

## CHAPTER 179A

## PUBLIC EMPLOYMENT LABOR RELATIONS

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**179A.01 PUBLIC POLICY.**

It is the public policy of this state and the purpose of sections 179A.01 to 179A.25 to promote orderly and constructive relationships between all public employers and their employees. This policy is subject to the paramount right of the citizens of this state to keep inviolate the guarantees for their health, education, safety, and welfare.

The relationships between the public, public employees, and employer governing bodies involve responsibilities to the public and a need for cooperation and employment protection which are different from those found in the private sector. The importance or necessity of some services to the public can create imbalances in the relative bargaining power between public employees and employers. As a result, unique approaches to negotiations and resolutions of disputes between public employees and employers are necessary.

Unresolved disputes between the public employer and its employees are injurious to the public as well as to the parties. Adequate means must be established for minimizing them and providing for their resolution. Within these limitations and considerations, the legislature has determined that overall policy is best accomplished by:

(1) granting public employees certain rights to organize and choose freely their representatives;

(2) requiring public employers to meet and negotiate with public employees in an appropriate bargaining unit and providing that the result of bargaining be in written agreements; and

(3) establishing special rights, responsibilities, procedures, and limitations regarding public employment relationships which will provide for the protection of the rights of the public employee, the public employer, and the public at large.

Nothing in sections 179A.01 to 179A.25 impairs, modifies, or alters the authority of the legislature to establish rates of pay, or retirement or other benefits for its employees.

**History:** 1984 c 462 s 2

**179A.02 CITATION.**

Sections 179A.01 to 179A.25 shall be known as the public employment labor relations act.

**History:** 1984 c 462 s 3

**179A.03 DEFINITIONS.**

Subdivision 1. **General.** For the purposes of sections 179A.01 to 179A.25, the terms defined in this section have the meanings given them unless otherwise stated.

Subd. 2. **Appropriate unit.** "Appropriate unit" or "unit" means a unit of employees determined under sections 179A.09 to 179A.11. For school districts, the term means all the teachers in the district.

Subd. 3. **Bureau.** "Bureau" means the Minnesota bureau of mediation services.

Subd. 4. **Confidential employee.** "Confidential employee" means an employee who as part of the employee's job duties:

(1) has access to labor relations information as that term is defined in section 13.37, subdivision 1, paragraph (c); or

(2) actively participates in the meeting and negotiating on behalf of the public employer.

Subd. 5. **Commissioner.** "Commissioner of the Minnesota bureau of mediation services" or "commissioner" means the commissioner of the bureau of mediation services.

Subd. 6. **Employee organization.** "Employee organization" means any union or organization of public employees whose purpose is, in whole or in part, to deal with public employers concerning grievances and terms and conditions of employment.

Subd. 7. **Essential employee.** "Essential employee" means firefighters, peace officers subject to licensure under sections 626.84 to 626.855, guards at correctional facilities, confidential employees, supervisory employees, assistant county attorneys, principals, and assistant principals. However, for state employees, "essential employee" means all employees in law enforcement, health care professionals, correctional guards, professional engineering, and supervisory collective bargaining units, irrespective of severance, and no other employees. For University of Minnesota employees, "essential employee" means all employees in law enforcement, nursing professional and supervisory units, irrespective of severance, and no other employees. "Firefighters" means salaried employees of a fire department whose duties include, directly or indirectly, controlling, extinguishing, preventing, detecting, or investigating fires.

Subd. 8. **Exclusive representative.** "Exclusive representative" means an employee organization which has been certified by the commissioner under section 179A.12 to meet and negotiate with the employer on behalf of all employees in the appropriate unit.

Subd. 9. **Fair share fee challenge.** "Fair share fee challenge" means any proceeding or action instituted by a public employee, a group of public employees, or any other person, to determine their rights and obligations with respect to the circumstances or the amount of a fair share fee.

Subd. 10. **Meet and confer.** "Meet and confer" means the exchange of views and concerns between employers and their employees.

Subd. 11. **Meet and negotiate.** "Meet and negotiate" means the performance of the mutual obligations of public employers and the exclusive representatives of public employees to meet at reasonable times, including where possible meeting in advance of the budget making process, with the good faith intent of entering into an agreement on terms and conditions of employment. This obligation does not compel either party to agree to a proposal or to make a concession.

Subd. 12. **Principal.** "Principal" and "assistant principal" means any person so licensed by the state board of education who devotes more than 50 percent of the time to administrative or supervisory duties.

Subd. 13. **Professional employee.** "Professional employee" means:

(a) any employee engaged in work (i) predominantly intellectual and varied in character as opposed to routine mental, manual, mechanical, or physical work; (ii) involving the consistent exercise of discretion and judgment in its performance; (iii) of a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time; and (iv) requiring advanced knowledge in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning or a hospital, as distinguished from a general academic education, an apprenticeship, or training in the performance of routine mental, manual, or physical processes; or

(b) any employee, who (i) has completed the course of advanced instruction and study described in clause (iv) of paragraph (a); and (ii) is performing related work under the supervision of a professional person to qualify as a professional employee as defined in paragraph (a); or

(c) a teacher.

Subd. 14. **Public employee.** "Public employee" or "employee" means any person appointed or employed by a public employer except:

- (a) elected public officials;
- (b) election officers;
- (c) commissioned or enlisted personnel of the Minnesota national guard;
- (d) emergency employees who are employed for emergency work caused by natural disaster;
- (e) part-time employees whose service does not exceed the lesser of 14 hours per week or 35 percent of the normal work week in the employee's appropriate unit;
- (f) employees whose positions are basically temporary or seasonal in character and: (1) are not for more than 67 working days in any calendar year; or (2) are not for more than 100 working days in any calendar year and the employees are under the age of 22, are full-time students enrolled in a nonprofit or public educational institution prior to being hired by the employer, and have indicated, either in an application for employment or by being enrolled at an educational institution for the next academic year or term, an intention to continue as students during or after their temporary employment;
- (g) employees providing services for not more than two consecutive quarters to the state university board or the community college board under the terms of a professional or technical services contract as defined in section 16B.17, subdivision 1;
- (h) employees of charitable hospitals as defined by section 179.35, subdivision 3;
- (i) full-time undergraduate students employed by the school which they attend under a work-study program or in connection with the receipt of financial aid, irrespective of number of hours of service per week;
- (j) an individual who is employed for less than 300 hours in a fiscal year as an instructor in an adult vocational education program;
- (k) an individual hired by a school district, the community college board, or the state university board, to teach one course for up to four credits for one quarter in a year.

The following individuals are public employees regardless of the exclusions of clauses (e) and (f):

(1) An employee hired by a school district, the community college board, or the state university board, except at the university established in section 136F.017 or for community services or community education instruction offered on a noncredit basis: (i) to replace an absent teacher or faculty member who is a public employee, where the replacement employee is employed more than 30 working days as a replacement for that teacher or faculty member; or (ii) to take a teaching position created due to increased enrollment, curriculum expansion, courses which are a part of the curriculum whether offered annually or not, or other appropriate reasons; and

(2) An employee hired for a position under clause (f)(1) if that same position has already been filled under clause (f)(1) in the same calendar year and the cumulative number of days worked in that same position by all employees exceeds 67 calendar days in that year. For the purpose of this paragraph, "same position" includes a substantially equivalent position if it is not the same position solely due to a change in the classification or title of the position.

