

Steven G. Hoffmeyer
Public Employment Relations Board
1380 Energy Lane, Suite #1
St. Paul, MN 55110-5253

Steven.Hoffmeyer@state.mn.us

Re: Possible Adoption of Rules Governing the Procedures of Investigations, Hearings,
and Appeals of Unfair Labor Practices Under Minn. Stat. §179A, Authority Minn.
Stat. §179A.041 - Request for a Hearing

Dear Mr. Hoffmeyer:

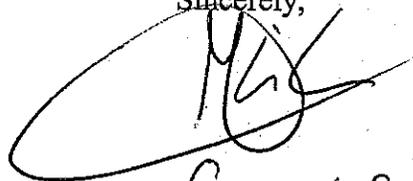
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Sincerely,



1-19-16

Giovanni Caponi
HEMC Paramedic

Giovanni Caponi
901 Oak St.
Farmington, MN 55024

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Sincerely,



Cara Bigelow
14302 91st PL. N
Maple Grove, MN 55369

CARA E BIGELOW

1/19/2016

paramedic

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Public Employment Relations Board
1380 Energy Lane, Suite #1
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Sincerely,

Kent Koelln
Kent Koelln EMT-P HCME
1-18-16

Kent Koelln
16797 Rum Ave.
Hutchinson, MN 55350

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Public Employment Relations Board
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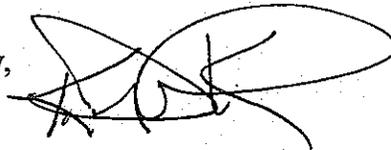
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KARL MECK

Karl Meek
4827 4th Ave. S
Minneapolis, MN 55419

1-19-16
Paramedic

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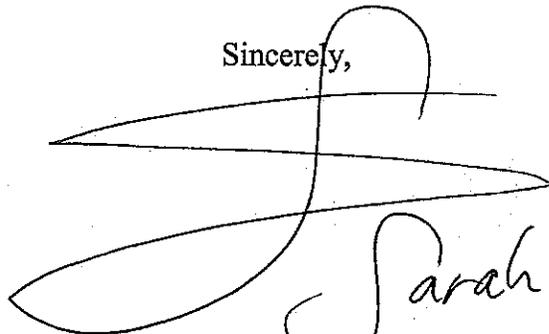
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Sincerely,

Sarah Grimes
17931 Jaguar Path
Lakeville, MN 55044



Sarah Grimes
paramedic 1/19/16

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Sincerely,

Myranda Kiblin
11409 Swallow St. NW
Coon Rapids, MN 55433

Myranda Kiblin
1-19-16

Myranda KIBLIN
paramedic

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1-19-16

Dustin Falk
710 Garceau Lane
Vadnais Heights, MN 55127

DUSTIN FALK
Paramedic
Hennepin EMS

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Sincerely,

Andrew Grasmick



Andrew Grasmick
234 Arabian Ave. E
Shakopee, MN 55379

1/19/2016

paramedic

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Sincerely,

Curtis S. Senn



Hennepin County Association of Paramedics and EMTs

1/18/2016

Curtis Senn
704 31st W
Hastings, MN 55033

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Dennis Combs
1836 Red River Trail
St. Cloud, MN 56301


Dennis Combs
Paramedic HCNM

1-19-16

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MICHAEL W. MOSENG
PARAMEDIC/HCMC

1-19-2016

Michael Moseng
15126 Durant St. NE
Ham Lake, MN 55304

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Public Employment Relations Board
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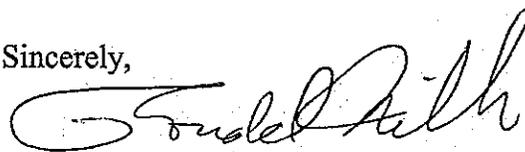
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Sincerely,



Ronald Miller
7124 78th Ave. N
Minneapolis, MN 55445

RONALD E MILLER

HENNEPIN COUNTY PARAMEDIC

01-19-2016

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Public Employment Relations Board
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Peter Carlson
Paramedic
1/19/2016

Peter Carlson
P.O. Box 644
Excelsior, MN 55331

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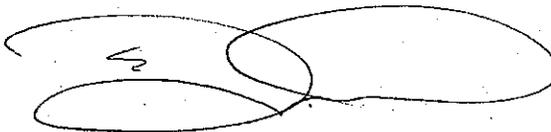
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Ernie Roettger
6953 91st St. NE
Moniticello, MN 55362

ERNIE
ROETTGER
PARAMEDIC 1/14/16

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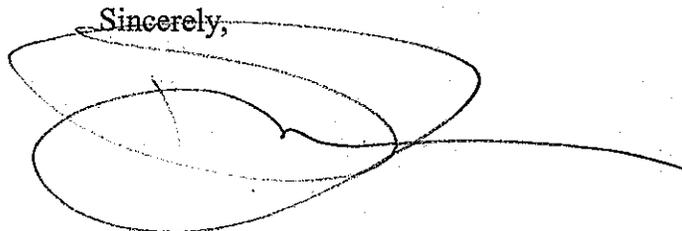
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Sincerely,



David Johnson
10825 Mississippi Blvd. NW
Coon Rapids, MN 55433

DAVID JOHNSON
COMMUNITY PARAMEDIC

19 JAN 2016

Steven G. Hoffmeyer
Public Employment Relations Board
1380 Energy Lane, Suite #1
St. Paul, MN 55110-5253

Steven.Hoffmeyer@state.mn.us

Re: Possible Adoption of Rules Governing the Procedures of Investigations, Hearings, and Appeals of Unfair Labor Practices Under Minn. Stat. §179A, Authority Minn. Stat. §179A.041 - Request for a Hearing

Dear Mr. Hoffmeyer:

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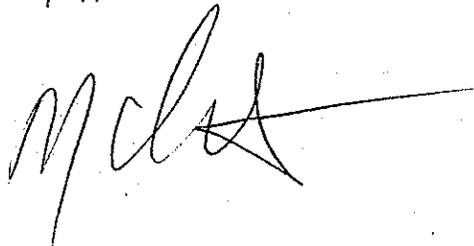
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Sincerely,

Michael Christian 19 Jan 2016

 Paramedic

Michael Christian
7405 Clinton Ave. S
Richfield, MN 55423

Steven G. Hoffmeyer
Public Employment Relations Board
1380 Energy Lane, Suite #1
St. Paul, MN 55110-5253

Steven.Hoffmeyer@state.mn.us

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Sincerely,

Michael LeVake
9087 Jensen Ave.
Cottage Grove, MN 55016

Michael W. LeVake - Paramedic



19 January 2016

Steven G. Hoffmeyer
Public Employment Relations Board
1380 Energy Lane, Suite #1
St. Paul, MN 55110-5253

Steven.Hoffmeyer@state.mn.us

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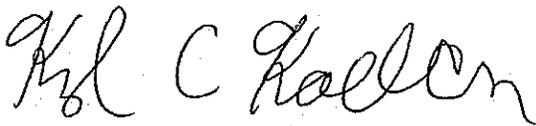
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Sincerely,

 19 Jan 2016
Kyle C Koelln Paramedic

Kyle Koelln
448 Prospect St. NE
Hutchinson, MN 55350

Steven G. Hoffmeyer
Public Employment Relations Board
1380 Energy Lane, Suite #1
St. Paul, MN 55110-5253

Steven.Hoffmeyer@state.mn.us

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Sincerely, *Regina Brown* 4536



Paramedic

1-18-16

Regina Brown
11336 Quince St. NW
Coon Rapids, MN 55448

Steven G. Hoffmeyer
Public Employment Relations Board
1380 Energy Lane, Suite #1
St. Paul, MN 55110-5253

Steven.Hoffmeyer@state.mn.us

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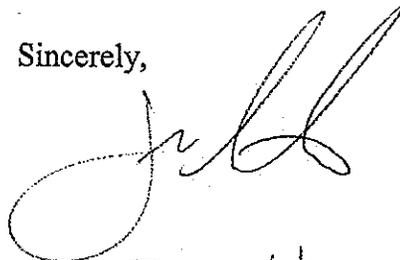
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Sincerely,



Jason Wiskow
1855 127th Ave. NE
Blaine, MN 55449

Jason Wiskow HEMS 4518
1-18-16
Paramedic

Steven G. Hoffmeyer
Public Employment Relations Board
1380 Energy Lane, Suite #1
St. Paul, MN 55110-5253

Steven.Hoffmeyer@state.mn.us

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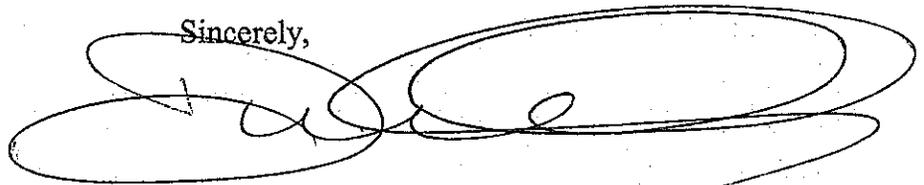
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Sincerely,



Dustin Graetz
1-19-16
Paramedic

Dustin Graetz
4820 Hwy 7, Apt. 401
St. Louis Park, MN 55416

Steven G. Hoffmeyer
Public Employment Relations Board
1380 Energy Lane, Suite #1
St. Paul, MN 55110-5253

Steven.Hoffmeyer@state.mn.us

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Sincerely,

Jacob McPherson
4018 Limonite LN
Eagan, MN 55122

Jacob McPherson


Paramedic 1-15-16

Steven G. Hoffmeyer
Public Employment Relations Board
1380 Energy Lane, Suite #1
St. Paul, MN 55110-5253

Steven.Hoffmeyer@state.mn.us

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representative at that hearing.

Sincerely,

Shane Stevens
475 East Washington St
LeCenter, MN 56057

Shane Stevens
Shane Stevens

Items 4489
1-18-16
medic

Steven G. Hoffmeyer
Public Employment Relations Board
1380 Energy Lane, Suite #1
St. Paul, MN 55110-5253

Steven.Hoffmeyer@state.mn.us

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Sincerely,



Sasha DeAngelis
1-18-16
Paramedic

Sasha De Angelis
2836 Texas Ave. S
St. Louis Park, MN 55345

Steven G. Hoffmeyer
Public Employment Relations Board
1380 Energy Lane, Suite #1
St. Paul, MN 55110-5253

Steven.Hoffmeyer@state.mn.us

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Sincerely,



Bradley McGee
3515 Owasso St. Apt 114
Shoreview, MN 55126

Bradley McGee Paramedic
1/19/16

Steven G. Hoffmeyer
Public Employment Relations Board
1380 Energy Lane, Suite #1
St. Paul, MN 55110-5253

Steven.Hoffmeyer@state.mn.us

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Sincerely,

Peter Money
1170 Cushing Circle Apt. 319
St. Paul, MN 55108



Peter D. Money
HEMS Paramedic

01/19/16

Steven G. Hoffmeyer
Public Employment Relations Board
1380 Energy Lane, Suite #1
St. Paul, MN 55110-5253

Steven.Hoffmeyer@state.mn.us

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Sincerely,

Nathan Favilla
13999 Portland Ave. Apt 2
St. Paul, MN 55104


Nathan J. Favilla
Paramedic

1-14-16

Steven G. Hoffmeyer
Public Employment Relations Board
1380 Energy Lane, Suite #1
St. Paul, MN 55110-5253

