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## 2 MEDIATION

### 2.01 PETITION PROCESSING AND MEDIATION MEETING SCHEDULING

Other forms of meetings being significantly less successful, the BMS will use in person mediation meetings unless unusual circumstances prevent. In cases involving unusual circumstances, the supervisor may authorize virtual mediation sessions.

1. Upon receipt, mediation petitions shall be assigned a case number and made-up in CaseLoad. This should be accomplished within two days of receipt of the petition. This will then generate a task for the Labor Mediation Manager to assign a mediator to the case.
2. The assigned mediator shall contact the parties within five (5) working days to schedule a date, time and location for the mediation meeting.
3. Upon securing a date, time and location for the mediation, a notice shall be electronically emailed to the parties. If the meeting is to be held at the Bureau's office the mediator shall secure the rooms on the BMS Calendar.
4. Mediation meetings should be scheduled during regular business hours (8:00 a.m. – 4:30 p.m.) Under limited circumstances, when it is determined to be in the best interest of the parties, mediation meetings may be scheduled during evening or non-regular business hours.

Nothing in this policy should be construed as an absolute prohibition against mediation meetings taking place during evening or non-regular business hours.

5. Jointly filed petitions requesting IBB shall be assigned a case number with the alpha code of PIF.

2/26/97; 5/1/01; 4/21/04; 11/1/04; 4/9/18; 4/17/20

## 2.02 GRIEVANCE PROCEDURE

This policy shall define the conditions under which the BMS Grievance Procedure (copy to be found on the subsequent pages) is applicable to public sector labor-management relationships in which a grievance procedure has not been agreed to by the parties.

**Original Contract.** In the event that the exclusive representative and the employer do not reach an agreement concerning the grievance procedure in an original contract, the BMS Grievance Procedure shall be adopted and applied to any grievance arising from the application or interpretation of contractual terms and conditions of employment.

**Renewal Contracts.** In the event that the exclusive representative and the employer do not reach agreement concerning the grievance procedure in a renewal contract, the grievance procedure shall be considered an issue in dispute. The BMS Grievance Procedure shall not be substituted or applicable in the case of a dispute concerning the grievance procedure of a renewal contract.

**Change in Exclusive Representative.** If a different labor organization is certified as an exclusive representative because of the transfer of the status of exclusive representative the existing contractual grievance procedure shall remain in effect. The BMS Grievance Procedure shall not be applicable in such situations.

2/26/97; 5/1/01

**5510.5110 POLICY**

Parts 5510.5110 to 5510.5190 are to be liberally construed so as to effectuate the purposes of Minnesota Statutes, chapter 179A, the Public Employment Labor Relations Act.

**5510.5120 APPLICATION**

Parts 5510.5110 to 5510.5190 are applicable when a public employer and an exclusive representative of public employees have not reached agreement on or do not have access to a contract grievance procedure as required by Minnesota Statutes, section 179A.20, subdivision 4.

**5510.5130 DEFINITIONS**

Subpart 1. Scope. For the purposes of parts 5510.5110 to 5510.5190 the words defined in this part have the meanings given them.

Subp. 2. Bureau. "Bureau" means the Bureau of Mediation Services.

Subp. 3. Days. "Days" means calendar days.

Subp. 4. Employee. "Employee" means any public employee who is employed in a position that is part of an appropriate unit for which an exclusive representative has been certified under Minnesota Statutes, section 179A.12.

Subp. 5. Grievance. "Grievance" means a dispute or disagreement regarding the application or interpretation of any term of a contract required under Minnesota Statutes, section 179A.20, subdivision 1. If no contract exists between the exclusive representative and the employer, "Grievance" means a dispute or disagreement regarding the existence of just cause in the discipline of any employee or the termination of non-probationary employees.

Subp. 6. Non-probationary. "Non-probationary" means an employee who has completed an initial probationary period required as a part of the public employer's employment process.

Subp. 7. Party. "Party" means either the exclusive representative and its authorized agent or the employer and its authorized representative.

Subp. 8. Service. "Service" means personal delivery or service by the United States Postal Service, postage prepaid and addressed to the individual or organization at its last known mailing address. Service under parts 5510.5110 to 5510.5190 is effective upon deposit with the United States Postal Service, as evidenced by a postmark or dated receipt, or upon personal delivery.

**5510.5131 COMPUTATION OF TIME**

In computing any period of time prescribed or allowed by parts 5510.5110 to 5510.5190, the day or act or event upon which a period of time begins to run shall not be included. The last day of the time period shall be included unless it is a Saturday, Sunday or holiday.

**5510.5140 STEP ONE**

When an employee or group of employees represented by an exclusive representative has a grievance, the employee or an agent of the exclusive representative shall attempt to resolve the matter with the employee's immediate supervisor within 21 days after the employee, through the use of reasonable diligence, should have had knowledge of the event or act giving rise to the grievance. The supervisor shall then attempt to resolve the matter and shall respond in writing to the grievant and the agent of the exclusive representative within five days after the grievance is presented.