Subd. 15. **Public employer.** "Public employer" or "employer" means:

- (a) the state of Minnesota for employees of the state not otherwise provided for in this subdivision or section 179A.10 for executive branch employees;
- (b) the board of regents of the University of Minnesota for its employees; and
- (c) notwithstanding any other law to the contrary, the governing body of a political subdivision or its agency or instrumentality which has final budgetary approval authority for its employees. However, the views of elected appointing authorities who have standing to initiate interest arbitration, and who are responsible for the selection, direction, discipline, and discharge of individual employees shall be considered by the employer in the course of the discharge of rights and duties under sections 179A.01 to 179A.25.

When two or more units of government subject to sections 179A.01 to 179A.25 undertake a project or form a new agency under law authorizing common or joint action, the em-

ployer is the governing person or board of the created agency. The governing official or body of the cooperating governmental units shall be bound by an agreement entered into by the created agency according to sections 179A.01 to 179A.25.

“Public employer” or “employer” does not include a “charitable hospital” as defined in section 179.35, subdivision 2.

Nothing in this subdivision diminishes the authority granted pursuant to law to an appointing authority with respect to the selection, direction, discipline, or discharge of an individual employee if this action is consistent with general procedures and standards relating to selection, direction, discipline, or discharge which are the subject of an agreement entered into under sections 179A.01 to 179A.25.

Subd. 16. **Strike.** “Strike” means concerted action in failing to report for duty, the willful absence from one’s position, the stoppage of work, slowdown, or the abstinence in whole or in part from the full, faithful, and proper performance of the duties of employment for the purposes of inducing, influencing, or coercing a change in the conditions or compensation or the rights, privileges, or obligations of employment.

Subd. 17. **Supervisory employee.** “Supervisory employee” means a person who has the authority to undertake a majority of the following supervisory functions in the interests of the employer: hiring, transfer, suspension, promotion, discharge, assignment, reward, or discipline of other employees, direction of the work of other employees, or adjustment of other employees’ grievances on behalf of the employer. To be included as a supervisory function which the person has authority to undertake, the exercise of the authority by the person may not be merely routine or clerical in nature but must require the use of independent judgment. An employee, other than an essential employee, who has authority to effectively recommend a supervisory function, is deemed to have authority to undertake that supervisory function for the purposes of this subdivision. The administrative head of a municipality, municipal utility, or police or fire department, and the administrative head’s assistant, are always considered supervisory employees.

The removal of employees by the employer from a nonsupervisory appropriate unit for the purpose of designating the employees as “supervisory employees” shall require either the prior written agreement of the exclusive representative and the written approval of the commissioner or a separate determination by the commissioner before the redesignation is effective.

Subd. 18. **Teacher.** “Teacher” means any public employee other than a superintendent or assistant superintendent, principal, assistant principal, or a supervisory or confidential employee, employed by a school district:

(1) in a position for which the person must be licensed by the board of teaching or the state board of education; or

(2) in a position as a physical therapist or an occupational therapist.

Subd. 19. **Terms and conditions of employment.** “Terms and conditions of employment” means the hours of employment, the compensation therefor including fringe benefits except retirement contributions or benefits other than employer payment of, or contributions to, premiums for group insurance coverage of retired employees or severance pay, and the employer’s personnel policies affecting the working conditions of the employees. In the case of professional employees the term does not mean educational policies of a school district. “Terms and conditions of employment” is subject to section 179A.07.

**History:** 1984 c 462 s 4; 1986 c 444; 1987 c 186 s 15; 1987 c 384 art 2 s 1; 1988 c 605 s 4; 1989 c 255 s 2; 1990 c 377 s 1; 1991 c 308 s 2; 1992 c 582 s 3–5; 1993 c 12 s 1; 1995 c 212 art 4 s 64; 1995 c 226 art 6 s 3; 1996 c 425 s 7

#### 179A.04 COMMISSIONER’S POWER, AUTHORITY, AND DUTIES.

Subdivision 1. **Petitions.** The commissioner shall accept and investigate all petitions for:

- (a) certification or decertification as the exclusive representative of an appropriate unit;
- (b) mediation services;
- (c) any election or other voting procedures provided for in sections 179A.01 to 179A.25;

(d) certification to the board of arbitration; and

(e) fair share fee challenges, upon the receipt of a filing fee. The commissioner shall hear and decide all issues in a fair share fee challenge.

**Subd. 2. Unit determination.** The commissioner shall determine appropriate units, under the criteria of section 179A.09.

**Subd. 3. Other duties.** (a) The commissioner shall:

(1) provide mediation services as requested by the parties until the parties reach agreement, and may continue to assist parties after they have submitted their final positions for interest arbitration;

(2) issue notices, subpoenas, and orders required by law to carry out duties under sections 179A.01 to 179A.25;

(3) assist the parties in formulating petitions, notices, and other papers required to be filed with the commissioner;

(4) conduct elections;

(5) certify the final results of any election or other voting procedure conducted under sections 179A.01 to 179A.25;

(6) adopt rules relating to the administration of this chapter and the conduct of hearings and elections;

(7) receive, catalogue, file, and make available to the public all decisions of arbitrators and panels authorized by sections 179A.01 to 179A.25, all grievance arbitration decisions, and the commissioner's orders and decisions;

(8) adopt, subject to chapter 14, a grievance procedure that fulfills the purposes of section 179A.20, subdivision 4, does not provide for the services of the bureau of mediation services and is available to any employee in a unit not covered by a contractual grievance procedure;

(9) maintain a schedule of state employee classifications or positions assigned to each unit established in section 179A.10, subdivision 2;

(10) collect fees established by rule for empanelment of persons on the labor arbitrator roster maintained by the commissioner or in conjunction with fair share fee challenges;

(11) provide technical support and assistance to voluntary joint labor-management committees established for the purpose of improving relationships between exclusive representatives and employers, at the discretion of the commissioner;

(12) provide to the parties a list of arbitrators as required by section 179A.16, subdivision 4; and

(13) maintain a list of up to 60 arbitrators for referral to employers and exclusive representatives for the resolution of grievance or interest disputes. Each person on the list must be knowledgeable about collective bargaining and labor relations in the public sector, well versed in state and federal labor law, and experienced in and knowledgeable about labor arbitration. To the extent practicable, the commissioner shall appoint members to the list so that the list is gender and racially diverse.

(b) From the names provided by representative organizations, the commissioner shall maintain a list of arbitrators to conduct teacher discharge or termination hearings according to section 125.12 or 125.17. The persons on the list must meet at least one of the following requirements:

(1) be a former or retired judge;

(2) be a qualified arbitrator on the list maintained by the bureau;

(3) be a present, former, or retired administrative law judge; or

(4) be a neutral individual who is learned in the law and admitted to practice in Minnesota, who is qualified by experience to conduct these hearings, and who is without bias to either party.

Each year, the Minnesota education association shall provide a list of seven names, the Minnesota federation of teachers a list of seven names, and the Minnesota school boards association a list of 14 names of persons to be on the list. The commissioner may adopt rules about maintaining and updating the list.