Steven.Hoffmeyer@state.mn.us

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Sincerely, *Wesley Thompson*
Wesley Thompson #4516
Paramedic
1-19-16

Wesley Thompson
3787 Kenny Ln,
White Bear Lake, MN 55110

Steven G. Hoffmeyer
Public Employment Relations Board
1380 Energy Lane, Suite #1
St. Paul, MN 55110-5253

Steven.Hoffmeyer@state.mn.us

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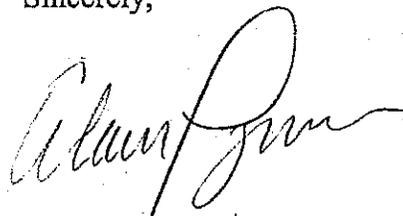
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Sincerely,

Adam Longman
2248 260th St.
Madison, MN 56256


Adam Longman
1-18-16
Paramedic

John G. Engberg
Bruce P. Grostephan
Mark W. Bay
Ronald G. Marks
Richard D. Kampa

Peterson, Engberg & Peterson

Attorneys and Counselors at Law
250 Marquette Avenue, Suite 540
Minneapolis, Minnesota 55401-2387
(612) 338-6743
Facsimile: (612) 338-4281
E-mail: peplawyers@aol.com

Roger A. Peterson-Retired
Reuben R. Spector-1972

January 25, 2016

Steven G. Hoffmeyer
Interim General Counsel/Executive Director
Minnesota Public Employment Relations Board
1380 Energy Lane, Suite 1
St. Paul, MN 55110-5253

Delivered by Messenger

Re: Possible Adoption of Rules Governing the Procedures of Investigations,
Hearings, and Appeals of Unfair Labor Practice Under Minn. Stat. §179A,
Authority Minn. Stat. §179A.041 - Request for a Hearing

Dear Mr. Hoffmeyer:

Enclosed and served upon you are twenty-nine letters from Hennepin County paramedics requesting a hearing on February 22, 2016 at 1:30 p.m., in the above-referenced matter. The paramedics are as follows:

Giovanni Caponi
Cara E. Bigelow
Kent Koelln
Karl Meek
Sarah Grimes
Myranda Kiblin
Dustin Falk
Andrew Grasmick
Bradley McGee
Wesley Thompson

Curtis Senn
Dennis Combs
Michael Moseng
Ronald Miller
Peter Carlson
Ernie Roettger
David Johnson
Michael Christian
Peter Money
Adam Longman

Michael LeVake
Kyle Koelln
Regina Brown
Jason Wiskow
Dustin Graetz
Jacob McPherson
Shane Stevens
Sasha De Angelis
Nathan Favilla

Sincerely,

PETERSON, ENGBERG & PETERSON



Bruce P. Grostephan

BPG/mav/Enclosures

Hoffmeyer, Steven (PERB)

From: Michael Zelenak <mzelenak@ci.albertlea.mn.us>
Sent: Wednesday, January 27, 2016 2:47 PM
To: Hoffmeyer, Steven (PERB)
Subject: FW: Request for Hearing on PERB Rules
Attachments: Request for Hearing on PERB Rules.pdf

From: Michael Zelenak
Sent: Wednesday, January 27, 2016 2:44 PM
To: 'steve.hoffmeyer@state.mn.us'
Subject: Request for Hearing on PERB Rules

Dear Mr. Hoffmeyer,

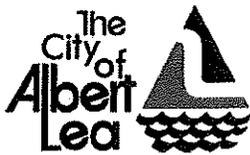
Attached to this email is my request for a hearing on the above-proposed rules.

Thank you for your consideration.

Mike



Michael F. Zelenak
Human Resources
City of Albert Lea
221 E Clark Street, Albert Lea, MN 56007-2421
507-377-4333 www.ci.albertlea.mn.us



Human Resources
221 East Clark Street
Albert Lea, Minnesota 56007-2496
507-377-4333
mzelenak@ci.albertlea.mn.us

January 27, 2016

Steve Hoffmeyer
PERB
Steven.Hoffmeyer@state.mn.us

VIA EMAIL

Re: Request for Hearing on Notice of Intent to Adopt Rules Without a Public Hearing Unless 25 or More Persons Request a Hearing, and Notice of Hearing if 25 or More Requests for Hearing Are Received; Revisor's ID Number R-04345

Dear Mr. Hoffmeyer:

On behalf of the Coalition of Greater Minnesota Cities (CGMC), I respectfully request a hearing on the above-proposed rules.

The CGMC is a nonprofit, nonpartisan advocacy organization representing 85 cities outside of the Twin Cities metropolitan area. CGMC cities are dedicated to a strong Greater Minnesota. Our mission is to develop viable, progressive communities for businesses and families through strong economic growth and good local government.

My information is as follows:

Michael F. Zelenak
City of Albert Lea
221 E. Clark St.
Albert Lea, MN 56007
507-377-4333 or mzelenak@ci.albertlea.mn.us

I oppose the entire set of rules because the rules:

- Are deficient in ensuring accountability;
- Do not address required qualifications for those serving as hearing officers or investigators; and
- Are deficient in ensuring timely and efficient processing of charges.

Thank you for your consideration.

Sincerely,

Michael F. Zelenak
Director, Human Resources-City of Albert Lea
CGMC Labor and Employee Relations Committee Co-Chair

Hoffmeyer, Steven (PERB)

From: Ignatius Dale <ignatius.dale@CO.OLMSTED.MN.US>
Sent: Monday, January 25, 2016 4:15 PM
To: Hoffmeyer, Steven (PERB)
Subject: MN Public Employment Relations Board (PERB) announce Rulemaking information - Requesting a public hearing

DATE: January 25, 2016

TO: Steven Hoffmeyer
Commissioner BMS

FROM: Dale Ignatius
Director of Human Resources
Olmsted County, Minnesota

SUBJECT: Request for a hearing on the PERB rulemaking process

Dear Commissioner Hoffmeyer,

After reviewing the materials and discussion with my administrator, Olmsted County requests that the Minnesota Public Employment Relations Board convene a public hearing for purposes of discussing the proposed rules governing the procedures of investigations, hearings, and appeals of unfair labor practices under Minn. Stat. 179A. Specific concerns to be addressed are the qualifications of the investigators and hearing officers, the timing of the hearing and absence of a way to avoid frivolous complaints (a suggestion is to change a fee to the filer to cover the cost of the investigator) are the key concerns.

Thank you for your consideration of our request.

Respectfully,

Olmsted County
151 4th Street SE
Rochester, Minnesota 55906

(507) 328-7711
ignatius.dale@co.olmsted.mn.us

Hoffmeyer, Steven (PERB)

From: Jim Gottschald <gottschaldj@StLouisCountyMN.gov>
Sent: Saturday, January 23, 2016 10:40 PM
To: Hoffmeyer, Steven (PERB)
Cc: Kevin Gray
Subject: RE: MN Public Employment Relations Board (PERB) announce Rulemaking information

Mr. Hoffmeyer,

First we would like to acknowledge the great work and progress that the appointees to the Board have completed to date. Please know our request for an administrative hearing is not intended to question the commitment of the Board to establish fair and transparent rules and operating procedures.

With that said, we support further input and dialogue on the qualifications of investigator(s) and hearing officers, timing of the hearings and the apparent absence of measures to deter frivolous complaints. These interests will be addressed with more specificity in a joint letter submitted by the Association of Minnesota Counties, League of Minnesota Cities, Minnesota Intra-County Association and the Minnesota School Board Association.

We look forward to updates on the process to set up the rules governing PERB. Thank you for your service on the Board and good luck with next steps.

Jim

James R. Gottschald
St. Louis County Human Resources Director
100 N. 5th Ave. W., Ste 1
Duluth, MN 55802
gottschaldj@stlouiscountymn.gov
(218) 725-5066 (phone)
(218) 733-2977 (fax)

From: Hoffmeyer, Steven (PERB) [<mailto:Steven.Hoffmeyer@state.mn.us>]
Sent: Friday, January 22, 2016 12:07 PM
To: Jim Gottschald
Cc: Kevin Gray
Subject: Re: MN Public Employment Relations Board (PERB) announce Rulemaking information

I will add you to the list of requesters. Can I ask what concerns you have?
Thank you
Steve Hoffmeyer

Sent from my iPhone

On Jan 22, 2016, at 11:47 AM, Jim Gottschald <gottschaldj@StLouisCountyMN.gov> wrote:

Mr. Hoffmeyer,

After reviewing the materials and discussion with my county administrator, St. Louis County requests that the Minnesota Public Employment Relations Board convene a public hearing for purposes of discussing the proposed rules governing the procedures of investigations, hearings, and appeals of unfair labor practices under Minn. Stat. 179A. Thank you for your consideration of our request.

Respectfully,

James R. Gottschald
St. Louis County Human Resources Director
100 N. 5th Ave. W., Ste 1
Duluth, MN 55802
gottschaldj@stlouiscountymn.gov
(218) 725-5066 (phone)
(218) 733-2977 (fax)

From: Hoffmeyer, Steven (PERB) [<mailto:Steven.Hoffmeyer@state.mn.us>]
Sent: Monday, December 21, 2015 2:53 PM
To: Hoffmeyer, Steven (PERB)
Subject: MN Public Employment Relations Board (PERB) announce Rulemaking information

Good afternoon:

Attached is MN Public Employment Relations Board (PERB) Rulemaking information.
This information is also available via the following link: <http://www.mn.gov/admin/bms/perb-rulemaking.jsp>

Sincerely,

Steven G. Hoffmeyer
Interim General Counsel/Executive Director

Hoffmeyer, Steven (PERB)

From: Kao, Irene <ikao@lmc.org>
Sent: Thursday, January 28, 2016 2:18 PM
To: Hoffmeyer, Steven (PERB)
Cc: Lindstrom, Ann
Subject: RE: Comments regarding PERB proposed rules
Attachments: Request for Hearing Names & Signatures.pdf

Steve,
Thank you for your clarification. Attached are 12 names, addresses and signatures (with the exception of Ann Lindstrom, who will email you). Please let me know if you have any questions.
Sincerely,
Irene

Irene Kao, J.D. | Intergovernmental Relations Counsel
Tel: (651) 281-1260
ikao@lmc.org | www.lmc.org
League of Minnesota Cities
145 University Ave. West | St. Paul, MN 55103

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Please note, I am not providing you with legal advice. This message is not a substitute for competent legal guidance. Consult your attorney concerning specific legal situations.

From: Hoffmeyer, Steven (PERB) [mailto:Steven.Hoffmeyer@state.mn.us]
Sent: Thursday, January 28, 2016 9:52 AM
To: Kao, Irene <ikao@lmc.org>
Subject: RE: Comments regarding PERB proposed rules

Correction—all 7 signers of the letter will be counted as requesters and receive notice from us.
Steve

From: Kao, Irene [mailto:ikao@lmc.org]
Sent: Wednesday, January 27, 2016 3:30 PM
To: Hoffmeyer, Steven (PERB) <Steven.Hoffmeyer@state.mn.us>
Cc: Lindstrom, Ann <alindstrom@lmc.org>; 'Hilgart, Matthew' <mhilgart@mncounties.org>; Kirk Schneidawind <kschneidawind@mnmsba.org>; 'ksulem@mntownships.org' <ksulem@mntownships.org>; Nauman, Patricia (Metro Cities) <Patricia@MetroCitiesMN.org>; Carlson, Keith (SWIFT SYSTEM) <keithc@mica.org>; 'r_broeder@msn.com' <r_broeder@msn.com>; Carlson, Gary <gcarlson@lmc.org>; Grundhoefer, Tom <TGrundho@lmc.org>; Cadman, Edward <ecadman@lmc.org>; Unmacht, Dave <dunmacht@lmc.org>
Subject: Comments regarding PERB proposed rules

Mr. Hoffmeyer,
Please see the attached comments related to the Public Employment Relations Board's proposed rules. These comments are provided by:

- League of Minnesota Cities
- Association of Minnesota Counties

- Minnesota School Boards Association
- Minnesota Association of Townships
- MetroCities
- Coalition of Greater Minnesota Cities
- Minnesota Inter-County Association

We will be sending a separate email tomorrow with a request for public hearing.