**5510.5150 STEP TWO**

If the supervisor has not been able to resolve the grievance or has not responded in writing within the time period provided in part 5510.5140 (step one), a written grievance may be served on the next appropriate level of supervision by the exclusive representative. The written grievance shall provide a concise statement outlining the nature of the grievance, the provisions of the contract or the just cause situation in dispute, and a statement of the relief or remedy requested. The written grievance must be served on the employer's representative within 15 days after the immediate supervisor's response was due under part 5510.5140 (step one). The employer's representative shall meet with the agent of the exclusive representative within five days after service of the written grievance and both parties shall attempt to resolve the grievance. The employer's representative shall serve a written response to the grievance on the agent of the exclusive representative within five days of the meeting. The response shall contain a concise statement of the employer's position on the grievance and the remedy or relief the employer is willing to provide, if any.

**5510.5160 STEP THREE**

If the grievance is not resolved under part 5510.5150 (step two), the exclusive representative may serve the written grievance upon the chief administrative agent of the employer or that person's designated representative within ten days after the written response required by part 5510.5050 (step two) was due. An agent of the exclusive representative shall meet with the chief administrative officer or designee within five days of service of the written grievance and they shall attempt to resolve the matter. The chief administrative officer or designee shall serve a written response to the grievance on the agent of the exclusive representative within five days of the meeting.

**5510.5170 ARBITRATION**

**Subpart 1. Referral to arbitration.** If the response of the chief administrative officer or designee is not received within the period provided in part 5510.5160 (step three) or is not satisfactory, the exclusive representative may serve written notice on the employer of its intent to refer the case to arbitration within ten days after the response required by part 5510.5160 (step three) is due.

**Subp. 2. Selection of arbitrator.** Within ten days of the service of written notice of intent to arbitrate, the employer's chief administrative officer or designee shall consult with the agent of the exclusive representative and endeavor to mutually agree upon an arbitrator to hear and decide the grievance. If the parties do not agree upon the selection of an arbitrator, either party may request a list of impartial arbitrators from the bureau. The parties shall alternately strike names from a list of seven names to be provided by the bureau until only one name remains, and the remaining name shall be the designated arbitrator. The determination of which party will commence the striking process shall be made by mutual agreement or a flip of a coin. If one party refuses to strike names from the list provided by the bureau, the other party may serve written notice of this fact upon the bureau, with a copy to the offending party. Unless it is confirmed that the parties have otherwise selected or agreed upon an arbitrator within three days of service of the notice of refusal or failure to strike names, the bureau shall designate one name from the list previously provided to the parties and the person so designated by the bureau shall have full power to act as the arbitrator of the grievance.

**Subp. 3. Arbitrator's authority.** The arbitrator shall have no authority to amend, modify, add to, or subtract from the terms of an existing contract. The decision and award of the arbitrator shall be final and binding upon both parties.

**Subp. 4. Arbitration expenses.** The employer and the exclusive representative shall share equally the arbitrator's fees and necessary expenses. Cancellation fees shall be paid by the party requesting the cancellation and any fees incurred as the result of a request for clarification shall be paid by the party requesting the clarification. Each party shall be responsible for compensating its own representatives and witnesses except to the extent provided by part 5510.5180, subpart 1.

**Subp. 5. Transcripts and briefs.** Because arbitration is intended to provide a simple, speedy alternative to litigation processes, the use of transcripts and briefs should be considered only in exceptional circumstances. If a verbatim record is required, it may be prepared providing the party desiring the record pays the cost and makes a copy available to the other party and the arbitrator without charge. The arbitrator may maintain written notes of the hearing and may use an electronic recording device to supplement the note taking. These notes shall be considered the arbitrator's private and personal property and shall not be made available to the parties or another third party. If a recording device is used by the arbitrator to supplement the arbitrator's notes, the arbitrator shall retain the recording for a period of 90 days following the issuance of the award.

#### **5510.5180 PROCESSING OF GRIEVANCE**

**Subpart 1. Release time.** To the fullest extent feasible, the processing of grievances under parts 5510.5110 to 5510.5190 shall be conducted during the normal business hours of the employer. Employees designated by the exclusive representative shall be released from work without loss of regular non-overtime earnings as a result of their necessary participation in meetings or hearings held pursuant to parts 5510.5110 to 5510.5190, whenever such release is consistent with the ability of the employer to conduct safe and reasonable operations. No more than three employees shall be entitled to compensation for participation in a single meeting or hearing with respect to any one grievance.

**Subp. 2. Waiver of steps.** The parties may by written mutual agreement waive participation in the grievance steps in parts 5510.5140 to 5510.5160 and may similarly agree to extend the time limits established by parts 5510.5140 to 5510.5170.

**Subp. 3. Time limits.** A failure to raise a grievance within the time limits specified in part 5510.5140, or to initiate action at the next step of the procedure in parts 5510.5140 to 5510.5170 within the time limits in these parts shall result in forfeiture by the exclusive representative of the right to pursue the grievance. A failure of an employer representative to comply with the time periods and procedures in parts 5510.5140 to 5510.5170 shall require mandatory alleviation of the grievance as requested in the last statement by the exclusive representative.