**Subd. 4. Location of hearings.** Hearings and mediation meetings authorized by this section shall be held at a time and place determined by the commissioner, but, whenever practical, a hearing shall be held in the general geographic area where the question has arisen or exists.

**History:** 1984 c 462 s 5; 1985 c 157 s 1; 1987 c 186 s 15; 1990 c 546 s 4; 1991 c 196 s 5; 1992 c 458 s 1; 1992 c 582 s 6; 1993 c 122 s 3; 1994 c 560 art 2 s 17; 1995 c 239 s 2; 1996 c 425 s 8

**179A.05** [Repealed, 1992 c 582 s 26]

#### **179A.051 APPEALS OF COMMISSIONER'S DECISIONS.**

Decisions of the commissioner relating to supervisory, confidential, essential, and professional employees, appropriateness of a unit, or fair share fee challenges may be reviewed on certiorari by the court of appeals. A petition for a writ of certiorari must be filed and served on the other party or parties and the commissioner within 30 days from the date of the mailing of the commissioner's decision. The petition must be served on the other party or parties at the party's or parties' last known address.

**History:** 1992 c 582 s 7

#### **179A.06 RIGHTS AND OBLIGATIONS OF EMPLOYEES.**

**Subdivision 1. Expression of views.** Sections 179A.01 to 179A.25 do not affect the right of any public employee or the employee's representative to express or communicate a view, grievance, complaint, or opinion on any matter related to the conditions or compensation of public employment or their betterment, so long as this is not designed to and does not interfere with the full faithful and proper performance of the duties of employment or circumvent the rights of the exclusive representative. Sections 179A.01 to 179A.25 do not require any public employee to perform labor or services against the employee's will.

If no exclusive representative has been certified, any public employee individually, or group of employees through their representative, has the right to express or communicate a view, grievance, complaint, or opinion on any matter related to the conditions or compensation of public employment or their betterment, by meeting with their public employer or the employer's representative, so long as this is not designed to and does not interfere with the full, faithful, and proper performance of the duties of employment.

**Subd. 2. Right to organize.** Public employees have the right to form and join labor or employee organizations, and have the right not to form and join such organizations. Public employees in an appropriate unit have the right by secret ballot to designate an exclusive representative to negotiate grievance procedures and the terms and conditions of employment with their employer. Confidential employees of the state and the University of Minnesota are excluded from bargaining. Other confidential employees, supervisory employees, principals, and assistant principals may form their own organizations. An employer shall extend exclusive recognition to a representative of or an organization of supervisory or confidential employees, or principals and assistant principals, for the purpose of negotiating terms or conditions of employment, in accordance with sections 179A.01 to 179A.25, applicable to essential employees.

Supervisory or confidential employee organizations shall not participate in any capacity in any negotiations which involve units of employees other than supervisory or confidential employees. Except for organizations which represent supervisors who are: (1) firefighters, peace officers subject to licensure under sections 626.84 to 626.855, guards at correctional facilities, or employees at hospitals other than state hospitals; and (2) not state or University of Minnesota employees, a supervisory or confidential employee organization which is affiliated with another employee organization which is the exclusive representative of nonsupervisory or nonconfidential employees of the same public employer shall not be certified, or act as, an exclusive representative for the supervisory or confidential employees. For the purpose of this subdivision, affiliation means either direct or indirect and includes affiliation through a federation or joint body of employee organizations.

**Subd. 3. Fair share fee.** An exclusive representative may require employees who are not members of the exclusive representative to contribute a fair share fee for services ren-

dered by the exclusive representative. The fair share fee must be equal to the regular membership dues of the exclusive representative, less the cost of benefits financed through the dues and available only to members of the exclusive representative. In no event may the fair share fee exceed 85 percent of the regular membership dues. The exclusive representative shall provide advance written notice of the amount of the fair share fee to the employer and to unit employees who will be assessed the fee. The employer shall provide the exclusive representative with a list of all unit employees.

A challenge by an employee or by a person aggrieved by the fee must be filed in writing with the commissioner, the public employer, and the exclusive representative within 30 days after receipt of the written notice. All challenges must specify those portions of the fee challenged and the reasons for the challenge. The burden of proof relating to the amount of the fair share fee is on the exclusive representative. The commissioner shall hear and decide all issues in these challenges.

The employer shall deduct the fee from the earnings of the employee and transmit the fee to the exclusive representative 30 days after the written notice was provided. If a challenge is filed, the deductions for a fair share fee must be held in escrow by the employer pending a decision by the commissioner.

**Subd. 4. Meet and confer.** Professional employees have the right to meet and confer under section 179A.08 with public employers regarding policies and matters other than terms and conditions of employment.

**Subd. 5. Meet and negotiate.** Public employees, through their certified exclusive representative, have the right and obligation to meet and negotiate in good faith with their employer regarding grievance procedures and the terms and conditions of employment, but this obligation does not compel the exclusive representative to agree to a proposal or require the making of a concession.

**Subd. 6. Dues check off.** Public employees have the right to request and be allowed dues check off for the exclusive representative. In the absence of an exclusive representative, public employees have the right to request and be allowed dues check off for the organization of their choice.

**History:** 1984 c 462 s 7; 1987 c 186 s 15; 1989 c 255 s 4

## 179A.07 RIGHTS AND OBLIGATIONS OF EMPLOYERS.

**Subdivision 1. Inherent managerial policy.** A public employer is not required to meet and negotiate on matters of inherent managerial policy. Matters of inherent managerial policy include, but are not limited to, such areas of discretion or policy as the functions and programs of the employer, its overall budget, utilization of technology, the organizational structure, selection of personnel, and direction and the number of personnel. No public employer shall sign an agreement which limits its right to select persons to serve as supervisory employees or state managers under section 43A.18, subdivision 3, or requires the use of seniority in their selection.

**Subd. 2. Meet and negotiate.** (a) A public employer has an obligation to meet and negotiate in good faith with the exclusive representative of public employees in an appropriate unit regarding grievance procedures and the terms and conditions of employment, but this obligation does not compel the public employer or its representative to agree to a proposal or require the making of a concession.

The public employer's duty under this subdivision exists notwithstanding contrary provisions in a municipal charter, ordinance, or resolution. A provision of a municipal charter, ordinance, or resolution which limits or restricts a public employer from negotiating or from entering into binding contracts with exclusive representatives is superseded by this subdivision.

(b) In addition, a public employer may, but does not have an obligation to, meet and negotiate in good faith with the exclusive representative of public employees in an appropriate unit regarding an employer contribution to the state of Minnesota deferred compensation plan authorized by section 356.24, paragraph (a), clause (4), within the limits set by section 356.24, paragraph (a), clause (4).

**Subd. 3. Meet and confer.** A public employer has the obligation to meet and confer, under section 179A.08, with professional employees to discuss policies and other matters relating to their employment which are not terms and conditions of employment.

**Subd. 4. Other communication.** If an exclusive representative has been certified for an appropriate unit, the employer shall not meet and negotiate or meet and confer with any employee or group of employees who are in that unit except through the exclusive representative. This subdivision does not prevent communication to the employer, other than through the exclusive representative, of advice or recommendations by professional employees, if this communication is a part of the employee's work assignment. This subdivision does not prevent communication between public post-secondary employers and post-secondary professional employees, other than through the exclusive representative, regarding policies and matters that are not terms and conditions of employment.

