

## CHAPTER 7300

### PUBLIC EMPLOYMENT RELATIONS BOARD

#### ISSUES AND APPEALS

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#### 7300.0100 DEFINITIONS.

Subpart 1. **Appeal.** "Appeal" means issues relating to the meaning of the terms "supervisory employee," "confidential employee," "essential employee," or "professional employee"; appeals from determinations of the commissioner relating to the appropriateness of a unit; and appeals from determinations of the commissioner relating to a fair share fee challenge.

Subp. 2. [Repealed by amendment, 8 SR 293]

Subp. 3. **Board.** "Board" means the Public Employment Relations Board or a panel of the Public Employment Relations Board.

Subp. 4. **Bureau.** "Bureau" means the Bureau of Mediation Services.

Subp. 5. [Repealed by amendment, 8 SR 293]

Subp. 6. **Commissioner.** "Commissioner" means the commissioner of the Bureau of Mediation Services.

Subp. 7. [Repealed by amendment, 8 SR 293]

Subp. 7a. **Executive director.** "Executive director" means the executive director of the Public Employment Relations Board.

Subp. 7b. **Holiday or legal holiday.** "Holiday" or "legal holiday" means those dates designated by Minnesota Statutes, section 645.44, subdivision 5, as holidays for the executive branch of the state of Minnesota.

Subp. 8. **Party.** "Party" means any public employer, exclusive representative of public employees, public employee organization, or public employer organization whose legal rights, duties, or privileges will be directly determined in an appeal; or any public employee who has filed a fair share fee challenge.

Subp. 9. **Presiding officer.** "Presiding officer" means the board, one or more of its members, or a hearing examiner appointed by the board.

Subp. 10. [Repealed by amendment, 8 SR 293]

Subp. 11. **Service; serve.** "Service" or "serve" means delivery by personal service, United States certified or regular mail, or other delivery. Electronic mail (fax machine) is not an effective method of service. Service is effective upon receipt by the recipient.

Subp. 12. [Repealed by amendment, 8 SR 293]

**Statutory Authority:** *MS s 14.06; 179A.05; 179A.25*

**History:** *8 SR 293; 15 SR 2107*

#### 7300.0110 COMPUTATION OF TIME.

In computing any period of time prescribed or allowed by parts 7300.0100 to 7300.3300, the day of an act or event on which the designated period of time begins to run is

not included. The last day of the time period is included unless it is a Saturday, Sunday, or legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or legal holiday. When the period of time prescribed or allowed is less than seven days, Saturday, Sunday, and legal holidays are not included in the computation. See part 7300.0100, subpart 7b, for the definition of legal holiday.

**Statutory Authority:** *MS s 14.06; 179A.05; 179A.25*

**History:** *15 SR 2107*

### **7300.0200 POLICY.**

Parts 7300.0100 to 7300.3300 shall be liberally construed to effectuate the purposes and provisions of the Public Employment Labor Relations Act. All parties who present issues and appeals to the board shall be provided a fair, just, and timely hearing.

**Statutory Authority:** *MS s 179A.05*

### **7300.0300 SCOPE.**

This chapter shall apply to:

A. issues relating to the meaning of the terms “supervisory employee,” “confidential employee,” “essential employee,” or “professional employee”;

B. appeals from determinations of the commissioner relating to the appropriateness of a unit; and

C. appeals from determinations of the commissioner relating to a fair share fee challenge.

**Statutory Authority:** *MS s 14.06; 179A.05; 179A.25*

**History:** *8 SR 293; 15 SR 2107*

### **7300.0350 BARGAINING UNIT ACCRETION.**

In review of a unit accretion pursuant to Minnesota Statutes, section 179A.09 and under part 7300.0300, item B, the board must consider as a relevant factor whether the employee or employees in question have indicated a showing of interest to be accreted so long as the confidentiality of the individual cards is protected in accordance with Minnesota Statutes, section 179A.12, subdivision 6.

**Statutory Authority:** *MS s 14.06; 179A.05; 179A.25*

**History:** *15 SR 2107*

### **7300.0400 [Repealed, 15 SR 2107]**

### **7300.0500 PRESIDING OFFICER; BOARD OR PANEL.**

The board, as a full body or as a panel of three of its members, may hear and decide an appeal. A panel shall consist of an equal number of representatives of public employees and public employers and the member who represents the public at large.

**Statutory Authority:** *MS s 14.06; 179A.05; 179A.25*

**History:** *8 SR 293; 15 SR 2107*

### **7300.0600 PRESIDING OFFICER; ADMINISTRATIVE LAW JUDGE.**

The board may appoint an administrative law judge to hear an appeal. The administrative law judge shall have such authority as the board deems necessary and appropriate to hear the appeal. The administrative law judge must submit to the board recommended findings, conclusion, and order as requested by the board. The final decision must in all cases be made by the board.

