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March 7, 2016

The Honorable Jeanne Cochran
Office of Administrative Hearings
600 N. Robert Street
PO Box 64620
St. Paul, MN 55164-0620

RECEIVED MAR 10 2016

Re: Proposed Changes to Minnesota Rule 7325.0240,
Hearing Officer Duties for the PERB Board

Dear Judge Cochran:

Please be advised that I appeared on behalf of the Hennepin County Association of Paramedics and EMTs at the hearing on February 22, 2016. I request on behalf of the Hennepin County Association of Paramedics and EMTs is that the rules be modified to allow a party to a hearing under Minn. Stat. §179A.13, to request a hearing officer, who is an administrative law judge from the Office of Administrative Hearings.

The Hennepin County Association of Paramedics and EMTs are health care workers and public employees. They have brought unfair labor practice actions in the past under Minn. Stat. §179A.13. The Hennepin County Association of Paramedics and EMTs are employees of Hennepin County Medical Center in Minneapolis, Minnesota. The statute going into effect, Minn. Stat. §179A.13(b), requires a qualified hearing officer in the event of a contested case hearing before the Board. We believe that an administrative law judge, as described by Minn. Stat. §14.48, subd. 3, would be a qualified hearing officer. Under the statute concerning an administrative law judge, that judge would be part of the classified service for the State of Minnesota. They would have previously demonstrated knowledge to be a good hearing officer. They would be free of political or economic association.

The Minnesota District Court has had jurisdiction of these unfair labor practice actions for approximately 45 years under the Public Employment Labor Relations Act, Minn. Stat. §179A.01, et. seq. There have been a lot of important cases under Minn. Stat. §179A.13, that are not set forth in the annotations under the statute. Some of these cases have been settled, with input from the District Court.

I have tried a significant number of cases under the Veterans Preference Act before an administrative law judge. Many of these cases involved significant labor issues. The decisions, the review of the law, and the reasoning by the administrative law judges has been good. There have been some big cases under Minn. Stat. §179A.13. The West St. Paul Federation of Teachers v. Independent School District No. 197, 713 NW2d 366 (Minn. Ct. App. 2006) was an important case. Two Dakota County District Court judges, Judge Spicer and Judge King, ruled in favor of the teachers. Enclosed is a copy of that appellate court case for your review. The ultimate result in that case was several hundred thousand dollars in medical benefits that were paid to the teachers. The School District violated PELRA, as well as other statutes concerning medical benefits, including Minn. Stat. §471.6161. The determinations by the District Court were affirmed by the Court of Appeals.

What Hennepin County Association of Paramedics and EMTs is requesting is that under Minnesota Rule 7325.0240, that a party to the proceeding have the option of requesting a State administrative law judge to conduct the hearing. We believe we need an administrative law judge who is trained to follow the Administrative Procedure Act. The purpose of that Act is set forth in Minn. Stat. §14.001, "Statement of Purpose", as follows:

14.001 Statement of purpose.

The purposes of the administrative procedure act are:

- (1) to provide oversight of powers and duties delegated to administrative agencies;
- (2) to increase public accountability of administrative agencies;
- (3) to ensure a uniform minimum procedure;
- (4) to increase public access to governmental information;
- (5) to increase public participation in the formulation of administrative rules;
- (6) to increase the fairness of agencies in their conduct of contested case proceedings; and
- (7) to simplify the process of judicial review of agency action as well as increase its ease and availability.

In accomplishing its objectives, the intention of this chapter is to strike a fair balance between these purposes and the need for efficient, economical, and effective government administration. The chapter is not meant to alter the substantive rights of any person or agency. Its impact is limited to procedural rights with the expectation that better substantive results will be achieved in the every day conduct of state government by improving the process by which those results are attained.

What we want from the administrative law judge is to find in the Minnesota Rule1400.8606, "Duties", as follows:

1400.8606 Duties.

- (1) Hear and rule on motions.
- (2) Examine witnesses as necessary to make a complete record.
- (3) Prepare findings of fact, conclusions, and recommendations.
- (4) Make orders to assure a fair hearing.
- (5) Knowledge of administrative procedures.

One of the hearing officers that the PERB Board has chosen is Janice Frankman. I believe she is a good choice. She has significant ability with regard to the work of an administrative law judge. Her biography, which is on file with the Bureau of Mediation Services, states that she worked as an Administrative Law Judge for the State from 1978-2000. Her conduct of a hearing indicates that she has significant training and experience. I first encountered her 25 years as an ALJ in a Minneapolis school district case. She was also the hearing officer in SEIU v. Independent School District No. 197 (February 17, 2006, BMS Case No. 05-PN-0893). A copy of this case is enclosed. The unfair labor practice lawsuit under Minn. Stat. §179A.13, was initially brought by the Union (SEIU) in Dakota County District Court. Judge Lynch was the District Court judge who advised the parties that he was going to order the case to arbitration. The parties selected Ms. Frankman from a list of arbitrators with the Bureau of Mediation Services. Judge Lynch's Order indicated that she was going to be an administrative law judge, not just an arbitrator. Often an arbitrator will rule that their decision has to be within the pages of the collective bargaining agreement. Ms. Frankman ruled that her jurisdiction was from the District Court's Order. She ruled that she was required to apply external law. She was more than an arbitrator. She was not restricted to applying the collective bargaining agreement.

Enclosed is a copy of Arbitrator Frankman's decision. In making her decision, she performed several important functions:

1. She applied the District Court Orders from the West St. Paul Federation of Teachers v. Independent School District No. 197, 713 NW2d 366 (2006).
2. She applied the above-referenced Court of Appeals Decision.
3. She applied Minn. Stat. §471.6161, concerning medical benefits.
4. She applied the Public Employment Labor Relations Act, Minn. Stat. §179A.01, et. seq.
5. She applied the Order of the District Court in the SEIU case which she ultimately was to decide.
6. She applied past practice.
7. She dealt with equitable remedies argued by the employer.
8. She dealt with the issue of waiver.
9. She dealt with the Doctrine of Laches.
10. She applied a summary judgment order of the District Court in the SEIU case. The summary judgment had to do with the Transportation Workers. She determined that the summary judgment was the law of the case.
11. She determined damages which are set forth in her enclosed opinion.

I believe that the additional arbitrators the PERB Board has appointed are fine arbitrators. The training and experience Ms. Frankman has is essential to some issues that will arise in certain cases. I believe that the administrative law judges that work for the Office of Administrative Hearings have training and experience similar to Ms. Frankman that will be very important to the parties in certain cases that arise under Minn. Stat. §179A.13.

The Honorable Jeanne Cochran

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Sincerely,

PETERSON, ENGBERG & PETERSON

A handwritten signature in black ink, appearing to read "Bruce P. Grostephan". The signature is fluid and cursive, with the first name "Bruce" being particularly prominent.

Bruce P. Grostephan

BPG/mav/Enclosures

cc: Shane Stevens and Giovanni Caponi (w/enc.) - HCAPE
David Biggar (w/enc.) - Public Employment Relations Board
Sandi Blaeser (w/enc.) - PERB
Nicole Blissenbach (w/enc.) - PERB
Steve Hoffmeyer (w/enc.) - PERB