**5510.5190 EFFECTIVE DATE**

**Subpart 1. No existing agreement.** In cases where there is no current collective bargaining agreement between an exclusive representative and a public employer, parts 5510.5110 to 5510.5190 are effective May 18, 1987.

**Subp. 2. Existing agreement.** If an exclusive representative and a public employer have executed a collective bargaining agreement before May 18, 1987, and the agreement relies upon the grievance procedure adopted by the commissioner to satisfy Minnesota Statutes, section 179A.20, subdivision 4, parts 5510.5110 to 5510.5190 shall become effective only upon the termination of the agreement. During the term of any agreement executed before May 18, 1987, the provisions of the grievance procedure contained in parts 5510.4600, 5510.4700, 5510.4800, 5510.4900, 5510.5000, and 5510.5100 shall prevail.

2/27/97; 6/25/16

## 2.03 GRIEVANCE MEDIATION

Mediation of grievance disputes shall be provided to public and private sector clients upon the mutual request of the parties or pursuant to the terms of a collective bargaining agreement (to the extent such agreement is consistent with this policy statement). Except for grievance mediations involving oral reprimands, the BMS will use in person mediation meetings unless unusual circumstances prevent. In cases involving unusual circumstances, the supervisor may authorize virtual mediation sessions. Grievance mediations involving oral reprimands (or equivalent) will be handled through virtual mediation unless otherwise authorized by the supervisor

Grievance mediation shall be distinguished from grievance arbitration at the opening of each case and shall proceed in an informal, narrative fashion. The Mediator may employ all of the techniques normally associated with mediation, including private caucuses. As appropriate to the case, the Mediator shall ensure that the grievant is granted the fullest opportunity to be heard. The taking of oaths or examination of witnesses shall not be permitted and no verbatim record of the proceeding shall be taken. The mediator shall ensure a complete understanding that either party may terminate the mediation effort at any time; and the mediator has no authority to compel participation in the mediation effort or force resolution of the dispute.

Mediators are reminded of the risks attendant to the rendering of conclusory opinions or advice during the course of grievance mediation, both as to issues of accuracy and as to the neutral stance of the bureau and staff.

As a general rule, advisory mediator opinions shall be limited to oral opinion. The mediator should ensure that both parties agree that any advisory opinion of the mediator will not be used as evidence in any subsequent arbitration proceeding. Written opinions, when used, shall be clearly marked as non-binding on the parties and shall include a phrase stating that it may be rejected, in whole or in part, by either or both parties. Written opinions shall also be clearly marked as not admissible as evidence in any subsequent arbitration hearing.

Whenever a written opinion is issued as a result of a grievance mediation proceeding, a copy of such opinion shall be provided to the Commissioner.

6/13/88; 2/26/97; 5/1/01; 11/1/04; 4/17/20

## 2.04 PRIVATE NON-PROFIT HEALTH CARE INSTITUTIONS

The 1974 health care amendments to the National Labor Relations Act argue against continued bureau involvement in private sector non-profit health care facilities. Federal Board of Inquiry provisions and questions of efficiency weigh against continued mediation of disputes in non-public health care facilities.

Accordingly, it shall be the policy of the bureau to decline requests for unit determination, representation, or mediation assistance in non-public health care facilities. Exceptions to this policy require approval of the commissioner and may be made on an individual basis where:

- (a) The parties jointly request the bureau's involvement; or
  - (b) Public policy interests of the State warrant involvement by the Bureau.
- This policy does not apply to grievance mediation cases.

3/21/89; 4/24/89

## 2.05 CLOSING OF MEETINGS

**Policy.** This policy shall apply to the closing of all negotiations and mediation sessions conducted by the bureau, as well as to meetings of the governing body of public sector employers which are closed by the bureau.

Minnesota Statutes section 179A.14 authorizes the Commissioner to close negotiations and mediation sessions between public employers or their exclusive representatives. The Minnesota Supreme Court, in *MEA, et al v. Kenneth Bennett, et al*, 321 N.W. 2d 395, (Minn. 1982) commented that public interest is served by conducting negotiation strategy sessions in private. The Court also held that a mediator's authority to close a meeting extends to meetings held without the mediator being present and that such closed meetings of a public governing body are not in violation of the Open Meeting Law. (See Minn. Stat. § 471.705, subd. 1a, and Minnesota Rules)

It is the policy of the Bureau that all mediation conferences be closed to the public and the press. This is based on the determination that public or media participation in the mediation process tends to have an adverse impact on the mediation process and the settlement of a collective bargaining dispute.

**Delegation of Authority.** BMS staff mediators are hereby delegated the authority to close negotiations and mediation sessions to the public whenever such action is deemed to be in the best interests of the resolution of disputes.

In all cases, no meeting will be closed unless the Bureau has received a timely and valid petition for mediation filed by one or more parties to the dispute or question.

**Mediator Physically Present at Meeting.** In all situations where the mediator is physically present, a mediation session or a meeting of a public governing body may be closed prior to its start or at any point thereafter, whether or not requested by a party, for purposes related to the resolution of the labor dispute.