Thank you for your consideration of our comments.

Sincerely,
Irene Kao

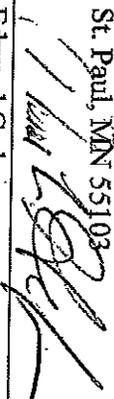
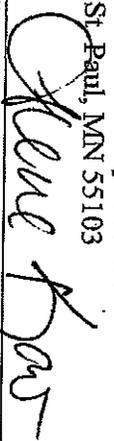
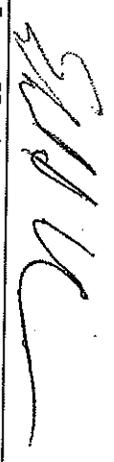
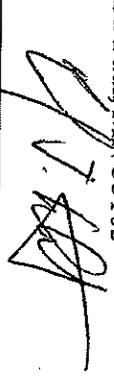
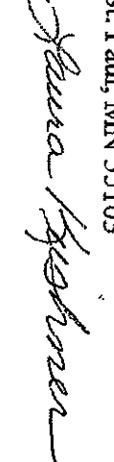
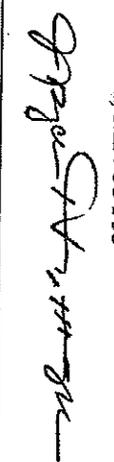
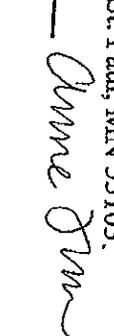
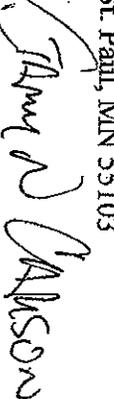
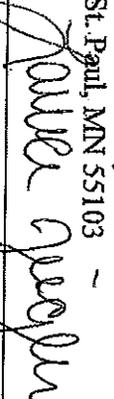
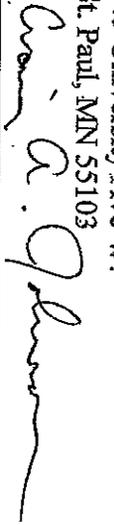
Irene Kao, J.D. | Intergovernmental Relations Counsel
Tel: (651) 281-1260
ikao@lmc.org | www.lmc.org
League of Minnesota Cities
145 University Ave. West | St. Paul, MN 55103

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Required List of Names for Request for Hearing on Public Employment Relations Board (PERB) Rules

Please see the separate document (Local Government Organizations Joint Comments Proposed PERB Rules) from Irene Kao (League of Minnesota Cities) for reasons for the request and changes wanted to the proposed rules.

<p>Tom Grundhoefer General Counsel League of Minnesota Cities 145 University Ave W. St. Paul, MN 55103</p> 	<p>Irene Kao Intergovernmental Relations Counsel League of Minnesota Cities 145 University Ave W. St. Paul, MN 55103</p> 	<p>Ann Lindstrom Intergovernmental Relations Representative League of Minnesota Cities 145 University Ave W. St. Paul, MN 55103</p> <p>(see email)</p>
<p>Edward Cadman Special Counsel League of Minnesota Cities 145 University Ave W. St. Paul, MN 55103</p> 	<p>David J. Ummacht Executive Director League of Minnesota Cities 145 University Ave W. St. Paul, MN 55103</p> 	<p>Laura Kushner Human Resources Director League of Minnesota Cities 145 University Ave W. St. Paul, MN 55103</p> 
<p>Joyce Hottinger Assistant Human Resources Director League of Minnesota Cities 145 University Ave W. St. Paul, MN 55103</p> 	<p>Anne Finn Assistant Intergovernmental Relations Director League of Minnesota Cities 145 University Ave W. St. Paul, MN 55103.</p> 	<p>Gary N. Carlson Intergovernmental Relations Director League of Minnesota Cities 145 University Ave W. St. Paul, MN 55103</p> 
<p>Heather Corcoran Intergovernmental Relations Liaison League of Minnesota Cities 145 University Ave W. St. Paul, MN 55103</p> 	<p>Laura Ziegler Intergovernmental Relations Liaison League of Minnesota Cities 145 University Ave W. St. Paul, MN 55103</p> 	<p>Craig Johnson Intergovernmental Relations Representative League of Minnesota Cities 145 University Ave W. St. Paul, MN 55103</p> 

Hoffmeyer, Steven (PERB)

From: Hoffmeyer, Steven (PERB)
Sent: Thursday, January 28, 2016 9:51 AM
To: 'Kao, Irene'
Subject: RE: Comments regarding PERB proposed rules

Correction—all 7 signers of the letter will be counted as requesters and receive notice from us.
Steve

From: Kao, Irene [mailto:ikao@lmc.org]
Sent: Wednesday, January 27, 2016 3:30 PM
To: Hoffmeyer, Steven (PERB) <Steven.Hoffmeyer@state.mn.us>
Cc: Lindstrom, Ann <alindstrom@lmc.org>; 'Hilgart, Matthew' <mhilgart@mncounties.org>; Kirk Schneidawind <kschneidawind@mnmsba.org>; 'ksulem@mntownships.org' <ksulem@mntownships.org>; Nauman, Patricia (Metro Cities) <Patricia@MetroCitiesMN.org>; Carlson, Keith (SWIFT SYSTEM) <keithc@mica.org>; 'r_broeder@msn.com' <r_broeder@msn.com>; Carlson, Gary <gcarlson@lmc.org>; Grundhoefer, Tom <TGrundho@lmc.org>; Cadman, Edward <ecadman@lmc.org>; Unmacht, Dave <dunmacht@lmc.org>
Subject: Comments regarding PERB proposed rules

Mr. Hoffmeyer,
Please see the attached comments related to the Public Employment Relations Board's proposed rules. These comments are provided by:

- League of Minnesota Cities
- Association of Minnesota Counties
- Minnesota School Boards Association
- Minnesota Association of Townships
- MetroCities
- Coalition of Greater Minnesota Cities
- Minnesota Inter-County Association

We will be sending a separate email tomorrow with a request for public hearing.

Thank you for your consideration of our comments.

Sincerely,
Irene Kao

Irene Kao, J.D. | Intergovernmental Relations Counsel
Tel: (651) 281-1260
ikao@lmc.org | www.lmc.org
League of Minnesota Cities
145 University Ave. West | St. Paul, MN 55103

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Hoffmeyer, Steven (PERB)

From: Hoffmeyer, Steven (PERB)
Sent: Thursday, January 28, 2016 9:42 AM
To: 'Kao, Irene'
Subject: RE: Comments regarding PERB proposed rules

Good morning Irene

I may have misspoken yesterday. My intent was to say a snail mail letter requesting a Hearing should have a signature; however, we have been accepting email requests such as you have provided. The four signers of the letter sent to me count as four requests. You four individuals, representing the entities you have signed for will be counted as requesters and added to our list of requesters. You do not need to do anything else.

I anticipate sending out notices to all requesters tomorrow.

Thank you.

Steve Hoffmeyer

From: Kao, Irene [mailto:ikao@lmc.org]
Sent: Wednesday, January 27, 2016 3:30 PM
To: Hoffmeyer, Steven (PERB) <Steven.Hoffmeyer@state.mn.us>
Cc: Lindstrom, Ann <alindstrom@lmc.org>; 'Hilgart, Matthew' <mhilgart@mncounties.org>; Kirk Schneidawind <kschneidawind@mnmsba.org>; 'ksulem@mntownships.org' <ksulem@mntownships.org>; Nauman, Patricia (Metro Cities) <Patricia@MetroCitiesMN.org>; Carlson, Keith (SWIFT SYSTEM) <keithc@mica.org>; 'r_broeder@msn.com' <r_broeder@msn.com>; Carlson, Gary <gcarlson@lmc.org>; Grundhoefer, Tom <TGrundho@lmc.org>; Cadman, Edward <ecadman@lmc.org>; Unmacht, Dave <dunmacht@lmc.org>
Subject: Comments regarding PERB proposed rules

Mr. Hoffmeyer,

Please see the attached comments related to the Public Employment Relations Board's proposed rules. These comments are provided by:

- League of Minnesota Cities
- Association of Minnesota Counties
- Minnesota School Boards Association
- Minnesota Association of Townships
- MetroCities
- Coalition of Greater Minnesota Cities
- Minnesota Inter-County Association

We will be sending a separate email tomorrow with a request for public hearing.

Thank you for your consideration of our comments.

Sincerely,
Irene Kao

Irene Kao, J.D. | Intergovernmental Relations Counsel
Tel: (651) 281-1260
ikao@lmc.org | www.lmc.org
League of Minnesota Cities
145 University Ave. West | St. Paul, MN 55103

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Hoffmeyer, Steven (PERB)

From: Kao, Irene <ikao@lmc.org>
Sent: Wednesday, January 27, 2016 3:30 PM
To: Hoffmeyer, Steven (PERB)
Cc: Lindstrom, Ann; 'Hilgart, Matthew'; Kirk Schneidawind; 'ksulem@mntownships.org'; Nauman, Patricia (Metro Cities); Carlson, Keith (SWIFT SYSTEM); 'r_broeder@msn.com'; Carlson, Gary; Grundhoefer, Tom; Cadman, Edward; Unmacht, Dave
Subject: Comments regarding PERB proposed rules
Attachments: Local Government Organizations_Joint Comments_Proposed PERB Rules.pdf

Mr. Hoffmeyer,

Please see the attached comments related to the Public Employment Relations Board's proposed rules. These comments are provided by:

- League of Minnesota Cities
- Association of Minnesota Counties
- Minnesota School Boards Association
- Minnesota Association of Townships
- MetroCities
- Coalition of Greater Minnesota Cities
- Minnesota Inter-County Association

We will be sending a separate email tomorrow with a request for public hearing.

Thank you for your consideration of our comments.

Sincerely,
Irene Kao

Irene Kao, J.D. | Intergovernmental Relations Counsel
Tel: (651) 281-1260
ikao@lmc.org | www.lmc.org
League of Minnesota Cities
145 University Ave. West | St. Paul, MN 55103

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January 26, 2016

VIA EMAIL: Steven.Hoffmeyer@state.mn.us

Steve Hoffmeyer
Public Employment Relations Board
1380 Energy Lane, Suite #1
St. Paul, MN 5510-5253

Re: Joint Comments of League of Minnesota Cities, et. al., on Possible Adoption of Rules Governing the Procedures of Investigations, Hearings, and Appeals of Unfair Labor Practices Under Minnesota Statutes 179A.

Mr. Hoffmeyer,

Thank you for the opportunity to provide comments on the proposed rules for the Public Employment Relations Board (PERB) as drafted in R-04345. We, as public employers at the local level, support the intent of the Public Employment Labor Relations Act (PELRA) "to promote orderly and constructive relationships between all public employers and their employees" (Minn. Stat. § 179A.01). It is with that goal in mind that we submit the following.