**Subd. 5. Arbitrators pay and hiring.** An employer may hire and pay for arbitrators desired or required by sections 179A.01 to 179A.25.

**Subd. 6. Time off.** A public employer must afford reasonable time off to elected officers or appointed representatives of the exclusive representative to conduct the duties of the exclusive representative and must, upon request, provide for leaves of absence to elected or appointed officials of the exclusive representative or to a full-time appointed official of an exclusive representative of teachers in another Minnesota school district.

**Subd. 7. Uniform settlement form.** (a) A public employer, other than a township, shall complete a uniform collective bargaining agreement settlement document for each collective bargaining agreement or arbitration award. The public employer shall:

(1) present the settlement document to the governing body at the time it ratifies a collective bargaining agreement or arbitration award;

(2) make the settlement document available afterward for inspection during normal business hours at the principal administrative offices of the public employer; and

(3) submit a copy of each settlement document to the department of finance within ten days of the approval by the governing body of the collective bargaining agreement or arbitration award.

(b) The commissioner of finance shall make available uniform baseline determination documents and uniform collective bargaining agreement settlement documents applicable to all negotiations between exclusive representatives of appropriate units of public employees and public employers other than townships and prescribe procedures and instructions for completion of the documents. The commissioner of finance shall, at a minimum, include these individual elements in the uniform baseline determination document: the costs of any increases to the wage schedule; the costs of employees moving through the wage schedule; the costs of medical insurance; the costs of dental insurance; the costs of life insurance; lump-sum payments; shift differentials; extracurricular activities; longevity; employer contributions to social security; employer contributions to state or local retirement plans; and contributions to a deferred compensation account. The calculation of the base year must be based on an annualization of the costs provided in the base year contract. The documents must be in the same form as presented by the commissioner of the bureau of mediation services to the legislative commission on employee relations on February 17, 1994; however, the legislative coordinating commission may modify the form as provided in section 3.855, subdivision 4.

(c) The commissioner of finance shall provide training and technical assistance to public employers who request it in completing the uniform baseline determination documents and uniform collective bargaining agreement settlement documents. The commissioner of finance, at least annually, shall inform public employers of their obligations to complete and post these forms and to submit copies of the completed forms to the department of finance.

**History:** 1984 c 462 s 8; 1988 c 605 s 5; 1994 c 647 art 8 s 27; 1995 c 212 art 2 s 9; 1996 c 425 s 9

#### **179A.08 POLICY CONSULTANTS.**

**Subdivision 1. Professional employees.** The legislature recognizes that professional employees possess knowledge, expertise, and dedication which is helpful and necessary to



the operation and quality of public services and which may assist public employers in developing their policies. It is, therefore, the policy of this state to encourage close cooperation between public employers and professional employees by providing for discussions and the mutual exchange of ideas regarding all matters that are not terms and conditions of employment.

**Subd. 2. Meet and confer.** The professional employees shall select a representative to meet and confer with a representative or committee of the public employer on matters not specified under section 179A.03, subdivision 19, relating to the services being provided to the public. The public employer shall provide the facilities and set the time for these conferences to take place. The parties shall meet at least once every four months.

**History:** 1984 c 462 s 9

#### 179A.09 UNIT DETERMINATION.

**Subdivision 1. Criteria.** In determining the appropriate unit, the commissioner shall consider the principles and the coverage of uniform comprehensive position classification and compensation plans of the employees, professions and skilled crafts, and other occupational classifications, relevant administrative and supervisory levels of authority, geographical location, history, extent of organization, the recommendation of the parties, and other relevant factors. The commissioner shall place particular importance upon the history and extent of organization, and the desires of the petitioning employee representatives.

**Subd. 2. Prohibitions.** The commissioner shall not designate an appropriate unit which includes essential employees with other employees.

**Subd. 3. Division of units.** If a designated appropriate unit contains both peace officers subject to licensure under sections 626.84 to 626.855 and essential employees who are not peace officers, the commissioner, at the request of a majority of either the peace officers or the other essential employees within the unit, shall divide the unit into two separate appropriate units, one for the peace officers and one for the other essential employees.

**History:** 1984 c 462 s 10; 1987 c 186 s 15; 1993 c 136 s 2

#### 179A.10 STATE UNITS.

**Subdivision 1. Exclusions.** The commissioner of employee relations shall meet and negotiate with the exclusive representative of each of the units specified in this section, except as provided in section 43A.06, subdivision 1, paragraph (c). The units provided in this section are the only appropriate units for executive branch state employees. The following employees shall be excluded from any appropriate unit:

(1) the positions and classes of positions in the classified and unclassified services defined as managerial by the commissioner of employee relations in accordance with section 43A.18, subdivision 3, and so designated in the official state compensation schedules;

(2) unclassified positions in the state university system and the community college system defined as managerial by their respective boards;

(3) positions of physician employees compensated under section 43A.17, subdivision 4;

(4) positions of all unclassified employees appointed by a constitutional officer;

(5) positions in the bureau;

(6) positions of employees whose classification is pilot or chief pilot;

(7) administrative law judge and compensation judge positions in the office of administrative hearings; and

(8) positions of all confidential employees.

The governor may upon the unanimous written request of exclusive representatives of units and the commissioner direct that negotiations be conducted for one or more units in a common proceeding or that supplemental negotiations be conducted for portions of a unit or units defined on the basis of appointing authority or geography.

**Subd. 2. State employees.** Unclassified employees, unless otherwise excluded, are included within the units which include the classifications to which they are assigned for pur-

poses of compensation. Supervisory employees shall only be assigned to units 13 and 17. The following are the appropriate units of executive branch state employees:

- (1) law enforcement unit;
- (2) craft, maintenance, and labor unit;
- (3) service unit;
- (4) health care nonprofessional unit;
- (5) health care professional unit;
- (6) clerical and office unit;
- (7) technical unit;
- (8) correctional guards unit;
- (9) state university instructional unit;
- (10) community college instructional unit;
- (11) technical college instructional unit;
- (12) state university administrative unit;
- (13) professional engineering unit;
- (14) health treatment unit;
- (15) general professional unit;
- (16) professional state residential instructional unit; and
- (17) supervisory employees unit.

Each unit consists of the classifications or positions assigned to it in the schedule of state employee job classification and positions maintained by the commissioner. The commissioner may only make changes in the schedule in existence on the day prior to August 1, 1984, as required by law or as provided in subdivision 4.

**Subd. 3. State employee severance.** Each of the following groups of employees has the right, as specified in this subdivision, to separate from the general professional, health treatment, or general supervisory units provided for in subdivision 2: attorneys, physicians, professional employees of the higher education services office who are compensated under section 43A.18, subdivision 4, state patrol-supervisors, enforcement supervisors employed by the department of natural resources, and criminal apprehension investigative-supervisors. This right must be exercised by petition during the 60-day period commencing 270 days prior to the termination of a contract covering the units. If one of these groups of employees exercises the right to separate from the units they have no right to meet and negotiate, but retain the right to meet and confer with the commissioner of employee relations and with the appropriate appointing authority on any matter of concern to them. The right to separate must be exercised as follows: An employee organization or group of employees claiming that a majority of any one of these groups of employees on a statewide basis wish to separate from their units may petition the commissioner for an election during the petitioning period. If the petition is supported by a showing of at least 30 percent support for the petitioner from the employees, the commissioner shall hold an election to ascertain the wishes of the majority with respect to the issue of remaining within or severing from the units provided in subdivision 2. This election must be conducted within 30 days of the close of the petition period. If a majority of votes cast endorse severance from the unit in favor of separate meet and confer status for any one of these groups of employees, the commissioner shall certify that result. This election, where not inconsistent with other provisions of this section, is governed by section 179A.12. If a group of employees elects to sever, the group may rejoin that unit by following the same procedures specified above for severance, but may only do so during the periods provided for severance.