**Mediator Not Physically Present at Meeting of a Governing Body.** In the event the mediator determines that a closed meeting of a public governing body will aid in the resolution of a dispute, but the mediator cannot be physically present for such closed meeting, and a timely and valid notice of intent to strike has been filed, the Commissioner or his or her designee may authorize

such closed meeting of the governing body upon at least 24 hours advance written notice to the governing body and exclusive representative.

Written notice by the Commissioner or his or her designee of a closed meeting under these circumstances shall include the date, time and place of the closed meeting and limit the purpose of the meeting to a review and discussion of the status of negotiations and the employer's positions with respect thereto. Where necessary, such written notice may be transmitted by electronic means as well as by U.S. Mail.

**Recording of Meetings of Governing Bodies.** If a mediator closes a meeting of a governing body, the governing body is obligated to tape record the meeting, pursuant to Minn. Stat. § 471.705. subd. 1a.

When a mediator closes a mediation meeting where members of a governing body are present, Minn. R. 5510.2810, subp. 5a prohibits the use of recording devices, stenographic records or other recording methods.

8/31/81; 1/1/82; 8/23/82; 5/1/83; 12/19/89; 2/26/97; 3/2/98; 5/15/98; 5/1/01; 11/1/04

## 2.06 CASE CLOSE-OUTS

This policy establishes written procedures relative to retention of records when closing out mediation cases and promotes the timely close-out of such cases.

Mediators shall be responsible as follows:

1. Monitor all assigned cases to conclusion and close out in a timely manner.
2. Remove from case file all personal notes and records.
3. Discard exhibits, proposals and irrelevant papers received from the parties during the course of mediation.
4. Strike notices filed by a party shall be retained in CaseLoad.
5. Other papers and records received by the mediator from the parties, which in the mediators' judgment may be pertinent to final agreement, should be retained in the mediator's personal file for an appropriate time.

On a monthly basis the Labor Mediation Manager will review a record of cases not closed out.

7/23/84; 2/26/97; 5/1/01; 11/1/04; 4/9/18

## **2.07 SCOPE OF MEDIATOR INTERVENTION – DECLARATION OF IMPASSE**

The Bureau does not declare impasse for non-essential bargaining units.

The term impasse is only appropriate for bargaining units which do not have a right to strike, and instead, have the right to interest arbitration. Impasse in negotiations for these units may be declared in accordance with certifying issues to interest arbitration.

7/23/84; 5/1/01

## 2.08 INTEREST ARBITRATION

### 2.08.01 - IDENTIFYING MATTERS FOR INTEREST ARBITRATION

**A. Private Sector:** Interest arbitration is unusual in the private sector. It is incumbent on the mediator, however, to ensure that the parties are aware of its potential in resolving their dispute and avoiding a strike. If both parties agree to interest arbitration, the mediator has no formal role in declaring impasse or specifying issues, but may assist the parties in such activities to the extent mutually requested by them.

**B. Charitable Hospitals:** If a charitable hospital dispute is not settled within ten (10) days after submission to mediation (presumed to mean the actual start of mediation, not merely the filing of a petition), either party may refer the matter to arbitration--an action which is binding on the other party. The mediator does not declare impasse or develop a list of issues under the Charitable Hospitals Act. Mediators do have a responsibility to assist the parties in identifying issues in dispute and procedures for submission to arbitration.

**C. Public Sector:** In this sector, the mediator plays a central role in the submission of interest disputes to arbitration. This role has statutory roots and is also one which evolved from the expectations of the parties. Because of the factors discussed in 2.07 and based upon the provisions of PELRA, the term "certify an impasse" shall be applicable only to essential units.

1. **Non-Essential Employees** - The entire interest arbitration process, i.e., the decision to arbitrate, the issues to be submitted, and the form of arbitration is voluntary for both parties. Since such interest arbitration can occur only through mutual agreement of the parties, there is no requirement, nor is it appropriate, for the bureau to determine that an impasse exists. (See Minn. Stat. § 179.16, subd 1.)
2. **Essential Employees** – Minnesota Statutes section 179A.16, subd. 2, provides that within 15 days of a properly filed request for binding arbitration, "the commissioner shall determine whether further mediation of the dispute would be appropriate and shall only certify to arbitration matters where the commissioner believes that both parties have made substantial, good-faith bargaining efforts and that an impasse has occurred." The judgment that impasse has occurred will

be determined by the mediator with review and consultation of the Labor Mediation Manager, deputy commissioner and/or commissioner.

### **2.08.02 - ARBITRATION FORMATS**

In assisting the parties through the dispute resolution process, mediators are frequently called upon to explain the process of interest arbitration.

**A. Conventional Arbitration.** Presumed to be the arbitration format for all bargaining units, except principals and assistant principals, unless the parties mutually agree to utilize a Final Offer option.

**B. Final Offer Arbitration.** Mandatory for principal/assistant principal units and available, by mutual consent, to all other bargaining units. Final offer arbitration for principal/assistant principal units must be in the item-by-item format. All other units may select either item-by-item or total-package formats, or a combination thereof.