We have two overarching concerns and subsequent suggestions:

- 1. The rules do not delineate payment for bringing an Unfair Labor Practice (ULP) charge to the PERB.** It is important for all parties involved in a ULP to know and share the financial responsibility for bringing forth a charge as well as responding to a charge. There should be a non-prohibitive fee for filing a charge to minimize non-meritorious charges; we suggest a \$50 fee. The recommended amount is consistent with Minn. Stat. § 13.085, subd. 6(c), for data practices complaints. We also encourage an amendment to the rules to clarify that all costs following the initial filing fee be shared equally by all parties, except for attorneys' fees. This is consistent with existing state law with respect to grievances (Minn. Stat. §179A.21, subd. 2).
- 2. The rules do not address required qualifications for those serving as hearing officers or investigators.** It is critical these individuals have labor employment experience and expertise, preferably in the public sector. In addition to the statutory requirement as a licensed attorney in Minnesota, it is recommended that the qualifications for hearing officers be consistent with what PERB identified in their Request for Proposals for Hearing Officers, which included: knowledge and experience in labor law; knowledge and experience in administrative law and procedure; and demonstrated skills in legal analysis and writing. It would also be beneficial for hearing officers to have similar qualifications to Bureau of Mediation Services' (BMS) arbitrators, which includes the ability to hear and decide complex labor relations issues in a fair and objective manner. Finally, due to the fact that BMS mediators must maintain neutrality during mediation, we believe they are not

well-suited for the investigation process. We do not want to see their availability for mediation services decrease.

7325.0100 FILING AND SERVICE GENERALLY

Subps. 1 and 2: *Filing and Service*. E-mail filing and service should not be permitted because e-mail can be unreliable. E-mail sometimes disappear into junk folders or get locked down behind fire walls. Electronic filing and service should only be permitted if and when the PERB establishes a web-based filing and service system like state and federal courts, Minnesota Office of Administrative Hearings, and the National Labor Relations Board (NLRB).

7325.0110 FILING, SUPPORTING, AND RESPONDING TO A CHARGE

Subp. 1: *Charge form*. As stated above, a charging party should be required to pay a \$50 fee simultaneous with the filing of their charge form.

Subp. 2: *Form information*. To provide further accountability for the party completing the charge form and to minimize non-meritorious charges, the rules should specify that the charging party must sign a declaration on the form, like the NLRB charge forms, stating something to the effect that: "I declare that I have read the above charge(s) and that the statements are true to the best of my knowledge and belief."

Subp. 6: *Submission of evidence*. An extension may be granted for submitting evidence "for good cause". There is no definition of "good cause" nor is it clear who determines "good cause". Clarification is needed.

Subps. 6 and 7: *Submission of evidence and Submission of a response*. To ensure all evidence must be shared with both parties, the rules should be amended to instruct this. This should include additional evidence from either the charged or charging party as deemed necessary by the investigator.

7325.0120 MEDIATION

To ensure fair and objective investigations, this rule should include a provision that the assigned mediator cannot be the investigator assigned to the charge. To further facilitate mediation, this rule should also include a provision that provides that a mediator will be assigned at any time if requested by both parties, which is common language in labor contract grievance procedures.

7325.0130 INVESTIGATION

As stated above, the rules have omitted qualifications for those serving as investigators. We reiterate the need for clear requirements including: labor employment experience in the public sector; ability to investigate complex labor relations issues in a fair and objective manner; and that BMS mediators should not serve as investigators due to the need for neutrality.

7325.0140 AMENDING OR WITHDRAWING A CHARGE

If a charge is withdrawn, we request the charge and all supporting documentation and evidence be classified as non-public data. This is consistent with how personnel data is classified when a grievance is sustained and all aspects of disciplinary action are reversed pursuant to Minn. Stat. § 13.43, subd. 2(b) for grievances.

7325.0150 DISMISSAL OF CHARGES

Subp. 1: *Dismissal*. This subpart provides that the Board must dismiss the charge if the charge has no reasonable basis in law or fact, contradicting 7325.0130, subp. 2, which provides the Board will give the charging party the opportunity to withdraw the charge if there is no reasonable basis in law or fact. For consistency, the Board should dismiss the charge in both rules. In addition, the Board should expressly be authorized to dismiss charges that do not comply with the procedural requirements for a charge.

Subp. 2: *Notification*. There is no required timeline for notifying all parties that the Board has dismissed a charge. We recommend that notification be given within five working days.

7325.0210 ANSWER

The time for the respondent to answer a complaint – the lesser of seven days from service of the complaint or three days before the hearing – is extremely short when the hearing can occur as soon as five days after service of the complaint under Minn. Stat. § 179A.13, subd. 1. Balancing the need to have a hearing within 20 days and providing adequate time for an answer, we recommend that an answer be filed within seven days of a complaint or amended complaint.

7325.0240 HEARING OFFICER DUTIES

As stated above, the rules have omitted qualifications for those serving as hearing officers. We reiterate the need for clear requirements including: labor employment experience in the public sector; ability to hear and decide complex labor relations issues in a fair and objective manner; and that BMS mediators should not serve as hearing officers due to the need for neutrality.

7325.0250 PREHEARING CONFERENCES

Subp. 1: *Conference*. The language in line 7.2 reads “The hearing officer assigned to the case shall schedule a prehearing conference...” “Shall” should be changed to “may” to be consistent with the Statement of Need and Reasonableness which states: “The board contemplated the requirement of prehearing conferences but decided that a requirement may frustrate the purposes of the Act by burdening the parties with unnecessary costs for attorney fees, delaying the hearing, complicating the issues, or permitting harassment of the parties and/or their witnesses.” The language should reflect this discussion.

7325.0260 SUBPOENAS

To ensure that the appropriate individual receives the subpoena, deter the abuse of subpoenas and ensure appropriate compensation for respondents to subpoenas, the rules should clarify, similar to rules for contested case hearings under Minn. R. 1400.7000 and the Revised Uniform Arbitration Act under Minn. Stat. § 572B.17, that the subpoena shall comply with the Rules of Civil Procedure for the District Courts of Minnesota addressing subpoenas unless otherwise provided by law.

7325.0270 PROTECTIVE ORDERS

Subp. 1. *Protective orders*. To ensure that the parties are able to provide all data they deem necessary to the investigator during the investigation, which may include not public data, this rule should expressly provide that protective orders may be issued at any time after a charge is filed. Also, the current protective order language uses terms like “sensitive” and “protected”, which are not consistent with current Minnesota Government Data Practices Act terminology. Instead using the term “not public” should be sufficient (Minn. Stat. § 13.02, subd. 8a).

Subp. 2: *Closing a hearing*. For greater consistency with other statutes addressing protective orders in administrative proceedings, the language should be changed “If the hearing record contains information that is not public data, the [hearing officer] may conduct a closed hearing to consider the information, issue necessary protective orders, and seal all or part of the hearing record, as provided in Minn. Stat. §14.60, subd. 2. If a party contends, and the [hearing officer] concludes, that not public data could be improperly disclosed while that party is presenting its arguments, the judge shall close any portion of the hearing as necessary to prevent the disclosure” (Minn. Stat. § 13.085, subd. 4). The current protective order language uses terms like “sensitive” and “protected”, which are not consistent with current Data Practices Act terminology.

7325.0300 CONSOLIDATION

The proposed rule is very general, providing consolidation for hearings that "will serve the purposes of this chapter". To assist future boards on deciding when hearings should be consolidated, it would be beneficial to articulate specific criteria, such as "common question of law or fact", consistent with Minnesota Rule of Civil Procedure 42.01, and/or where the same parties are involved.

7325.0320 RECORD

Subp. 1: *Digital transcription*. The rule does not address who will bear the cost for the digital transcription. It appears that the Board may bear these costs, but it would be beneficial to the parties if the rules clarified this point.

7325.0400 EXCEPTIONS

Subp. 4: *Brief supporting exceptions*. To mirror Minnesota General Rule of Practice 115.05, the page limit for briefs and responses to exceptions and cross-exceptions should be limited to 35 pages, except with the permission of the Board.

Subp. 9: *Request to file an amicus brief*. Minnesota Court Rule of Appellate Procedure 129.01 provides a 15-day-notice requirement for requesting amicus. We recommend changing the 10-day requirement to 15 days for consistency with how the state appellate courts treat amicus requests.

7325.0410 PROCEEDINGS BEFORE THE BOARD

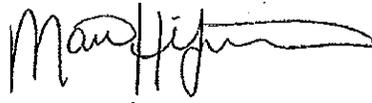
A subpart should be added addressing the requirements of the PERB decision and order on a recommended decision from the hearing officer from which exceptions are filed. The PERB's decision and order should be required to contain, similar to NLRB's Statement of Procedures under 29 CFR § 101.12, detailed findings of fact, conclusions of law, and basic reasons for decisions on all material issues raised, and an order either dismissing the complaint in whole or in part or requiring the respondent to cease and desist from its unlawful practices and to take appropriate affirmative action.

Subp. 1: *Board initiated review of recommended decision and order*. Since the Board will be initiating the review of a recommended decision and order, in absence of the submission of exceptions from either party, the Board should bear the costs of reasonable attorneys' fees and other costs for both parties in subsequent proceedings. Reason (C) listed in subp. 1 for board review of a recommended decision is too broad and could encompass almost any situation; we suggest deleting subp. 1(C).

Thank you for your consideration of our comments. As individual organizations, we will submit requests and requisite signatures for a hearing on the proposed rules.



Irene Kao
Intergovernmental Relations Counsel
League of Minnesota Cities



Matthew Hilgart
Policy Analyst
Association of Minnesota Counties



Kirk Schneidawind
Executive Director
Minnesota School Boards Association



Kent Sulem
General Counsel/Director of Government Relations
Minnesota Association of Townships

Patricia A. Nauman

Patricia Nauman
Executive Director
MetroCities

Robert J. Broeder

Robert Broeder
President
Coalition of Greater Minnesota Cities

Keith J. Carlson

Keith Carlson
Executive Director
Minnesota Inter-County Association

Hoffmeyer, Steven (PERB)

From: Johnson, Julie <Julie.Johnson@CO.STEELE.MN.US>
Sent: Tuesday, January 26, 2016 9:35 AM
To: Hoffmeyer, Steven (PERB)
Subject: Request for Public Hearing

Mr. Hoffmeyer,

After reviewing the PERB rulemaking materials, Steele County respectfully requests that the Minnesota Public Employment Relations Board convene a public hearing for purposes of discussing the proposed rules governing the procedures of investigations, hearings, and appeals of unfair labor practices under Minn. Stat. 179A. Thank you for your consideration of our request.

Julie Johnson

Director of Human Resources
Steele County
630 Florence Ave
Owatonna, MN 55060
(507) 444 – 7429
julie.johnson@co.steele.mn.us



*Steele County is dedicated to delivering effective, efficient, respectful public service
with integrity and accountability using both proven and innovative methods.*

Hoffmeyer, Steven (PERB)

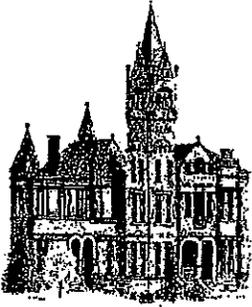
From: Dawn Fellows <dawn.fellows@co.faribault.mn.us>
Sent: Tuesday, January 26, 2016 2:09 PM
To: Hoffmeyer, Steven (PERB)
Subject: PERB
Attachments: 2016_01_26_14_06_25.pdf

Hello.