**Statutory Authority:** *MS s 14.06; 179A.05; 179A.25*

**History:** *8 SR 293; 15 SR 2107*

### **7300.0700 INITIATING AN APPEAL.**

Subpart 1. **Time limits.**

A. Within 15 calendar days of the date of a final determination by the commissioner, any party, or parties, may initiate an appeal by serving a copy of a notice of appeal upon all

other parties with a copy to the commissioner and filing the original with the board. Service is effective upon receipt by the board, bureau, and all other parties.

B. If a party or parties files a request for reconsideration of a decision by the commissioner, the appeal to the board must be initiated within 15 calendar days of the date of the reconsideration decision by the commissioner. A copy of the notice of appeal must be served upon all other parties with a copy to the commissioner and the original filed with the board. Service is effective upon receipt by the board, bureau, and all other parties.

**Subp. 2. Notice of appeal.** A notice of appeal shall include:

- A. the name and address of the appellant;
- B. the names and addresses of all individuals and organizations who were parties to the appeal;
- C. a copy of the commissioner's determination from which the appeal is being taken, and, if applicable, a copy of the reconsideration decision by the commissioner;
- D. a statement of which issues the appellant seeks board review, why the issues should be resolved in the appellant's favor, and what remedy is requested;
- E. a statement that the appellant understands the commissioner's rules governing the preparation of and payment for the record and transcript on appeal and agrees to abide by those rules; and
- F. the signature of the appellant or its representative.

**Statutory Authority:** *MS s 14.06; 179A.05; 179A.25*

**History:** *8 SR 293; 15 SR 2107*

### 7300.0800 ANSWER.

Within 15 calendar days after service of a notice of appeal, all other parties may submit an answer to the notice of appeal. A copy of the answer shall be served on all parties to the appeal and filed with the board. Failure to submit an answer shall not be deemed an admission of any statement contained in the notice of appeal or a waiver of any rights afforded the respondent by any statute or rule.

**Statutory Authority:** *MS s 14.06; 179A.05; 179A.25*

**History:** *8 SR 293; 15 SR 2107*

### 7300.0810 BRIEFS.

**Subpart 1. Establishment of briefing schedule.** Upon transmission of the record from the commissioner, the board must provide written notice to the parties establishing specific dates for each party to submit its brief. The appellant must serve and file the appellants' brief within 14 calendar days after the board's written notice establishing the briefing schedule. The respondent must serve and file the respondent's brief within 14 calendar days after service of the appellant's brief. Parties must notify the board by the established dates if they do not intend to file a brief.

**Subp. 2. Extension of the briefing schedule.**

A. Either party may request an extension of the briefing schedule. Request for an extension must be received by the board before the deadline and in writing. If it is a first request and the extension does not exceed 14 calendar days, the request will be granted by the executive director. Written notice must be provided to all the parties of the revised briefing schedule.

B. Either party may request an extension that exceeds 14 calendar days or the same party who made the first request for an extension may request a second extension. These requests must be in writing and received by the board before the deadline established in the initial briefing schedule. The board must consider the request at its next meeting and may grant the extensions only for good cause shown and if it causes no prejudice to the other party. If the board is not scheduled to meet within 14 calendar days from the date of the written request, the board chair has authority to decide the request.

**Statutory Authority:** *MS s 14.06; 179A.05; 179A.25*

**History:** *8 SR 293; 15 SR 2107*

**7300.0850 AMICUS CURIAE STATUS.**

An individual, association, or organization may seek permission in an appeal to file a brief as amicus curiae. The board will grant amicus curiae status if the requester establishes that its brief will be relevant to the appeal and that it will contribute to the board's understanding of the case and the board's decision. Any request of the commissioner for amicus curiae status must be granted. Any brief which is filed under this part must be submitted to the board within the time established for the respondent's brief under part 7300.0810.

**Statutory Authority:** *MS s 14.06; 179A.05; 179A.25*

**History:** *15 SR 2107*

**7300.0900 NOTICE OF HEARING.**

Subpart 1. **Contents of notice.** At least 15 calendar days before the hearing date, the board must provide to all parties by certified mail a notice of hearing stating:

- A. the date, time, and place of hearing;
- B. the rights of the parties to representation (see part 7300.1100); and
- C. that failure to appear may prejudice the party's rights (see part 7300.1300).

Subp. 2. **Copy of rules included.** A copy of this chapter must be included with the notice of hearing.

**Statutory Authority:** *MS s 14.06; 179A.05; 179A.25*

**History:** *8 SR 293; 15 SR 2107*

**7300.1000 CONTINUANCE OF HEARING.**

A request for continuance of a hearing, if mutually consented to by all of the parties, will be granted by the board's executive director. If there is no mutual consent, the board must consider the request for continuance at its next meeting and grant the request upon good cause shown. If a board meeting is not scheduled that provides the opportunity for the board to consider the request and provide a timely response, the board chair has the authority to consider and decide the request.