**C. Selection of Arbitration Panel.** Selection of an arbitrator or panel of arbitrators shall be from a list of seven names provided by the bureau. Although other methods for selecting interest arbitrators have been used in a few selected public sector cases, these situations should be discussed with the commissioner before they are finalized.

### **2.08.03 - DETERMINING MATTERS NOT AGREED UPON**

For "essential" units, it is the statutory responsibility of the commissioner to determine the matters not agreed upon based on the positions submitted by the parties and the efforts to mediate the dispute. The parties may stipulate items to be excluded, but it is the mediator who must determine what "matters" the arbitrator will be asked to decide.

The following policies are intended as a guide for the exercise of this responsibility by all mediators. The mediator is expected to exercise good judgment in applying these policies. It is to be understood that they are a guide for professional practice rather than rigid rules.

**A. Initial Meeting.** Mediators, as a matter of routine, should utilize formal and informal means at the start of each case to ascertain the number and nature of unresolved issues. Care must be taken, however, to avoid routinizing the function so that parties begin to take advantage of the procedure (i.e., listing all contract items as issues during the first session). Too much focus on this element at the initial meeting may produce an undesirable fixation on every difference between the parties, with a loss of perspective concerning areas of previous agreement.

**B. Totality of Conduct Controls.** A party may raise an issue at the first mediation session which was not raised in negotiation meetings prior to mediation. While such additional issues should not be encouraged by mediators, they may be added to the list of unresolved issues at the insistence of the party making the proposal.

Mediators must use good judgment and discretion in determining whether an item not raised at the initial mediation meeting may subsequently be introduced as an issue during the course of mediation. Generally, such requests should be rejected. Similarly, the mediator must exercise good judgment and caution in listing issues identified at the initial meeting, but never subsequently pursued during efforts to reach a settlement. In making these determinations, the mediator must assess the overall conduct and behavior of the parties. It is the mediator's judgment as to the validity of an issue referred to arbitration. The mediator should attempt to keep the number of issues certified to a minimum.

**C. Joint Development.** Before adjourning the final mediation conference of a dispute headed for arbitration, the mediator, with the participation of both parties, should develop the list of issues to be certified. A joint session is highly desirable for such a purpose. When necessity dictates separate caucuses, the mediator should bring the parties together following the separate caucuses to review the final list of issues prior to terminating the mediation conference.

**D. Controversy.** Whenever one or both parties disagree with the list of matters the mediator will be recommending for certification, the mediator should make note of such objections and advise the parties that a final determination of the question will be made by the Commissioner. The mediator should review the matter with the Labor Mediation Manager at the first opportunity.

**E. Arbitrability.** If an issue is one which was pursued by either party during the mediation process, it is a matter appropriate for listing as an issue not agreed upon. The Commissioner will not make arbitrability determinations in the listing of issues.

**2.08.04 - TECHNICAL FORMAT FOR LISTING MATTERS**

One of the major objectives in listing matters to be decided by an arbitrator is to provide the arbitrator and the public with a simple explanation of the issues the arbitrator will be asked to resolve. By simply reading this list, one should be able to determine the nature and scope of the interest dispute.

Whenever possible, the following format and conventions should be used to list matters being referred to arbitration. Since interest arbitration for essential employees is a mandatory impasse resolution process, the mediator has substantial control over the items to be referred -- and how they are to be listed. For non-essential units, however, although there is an obligation for the mediator to attempt to comply with this policy, s/he must guard against allowing format to become a barrier to arbitration. If both parties prefer to list items in a manner not consistent with this policy (i.e., wages for a multi-year contract listed as one issue), the policy should not prevent that matter from being referred in the manner desired by the parties.

**A. Standardized Terms.** Although each dispute may have its own characteristics, and various parties may develop their own conventions for defining an issue or dispute, to the extent possible, mediators are encouraged to utilize a standard lexicon on describing matters being referred to arbitration. See Policy 2.08.05 for further discussion of standardized terms.

**B. Include Article Number.** If the dispute involves current contract provisions, include the Article, section, and subdivision numbers whenever possible. If the dispute involves new language, that should be indicated in lieu of the article number.

**C. Narrow Scope of Items Listed.** Consistent with long-standing practice, where there is more than one issue within the same contract article, each should be listed separately. For example, a dispute over the amount of a general wage increase, the effective date of such increase, and the frequency of step increases should be listed as three issues even if these subjects are covered by the same Article and section of a contract.

**D. Comprehension.** Each matter should be framed in a specific, narrow manner which will allow anyone who reads it to gain an understanding of the nature and extent of the dispute.

**E. Order of Items.** There is no particular policy with respect to the order in which matters are to be listed, although a ranking by contract article number would seem appropriate.

