makes no substantive change in policy or procedure.

Subp. 2. Form of Arbitration. The proposed rule reflects the statutory public policy of § 179A.16 that all interest arbitration is of a conventional nature, except that final-offer varieties may be employed by mutual agreement or where required by statute, as in the case of principals and assistant principals.

Subp. 3. Unresolved Issues. The proposed rule spells out the procedures which are followed by the agency in determining the matters or unresolved issues which are to be submitted to interest arbitration. In most instances, the parties themselves are able to list and agree upon the list of issues or matters the arbitration panel will be required to decide. The rule further provides that, pursuant to § 179A.16, subd. 3, the commissioner has the ultimate responsibility to determine the matters not agreed upon.

Subp. 4. Final Positions. The proposed rule combines current provisions of parts 5510.2910, subp. 4a, 5510.2910, subp. 6, 5510.3010, subps. 2 and 4. It provides a

reasonable and uniform manner for the solicitation and receipt of the final positions of each party on matters subject to arbitration, and requires that they be presented in a format which is unambiguous in presenting each party's desired outcome. A deadline for the submission of final positions is specified by the rule in accordance with § 179A.16, Subd. 3, with provisions for extensions upon a showing of good cause. Because of the nature of final offer arbitration and the consequences of continued bluff behavior by negotiators facing this form of arbitration, the rule emphasizes the finality of final offer submissions under final offer arbitration.

Subp. 5. Forward to Board. The proposed rule sets forth the administrative procedures to be followed by the agency in forwarding materials to the Public Employment Relations Board pursuant to § 179A.16. The proposed rule further clarifies the procedures for providing final positions to the arbitration panel and to the opposing parties, consistent with the provisions of proposed part 5510.2905, subp. 2.

Subp. 6. Effect of Untimely Final Positions. The provisions of § 179A.16, subd. 3, parts 5510.2910, subp. 4a, and 5510.3010, subp. 2, notwithstanding a few practitioners are notoriously tardy or recalcitrant in filing final positions in a timely manner. The proposed rule seeks to emphasize the importance of timely compliance with these statutory obligations and permit the arbitration panel to take note of such timeliness questions as a part of its overall deliberations on the issues. In the case of final offer arbitration, which has a basic purpose of increasing the adverse consequences of bluff or bad faith behavior, the arbitration panel must regard an untimely final position in a manner prejudicial to that party's interests. In the case of conventional arbitration, timeliness may be considered by the panel in the context of overall behavior and evidence in the case.

Subp. 7. Continued Mediation. This proposed rule merely clarifies the ability of the agency to continue to aid the parties in reaching a mutually satisfactory resolution of a dispute, even though it may already have been referred for arbitration. Because a mutually determined resolve is preferable to the best arbitration award under the basic precepts of collective bargaining, this rule is a reasonable application of public policy.

5510.3005 STRIKES

Subp. 1. Notice. This proposed rule consolidates the provisions of 5510.2910, subparts 7 and 8, into a single subpart which is easier to understand and refers parties to appropriate statutory sources for issues of timeliness.

Subp 2. Dates. This subpart provides that the commissioner shall calculate the dates upon which a right to strike matures and terminates. Because the standards for calculating time under part 5510.0310, subpart 21, apply to the issue of the timeliness of strikes, yet are not commonly understood by all parties, this proposed rule helps guard against a strike which could be illegal in nature solely because an inexperienced person miscalculated time periods. By providing for written notice of the dates by the commissioner, the rule minimizes the potential for error.

Subp. 3. Renewal of intent to strike notice. This proposed rule rewrites parts 5510.2910, subp. 7, in a manner which is more understandable but does not change existing practice or policy.

REPEALER. The parts repealed have been incorporated into the proposed rules for purposes of clarity.