I have sent a hard copy letter as well, but due to the deadline I wanted to be certain that I met.

Thank you

Dawn Y. Fellows
Central Services Director
Faribault County



Faribault County

CENTRAL SERVICES

415 North Main Street, P.O. Box 130

Blue Earth Minnesota 56013-0130

Telephone: (507) 526-6225

Fax: (507) 526-6227

Web Site: www.co.faribault.mn.us

DAWN Y. FELLOWS
Central Services Director

CLARA VEREIDE
Senior Technical Clerk

01.26.2016

Steve Hoffmeyer
PERB
1380 Energy Lane, Suite #1
St. Paul, MN 55110-5253

Dear Mr. Hoffmeyer—

On behalf of Faribault County, I would like to request the Minnesota Public Employment Relations Board convene a public hearing for purposes of discussing the proposed rules governing the procedures of investigations, hearings, and appeals of unfair labor practices under Minn. Stat. 179A.

At this time, so many issues appear to be unclear in this process and further clarification needs to be evaluated, assessed and determined.

Thank you for your consideration of our request.

Sincerely,

Dawn Y. Fellows



Faribault County

CENTRAL SERVICES

415 North Main Street, P.O. Box 130
Blue Earth Minnesota 56013-0130
Telephone: (507) 526-6225
Fax: (507) 526-6227
Web Site: www.co.faribault.mn.us

DAWN Y. FELLOWS
Central Services Director

CLARA VEREIDE
Senior Technical Clerk

01.26.2016

RECEIVED JAN 29 2016

Steve Hoffmeyer
PERB
1380 Energy Lane, Suite #1
St. Paul, MN 55110-5253

Dear Mr. Hoffmeyer—

On behalf of Faribault County, I would like to request the Minnesota Public Employment Relations Board convene a public hearing for purposes of discussing the proposed rules governing the procedures of investigations, hearings, and appeals of unfair labor practices under Minn. Stat. 179A.

At this time, so many issues appear to be unclear in this process and further clarification needs to be evaluated, assessed and determined.

Thank you for your consideration of our request.

Sincerely,

Dawn Y. Fellows

Hoffmeyer, Steven (PERB)

From: Hager, Lisa <lisa.hager@co.dodge.mn.us>
Sent: Thursday, January 28, 2016 10:12 AM
To: Hoffmeyer, Steven (PERB)
Subject: RE: MN Public Employment Relations Board (PERB) announce Rulemaking information

Dodge County Government Services Building
721 Main St North Dept 65
Mantorville, MN 55955

From: Hoffmeyer, Steven (PERB) [mailto:Steven.Hoffmeyer@state.mn.us]
Sent: Thursday, January 28, 2016 10:10 AM
To: Hager, Lisa
Subject: RE: MN Public Employment Relations Board (PERB) announce Rulemaking information

Lisa can you give me your mailing address?
Thanks
Steve

From: Hager, Lisa [mailto:lisa.hager@co.dodge.mn.us]
Sent: Wednesday, January 27, 2016 9:19 AM
To: Hoffmeyer, Steven (PERB) <Steven.Hoffmeyer@state.mn.us>
Subject: MN Public Employment Relations Board (PERB) announce Rulemaking information
Importance: High

Mr. Hoffmeyer,

After reviewing the materials and discussion with local government associations, Dodge County requests that the Minnesota Public Employment Relations Board convene a public hearing for purposes of discussing the proposed rules governing the procedures of investigations, hearings, and appeals of unfair labor practices under Minn. Stat. 179A. Thank you for your consideration of our request.

Respectfully,

Lisa Hager
Employee Relations Director
Dodge County (507) 635-6239
lisa.hager@co.dodge.mn.us

Hoffmeyer, Steven (PERB)

From: Hager, Lisa <lisa.hager@co.dodge.mn.us>
Sent: Wednesday, January 27, 2016 9:19 AM
To: Hoffmeyer, Steven (PERB)
Subject: MN Public Employment Relations Board (PERB) announce Rulemaking information

Importance: High

Mr. Hoffmeyer,

After reviewing the materials and discussion with local government associations, Dodge County requests that the Minnesota Public Employment Relations Board convene a public hearing for purposes of discussing the proposed rules governing the procedures of investigations, hearings, and appeals of unfair labor practices under Minn. Stat. 179A. Thank you for your consideration of our request.

Respectfully,

Lisa Hager

Employee Relations Director
Dodge County (507) 635-6239
lisa.hager@co.dodge.mn.us

Hoffmeyer, Steven (PERB)

From: Jan Webster <Jan.Webster@co.washington.mn.us>
Sent: Tuesday, January 26, 2016 8:27 PM
To: Hoffmeyer, Steven (PERB)
Subject: MN Public Employment Relations Board (PERB) announce Rulemaking information

Mr. Hoffmeyer,

After reviewing the materials you provided related to the Minnesota Public Employment Relations Board (PERB), Washington County requests that the Minnesota PERB hold a public hearing for purpose of discussing the proposed rules governing the procedures of investigations, hearings, and appeals of unfair labor practices under Minnesota Statutes, 179A.

Thank you for your consideration of our request.

Jan Webster

Director | Human Resources

jan.webster@co.washington.mn.us

Phone 651.430-6075

P.O. Box 6 | 14649 62nd Street North | Stillwater, MN 55082

Washington
 **County**

Hoffmeyer, Steven (PERB)

From: Brandon Fitzsimmons <bmfitzsimmons@flaherty-hood.com>
Sent: Wednesday, January 27, 2016 1:09 PM
To: Hoffmeyer, Steven (PERB)
Subject: Request for Hearing on PERB Notice of Intent to Adopt Rules
Attachments: Request for Hearing on PERB Rules 012716.pdf

Dear Mr. Hoffmeyer,

Attached to this email is my request for a hearing on the above-proposed rules.

Thank you for your consideration.

Brandon

Brandon M. Fitzsimmons, Shareholder Attorney
Flaherty & Hood, P.A.
525 Park Street, Suite 470
St. Paul, MN 55103
Direct 651-259-1910
Fax 651-225-9088
www.flaherty-hood.com

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January 27, 2016

Steve Hoffmeyer
PERB
Steven.Hoffmeyer@state.mn.us

VIA EMAIL

Re: Request for Hearing on Notice of Intent to Adopt Rules Without a Public Hearing Unless 25 or More Persons Request a Hearing, and Notice of Hearing if 25 or More Requests for Hearing Are Received; Revisor's ID Number R-04345

Dear Mr. Hoffmeyer:

On behalf of the Coalition of Greater Minnesota Cities (CGMC), I respectfully request a hearing on the above-proposed rules.

The CGMC is a nonprofit, nonpartisan advocacy organization representing 85 cities outside of the Twin Cities metropolitan area. CGMC cities are dedicated to a strong Greater Minnesota. Our mission is to develop viable, progressive communities for businesses and families through strong economic growth and good local government.

My information is as follows:

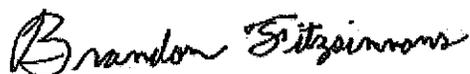
Brandon M. Fitzsimmons
Attorney
Flaherty & Hood, P.A.
525 Park Street, Suite 470
Saint Paul, MN 55013

I oppose the entire set of rules because the rules:

- Are deficient in ensuring accountability;
- Do not address required qualifications for those serving as hearing officers or investigators; and
- Are deficient in ensuring timely and efficient processing of charges.

Thank you for your consideration.

Sincerely,



Brandon M. Fitzsimmons
Shareholder Attorney

Hoffmeyer, Steven (PERB)

From: Brandon Fitzsimmons <bmfitzsimmons@flaherty-hood.com>
Sent: Wednesday, January 27, 2016 2:56 PM
To: Hoffmeyer, Steven (PERB)
Subject: RE: Request for Hearing on PERB Notice of Intent to Adopt Rules

Hello Mr. Hoffmeyer,

Thank you for the inquiry.

The CGMC has signed onto joint comments submitted to you from League of Minnesota Cities, et. al. describing concerns with accountability in the rules, which I concur with. In addition, we will be providing testimony and a written statement if a hearing is held describing these concerns.

Some of our concerns with the deficiency in accountability in the proposed rules are:

1. It is important for all parties involved in a ULP to know and share the financial responsibility for bringing forth a charge as well as responding to a charge. There is currently no fee. There should be a non-prohibitive fee for filing a charge to minimize non-meritorious charges, such as a \$50 fee.
2. There is no provision establishing that chargeable PERB costs following the initial filing fee be shared equally by all parties, except for attorneys' fees.
3. There is no provision requiring parties to declare that they read the charge and that the statements are true to the best of their knowledge and belief.
4. The rules provide for e-mail filing and service which is unreliable without a web-based e-filing and service system in place.
5. The rules do not specify the appropriate individual that should be served with the charge form when entities are charged.
6. There is no provision requiring that a party receive evidence submitted to the investigator by the other party.

Feel free to contact me with any other questions.

Again, thank you for your consideration.

Brandon

Brandon M. Fitzsimmons, Shareholder Attorney
Flaherty & Hood, P.A.
525 Park Street, Suite 470
St. Paul, MN 55103
Direct 651-259-1910
Fax 651-225-9088
www.flaherty-hood.com

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recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please immediately notify us by replying to this e-mail and destroying the original e-mail and any attachments thereto.

From: Hoffmeyer, Steven (PERB) [mailto:Steven.Hoffmeyer@state.mn.us]
Sent: Wednesday, January 27, 2016 1:28 PM
To: Brandon Fitzsimmons <bmfitzsimmons@flaherty-hood.com>
Subject: Re: Request for Hearing on PERB Notice of Intent to Adopt Rules

Brandon what is the concern about "accountability"?
Thanks
Steve

Sent from my iPhone

On Jan 27, 2016, at 1:09 PM, Brandon Fitzsimmons <bmfitzsimmons@flaherty-hood.com> wrote:

Dear Mr. Hoffmeyer,

Attached to this email is my request for a hearing on the above-proposed rules.

Thank you for your consideration.

Brandon

Brandon M. Fitzsimmons, Shareholder Attorney
Flaherty & Hood, P.A.
525 Park Street, Suite 470
St. Paul, MN 55103
Direct 651-259-1910
Fax 651-225-9088
www.flaherty-hood.com

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<Request for Hearing on PERB Rules 012716.pdf>

Hoffmeyer, Steven (PERB)

From: Wodziak, Becky <Becky.wodziak@co.ramsey.mn.us>
Sent: Wednesday, January 27, 2016 1:47 PM
To: Hoffmeyer, Steven (PERB)
Subject: FW: MN Public Employment Relations Board (PERB) announce Rulemaking information
Attachments: David Biggar signed original Dual Notice 20151218132311777.pdf; FINAL SONAR 20151221084047209.pdf; Revisor's approved Rules 20151130115448173.pdf

Sending it to the correct e-mail address, I hope.

Becky

From: Wodziak, Becky
Sent: Wednesday, January 27, 2016 1:43 PM
To: Hoffmeyer, Steven G (BMS) <Steven.G.Hoffmeyer@state.mn.us>
Cc: Blackstone, Gail <gail.blackstone@CO.RAMSEY.MN.US>
Subject: FW: MN Public Employment Relations Board (PERB) announce Rulemaking information

Hello Mr. Hoffmeyer –

On behalf of Ramsey County, we request a hearing prior to the adoption of the rules.