**F. Examples.** The following are examples of the correct and incorrect ways to list matters for arbitration:

**CORRECT**

1. Check Off - Service fee for the checkoff of union dues.  
Article II, Sec. 1.
  
2. Job Staffing - Minimum Staffing level.  
Article III.
  
3. Vacation Leave - Maximum vacation accrual level.  
Article VII, Sec. 1.
  
4. Vacation Policies - Probationary employee eligibility for vacation leave.  
Article VII, Sec. 1.
  
5. Vacation Policies - Use of vacation at certain seasons.  
Article VII, Sec. 3.
  
6. Wages - Wage Rates for 2001.  
Article XI, Sec. 1.
  
7. Wages - Wage Rates for 2001 (if two year contract)  
Article XI, Sec. 1.
  
8. Wages - Number of steps in the salary schedule.  
Article XI, Sec. 7.
  
9. Retroactivity - Effective date of economic benefits (or wage rates).  
Article XI, Sec. 1.
  
10. Duration - One or two year contract  
Article XX.

**INCORRECT**

1. Checkoff
2. Vacation
  - a. accrual cap
  - b. part-time employees
  - c. During Dec., Jan., and Feb.
3. Wages – 1986
  - a. Retroactivity
4. Wages - 1987 (if a two-year agreement)
  - a. structure of schedule
5. Duration

**2.08.05 - STANDARDIZED DESCRIPTIONS**

All mediators are requested to utilize the following list of subjects or captions to the extent possible in listing the matters being referred to arbitration. The following list is illustrative only, not all inclusive.

Absence from Work	Grievance Procedure
Bulletin Boards	Health/Hospital Insurance
Bumping	Holidays
Call-in/Call-back Pay	Hours of Work (See also Work Schedules)
Checkoff	Inclement Weather Policies
Classroom Size (use Job Manning)	Incentive Pay (for unused sick leave)
Clean-Up Time	Job Assignment
Clothing Allowance	Job Manning
Court Appearance Pay	Job Posting/Bidding
Crew Size (use Job Manning)	Jury Duty
Dental Insurance	Layoff
Disability Insurance	Leaves of Absence
Discipline and Discharge Procedures	Life Insurance
Duration (of Agreement)	Lockouts
Early Retirement Incentive	Longevity Pay
Favored Nations ("me, too") Clause	Lunch Period
Funeral Leave	Market Adjustment

Minimum Manning (use Job Manning)	Sick Leave
On Call Pay (use Standby Pay)	Standby Pay (On Call Pay)
Out-of-Classification Work	Subcontracting
Overtime	Transfer of Employees
Parenting Leave	Trial Period
Pay for Contract Negotiations Time	Uniform Allowance (use Clothing Allowance)
Personal Leave	Union Activities
Preparation Time	Union Leave
Probationary Period	Union Rights
Recall	Vacation Leave
Reporting Pay	Vacation Policies
Re-Opener Clause (use Duration of Agreement)	Voting Time
Retroactivity (effective date of wage increase)	Wages
Safety and Health	Work Assignment (use Job Assignment)
Seniority	Work Load (use Job Manning)
Severance Pay	Work Rules
Shift Differentials	Work Schedule

4/6/87; 7/2/92; 4/24/89; 1/2/90; 12/20/96; 2/26/97; 5/1/01; 11/1/04; 4/9/18; 4/17/20

## **2.09 REQUESTS TO CERTIFY MATTERS TO INTEREST ARBITRATION**

1. All requests to certify matters to interest arbitration will first be given to the Commissioner and a copy to the assigned mediator.
2. In cases where the mediator approves the request for certification, the mediator will prepare a referral to arbitration form in accordance with Policy 2.09.01-.09.04. Instances where the mediator wishes to delay referral to arbitration will be discussed with the commissioner to determine the appropriate course of action.
3. The Labor Mediation Manager will review the referral to arbitration and the mediation clerk will prepare a certification to arbitration and request for final positions to include:
  - a. A list of issues to be certified
  - b. The method of arbitration
  - c. The due date for final positions
4. After the mediation clerk prepares the certification to arbitration and request for final positions he/she shall email the documents to both parties.

All requests for extension of time to file final positions will be handled by the commissioner.

5. When the final positions of the parties have been received or the due date for final position has arrived, the mediation clerk will prepare and send a Referral of Arbitration List to the parties which will include a list of seven arbitrators. The final position of both parties will accompany the list. If the final positions have not been received by the time of the arbitration list is sent, they may be sent to the parties at a later time.
6. A copy of the final positions of the parties will be furnished to the assigned mediator. The mediator will make a determination if further mediation efforts are warranted.

7. When the parties have selected an arbitrator and notified the bureau of their selection, the mediation clerk will prepare a transmittal to the arbitrator to include:
  - a. The Commissioner's certification to arbitration and the issues in dispute.
  - b. Statements of the final positions on the issues in dispute.
  - c. A request for a copy of the award.
  - d. A request for the BMS Arbitration Fee and Summary Report to be submitted with the award.

2/27/97; 5/1/01; 11/1/04; 4/9/18; 9/11/18

## **2.10 MANDATORY AND VOLUNTARY INTEREST ARBITRATION PROCEDURES UNDER PELRA**

The purpose of this policy is to identify the coverage and type (conventional, final offer item-by-item, or final offer total-package) of interest arbitration applying to public employees and employers.

**Essential Employees**, including supervisory and confidential employees, are subject to conventional arbitration procedures unless the exclusive representative and the employer agree in writing to final offer item-by-item arbitration procedures.

