BUREAU OF MEDIATION SERVICES

Mediation Policies

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 it 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

A. Nonessential units. The Bureau doesn't declare impasse for nonessential bargaining units.

B. Essential units. The term "impasse" is only appropriate for bargaining units that don't have a right to strike and, instead, may petition for interest arbitration. Impasse in negotiations may be declared in accordance with certifying issues to interest arbitration.[1]

History: 7/23/84; 5/1/01; 4/10/23

[1] *See* § 2.09.

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 know arbitration could resolve their dispute and avoid a strike. If both parties agree to interest arbitration, the mediator has no formal role in declaring impasse or specifying issues, but the mediator may assist the parties to the extent mutually requested by them.

B. Charitable hospitals.[2] If a dispute is not settled within 10 days after submission to mediation, either party may refer the dispute to arbitration.

The mediator does not declare impasse or develop a list of issues. But a mediator may help the parties identify the disputed issues and the procedures for submitting the issues to arbitration.

C. Public sector. The mediator plays a central role in certifying issues to interest arbitration. This role has statutory roots under Minn. Stat. § 179A.16 (***https://www.revisor.mn.gov/statutes/cite/179A.16***) and is also one that evolved from the expectations of the parties.

1. *Nonessential employees.* The decision to arbitrate, the issues to be submitted, and the arbitration format are all voluntary for both parties. Since interest arbitration can occur only through the parties' mutual agreement,[3] there is no requirement—nor is it appropriate—for the Bureau to determine if an impasse exists.

2. *Essential employees.* 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."[4]

   The mediator—with review and consultation with the Commissioner or a designee determines whether impasse has occurred.

[2] Minn. Stat. § 179.38.
[3] *Id.* § 179A.16, subd. 1.
[4] *Id.*, subd. 2.

2.08.02 - ARBITRATION FORMATS

In assisting the parties, mediators are frequently asked to explain interest arbitration. The first step to understanding interest arbitration is recognizing the two types of interest arbitration: conventional and final offer.

A. Conventional arbitration. In conventional arbitration, each party presents its positions on the disputed issue; the arbitrator then crafts a resolution that the arbitrator deems appropriate for each issue.

Conventional arbitration is the default arbitration format[5] except:

1) for principals and assistant principals; and

2) when the parties agree to use final-offer arbitration.

B. Final-offer arbitration. Final-offer arbitration has two formats: **item by item** and **total package**.

Final-offer, item-by-item arbitration is **mandatory for principal and assistant principal units**.

All other bargaining units may select **either** item-by-item or total-package formats by mutual consent.

2.08.03 - DETERMINING MATTERS NOT AGREED UPON

Parties select an arbitrator according to statute and rule. The Bureau sends parties a list of arbitrators from the general roster.[6]

2.08.04 - TECHNICAL FORMAT FOR LISTING MATTERS

A. Bureau responsibility. For essential units other than hospitals, the Commissioner or the mediator must determine the issues not agreed on, based on the issues submitted by the parties and the efforts to mediate the dispute. The parties may stipulate to exclude issues.[7]

B. Initial meeting. At the start of each case, a mediator should identify the number and nature of unresolved issues by asking each party to identify the issues that the party will want to

[5] Minn. R. 5510.2930, subp. 2.
[6] *See* Minn. Stat. §§ 179A.16, subd. 4, .21, subd. 2; Minn. R. 5530.0900, subp. 2.
[7] *See* Minn. Stat. § 179A.16, subd. 3; Minn. R. 5510.2930, subp. 3.

have certified to interest arbitration if impasse occurs. The issues should be identified by (1) article and section number, and (2) a brief description of the issue.

Identifying the issues at the start of mediation ensures that both parties understand the issues that may be certified to interest arbitration. Care should be taken, however, to avoid routinizing the function so that parties don't exploit it (e.g., listing all contract items as issues during the first meeting).

After identifying the unresolved issues, the mediator should—before mediation begins—determine the status of any tentative agreements reached in negotiations.

C. Raising additional issues. At the first mediation meeting, a party may raise an issue that was not raised in negotiation meetings before mediation. Although additional issues should not be encouraged by mediators, an issue may be added to the list of unresolved issues at the insistence of the party making the proposal.

A mediator must use good judgment and discretion when determining whether an item not raised at the initial mediation meeting may be later introduced as an issue during mediation. Generally, such requests should be rejected.

D. Determining impasse. If the parties cannot reach agreement during the mediation process, either party may seek impasse from the mediator. After the mediator receives a signed request to declare impasse and certify issues to arbitration, the mediator will work with the parties to ensure that each party has the opportunity to include its desired issues to be certified. The mediator should also ensure that the parties understand the status of any and all tentative agreements reached during mediation.