Our questions / concerns include but are not limited to the following:

7325.0110, subp. 6 – The proposed rule is unclear -- whether transmittal/service of evidence is required. It is not clear if submission to an assigned investigator a “filing” with the board for which service is required.

7325.0110, subp. 7 - We do not think 14 days (from when a party is served with the complaint by the board) is sufficient time for a jurisdiction to provide a response to the board/investigator.

7325.0210 – We do not think the lesser of 7 days (from service of complaint or 3 days before hearing) is sufficient time to respond to a complaint filed by board.

7325.0270 – We do not think the prohibition of disclosure of data (that are otherwise public) is appropriate. We believe transparency serves the interests of the parties and more importantly, best serves the public interest.

7325.0310 – We are concerned about the extent to which intervention by 3rd parties is allowed.

Thanks for your consideration.

Becky

Becky Wodziak | Labor Relations Manager
Ramsey County Human Resources
Suite 2100 Metro Square Building
121 7th Place East
Saint Paul MN 55101

Phone 651.266.2732

Fax 651.266.2714

becky.wodziak@co.ramsey.mn.us

From: Hoffmeyer, Steven (PERB) [<mailto:Steven.Hoffmeyer@state.mn.us>]
Sent: Monday, December 21, 2015 2:54 PM
To: Hoffmeyer, Steven (PERB) <Steven.Hoffmeyer@state.mn.us>
Subject: MN Public Employment Relations Board (PERB) announce Rulemaking information

Good afternoon:

Attached is MN Public Employment Relations Board (PERB) Rulemaking information.
This information is also available via the following link: <http://www.mn.gov/admin/bms/perb-rulemaking.jsp>

Sincerely,

Steven G. Hoffmeyer
Interim General Counsel/Executive Director

Hoffmeyer, Steven (PERB)

From: Traci Sorenson <traci@mica.org>
Sent: Thursday, January 28, 2016 10:23 AM
To: Hoffmeyer, Steven (PERB)
Cc: Carlson, Keith (SWIFT SYSTEM)
Subject: RE: MN Public Employment Relations Board (PERB) announces Rulemaking information

Minnesota Inter-County Association
161 St. Anthony Avenue, Suite 850
St. Paul, MN 55103

From: Hoffmeyer, Steven (PERB) [mailto:Steven.Hoffmeyer@state.mn.us]
Sent: Thursday, January 28, 2016 10:13 AM
To: Carlson, Keith (SWIFT SYSTEM)
Subject: RE: MN Public Employment Relations Board (PERB) announces Rulemaking information

Keith—can you give me your street mailing address for the Notice?
Thank you.
Steve Hoffmeyer

From: Keith Carlson [mailto:Keithc@mica.org]
Sent: Thursday, January 21, 2016 4:54 PM
To: Hoffmeyer, Steven (PERB) <Steven.Hoffmeyer@state.mn.us>
Subject: RE: MN Public Employment Relations Board (PERB) announces Rulemaking information

Mr. Hoffmeyer,

Thank you for forwarding this information. I am requesting a hearing before the ALJ

From: Hoffmeyer, Steven (PERB) [mailto:steven.hoffmeyer@state.mn.us]
Sent: Monday, December 21, 2015 2:39 PM
To: Hoffmeyer, Steven (PERB)
Subject: MN Public Employment Relations Board (PERB) announces Rulemaking information

Good afternoon:

Attached is MN Public Employment Relations Board (PERB) Rulemaking information.
This information is also available via the following link: <http://www.mn.gov/admin/bms/perb-rulemaking.jsp>

Sincerely,

Steven G. Hoffmeyer
Interim General Counsel/Executive Director

Hoffmeyer, Steven (PERB)

From: Keith Carlson <Keithc@mica.org>
Sent: Thursday, January 21, 2016 4:54 PM
To: Hoffmeyer, Steven (PERB)
Subject: RE: MN Public Employment Relations Board (PERB) announces Rulemaking information

Mr. Hoffmeyer,

Thank you for forwarding this information. I am requesting a hearing before the ALJ

From: Hoffmeyer, Steven (PERB) [mailto:steven.hoffmeyer@state.mn.us]
Sent: Monday, December 21, 2015 2:39 PM
To: Hoffmeyer, Steven (PERB)
Subject: MN Public Employment Relations Board (PERB) announces Rulemaking information

Good afternoon:

Attached is MN Public Employment Relations Board (PERB) Rulemaking information.
This information is also available via the following link: <http://www.mn.gov/admin/bms/perb-rulemaking.jsp>

Sincerely,

Steven G. Hoffmeyer
Interim General Counsel/Executive Director

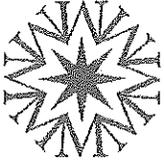
Hoffmeyer, Steven (PERB)

From: Maile, Ann M <Ann.Maile@so.mnscu.edu>
Sent: Wednesday, January 27, 2016 3:22 PM
To: Hoffmeyer, Steven (PERB)
Cc: Trevis, Carolyn J (MMB); Carlson, Mark D; Simonsen, Jaime L; Thompson, Betsy; Wade, Jeff O; Mount, Jessica L; Jorstad, Jim G; Dale, Chris
Subject: Proposed PERB Rules
Attachments: 2016-01-27 -- Proposed Rules Comments.pdf

Please see the attached letter from Chris Dale regarding MnSCU's comments on the proposed rules for PERB. A hard copy has been sent via federal mail.

Thank you!

Ann Maile, Legal Secretary
MN State Colleges and Universities
30 - 7th Street East, Suite 350 | St. Paul, MN 55101
P. 651.201.1842 | F. 651.297.3145 |
ann.maile@so.mnscu.edu | www.mnscu.edu



Minnesota
STATE COLLEGES
& UNIVERSITIES

30 7TH ST. E., SUITE 350
ST. PAUL, MN 55101-7804

Twin Cities: 651-201-1800
Toll free: 1-888-667-2848
www.mnscu.edu

January 27, 2016

Steve Hoffmeyer
Minnesota Public Employment Relations Board
1380 Energy Lane
Suite #1
St. Paul, MN 55110-5253

Dear Mr. Hoffmeyer:

Thank you for the opportunity to provide comments on the proposed rules for the Public Employment Relations Board (PERB) as drafted in R-04345. MnSCU supports the intent of the Minnesota Public Employment Labor Relations Act (PELRA) "to promote orderly and constructive relationships between all public employers and their employees" (Minn. Stat. § 179A.01). It is with that goal in mind that we submit the following.

7325.0020 DEFINITIONS

Supb. 3: Charged party. The Rules should address the distinction in Minn. Stat. 179A.13, Subd. 2 "Employer" and Subd. 3 "Employees" for purposes of delineating whom may be properly named as a charged party. Minn. Stat. 179A.13, Subd. 2 prohibits only "public employers" and their "representatives" and "agents" from engaging in the listed unfair labor practices. This enumeration indicates that individuals may not be "charged" in an individual (*i.e.*, non-representative, non-agent) capacity with violating Minn. Stat. 179A.13, Subd. 2. In contrast, Minn. Stat. 179A.13, Subd. 3 prohibits "employee organizations," their "agents" and "representatives" as well as "employees" from engaging in the unfair labor practices described in Subdivision 3. This enumeration suggests that individual employees may be charged with violating Minn. Stat. 179A.13, Subd. 3.

Supb. 5: Charge or unfair labor practice charge. A charge means a statement filed with the board in which "a person" alleges that "another person or entity" committed an unfair labor practice.

- This should be changed to either:
 - A charge means a statement filed with the board in which “a person or entity” alleges that “another person or entity” committed an unfair labor practice, or
 - A charge means a statement filed with the board in which “a person or organization” alleges that “another person or organization” committed an unfair labor practice.
- Both of these proposed changes would arguably make the provision consistent with Minn. Stat. 179A.13, Subd. 1(a), in that the statute allows both persons and organizations to file a ULP charge. As the definition is currently written in the rules, however, an organization could not bring a ULP charge against a person.
- We believe that the second proposed change (which replaces “entity” with “organization”) is the more preferable of the two options, unless the drafters of the proposed rules can articulate a compelling reason for using a different term in the rules (“entity”) than what is used in the statute (“organization”).
- Further, definition of “charge” should reference the charge form described in 7325.0110. We suggest that claims that are not reduced to writing in the prescribed charge form not be characterized as “charges.”

NEW SUBPART: Definition of “Aggrieved Party.” The Rule should probably reference what it means to be an “aggrieved party.” Minn. Stat. 179A.13, Subd. 1(a) does not authorize anyone to file unfair labor practice charges with the Board, but instead authorizes aggrieved parties to file such charges.

NEW SUBPART: Definition of “Complaint.” Rule 7325.0200 *et seq.* addresses complaints, as does Minn. Stat. 179A.13. For clarity, add a definition in Rules to specify what this word means. It is not apparent why the term “charge” should be defined in the definitions section of the Rules, but not the term “complaint.”

NEW SUBPART: Definition of “Exception.” Rule 7325.0400 addresses Exceptions. For clarity, add a definition to specify what this word means.

NEW SUBPART: Definition of “Preponderance of the Evidence.” Minn. Stat. 179A.13, Subds. 1(g) and (i) and Rule 7325.0230 address the burden of proof as being “a preponderance of the evidence.” For clarity, add a definition to specify what this term means.

7325.0100 FILING AND SERVICE GENERALLY

Subp. 1.A. As currently worded, there is no specified recipient of the “first class United States mail,” “facsimile,” or “attachment to an email” options. For clarity, we suggest wording along the following lines instead: “Filing is accomplished by delivery to the board via any of the following methods: . . .”

Subp. 1.B. Anything filed with the board must be served on all other parties. This provision should be modified to state that anything filed with the board must be served contemporaneously on all other parties. This will ensure a fair and efficient process.

Subp. 2. Service.

- Current wording does not specify object of service (*i.e.*, service *on whom?* The party? The party's agent, attorney, or designated representative?)
- We also have concerns about the concept of service by email. An individual or organization may have multiple email accounts, some of which are less-frequently used or checked. Does simply sending an email to any of these accounts (without something more, such as a "read receipt") constitute service? To assure that a public employer has actual and timely notice of the filing of a charge, we recommend that service be accomplished on a public employer, its agents, or its representatives by personal service on or by certified mail to the public employer's commissioner or, if the public employer does not operate under the auspices of a commissioner, on the chief executive officer of the public employer.
- The Rule should be amended to require that an affidavit of proof of service be filed with the board upon filing of the charge form.

7325.0110 FILING, SUPPORTING, AND RESPONDING TO A CHARGE

Subp. 2. F. Form Information. Current wording is grammatically incorrect: "either" should not be used if more than two options are given. Here, three sections of the law are listed as options.

Subp. 4. Serving a form on charged party. Consistent with comments above re: 7325.0100, Subp.1.B., we suggest providing timelines for service that are contemporaneous with the filing of the charge with the board.

Subp. 5. Receipt of a charge. Current wording suggests that the charge itself must be re-served on the parties by the board upon the board's receipt. Is this the intent? Or is the intent that the docketing and case number information be served upon the parties by the board? If the latter, we suggest revising the current language for clarity.

Subp. 6. Submission of evidence. An extension may be granted for submitting evidence "for good cause". There is no definition of "good cause" nor is it clear who determines "good cause". Clarification is needed.

Subps. 6 and 7: Submission of evidence and submission of a response.

- To ensure that all evidence be shared with both parties, the Rules should be amended to instruct that all evidence submitted pursuant to Subparts 6 and 7 shall be served on all named parties at the time the evidence is submitted to the board. This should include additional evidence from either the charged or charging party as deemed necessary by the investigator.
- The Rule should address whether evidence submitted must be in the form of sworn statements (*i.e.*, affidavits and documents supported by sworn testimony).