**Principals and Assistant Principals** are subject to final offer item-by-item arbitration procedures.

**All Other Employees** are subject to conventional arbitration procedures unless the parties agree to item-by-item or final offer total-package arbitration procedure, or a combination thereof.

### **Voluntary or Mandatory Arbitration.**

1. Mandatory Arbitration. Bargaining impasses between public employers and the exclusive representatives of essential employees, including supervisory and confidential employees, and also including principals and assistant principals, will be referred to interest arbitration, if:
  - a. One of the parties has submitted a request for arbitration in writing; and
  - b. The mediator has determined that the party requesting arbitration has demonstrated good faith efforts to bargain on the matters in dispute; and
  - c. The mediator has determined, after consultation with the Commissioner, further mediation efforts would not be of use in resolving the dispute.

2. Voluntary Arbitration. In the event of bargaining impasses between public employers and the exclusive representative of a "non-essential" unit, the mediator should encourage favorable consideration of interest arbitration to resolve the dispute. Since the arbitration process is totally voluntary for this class of employee, the mediator should assist the parties in exploring arbitration types and identification of unresolved issues so that arbitration is facilitated. While the mediator may identify a list of the items in dispute, the voluntary nature of interest arbitration for this class of employee means that the parties are not bound by such list in the same manner as for essential employees.

3/23/89; 2/26/97; 5/1/01; 11/1/04

## 2.11 VOLUNTARY INTEREST ARBITRATION – NON-ESSENTIAL EMPLOYEES

The purpose of this policy is to establish the conditions under which an exclusive representative or an employer offers to arbitrate a contract negotiation dispute or rejects such an offer.

**Offers to Arbitrate.** Either party may request arbitration by providing written notice to the other party and a copy to the Commissioner. The written request must specify the items to be submitted to arbitration and the format for arbitration (conventional, final offer total-package, or final offer, item-by-item, or a combination thereof). The items and the format are subject to mutual agreement.

**Rejection of Offer to Arbitrate.** An offer to arbitrate shall be considered to have been rejected if the other party formally rejects the offer in writing or fails to respond within 15 calendar days of the date the offer is made.

**Status of an Offer to Arbitrate a Dispute.** An offer to arbitrate a dispute shall be considered withdrawn if rejected in accordance with the provisions noted above.

An offer to arbitrate the dispute can be reinstated by either party following rejection; or the parties may jointly agree to arbitrate the dispute following a rejection.

**Status of an Agreement to Arbitrate.** The written joint agreement to arbitrate or the written acceptance of the offer to arbitrate shall be binding on both parties unless both parties mutually agree to terminate the acceptance of arbitration.

4/6/87; 4/26/91; 5/1/01; 4/9/18

## **2.12 PROCEDURES FOR PROCESSING INTENT TO STRIKE NOTICES AND FINAL WORK STOPPAGE REPORTS**

1. Immediately upon receipt, all Notices of Intent to Strike, or renewals, will be date stamped and a copy given to the attention of the Labor Mediation Manager, Deputy Commissioner, Commissioner and the Mediator handling the case.
2. At the first available opportunity, the mediator will give an oral report to the Labor Mediation Manager and Deputy Commissioner concerning the situation and the likelihood of a strike. The Labor Mediation Manager and Deputy Commissioner will brief the Commissioner of the situation as soon as possible.
3. Within 24 hours of receipt of the written communication, the Notice of Receipt of Intent to Strike, or Renewal, will be prepared advising the parties of the beginning and ending times and dates for the strike "window".  
This notice will normally be mailed to all interested parties no later than 48 hours following receipt of the Notice of Intent to Strike or Renewal.
4. In the event a work stoppage does occur, the mediator will keep the Labor Mediation Manager and Commissioner informed of what is going on with the strike.
5. Following cessation of the work stoppage the Mediator will complete the FINAL REPORT OF WORK STOPPAGE in CaseLoad.

08/18/92; 2/26/97; 5/1/01; 11/1/04; 4/9/18

**2.13 PROCEDURES FOR PROCESSING NOTICE TO MEDIATION AGENCIES  
(FEDERAL MEDIATION F-7 FORMS) AND NOTICES OF DESIRE TO  
NEGOTIATE**

Upon receipt, notice to mediation agencies (federal mediation F-7 forms) and notices of desire to negotiate will be date stamped, filed and retained for a minimum of six months.

6/20/90; 7/15/92; 2/26/97; 5/1/01

## 2.14 INTEREST-BASED BARGAINING IBB MEDIATION/FACILITATION

**Policy Overview.** IBB seeks to shift the emphasis in negotiations away from adversarial, positional techniques toward a more collaborative, problem-solving approach. This process doesn't purport to eliminate altogether inherent conflicts between the parties. Rather, it is based on the principle that through identification of interests, possible options addressing those interests, and standards against which to measure acceptability of such options, conflicts are minimized and the likelihood of reaching mutually satisfactory agreements is increased. To help insure success of this process, the Bureau's IBB program includes reliance on collaborative and decision-making procedures in the negotiations practices by both negotiating committees. Training on principles of interest-based negotiations and collaborative processes are offered to the parties by the Bureau along with neutral facilitation services in the subsequent negotiations.