**Subd. 4. Other assignments.** The commissioner shall assign state employee classifications, University of Minnesota employee classifications, and supervisory positions to the appropriate units when the classifications or positions have not been assigned under subdivision 2 or section 179A.11 or have been significantly modified in occupational content subsequent to assignment under these sections. The assignment of the classes shall be made on the basis of the community of interest of the majority of employees in these classes with the em-

ployees within the statutory units. All the employees in a class, excluding supervisory and confidential employees, shall be assigned to a single appropriate unit.

**History:** 1984 c 462 s 11; 1984 c 640 s 32; 1Sp1986 c 3 art 1 s 26; 1987 c 186 s 15; 1988 c 667 s 26; 1991 c 356 art 9 s 7; 1992 c 464 art 1 s 25; 1992 c 582 s 8,9; 1994 c 532 art 4 s 6; 1994 c 560 art 2 s 18; 1995 c 212 art 3 s 59

### **179A.11 UNIVERSITY OF MINNESOTA.**

**Subdivision 1. Units.** The following are the appropriate units of University of Minnesota employees. All units shall exclude managerial and confidential employees. Supervisory employees shall only be assigned to unit 13. No additional units of University of Minnesota employees shall be recognized for the purpose of meeting and negotiating.

(1) The law enforcement unit consists of the positions of all employees with the power of arrest.

(2) The craft and trades unit consists of the positions of all employees whose work requires specialized manual skills and knowledge acquired through formal training or apprenticeship or equivalent on-the-job training or experience.

(3) The service, maintenance, and labor unit consists of the positions of all employees whose work is typically that of maintenance, service, or labor and which does not require extensive previous training or experience, except as provided in unit 4.

(4) The health care nonprofessional and service unit consists of the positions of all non-professional employees of the University of Minnesota hospitals, dental school, and health service whose work is unique to those settings, excluding labor and maintenance employees as defined in unit 3.

(5) The nursing professional unit consists of all positions which are required to be filled by registered nurses.

(6) The clerical and office unit consists of the positions of all employees whose work is typically clerical or secretarial, including nontechnical data recording and retrieval and general office work, except as provided in unit 4.

(7) The technical unit consists of the positions of all employees whose work is not typically manual and which requires specialized knowledge or skills acquired through two-year academic programs or equivalent experience or on-the-job training, except as provided in unit 4.

(8) The Twin Cities instructional unit consists of the positions of all instructional employees with the rank of professor, associate professor, assistant professor, including research associate or instructor, including research fellow, located on the Twin Cities campuses.

(9) The outstate instructional unit consists of the positions of all instructional employees with the rank of professor, associate professor, assistant professor, including research associate or instructor, including research fellow, located at the Duluth campus, provided that the positions of instructional employees of the same ranks at the Morris, Crookston, or Waseca campuses shall be included within this unit if a majority of the eligible employees voting at a campus so vote during an election conducted by the commissioner, provided that the election shall not be held until the Duluth campus has voted in favor of representation. The election shall be held when an employee organization or group of employees petitions the commissioner stating that a majority of the eligible employees at one of these campuses wishes to join the unit and this petition is supported by a showing of at least 30 percent support from eligible employees at that campus and is filed between September 1 and November 1.

Should both units 8 and 9 elect exclusive bargaining representatives, those representatives may by mutual agreement jointly negotiate a contract with the regents, or may negotiate separate contracts with the regents. If the exclusive bargaining representatives jointly negotiate a contract with the regents, the contract shall be ratified by each unit.

(10) The graduate assistant unit consists of the positions of all graduate assistants who are enrolled in the graduate school and who hold the rank of research assistant, teaching assistant, teaching associate I or II, project assistant, or administrative fellow I or II.

(11) The academic professional and administrative staff unit consists of all academic professional and administrative staff positions that are not defined as included in an instructional unit, the supervisory unit, the clerical unit, or the technical unit.

(12) The noninstructional professional unit consists of the positions of all employees meeting the requirements of section 179A.03, subdivision 14, clause (a) or (b), which are not defined as included within an instructional unit, the academic professional and administrative staff unit, or the supervisory unit.

(13) The supervisory employees unit consists of the positions of all supervisory employees.

**Subd. 2. University of Minnesota employee severance.** Each of the following groups of University of Minnesota employees has the right, as specified in this subdivision, to separate from the instructional and supervisory units: (1) health sciences instructional employees at all campuses with the rank of professor, associate professor, assistant professor, including research associate, or instructor, including research fellow, (2) instructional employees of the law school with the rank of professor, associate professor, assistant professor, including research associate, or instructor, including research fellow, (3) instructional supervisors, (4) noninstructional professional supervisors, and (5) academic professional and administrative staff supervisors. This right may be exercised by petition between September 1 and November 1. If a group separates from its unit, it has no right to meet and negotiate, but retains the right to meet and confer with the appropriate officials on any matter of concern to the group. The right to separate must be exercised as follows: An employee organization or group of employees claiming that a majority of any one of these groups of employees on a statewide basis wish to separate from their unit may petition the commissioner for an election during the petitioning period. If the petition is supported by a showing of at least 30 percent support from the employees, the commissioner shall hold an election on the separation issue. This election must be conducted within 30 days of the close of the petition period. If a majority of votes cast endorse severance from their unit, the commissioner shall certify that result. Where not inconsistent with other provisions of this section, the election is governed by section 179A.12. If a group of employees severs, it may rejoin that unit by following the procedures for severance during the periods for severance.

**History:** 1984 c 462 s 12; 1987 c 186 s 15; 1991 c 77 s 1,2

### **179A.12 EXCLUSIVE REPRESENTATION; ELECTIONS; DECERTIFICATION.**

**Subdivision 1. Certification continued.** Any employee organization holding formal recognition by order of the commissioner or by employer voluntary recognition on the effective date of Extra Session Laws 1971, chapter 33, under any law that is repealed by Extra Session Laws 1971, chapter 33, is certified as the exclusive representative until it is decertified or another representative is certified in its place.

Any teacher organization as defined by Minnesota Statutes 1969, section 125.20, subdivision 3, which on the effective date of Extra Session Laws 1971, chapter 33, has a majority of its members on a teacher's council in a school district as provided in Minnesota Statutes 1969, section 125.22 is certified as the exclusive representative of all teachers of that school district until the organization is decertified or another organization is certified in its place.

**Subd. 2. Certification upon joint request.** The commissioner may certify an employee organization as an exclusive representative in an appropriate unit upon the joint request of the employer and the organization if, after investigation, the commissioner finds that no unfair labor practice was committed in initiating and submitting the joint request and that the employee organization represents over 50 percent of the employees in the appropriate unit. This subdivision does not reduce the time period or nullify any bar to the employee organization's certification existing at the time of the filing of the joint request.