**Statutory Authority:** *MS s 14.06; 179A.05; 179A.25*

**History:** *8 SR 293; 15 SR 2107*

**7300.1100 RIGHT TO REPRESENTATION.**

Any party may be represented by a designated agent in an appeal before the board.

**Statutory Authority:** *MS s 179A.05*

**7300.1200 INFORMAL AND SUMMARY DISPOSITION.**

Subpart 1. **Informal disposition.** Informal disposition may be made of any appeal or any issue by stipulation, settlement, or agreement at any point in the proceedings so long as the stipulation, settlement, or agreement does not violate any law and is approved by the board.

Subp. 2. **Summary disposition.** The board, on its own motion or on motion of any party, may:

- A. dismiss an appeal if the board lacks jurisdiction;
- B. summarily affirm the commissioner's determination if the appeal presents no question of substantial merit;
- C. limit the issues to be considered to those which present a question of substantial merit;
- D. summarily reverse or remand in the case of obvious error; or
- E. grant other appropriate relief.

**Statutory Authority:** *MS s 14.06; 179A.05; 179A.25*

**History:** *8 SR 293; 15 SR 2107*

**7300.1300 DEFAULT.**

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

**Statutory Authority:** *MS s 179A.05*

**History:** *8 SR 293*

**7300.1400 INTERVENTION.**

The board may, upon timely application, allow a person to intervene in an appeal if the applicant establishes that its legal rights, duties, or privileges will be directly determined in the appeal.

**Statutory Authority:** *MS s 179A.05*

**History:** 8 SR 293

**7300.1500 SUBSTITUTION OF PARTY'S REPRESENTATIVE.**

Substitution of a party's representative may be allowed only if notice of the substitution is served on all other parties and the board at least seven calendar days before the hearing date.

**Statutory Authority:** *MS s 14.06; 179A.05; 179A.25*

**History:** 8 SR 293; 15 SR 2107

**7300.1600 CONSOLIDATION.**

Subpart 1. **Basis.** The board may consolidate cases either on its own motion or on motion of any party if it determines that:

- A. separate appeals 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.

Subp. 2. **Stipulation.** Notwithstanding the requirements of subpart 1, the parties may stipulate and agree to consolidation subject to board approval.

Subp. 3. **Order.** The board shall serve on all parties the order of consolidation.

Subp. 4. **Severance from consolidation.** Within five days of receipt of the order of consolidation, a party may file with the board a petition for severance from consolidation which shall include the reasons why the requirements of subpart 1 are not met.

**Statutory Authority:** *MS s 179A.05*

**History:** 8 SR 293

**7300.1700 REMAND.**

Subpart 1. **Remand to commissioner.** A party may make a motion to remand the appeal to the commissioner. The board may remand to the commissioner all or part of the appeal for rehearing, the taking of specified additional evidence, or other appropriate action.

Subp. 2. **Circumstances for remand.** The board must grant a remand under the following circumstances:

- A. additional evidence, newly discovered, that with reasonable diligence could not have been found and produced at the hearing;
- B. a change in existing law material to the appeal; or
- C. irregularities or errors of law occurring during the bureau's proceedings.

Subp. 3. **Appeals on remand.** When the board remands an appeal under subparts 1 and 2, the appeal remains before the board, until the board decides the appeal or dismisses the appeal. If the commissioner, upon remand, issues a decision that differs from its initial decision, the board must dismiss the appeal unless either party seeks continuance of the appeal by providing written notice in the same manner as provided in part 7300.0700. If the commissioner, upon remand under subparts 1 and 2, issues a decision that affirms its initial decision, the board must notify the parties that it will proceed with the appeal under the terms of the appellant's initiation of appeal filed with the board before the remand. The party who initiated the appeal may provide written notice to the board of its request to withdraw the appeal.

**Statutory Authority:** *MS s 14.06; 179A.05; 179A.25*

**History:** 8 SR 293; 15 SR 2107

**7300.1800** [Repealed, 15 SR 2107]

**7300.1900** [Repealed by amendment, 8 SR 293]

## THE HEARING

**7300.1910 THE BOARD RECORD.**

Before the hearing, the board must prepare an official record in each appeal that contains:

- A. the record of the proceedings before the commissioner;
  - B. the determination of the commissioner, and if applicable, the reconsideration decision of the commissioner;
  - C. notice of appeal and any supporting documents;
  - D. if consolidation has occurred, the order of consolidation and any supporting documents;
  - E. notice of hearing and any supporting documents;
  - F. any stipulations, settlements, or agreements entered into by any of the parties;
- and
- G. pleadings, motions, and intermediate rulings of the presiding officer.