Two basic policy assumptions govern application of the Bureau's program:

1. There is a long history, and numerous examples of constructive and collaborative collective bargaining using traditional negotiations procedures. Many negotiators use IBB principles within the traditional model of bargaining. These principles lend themselves naturally to the process of persuasion, argumentation and explanation of bargaining proposals. Therefore, the Bureau believes that IBB does not pose an "either-or" question, i.e., either the parties engage in constructive/non-adversarial bargaining by utilizing the IBB process, or they engage in adversarial bargaining using a traditional process. The reality is that all collective bargaining operates on a continuum from adversarial to collaborative, depending upon bargaining styles, relationships, skills of the negotiators, and history.
2. Collective bargaining is best served when the parties provide their own leadership to the process, take ownership in their bargaining procedures and philosophies, and work together without undue reliance on outside neutrals. Accordingly, the Bureau's approach to IBB is to assist the parties in such a way as to foster self-reliance and the capacity to carry out IBB without the need for mediators. Hence, in bureau-conducted sessions, the parties should be advised that our engagement is designed to assist the parties to become self-sufficient in the use of IBB principles. To that end, the parties should consider procedures for the use of facilitators from within their teams or from elsewhere in the jurisdiction involved.

The following summarizes the procedures for mediating/facilitating an IBB process:

**Request for Information**

1. All mediators will be able to respond to requests for information. The mediators will be conversant with the philosophy and procedures of the Bureau's IBB process and be able to conduct an exploratory meeting consistent with the policy and the bureau's training program. Commitment of agency resources must be first discussed with the Labor Mediation Manager.
2. Formal IBB training requires joint requests of labor and management.
3. Parties wishing to avail themselves of the bureau's services should contact us as far in advance as possible of the contract expiration.

**Joint Agreement to Proceed - Exploration Meeting**

During the course of the exploration meeting the Mediator will:

1. Present IBB in an objective and neutral manner, consistent with this policy overview.
2. Make no assumptions or representations that traditional bargaining cannot be constructive and problem-solving, or is, by its nature, less effective than interest-based negotiation.
3. Inform the parties that the Bureau will provide eight to twelve hours of technical training and will facilitate meetings without a petition for mediation until the parties are comfortable on their own. Our staff will assist in identifying issues, interests, standards, and options as well as refining the process during the facilitated meetings.

Parties will be advised they should plan to utilize the training provided to continue the negotiations on their own. Mediation will be available if a petition for mediation is submitted. However, for a valid petition to be filed, the bureau expects that the parties have made genuine efforts to reach an agreement, as is the circumstance in the traditional collective bargaining model.

4. Make a preliminary assessment of the parties' readiness to proceed based on their expressed or implied motivations, understanding of process dynamics, and expectations. The mediator may advise the parties to continue their negotiations using the traditional process.
5. Emphasize the importance of having all negotiating team members present for the entire training session.

### **Training**

Training of the parties in the IBB process will be conducted in accordance with the BMS IBB Training Manual. Changes in the program must be reviewed with the Labor Mediation Manager prior to delivery.

Generally, two-person training teams will be assigned to each training session (as staffing conditions permit). One mediator shall be assigned to the case as a trainer. The second mediator shall act as mediator/facilitator.

The mediator/facilitator shall not proceed unless all or substantially all of the negotiators are present.

The mediator/facilitator will continue to assess the readiness of the parties and their acceptance of the process.

### **Mediation/Facilitation**

1. All mediators new to the process will be assigned to observe at least one entire case from exploration through the facilitation process. This requires attendance at all scheduled meetings.
2. After the initial training and facilitation is complete, the mediator/ facilitator will continue to monitor the progress of the parties' process. If a petition for mediation is received a different mediator will be assigned to conduct traditional mediation.

## 2.15 VIRTUAL MEDIATION

**Policy Overview:** In Person Mediation meetings have a significantly higher instance of settlement rate than other forms of meetings and is the preferred method of the Bureau. When authorized by the supervisor, virtual mediation may be utilized in accordance with the following procedure.

1. When a Mediator believes unusual circumstances exist, requiring the use of virtual mediation, they shall review the issues with the supervisor who will determine whether to authorize the process.
2. The Mediator will notify the parties they would like to conduct the mediation session through a virtual platform and explain how the process will be used.
3. All parties who will participate in the virtual mediation will sign a participation agreement which will include:
  - a. Willingness to participate.
  - b. Mediation meeting being private.
  - c. Confidentiality agreement.
  - d. Non-recording or transcribing assurance.
  - e. Mediator not to testify.
  - f. BMS and Mediator to be held harmless.
4. Mediation sessions will be conducted by the Mediator using customary techniques of mediation and problem solving, including the use of separate caucuses.
5. The Mediator will not issue a written recommendation or conclusions; advisory mediator opinions shall be limited to oral opinion.
6. Only authorized virtual platforms will be used for mediation sessions.