**Subd. 3. Obtaining elections.** Any employee organization may obtain a certification election upon petition to the commissioner stating that at least 30 percent of the employees of a proposed appropriate unit wish to be represented by the petitioner. Any employee organization may obtain a representation election upon petition to the commissioner stating that the currently certified representative no longer represents the majority of employees in an established unit and that at least 30 percent of the employees in the established unit wish to be

represented by the petitioner rather than by the currently certified representative. An individual employee or group of employees in a unit may obtain a decertification election upon petition to the commissioner stating the certified representative no longer represents the majority of the employees in an established unit and that at least 30 percent of the employees wish to be unrepresented.

**Subd. 4. State unit elections.** The commissioner shall not consider a petition for a decertification election during the term of a contract covering employees of the executive branch of the state of Minnesota except for a period for not more than 270 to not less than 210 days before its date of termination.

**Subd. 5. Commissioner to investigate.** The commissioner shall, upon receipt of an employee organization's petition to the commissioner under subdivision 3, investigate to determine if sufficient evidence of a question of representation exists and hold hearings necessary to determine the appropriate unit and other matters necessary to determine the representation rights of the affected employees and employer.

**Subd. 6. Authorization signatures.** In determining the numerical status of an employee organization for purposes of this section, the commissioner shall require dated representation authorization signatures of affected employees as verification of the statements contained in the joint request or petitions. These authorization signatures shall be privileged and confidential information available to the commissioner only.

**Subd. 7. Election order.** The commissioner shall issue an order providing for a secret ballot election by the employees in a designated appropriate unit. The election must be held on one or more sites where those voting are employed or by a mail ballot, as determined by the commissioner. In making this determination, the commissioner shall strive for an election process that provides for maximum participation by the affected employees. The parties affected by this determination may request reconsideration of it by the commissioner under bureau rules.

**Subd. 8. Ballot.** The ballot in a certification election may contain as many names of representative candidates as have demonstrated that 30 percent of the employees in the unit desire them as their exclusive representative. The ballots shall contain a space for employees to indicate that no representation is desired. The commissioner shall provide and count absentee ballots in all elections.

**Subd. 9. Runoff election.** If no choice on the ballot receives a majority of those votes cast in the unit, the commissioner shall conduct a runoff election between the two choices receiving the most votes.

**Subd. 10. Certification.** Upon a representative candidate receiving a majority of those votes cast in an appropriate unit, the commissioner shall certify that candidate as the exclusive representative of all employees in the unit.

**Subd. 11. Unfair labor practices.** If the commissioner finds that an unfair labor practice was committed by an employer or representative candidate or an employee or group of employees, and that the unfair labor practice affected the result of an election, or that procedural or other irregularities in the conduct of the election may have substantially affected its results, the commissioner may void the election result and order a new election.

**Subd. 12. Bar to reconsideration.** When the commissioner certifies an exclusive representative, the commissioner shall not consider the question again for a period of one year, unless the exclusive representative is decertified by a court of competent jurisdiction, or by the commissioner.

**History:** 1984 c 462 s 13; 1986 c 444; 1987 c 186 s 15; 1987 c 384 art 2 s 46; 1990 c 546 s 5,6; 1992 c 582 s 10

### 179A.13 UNFAIR LABOR PRACTICES.

**Subdivision 1. Actions.** The practices specified in this section are unfair labor practices. Any employee, employer, employee or employer organization, exclusive representative, or any other person or organization aggrieved by an unfair labor practice as defined in this section may bring an action for injunctive relief and for damages caused by the unfair labor practice in the district court of the county in which the practice is alleged to have occurred. A copy of any complaint alleging an unfair labor practice must be filed with the commissioner at the

time it is brought in district court. The party bringing an unfair labor practice action in district court shall also transmit to the commissioner any orders or judgments of the court within ten days of the order or judgment.

**Subd. 2. Employers.** Public employers, their agents and representatives are prohibited from:

(1) interfering, restraining, or coercing employees in the exercise of the rights guaranteed in sections 179A.01 to 179A.25;

(2) dominating or interfering with the formation, existence, or administration of any employee organization or contributing other support to it;

(3) discriminating in regard to hire or tenure to encourage or discourage membership in an employee organization;

(4) discharging or otherwise discriminating against an employee because the employee has signed or filed an affidavit, petition, or complaint or given information or testimony under sections 179A.01 to 179A.25;

(5) refusing to meet and negotiate in good faith with the exclusive representative of its employees in an appropriate unit;

(6) refusing to comply with grievance procedures contained in an agreement;

(7) distributing or circulating a blacklist of individuals exercising a legal right or of members of a labor organization for the purpose of preventing blacklisted individuals from obtaining or retaining employment;

(8) violating rules established by the commissioner regulating the conduct of representation elections;

(9) refusing to comply with a valid decision of a binding arbitration panel or arbitrator;

(10) violating or refusing to comply with any lawful order or decision issued by the commissioner;

(11) refusing to provide, upon the request of the exclusive representative, all information pertaining to the public employer's budget both present and proposed, revenues, and other financing information provided that in the executive branch of state government this clause may not be considered contrary to the budgetary requirements of sections 16A.10 and 16A.11; or

(12) granting or offering to grant the status of permanent replacement employee to a person for performing bargaining unit work for the employer during a lockout of employees in an employee organization or during a strike authorized by an employee organization that is an exclusive representative.

**Subd. 3. Employees.** Employee organizations, their agents or representatives, and public employees are prohibited from:

(1) restraining or coercing employees in the exercise of rights provided in sections 179A.01 to 179A.25;

(2) restraining or coercing a public employer in the election of representatives to be employed to meet and negotiate or to adjust grievances;

(3) refusing to meet and negotiate in good faith with a public employer, if the employee organization is the exclusive representative of employees in an appropriate unit;

(4) violating rules established by the commissioner regulating the conduct of representation elections;

(5) refusing to comply with a valid decision of an arbitration panel or arbitrator;

(6) calling, instituting, maintaining, or conducting a strike or boycott against any public employer on account of any jurisdictional controversy;

(7) coercing or restraining any person with the effect to:

(a) force or require any public employer to cease dealing or doing business with any other person or;

(b) force or require a public employer to recognize for representation purposes an employee organization not certified by the commissioner;

(c) refuse to handle goods or perform services;

- (d) preventing an employee from providing services to the employer;
- (8) committing any act designed to damage or actually damaging physical property or endangering the safety of persons while engaging in a strike;
- (9) forcing or requiring any employer to assign particular work to employees in a particular employee organization or in a particular trade, craft, or class rather than to employees in another employee organization or in another trade, craft, or class;
- (10) causing or attempting to cause a public employer to pay or deliver or agree to pay or deliver any money or other thing of value, in the nature of an exaction, for services which are not performed or not to be performed;
- (11) engaging in an unlawful strike;
- (12) picketing which has an unlawful purpose such as secondary boycott;
- (13) picketing which unreasonably interferes with the ingress and egress to facilities of the public employer;
- (14) seizing or occupying or destroying property of the employer;
- (15) violating or refusing to comply with any lawful order or decision issued by the commissioner.