A mediator will only certify an issue requested by the parties if:

1) the issue was raised at the beginning of the first mediation meeting or the issue was later added and approved by the mediator; and

2) the parties have made substantial good-faith bargaining efforts to resolve the issue.

For essential employees, interest arbitration substitutes the right to strike. Therefore, a mediator should give similar considerations for resolving a dispute such as by scheduling additional meetings:

1) if the parties are unable to reach an agreement at the first mediation meeting; or

2) after the mediator reviews the final positions after the parties submit them.

E. Controversy. If a disagreement occurs on whether an issue should be certified to interest arbitration, the Commissioner or a designee will make the final determination. The mediator should review the matter with the Commissioner or a designee at the first opportunity.

F. Arbitrability. An issue may be listed as an issue not agreed on if the issue was:

1) listed during the first mediation meeting; and

2) discussed by either party during mediation.

2.08.05 - STANDARDIZED DESCRIPTIONS

A. Explaining issues certified to arbitration. A reader should be able to easily determine a dispute's nature and scope when reading the list of issues certified to arbitration.

B. Format and conventions. Whenever possible, the format and conventions in this policy should be used to list matters being referred or certified to arbitration.

1. *Essential.* Because interest arbitration for essential employees is mandatory, the mediator has substantial control over the items to be certified and how to list them.

2. *Nonessential.* For nonessential units, the mediator is obligated to attempt to comply with this policy. But the mediator must guard against allowing format to become a barrier to arbitration. For example, if both parties prefer to list items in a manner inconsistent with this policy (e.g., wages for a multiyear contract listed as one issue), the policy shouldn't prevent the issue from being referred as the parties prefer.

C. 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, it should be identified as "new" in lieu of the article number.

D. Narrow scope of items listed. If there is more than one issue within the same contract article, each issue should be listed separately. For example, in a dispute over the amount of a general wage increase, the effective date of such increase, and the frequency of step increases, each issue should be listed as a separate issue even if these subjects are under the same article and section.

E. Framing the issue. Each issue should be framed in a specific, narrow manner that will allow anyone who reads it to understand the dispute.

F. Order of items. A listing in order of contract article number is preferred.

G. Examples. The following examples show the correct ways to list matters for arbitration:

CORRECT

Item #	Article/ Section	Title of Article/Section	Issue Statement/Question
1.	Art. 11.4	Normal Working Hours and Overtime	What should the amount of shift differential pay be?
2.	Art. 11.4	Normal Working Hours and Overtime	What should the amount of P.O.S.T. instructor compensation be?
3.	Art. 11 - NEW	Normal Working Hours and Overtime	Should there be a premium for schedule changes with 7 days' or less notice?
4.	Art. 13	Holidays	Should Juneteenth be added to the list of recognized holidays?
5.	Art. 16.3	Insurance Benefits	What should the amount of employer contribution to Major Medical insurance in 2022 be?
6.	Art. 16.3	Insurance Benefits	What should the amount of employer contribution to Major Medical insurance in 2023, if awarded, be?
7.	Art. 21.1	Pay Plan	What, if any, should the amount of general increase for 2022 be?
8.	Art. 21.1	Pay Plan	What, if any, should the amount of general increase for 2023, if awarded, be?
9.	Art. 21.14	Pay Plan	What should the amount of compensation for SWAT/Dive Team assignment be?
10.	Art. 21 - NEW	Pay Plan – PANDEMIC PAY	Should employees receive supplemental pay for working during the pandemic?
11.	Art. 25	Term of Agreement	What should the duration of the collective bargaining agreement be?

History: 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; 4/10/23

2.09 REQUESTS TO CERTIFY MATTERS TO INTEREST ARBITRATION

1. **Certification requests.** All requests to certify or refer issues to interest arbitration must be signed in writing and provided to the other party and filed with the Commissioner.[8]

   The Office Administrative Specialist will forward a copy to the assigned mediator.

2. **Preparing request for final positions.** In cases where the mediator approves the certification request, the mediator prepares a request for final positions.

   If a mediator wishes to delay certification or referral to arbitration, the mediator must discuss the possible delay with the Commissioner's designee to determine the appropriate action.

3. **Preparing certification to arbitration.** After the Commissioner's designee reviews the certification request, the Office Administrative Specialist will prepare a certification to arbitration and request for final positions to include:

   a. a list of issues to be certified;

   b. the arbitration format; and

   c. the due date for final positions, which must be within 15 calendar days of the certification date.[9]

4. **Sending certification to arbitration and request for final positions.** After the Office Administrative Specialist prepares the certification to arbitration and request for final positions, the specialist will then email the documents to both parties.

