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7 INDEPENDENT REVIEW

7.01 PURPOSE

This policy establishes procedures for administering Minnesota Statute 179A.25, Independent Review.

179A.25 INDEPENDENT REVIEW

It is the public policy of the state of Minnesota that every public employee should be provided with the right of independent review, by a disinterested person or agency, of any grievance arising out of the interpretation of or adherence to terms and conditions of employment. When such review is not provided under statutory, charter, or ordinance provisions for a civil service or merit system, the governmental agency may provide for such review consistent with the provisions of law or charter. If no other procedure exists for the independent review of such grievances, the employee may present the grievance to the commissioner under procedures established by the commissioner.

The Bureau shall administer this policy in a manner to effectuate the purposes of the Public Employment Labor Relations Act (PELRA).

7.02 DEFINITIONS

1. Other words, terms, and phrases. Except as otherwise provided in this policy, the words, terms, and phrases in this chapter shall have the same meaning and definition as defined in Minnesota Rules Part 5510.
2. "Party" means any public employee or public employer, whose legal rights, duties, or privileges will be directly determined in an independent review.

7.03 PETITION

1. Authority to petition. An employee may petition the Bureau in writing for independent review of a grievance arising out of the interpretation of or adherence to terms and conditions of employment when no other such procedure exists to hear that grievance. The petitioner must provide all parties a copy of the petition at the time of filing with the Bureau.
2. Petition contents. The petition must contain:
 - a. The name, address, and telephone number of the petitioner;
 - b. The name, address, and telephone number of the other parties; and
 - c. A concise statement specifying:
 - I. The terms and conditions of employment claimed to be violated;
 - II. How such terms and conditions of employment claimed to be violated are established by law, rule, employment contract, or policy;
 - III. The specific law, rule, employment contract provision, or policy, claimed to be violated;
 - IV. The conduct which is claimed to violate the law, rule, employment contract, or policy;
 - V. The relief requested; and
 - VI. Why a review of the grievance by an independent disinterested person or agency is not otherwise available under any other procedure.

7.04 ANSWER

Within 15 calendar days after receipt of a petition, all other parties shall file with the Bureau and provide to the other parties an answer to the petition. The answer must contain a concise statement specifying whether:

1. The terms and conditions of employment claimed to be violated are established by law, rule, employment contract, or policy;
2. The law, rule, employment contract provision, or policy, has been violated by the respondent;
3. If a violation is found, what relief is appropriate; and
4. Review of the grievance by an independent disinterested person or agency is available under any other procedure.

7.05 JURISDICTION

The Bureau, on its own motion or on motion of any party, may dismiss a petition if it lacks jurisdiction. Dismissal may be made by summary judgement based upon written submissions of the parties or the Bureau may conduct or cause to be conducted a hearing on the question of jurisdiction.

7.06 PRESIDING OFFICER

1. **Bureau Hearing Officer.** At the discretion of the commissioner, the Bureau may assign a Bureau staff hearing officer to hear either questions of jurisdiction only, or the grievance itself and any questions of jurisdiction.
2. **Arbitrator.** In lieu of 7.06 (1), the commissioner may provide the parties a list of seven arbitrators from the Bureau arbitration roster. From this list they shall select an arbitrator who shall hear and decide the grievance. The arbitrator shall have full authority delegated by the commissioner to hear the grievance. The arbitrator shall issue findings of fact, conclusions of law, and orders as he/she deems appropriate. The orders of the arbitrator shall be limited to the alleged violation of terms and conditions of employment of the grievance; must be based upon the record of the hearing; and

shall be consistent with applicable rule and law. Fees and expenses of the arbitrator shall be borne equally by the parties.

7.07 BRIEFS

The presiding officer may request the parties to submit a written brief if it will assist her/him in making a determination. If briefs are necessary, the presiding officer must notify the parties of the dates for submission of the briefs.

7.08 NOTICE OF HEARING

At least 15 calendar days before the hearing date, the presiding officer must provide to all parties a written notice of hearing indicating:

1. The date, time, and place of hearing;
2. A statement of the grievance to be determined;
3. The rights of the parties to representation; and
4. That failure to appear may prejudice the party's rights.

7.09 RIGHT TO REPRESENTATION

Any party may be represented by a designated agent in an independent review proceeding under this policy.

7.10 INFORMAL DISPOSITION

Informal disposition may be made of any grievance or any issue by stipulation, settlement, or agreement at any point in the proceedings.

7.11 DEFAULT

The presiding officer may decide a grievance adversely to a party who fails to appear after receiving due notice and an opportunity for hearing.

7.12 INTERVENTION

The presiding officer may, upon timely application, allow a person or organization to intervene in an independent review proceeding if the presiding officer determines that the applicant's legal rights, duties, or privileges will be directly determined in the matter.

7.13 CONSOLIDATION

1. **Basis.** The Bureau may consolidate cases either on its own motion or on motion of any party if it determines that:
 - a. Separate grievances present substantially the same issues;
 - b. A decision in one case would affect the rights of a party in another case; and
 - c. Consolidation would not substantially prejudice any party.
2. **Stipulation.** Notwithstanding the requirements of 7.13 (1), the parties may stipulate and agree to consolidation subject to Bureau approval.
3. **Order.** The Bureau must serve on all parties the order of consolidation.
4. **Severance from consolidation.** Within seven calendar days of receipt of the order of consolidation, a party may file with the Bureau a petition for severance from consolidation which must include the reasons why the requirements of part 7.13 (1) are not met.

7.14 THE HEARING

1. **How conducted.** The hearing must be conducted as follows:
 - a. It shall be the duty of the presiding officer to inquire fully into the facts in dispute, and to insure a complete hearing record. The parties may call, examine, and cross-examine witnesses. The presiding officer may require the production of documentary or other evidence as he/she deems necessary to become fully acquainted with all facts relating to the case.

- b. Any objection with respect to the conduct of the hearing, including any objection to the introduction of evidence, must be stated orally, together with a statement of the grounds of the objection and included in the record of the hearing. No objection shall be deemed waived by further participation in the hearing.
 - c. The presiding officer may admit evidence which possesses probative value commonly accepted by reasonably prudent persons in the conduct of their affairs. The presiding officer shall give effect to any rule or privilege recognized by law.
 - d. Witnesses must testify under oath and shall be subject to cross-examination by all parties.
 - e. Upon a showing of good cause the presiding officer may allow the taking of depositions to preserve testimony in the same manner as prescribed by the Minnesota Rules of Civil Procedure.
2. **Hearing Record.** The record of the hearing including all exhibits shall be preserved for ninety days after the date of the final order.
 3. **Decorum.** The presiding officer may prohibit the operation of any electronic, mechanical or other device for recording either sound or images in the hearing room while the hearing is in progress. No person shall interfere with the free, proper, and lawful access to or egress from the hearing room. No person shall interfere or threaten interference with the hearing.

7.15 DECISIONS AND ORDERS

Decisions and orders issued pursuant to this policy shall be in writing, served on all parties and the commissioner, and must include a statement of the reasons therefore. Decisions and orders shall be binding on all parties. (See *William Cross v. County of Beltrami*, April 30, 1999, Stephan F. Befort, Presiding Officer; affirmed Minnesota Court of Appeals, March 7, 2000.)

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