Additional evidence admitted pursuant to part 7300.2050 shall become part of the board record.

**Statutory Authority:** *MS s 14.06; 179A.05; 179A.25*

**History:** *8 SR 293; 15 SR 2107*

**7300.2000 HEARING PROCEDURE.**

Subpart 1. **Hearing opened.** The presiding officer shall open the hearing and introduce the board record.

Subp. 2. **Beginning argument.** Unless otherwise directed by the presiding officer, the party who initiated the appeal shall begin the argument and shall be followed by the other parties in a sequence determined by the presiding officer.

Subp. 3. **Time allowed.** Each party shall be allowed 30 minutes for its oral argument and an additional five minutes for its rebuttal.

Subp. 4. **Memoranda.** The presiding officer may allow filing of memoranda by the parties.

**Statutory Authority:** *MS s 179A.05*

**History:** *8 SR 293*

**7300.2050** [Repealed, 15 SR 2107]

**7300.2100 TRANSCRIPT OF BOARD HEARING.**

A verbatim record must be taken by a hearing reporter or recording equipment of any hearing conducted pursuant to part 7300.2000 or 7300.2050.

**Statutory Authority:** *MS s 14.06; 179A.05; 179A.25*

**History:** *8 SR 293; 15 SR 2107*

**7300.2200** [Repealed by amendment, 8 SR 293]

**7300.2300** [Repealed by amendment, 8 SR 293]

**7300.2400 DECORUM.**

The presiding officer may prohibit the operation of a television, newsreel, motion picture, still, or other camera and mechanical recording devices in the hearing room while the hearing is in progress if such operation shall be determined to have a significantly adverse effect on the hearing.

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.

**Statutory Authority:** *MS s 179A.05*

**History:** *8 SR 293*

**7300.2500** [Repealed by amendment, 8 SR 293]

**BOARD DECISION AND REHEARING**

**7300.2600 BOARD DECISIONS AND ORDERS.**

All decisions and orders issued by the board must be in writing and must be accompanied by a statement of the reasons therefor.

All decisions and orders shall be served on all parties and filed with the commissioner.

**Statutory Authority:** *MS s 14.06; 179A.05; 179A.25*

**History:** *8 SR 293; 15 SR 2107*

**7300.2700** [Repealed by amendment, 8 SR 293]

**7300.2800 REQUEST FOR REHEARING.**

The board, on its own motion or on petition of any party and for good cause shown, may reopen, rehear, and redetermine an appeal. The petition for rehearing by the parties must be served on all other parties and the board within 15 calendar days of the date of the board's written decision.

**Statutory Authority:** *MS s 14.06; 179A.05; 179A.25*

**History:** *8 SR 293; 15 SR 2107*

**7300.2900 PETITION FOR REHEARING.**

A petition for rehearing must contain:

- A. the name and address of the petitioner;
- B. the board designation of the case;
- C. a statement as to which issues rehearing is sought; and
- D. the reasons why the issues should be reheard.

**Statutory Authority:** *MS s 14.06; 179A.05; 179A.25*

**History:** *8 SR 293; 15 SR 2107*

**7300.2950 CONSIDERATION.**

The board may consider evidence and argument in written or oral form with respect to granting or denying the petition.

**Statutory Authority:** *MS s 179A.05*

**History:** *8 SR 293*

**7300.3000 DETERMINATION.**

A petition for rehearing may be granted only if the petition or the board record reveals:

- A. irregularities in the board proceedings;
- B. errors of law occurring during the board proceedings;
- C. newly discovered material evidence;
- D. a change in existing law material to the appeal; or
- E. good cause for failure to appear.

**Statutory Authority:** *MS s 179A.05*

**History:** *8 SR 293*

**7300.3100 NOTICE OF REHEARING.**

A notice of rehearing must be provided in the same manner prescribed for a hearing by part 7300.0900.

**Statutory Authority:** *MS s 14.06; 179A.05; 179A.25*

**History:** *8 SR 293; 15 SR 2107*

**7300.3200 REHEARING PROCEDURE.**

A rehearing of an appeal must be conducted in the same manner prescribed for a hearing by parts 7300.1910 to 7300.2400.

**Statutory Authority:** *MS s 14.06; 179A.05; 179A.25*

**History:** *8 SR 293; 15 SR 2107*

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ISSUES AND APPEALS 7300.3300

## **7300.3300 DECISION AFTER REHEARING.**

The decision after rehearing must be issued in the same manner prescribed for the decision after a hearing by parts 7300.1200, 7300.1300, and 7300.2600.

**Statutory Authority:** *MS s 14.06; 179A.05; 179A.25*

**History:** *8 SR 293; 15 SR 2107*