5. **Sending arbitrator list.** After receiving the parties' final positions or after the final-position due date, the Office Administrative Specialist will prepare and send a referral-of-arbitration list to the parties with the appropriate number of arbitrators; the specialist will attach the parties' final positions to the list.

   If the Bureau hasn't received the final positions when it sends the arbitrator list, the Bureau will send the final positions when it receives them.

[8] *See* Minn. Stat. § 179A.16; Minn. R. 5510.2930, .0320.
[9] Minn. R. 5510.2930, subp. 4(A)(2).

The Commissioner or a designee handles all time-extension requests for filing final positions.[10]

6. **Giving copy of final positions to mediator.** The Office Administrative Specialist will give the mediator a copy of the final positions when they are received from the parties. The mediator will then review the final positions and determine if further mediation efforts are warranted.

7. **Transmittal to arbitrator.** After the parties have selected an arbitrator and notified the Bureau of their selection, the Office Administrative Specialist will prepare a transmittal to the arbitrator to include:

   a. the Commissioner's certification to arbitration and the issues in dispute;

   b. the parties' final positions on the issues in dispute;

   c. a statement that a copy of the award must be simultaneously filed with the parties and the Commissioner, with a reference to Minn. R. 5510.5280, subp. 2; and

   d. a request for the BMS Arbitration Fee and Summary Report to be submitted with the award, with a reference to Minn. R. 5530.0800, subp. 10.

8. Protected nature of final positions. The data classification for final positions is governed by Minn. R. 5510.2905:

   1. *Data classification.* Until both parties have filed their final positions with the Commissioner, final positions are regarded as both:

      a. protected nonpublic data regarding data not on individuals; and

      b. confidential data on individuals.

   2. *Releasing data.* The Commissioner may release the final positions to the arbitrator to fulfill procedural requirements of the Public Employment Labor Relations Act, but the final positions remain nonpublic and confidential until:

      a. the Commissioner has affirmed that final positions have been filed by both parties; or

      b. an arbitrator starts an interest arbitration hearing.

History: 2/27/97; 5/1/01; 11/1/04; 4/9/18; 9/11/18; 4/10/23

[10] *Id.*

2.10 MANDATORY AND VOLUNTARY INTEREST ARBITRATION PROCEDURES UNDER PELRA

A. Purpose. This policy identifies the coverage and format of mandatory interest arbitration for public employees and employers.

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

Principals and assistant principals are subject to final-offer item-by-item arbitration.

B. Mandatory arbitration.

For essential employees other than charitable-hospital employees, bargaining impasses must be certified to interest arbitration if:

a. one of the parties has submitted an arbitration request in writing;

b. the mediator has determined that the party requesting arbitration has demonstrated good-faith efforts to bargain on the issues in dispute; and

c. the mediator has determined, after consultation with the Commissioner or a designee, that further mediation efforts would not be useful toward resolving the dispute.

For charitable hospitals, referral to arbitration is subject to Minn. Stat. § 179.38, not the Public Employment Labor Relations Act.

History: 3/23/89; 2/26/97; 5/1/01; 11/1/04; 4/10/23

2.11 VOLUNTARY INTEREST ARBITRATION – NON-ESSENTIAL EMPLOYEES

A. Purpose. This policy explains when an exclusive representative or an employer of a nonessential unit may offer to voluntarily arbitrate a dispute over a contract negotiation or reject such an offer.

B. Offer to arbitrate. Either party may request arbitration by providing written notice to the other party and sending a copy to the Commissioner. The written request must specify the items to be submitted to arbitration and the arbitration format. The items and the format are subject to mutual agreement.

Because interest arbitration for a nonessential group is voluntary, the mediator should help the parties explore arbitration formats and identify unresolved issues. Although the mediator may identify a list of the disputed issues, the parties aren't bound by a list as essential employees are.

C. Rejecting offer to arbitrate. An offer to arbitrate is automatically withdrawn if the other party:

1) formally rejects the offer in writing; or

2) fails to respond within 15 calendar days of the date that the offer is made.

D. Reinstating offer to arbitrate. An offer to arbitrate can be reinstated by either party after it is rejected; the parties may also jointly agree to arbitrate the dispute after a rejection.

History: 4/6/87; 4/26/91; 5/1/01; 4/9/18; 4/10/23

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 ensure 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.

10/12/99; 7/17/02; 11/1/04

2.15 VIRTUAL MEDIATION

Policy Overview: In Person Mediation meetings have a significantly higher instance of settlement rate then 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.

4/17/20