- Should additional evidence from the charging party be received by the investigator after the charged party has submitted its response, the charged party should be permitted additional time to amend its response.
- The Rule should be amended to acknowledge that, pursuant to the Minnesota Government Data Practices Act, a public employer may be required to redact the copies of submissions filed with the board that are served on the other named parties to the charge.

7325.0130 INVESTIGATION

1. The Rules have omitted qualifications for those serving as investigators. It is critical that these individuals have labor and employment experience and expertise, preferably in the public sector, and knowledge and experience in administrative law and procedure, and demonstrated skills in legal analysis and writing. Due to the fact that Bureau of Mediation Services (BMS) mediators must maintain neutrality during mediation, we believe they are not well-suited for the investigation process. Additionally, we do not want to see their availability for mediation services decrease.
 - **Subp. 1. Informal conferences.** The current language refers to a “designated board staff member” as having the ability to conduct informal conferences. Is the intent that this person be a PERB investigator? If so, replace the current language with clearer, more specific term “investigator.”

7325.0140 AMENDING OR WITHDRAWING A CHARGE

If a charge is withdrawn, we request the charge and all supporting documentation and evidence be classified as non-public data. This is consistent with how personnel data is classified when a grievance is sustained and all aspects of disciplinary action are reversed pursuant to Minn. Stat. § 13.43, subd. 2(b) for grievances.

7325.0150 DISMISSAL OF CHARGES

Subp. 1: Dismissal.

- This subpart provides that the board must dismiss the charge if the charge has no reasonable basis in law or fact, which contradicts 7325.0130, subp. 2, which provides the board will give the charging party the opportunity to withdraw the charge if there is no reasonable basis in law or fact. For consistency, the board should dismiss the charge in both Rules.
- Further, this Rule should address whether the dismissal of a charge may occur upon motion of a party prior to or following a hearing. The Rule should specifically address the relationship of the dismissal standard – no reasonable basis in law or fact – to the presence or absence of evidence in the record as a result of the submissions described in Rule 7325.0110. The Rule should address whether the absence of sworn evidence to support any element of any charge means the charge is without a basis in law or fact.

Subp. 2: Notification.

- There is no required timeline for notifying all parties that the board has dismissed a charge. We recommend that notification be given within five working days.
- The current language references the *charging party's* right to “request that the Minnesota Court of Appeals review the board’s decision in accordance with Minnesota Statutes, section 179A.052.” However, under Minn. Stat. 179A.052, the right to petition for appellate review is not limited to the charging party, nor is it limited to board decisions where charges have been dismissed. We propose adding language clarifying that petitions for appellate review of a board decision may be brought by either party and that board decisions subject to appellate review are not limited to dismissals.
- Further, because appellate review is not limited to dismissals, we propose including language about certiorari review in a new section under the existing heading “Appeals and Review,” rather than this language being placed solely under the heading “Dismissal of Charges.”

7325.0210: Answer. The proposed Rule would require a respondent to file its answer to the complaint or amended complaint “within seven days after service . . .” We believe seven days is not a reasonable length of time and that 14 days would be far more practical. Such a change would make this rule consistent with proposed Rule 7325.0110, Subd.7 which provides 14 days for a charged party to submit a response to each alleged unfair labor practice in the initial charge. In addition, please note that a defendant in district court is entitled to 20 days to answer a civil complaint. Minn. R. Civ. P. 12.01.

7325.0240 HEARING OFFICER DUTIES

Paragraph D provides that hearing officers shall sequester witnesses. This should be modified to hearing officers may sequester witnesses. This will provide discretion to the hearing officer to sequester only where it makes sense in conducting a fair and efficient hearing. This would be consistent with how typical public sector labor arbitrations occur.

Qualifications of Hearing Officers. The Rules have omitted qualifications for those serving as hearing officers. It is critical that these individuals have labor employment experience and expertise, preferably in the public sector. In addition to the statutory requirement as a licensed attorney in Minnesota, we recommend that the qualifications for hearing officers be consistent with what PERB identified in its Request for Proposals for Hearing Officers, which included knowledge and experience in labor law, knowledge and experience in administrative law and procedure, and demonstrated skills in legal analysis and writing. Due to the fact that Bureau of Mediation Services (BMS) mediators must maintain neutrality during mediation, we believe they are not well-suited for the investigation process. Additionally, we do not want to see their availability for mediation services decrease.

7325.0250 PREHEARING CONFERENCES

Subp. 1: Conference. The language in line 7.2 reads “The hearing officer assigned to the case shall schedule a prehearing conference...” “Shall” should be changed to “may” to be consistent with the Statement of Need and Reasonableness: “The board contemplated the requirement of pre-hearing conferences but decided that a requirement may frustrate the purposes of the Act by burdening the parties with unnecessary costs for attorney fees, delaying the hearing, complicating the issues, or permitting harassment of the parties and/or their witnesses.” The language should reflect this discussion.

NEW SUBPART: Stipulations of Fact. A new subpart should be added to require the parties to make a good faith effort to agree to stipulated facts to ensure an efficient process (see also 7325.0250 Subp. 4 and 7325.0220 Scope of Hearing which reference facts stipulated by the parties).

7325.0270 PROTECTIVE ORDERS

Subp. 2: Closing a hearing. For greater consistency with other statutes addressing protective orders in administrative proceedings, the language should be changed “If the hearing record contains information that is not public data, the [hearing officer] may conduct a closed hearing to consider the information, issue necessary protective orders, and seal all or part of the hearing record, as provided in Minn. Stat. §14.60, subd. 2. If a party contends, and the [hearing officer] concludes, that not public data could be improperly disclosed while that party is presenting its arguments, the judge shall close any portion of the hearing as necessary to prevent the disclosure” (Minn. Stat. § 13.085, subd. 4). The current protective order language uses terms like “sensitive” and “protected”, which are not consistent with current Data Practices Act terminology.

7325.0300 CONSOLIDATION

The proposed Rule is very general, providing consolidation for hearings that “will serve the purposes of this chapter.” To assist future boards on deciding when hearings should be consolidated, it would be beneficial to articulate specific criteria, such as “common question of law or fact,” consistent with Minnesota Rule of Civil Procedure 42.01 and/or where the same parties are involved.

7325.0320 RECORD

Subp. 1: Digital transcription. Initially, this proposed Rule appears to be in conflict with Minn. Stat. 179A.13, Subd. 1 (f) which provides that all proceedings “shall be transcribed by a reporter appointed by the board.” Clearly, the statute requires the board to hire a reporter to transcribe proceedings rather than a digital transcription. Additionally, the proposed Rule does not address who will bear the cost for the digital transcription. It appears that the board may bear these costs, but it would be beneficial to the parties if the Rules clarified this point.

NEW SECTION under current heading "Appeals and Review".

- 7325.0150, Subp. 2 "Dismissal of Charges – Notification" references the charging party's right to "request that the Minnesota Court of Appeals review the board's decision in accordance with Minnesota Statutes, section 179A.052" but we suggest including appellate review language, as described in the following bullet point, under the existing heading "Appeals and Review." That would be a logical place for a party to look for information about the rules governing appeals, and, because appellate review is not limited to dismissals, this language should not be placed solely under the heading "Dismissal of Charges."
- Further, as stated above in our comments about 7325.0150, Subp.2, the current language references the *charging party's* right to "request that the Minnesota Court of Appeals review the board's decision in accordance with Minnesota Statutes, section 179A.052." However, under Minn. Stat. 179A.052, the right to petition for appellate review is not limited to the charging party, nor is it limited to board decisions where charges have been dismissed. We propose adding language clarifying that petitions for appellate review of a board decision may be brought by either party and that board decisions subject to appellate review are not limited to dismissals.

7325.0400 EXCEPTIONS

The heading of this section should be modified to provide greater clarity.

Subp. 2: Number of copies. This Rule requires the submission of four paper copies and an electronic copy. Generally, there is an effort to reduce the quantity of use of paper in government setting for both cost and environmental reasons. Requiring four paper copies and an electronic copy appears to be excessive and to be an attempt to shift the board's cost of doing business to the parties. The board should endeavor to establish a paperless process.

Subp. 4: Brief supporting exceptions. To mirror Minnesota General Rule of Practice 115.05, the page limit for briefs and responses to exceptions and cross-exceptions should be limited to 35 pages, except with the permission of the board.

Subp. 9: Request to file an amicus brief. Minnesota Court Rules of Appellate Procedure 129.01 provide for a 15-day-notice requirement for requesting amicus. We recommend changing the 10-day requirement to 15 days for consistency with how the state appellate courts treat amicus requests.

7325.0410 PROCEEDINGS BEFORE THE BOARD

Since the board will be initiating the review of a recommended decision and order, in absence of the submission of exceptions from either party, the board should bear the costs of reasonable attorneys' fees for both parties. Reason (C) listed in subp. 1 for board review of a recommended decision is too broad and could encompass almost any situation; we suggest deleting subp. 1(C).

January 27, 2016

Page 8

Additional Suggestions:

- **The Rules do not delineate payment for bringing an Unfair Labor Practice (ULP) charge to the PERB.** There are no filing fees or other charges required by the proposed Rules. It is important for all parties involved in a ULP to know and share the financial responsibility for bringing forth a charge as well as responding to a charge. There should be a non-prohibitive cost for filing a charge to decrease non-meritorious charges; we suggest a \$50 fee. The recommended amount is consistent with Minn. Stat. § 13.085, subd. 6(c) for data practices complaints. We encourage an amendment to the rules to clarify that all costs following the initial filing fee be shared equally by all parties, except for attorneys' fees. This is consistent with existing state law with respect to grievances (Minn. Stat. §179A.21, subd. 2). Each party must be responsible for their own attorneys' fees.
- **Deferral to Arbitration.** The PERB should adopt a practice of deferral to arbitration similar to the practice of the National Labor Relations Board.
- The Rules should require the board to categorize and post recommended decisions and order and board decisions in a searchable database on the board's website. This will facilitate government transparency and the dissemination of information that will assist parties in maintaining productive labor relations.

Thank you for your consideration of our suggested amendments. We respectfully request a hearing on the proposed rules.

Sincerely,



Chris Dale
Senior System Director for Labor Relations

cc: Mark Carlson, Vice-Chancellor for Human Resources, MnSCU
Jaime Simonsen, Interim System Director for Education Industry Partnerships, MnSCU
Carolyn Trevis, Acting State Negotiator, MMB

Hoffmeyer, Steven (PERB)

From: Davis, Laura (MMB)
Sent: Thursday, January 28, 2016 4:34 PM
To: Hoffmeyer, Steven (PERB)
Subject: MMB comments - PERB proposed rules
Attachments: MMB PERB rule comments.docx

Steve,
Please see the attached letter with MMB Labor Relations Division's comments to the proposed PERB rules.
Thanks very much,

Laura Davis



LAURA J. DAVIS | LABOR RELATIONS REP PRINCIPAL | LABOR RELATIONS DIVISION
MINNESOTA MANAGEMENT & BUDGET
651.259.3740 | LAURA.DAVIS@STATE.MN.US | MN.GOV/MMB
612.323.6110 | CELL PHONE

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January 29, 2016

Mr. Steve Hoffmeyer
Public Employment Relations Board
1380 Energy Lane, Suite #1
St. Paul, MN 55110-5253

Re: Public Employment Relations Board proposed Rules

Dear Mr. Hoffmeyer:

We appreciate the opportunity to provide comments on the proposed Rules for the Public Employment Relations Board ("PERB") in R-04345. As the largest public sector employer in the State, we support the intent of the Public Employment Labor Relations Act ("PELRA") "to promote orderly and constructive relationships between all public employers and their employees." Minn. Stat. §179A.01. We respectfully request a hearing on the proposed Rules and submit the following comments regarding the same:

7325.0020 DEFINITIONS

Subpart 5. Charge or Unfair Labor Practice Charge. This defines a charge as "a statement filed with the board in which a 'person' alleges that 'another person or entity' committed an unfair labor practice." However, under PELRA, both persons and "organizations" are entitled to file ULP charges. Minn. Stat. §179A.13, subd. 1(a). However, this proposed Rule's definition does not allow an organization to file a charge and therefore does not appear to comply with state law. Also, the term "entity" should be replaced with "organization," the term used in PELRA.