**History:** 1984 c 462 s 14; 1986 c 444; 1987 c 186 s 15; 1989 c 255 s 5; 1991 c 239 s 2; 1992 c 582 s 11,12

#### 179A.14 NEGOTIATION PROCEDURES.

**Subdivision 1. Initiation of negotiation. (a) First agreement.** When an exclusive representative desires to meet and negotiate an initial agreement establishing terms and conditions of employment, the exclusive representative shall give written notice to the employer and the commissioner. If the exclusive representative has not been certified by the commissioner under section 179A.12 within one year of such written notice, the employer has ten days from receipt of the notice to object to the demand to negotiate by petitioning the commissioner to investigate either the appropriateness of the unit or the question of representation that the employer believes is raised by the demand, or both. If the employer does not object within ten days, the employer accepts the obligations of section 179A.07, subdivision 2, and the balance of this chapter with regard to such exclusive representative. If the employer does object by filing a petition under this section, the commissioner shall investigate the petition under section 179A.12, subdivision 5.

**(b) Subsequent agreement.** When a party to a contract desires to meet and negotiate an agreement subsequent to the initial agreement, the party shall give written notice to the other party and to the commissioner at least 60 days before the termination date of the existing contract. If a party fails to give the required 60-day notice, the party is subject to a fine of \$10 per day for each day the notice is late. The fine for late notice may be waived at the discretion of the commissioner if the commissioner finds that the failure to give timely notice did not prejudice the commissioner or the other party in the fulfillment of their responsibilities and duties. The fine for late notice is the only penalty for late notice under this paragraph.

**Subd. 2. Joint negotiations.** Public employers and exclusive representatives of employees may voluntarily participate in joint negotiations in similar or identical appropriate units. It is the policy of sections 179A.01 to 179A.25 to encourage areawide negotiations, and the commissioner shall encourage it when possible.

**Subd. 3. Public meetings.** All negotiations, mediation sessions, and hearings between public employers and public employees or their respective representatives are public meetings except when otherwise provided by the commissioner.

**History:** 1984 c 462 s 15; 1985 c 157 s 3; 1987 c 186 s 15; 1989 c 255 s 6

#### 179A.15 MEDIATION.

Once notice has been given under section 179A.14, the employer or the exclusive representative may petition the commissioner for mediation services.

A petition by an employer shall be signed by the employer or an authorized officer or agent. A petition by an exclusive representative shall be signed by its authorized officer. All

petitions shall be delivered to the commissioner in person or sent by certified mail. The petition shall state briefly the nature of the disagreement of the parties. Upon receipt of a petition and upon concluding that mediation would be useful, the commissioner shall fix a time and place for a conference with the parties to negotiate the issues not agreed upon, and shall then take the most expedient steps to bring about a settlement, including assisting in negotiating and drafting an agreement.

If the commissioner determines that mediation would be useful in resolving a dispute, the commissioner may mediate the dispute even if neither party has filed a petition for mediation. In these cases, the commissioner shall proceed as if a petition had been filed.

The commissioner shall not furnish mediation services to any employee or employee representative who is not certified as an exclusive representative.

All parties shall respond to the summons of the commissioner for conferences and shall continue in conference until excused by the commissioner.

**History:** 1984 c 462 s 16; 1985 c 157 s 4; 1987 c 186 s 15

### 179A.16 INTEREST ARBITRATION.

**Subdivision 1. Nonessential employees.** An exclusive representative or an employer of a unit of employees other than essential employees may request interest arbitration by providing written notice of the request to the other party and the commissioner. The written request for arbitration must specify the items to be submitted to arbitration and whether conventional, final-offer total-package, or final-offer item-by-item arbitration is contemplated by the request.

The items to be submitted to arbitration and the form of arbitration to be used are subject to mutual agreement. If an agreement to arbitrate is reached, it must be reduced to writing and a copy of the agreement filed with the commissioner. A failure to respond, or to reach agreement on the items or form of arbitration, within 15 days of receipt of the request to arbitrate constitutes a rejection of the request.

**Subd. 2. Essential employees.** An exclusive representative or employer of a unit of essential employees may petition for binding interest arbitration by filing a written request with the other party and the commissioner. The written request must specify the items which that party wishes to submit to binding arbitration. Within 15 days of the request, the commissioner shall determine whether further mediation of the dispute would be appropriate and shall only certify matters to the board in cases where the commissioner believes that both parties have made substantial, good-faith bargaining efforts and that an impasse has occurred.

**Subd. 3. Procedure.** Within 15 days from the time the commissioner has certified a matter to be ready for binding arbitration because of an agreement under subdivision 1 or in accordance with subdivision 2, both parties shall submit their final positions on the items in dispute. In the event of a dispute over the items to be submitted to binding arbitration involving essential employees, the commissioner shall determine the items to be decided by arbitration based on the efforts to mediate the dispute and the positions submitted by the parties during the course of those efforts. The parties may stipulate items to be excluded from arbitration.

**Subd. 4. Selection of arbitrator or panel of arbitrators.** The parties may select persons who are members of the arbitration roster maintained by the bureau to act as the arbitrator or panel in their dispute by mutual agreement. In the event of a mutual agreement on the arbitrator or panel, the commissioner shall advise in writing the arbitrator or panel. If the parties do not mutually agree upon the arbitrator or panel, the commissioner shall provide the parties to the interest arbitration a list of seven arbitrators. The commissioner shall mail the list of arbitrators to the parties within five working days. The parties shall alternately strike names from the list of arbitrators until only a single arbitrator remains, unless the parties request and mutually agree to utilize a panel of three arbitrators. If the parties are unable to agree on who shall strike the first name, the question must be decided by the flip of a coin. The arbitrator or arbitrators remaining after the striking procedure shall constitute the arbitrator or panel.

**Subd. 5. Jurisdiction of the arbitrator or panel.** The arbitrator or panel selected by the parties has jurisdiction over the items of dispute certified to and submitted by the commis-



sioner. However, the arbitrator or panel has no jurisdiction or authority to entertain any matter or issue that is not a term and condition of employment, unless the matter or issue was included in the employer's final position. Any decision or part of a decision issued which determines a matter or issue which is not a term or condition of employment and was not included in the employer's final position is void and of no effect. A decision which violates, is in conflict with, or causes a penalty to be incurred under: (1) the laws of Minnesota; or (2) rules promulgated under law, or municipal charters, ordinances, or resolutions, provided that the rules, charters, ordinances, and resolutions are consistent with this chapter, has no force or effect and shall be returned to the arbitrator or panel to make it consistent with the laws, rules, charters, ordinances, or resolutions.

**Subd. 6. Powers of the arbitrator or panel.** The arbitrator or panel may issue subpoenas requiring the attendance and testimony of witnesses and the production of evidence that relates to any matter involved in any dispute before it. The arbitrator or panel may administer oaths and affidavits and may examine witnesses. Attendance of witnesses and the production of evidence may be required from any place in the state at any hearing. However, any hearing must be held in the county where the principal administrative offices of the employer are located, unless another location is selected by agreement of the parties. In case of refusal to obey a subpoena issued under this section, the district court of the state for the county where the proceeding is pending or where the person who refuses to obey is found, or resides, or transacts business, on application of the arbitrator or panel, has jurisdiction to issue an order requiring the person to appear before the panel, to produce evidence, or to give testimony. Failure to obey the order may be punished by the court as a contempt. Posthearing briefs, if any, must be received by the arbitrator within 14 days of the hearing.