Accordingly, we recommend this definition be changed to one of the following:

- A statement filed with the board in which "a person or entity" alleges that "another person or entity" committed an unfair labor practice; or,
- A statement filed with the board in which "a person or organization" alleges that "another person or organization" committed an unfair labor practice.

7325.0100 FILING AND SERVICE GENERALLY

Subp. 1. Filing. B. Anything filed with the board must be served on all other parties. This provision should be modified to state that anything filed with the board must be served *contemporaneously* or on the same day, on all other parties to ensure a fair and efficient process.

Subp. 2. Service. We share MnSCU's concern regarding the service of a ULP charge as an email attachment. Large organizations, such as state agencies, may have thousands of employees with email addresses, yet the proposed Rule does not specify to whom a message filing a ULP charge should be directed. To ensure that a public employer receives timely notice of a charge, we recommend that service on a public employer, its agents, or its representatives must be made by personal service or certified mail to the public employer's commissioner or, if the public employer does not operate under the auspices of a commissioner, on the public employer's chief executive officer. In addition, this proposed Rule should require that an Affidavit of Service be filed with the board upon the filing of a charge.

7325.0110 FILING, SUPPORTING, AND RESPONDING TO A CHARGE

Subp. 6: Submission of evidence; Subp. 7. Submission of a response.

- In order to ensure that all evidence is received by all parties, both Subparts 6 and 7 of this proposed Rule should be amended to require that at the time all evidence is submitted to the board, it shall be provided to all named parties. This should include all additional evidence from any party deemed necessary by the investigator.
- If evidence from the charging party is received by the investigator after the charged party has submitted its response, the charged party should be provided an extension of time to amend its response.
- This proposed Rule should be amended to acknowledge that in order to comply with the Minnesota Government Data Practices Act ("MGDPA"), a public employer may be required to redact documents that are filed with the PERB and provided to other parties.

7325.0140 AMENDING OR WITHDRAWING A CHARGE.

If a charge is withdrawn, this proposed Rule should indicate that the charge and all supporting documentation and evidence will be classified as non-public data. This is consistent with the manner in which personnel data is classified when a disciplinary grievance reaches final disposition and results in no discipline. *See* Minn. Stat. §13.43, subd. 2(b) for grievances.

7325.0150 DISMISSAL OF CHARGES.

Subp. 1: Dismissal. This subpart provides that the board must dismiss a charge that has no reasonable basis in law or fact. It appears to contradict proposed Rule 7325.0130, subp. 2, which provides that the board will give the charging party the opportunity to withdraw the

charge if there is no reasonable basis in law or fact. For consistency, we suggest both proposed Rules be modified to require that under such circumstances, the board shall merely dismiss the charge without providing the charging party with the opportunity to withdraw it.

Subp. 2: Notification.

This proposed Rule contains no timeframe in which the board must notify parties it has dismissed a charge. We recommend this be modified to require the board to notify all parties within five working days of that decision.

7325.0210. ANSWER.

This proposed Rule requires a respondent to file its answer to the complaint or amended complaint within seven days after service. We believe seven days is not a reasonable length of time to provide a complete answer, particularly in a large state agency where consultation with a number of interested parties could be required. We suggest that 14 days would be more practical and would be consistent with proposed Rule 7325.0110, Subd.7 which provides 14 days for a charged party to submit a response to each alleged unfair labor practice in the initial charge. In addition, please note that a defendant in district court is entitled to 20 days to answer a civil complaint. Mn. R. Civ. P. 12.01.

7325.0240. HEARING OFFICER DUTIES.

Paragraph D provides that hearing officers *shall* sequester witnesses. This should be modified to provide that hearing officers shall *rule on requests* for the sequestration of witnesses. The hearing officer should exercise his/her discretion to sequester only where doing so furthers the objective of a fair and efficient hearing.

7325.0250 PREHEARING CONFERENCES.

Subp. 1: Conference. The language in line 7.2 reads “The hearing officer assigned to the case shall schedule a prehearing conference...” “Shall” should be changed to “may” to be consistent with the Statement of Need and Reasonableness which states: “The board contemplated the requirement of pre-hearing conferences, but decided that a requirement may frustrate the purposes of the Act by burdening the parties with unnecessary costs for attorney fees, delaying the hearing, complicating the issues, or permitting harassment of the parties and/or their witnesses.” The language should reflect this discussion.

NEW SUBPART: Stipulations of Fact. We request the addition of a new subpart requiring the parties to make a good faith effort to stipulate to facts to help ensure an efficient process. Please note that proposed Rules 7325.0220 and 7325.0250 Subp. 4 expressly refer to stipulations by the parties.

7325.0270 PROTECTIVE ORDERS.

Subp. 2: Closing a hearing. For consistency with other statutes addressing protective orders in

administrative proceedings, we suggest this proposed Rule be revised as follows: “If the hearing record contains information that is not public data, the [hearing officer] may conduct a closed hearing to consider the information, issue necessary protective orders, and seal all or part of the hearing record, as provided in Minn. Stat. §14.60, subd. 2. If a party contends, and the [hearing officer] concludes, that not public data could be improperly disclosed while that party is presenting its arguments, the [hearing officer] shall close any portion of the hearing as necessary to prevent the disclosure.” See Minn. Stat. § 13.085, subd. 4. This proposed Rule’s use of the terms, “sensitive” and “protected” are not consistent with the terminology of the Minnesota Government Data Practices Act (“MGDPA”).

7325.0300 CONSOLIDATION

This proposed Rule is overly broad, only providing for the consolidation of hearings if it “will serve the purposes of this chapter.” We suggest the proposed Rule be modified to include criteria for consolidation, such as “common question of law or fact,” consistent with Mn. R. Civ. P. 42.01, and/or when hearings involve the same parties.

7325.0410 PROCEEDINGS BEFORE THE BOARD.

This proposed Rule allows the board to initiate review of a recommended decision and order, in the absence of the submission of any exceptions from either party. In such instances, we suggest the board be required to bear the costs of reasonable attorneys’ fees for both parties. In addition, we suggest deletion of Subpart 1(C) which allows board initiated review when “persons or entities not parties to the case may adversely be affected . . .” because it is overly broad.

ADDITIONAL SUGGESTIONS

Filing fee. We agree with the position of both the League of Minnesota Cities’ MnSCU concerning the payment of fees. The proposed Rules do not require any fee to file a ULP charge. There should be a reasonable \$50.00 fee to file a charge to deter non-meritorious charges. This sum is the same as the fee to file a complaint under the MGDPA. See Minn. Stat. §13.085, subd. 6(c). We encourage a modification to clarify that all costs following the initial filing fee be shared equally by the parties, except for attorneys’ fees. This is consistent with state law governing grievance arbitrations. See Minn.Stat. §179A.21, subd. 2.

Deferral to Arbitration. The board should adopt a practice of deferral to arbitration similar to the practice of the National Labor Relations Board.

Respectfully,

Labor Relations Division
State of Minnesota Management and Budget

Liz Brady

Joy Hargons

Laura J. Davis

Chrisanne Nelson

Valerie Darling

Carolyn Trevis

Hoffmeyer, Steven (PERB)

From: Davis, Laura (MMB)
Sent: Thursday, January 28, 2016 4:36 PM
To: Hoffmeyer, Steven (PERB)
Subject: MMB PERB comments signature page
Attachments: 20160128163040836_0001.pdf

So sorry I forgot to include this.

Thanks very much,

Laura Davis

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-----Original Message-----

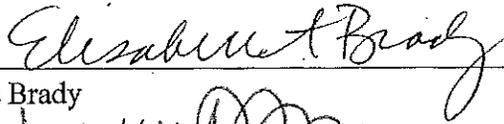
From: Scanner@state.mn.us [mailto:Scanner@state.mn.us]
Sent: Thursday, January 28, 2016 4:31 PM
To: Davis, Laura (MMB) <Laura.Davis@state.mn.us>
Subject: Message from "RNP0026738D71F0"

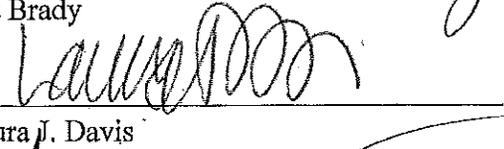
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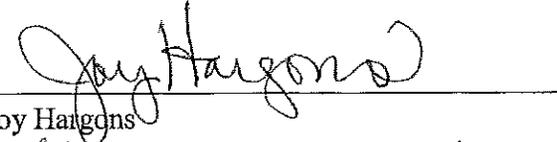
Respectfully,

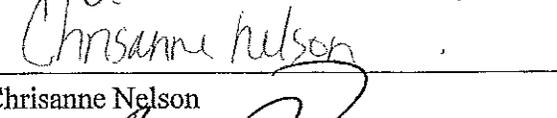
Labor Relations Division
State of Minnesota Management and Budget

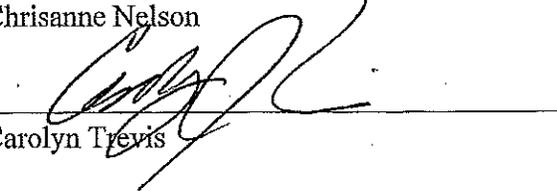

Liz Brady


Laura J. Davis


Valerie Darling


Joy Hargons


Chrisanne Nelson


Carolyn Trevis

Hoffmeyer, Steven (PERB)

From: Hoffmeyer, Steven (PERB)
Sent: Friday, January 29, 2016 9:43 AM
To: 'Huss, Lori'
Subject: RE: Hearing Request

Hello Ms Huss:

The deadline was yesterday afternoon. But enough requests were received to warrant the Hearing. It will go on as noticed before.

Thank you.

Steve Hoffmeyer
Interim General Counsel/Executive Director
Minnesota Public Employment Relations Board (PERB)
1380 Energy Lane, Suite #1
St. Paul, MN 55108-5253
Office 651-649-5447, Cell 651-325-6210
Fax 651-643-3013

From: Huss, Lori [mailto:LHuss@co.scott.mn.us]
Sent: Friday, January 29, 2016 9:40 AM
To: Hoffmeyer, Steven (PERB) <Steven.Hoffmeyer@state.mn.us>
Subject: Hearing Request

Mr. Hoffmeyer,

I would like to request that a hearing be held to ensure the proposed rules for the Public Employment Relations Board have been fully considered.

Thank you.

Lori

Lori Huss SPHR, SHRM-SCP
Employee Relations Director
Scott County
952.496.8604 (O)
952.469.8446 (F)
LHuss@co.scott.mn.us

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