**Subd. 7. Decision by the arbitrator or panel.** The decision must be issued by the arbitrator or a majority vote of the panel. The decision must resolve the issues in dispute between the parties as submitted by the commissioner. For principals and assistant principals, the arbitrator or panel is restricted to selecting between the final offers of the parties on each impasse item. For other employees, if the parties agree in writing, the arbitrator or panel is restricted to selecting between the final offers of the parties on each impasse item, or the final offer of one or the other parties in its entirety. In considering a dispute and issuing its decision, the arbitrator or panel shall consider the statutory rights and obligations of public employers to efficiently manage and conduct their operations within the legal limitations surrounding the financing of these operations. The decision is final and binding on all parties.

The arbitrator or panel shall render its decision within 30 days from the date that all arbitration proceedings have concluded. The arbitrator or panel may not request that the parties waive their right to have the decision rendered within 30 days, unless the commissioner grants an extension of the deadline. The commissioner shall remove from the roster for six months the name of any arbitrator who does not render the decision within 30 days or within the extension granted by the commissioner. The commissioner shall adopt rules establishing criteria to be followed in determining whether an extension should be granted. The decision must be for the period stated in the decision, except that decisions determining contracts for teacher units are effective to the end of the contract period determined by section 179A.20.

The arbitrator or panel shall send its decision to the commissioner, the appropriate representative of the public employer, and the employees. If any issues submitted to arbitration are settled voluntarily before the arbitrator or panel issues a decision, the arbitrator or panel shall report the settlement to the commissioner.

The parties may, at any time before or after issuance of a decision of the arbitrator or panel, agree upon terms and conditions of employment regardless of the terms and conditions of employment determined by the decision. The parties shall, if so agreeing, execute a written contract or memorandum of contract.

**Subd. 8. Database; fees, charges, and per diems.** The commissioner shall maintain a database of all fees, charges, and per diems charged by each arbitrator. The database must include the total charges imposed by the arbitrator in the previous six interest arbitration cases. For each arbitration decision rendered by an arbitrator, the arbitrator shall submit a copy of the award and a description of all fees, charges, and per diems assessed to the parties

to the commissioner. Data from this database must be available to the public. All costs of the panel must be shared equally by the parties to the dispute.

**Subd. 9. No arbitration.** Failure to reach agreement on employer payment of, or contributions toward, premiums for group insurance coverage of retired employees is not subject to interest arbitration procedures under this section, except for units of essential employees.

**History:** 1984 c 462 s 17; 1985 c 157 s 5; 1986 c 444; 1987 c 186 s 15; 1988 c 605 s 6; 1989 c 255 s 7-10; 1990 c 546 s 7; 1991 c 238 art 2 s 2-4; 1992 c 582 s 13-18; 1993 c 149 s 1; 1995 c 239 s 3-5

### 179A.17 NEW EXCLUSIVE REPRESENTATIVES.

**Subdivision 1. For teachers.** If a new or different exclusive representative of teachers employed by a local school district is certified by the commissioner at any time other than the period between 120 days before the termination date of a contract and the termination date of the contract, or if on July 1 of any odd-numbered year a representation proceeding involving the employer and the employer's teachers is before the commissioner, section 179A.18, subdivision 2, clause (1), shall apply. In those cases, however, the employer and the exclusive representative of the teachers shall execute a written contract or memorandum of contract no later than 60 days after a certification by the commissioner of a new or different exclusive representative or the resolution by the commissioner of a representation proceeding. Either party may petition the commissioner for assistance in reaching an agreement. If the employer and the exclusive representative of the teachers fail to execute a contract by 60 days after the certification of a new or different exclusive representative or the resolution by the commissioner of a representation proceeding, they shall be conclusively presumed to be at an impasse after having participated in mediation as specified in section 179A.18, subdivision 2, clause (1)(b).

**Subd. 2. Nonteachers.** If a new or different exclusive representative of employees other than teachers employed by a local school district is certified by the commissioner, or if on the expiration date of an existing contract a representation proceeding is before the commissioner, section 179A.18, subdivision 1, clause (1), shall apply. In those cases, however, the employer and the exclusive representative of the employees shall execute a written contract or memorandum of contract no later than 45 days after a certification by the commissioner of a new or different exclusive representative or the resolution by the commissioner of a representation proceeding. Either party may petition the commissioner for assistance in reaching an agreement. If the employer and the exclusive representative fail to execute a contract by 45 days after the certification of a new or different exclusive representative or the resolution by the commissioner of a representation proceeding, they shall be conclusively presumed to be at an impasse after having participated for a period of no less than 45 days in mediation sessions.

**History:** 1984 c 462 s 18; 1985 c 157 s 6; 1987 c 186 s 15; 1992 c 582 s 19

### 179A.18 STRIKES AUTHORIZED.

**Subdivision 1. When authorized.** Essential employees may not strike. Except as otherwise provided by subdivision 2 and section 179A.17, subdivision 2, other public employees may strike only under the following circumstances:

(1)(a) the collective bargaining agreement between their exclusive representative and their employer has expired or, if there is no agreement, impasse under section 179A.17, subdivision 2, has occurred; and

(b) the exclusive representative and the employer have participated in mediation over a period of at least 45 days, provided that the mediation period established by section 179A.17, subdivision 2, governs negotiations under that section, and provided that for the purposes of this subclause the mediation period commences on the day following receipt by the commissioner of a request for mediation; or

(2) the employer violates section 179A.13, subdivision 2, clause (9); or

(3) in the case of state employees,

(a) the legislative commission on employee relations has rejected a negotiated agreement or arbitration decision during a legislative interim; or

(b) the entire legislature rejects or fails to ratify a negotiated agreement or arbitration decision, which has been approved during a legislative interim by the legislative commission on employee relations, at a special legislative session called to consider it, or at its next regular legislative session, whichever occurs first.

**Subd. 2. School district requirements.** Except as otherwise provided by section 179A.17, subdivision 1, teachers employed by a local school district, other than principals and assistant principals, may strike only under the following circumstances:

(1)(a) the collective bargaining agreement between their exclusive representative and their employer has expired or, if there is no agreement, impasse under section 179A.17, subdivision 1, has occurred; and

(b) the exclusive representative and the employer have participated in mediation over a period of at least 30 days. For the purposes of this subclause the mediation period commences on the day that a mediator designated by the commissioner first attends a conference with the parties to negotiate the issues not agreed upon; and

(c) neither party has requested interest arbitration or a request for binding interest arbitration has been rejected; or

(2) the employer violates section 179A.13, subdivision 2, clause (9).

**Subd. 3. Notice.** In addition to the other requirements of this section, no employee may strike unless written notification of intent to strike is served on the employer and the commissioner by the exclusive representative at least ten days prior to the commencement of the strike. For all employees other than teachers, if more than 30 days have expired after service of a notification of intent to strike, no strike may commence until ten days after service of a new written notification. For teachers, no strike may commence more than 25 days after service of notification of intent to strike unless, before the end of the 25-day period, the exclusive representative and the employer agree that the period during which a strike may commence shall be extended for an additional period not to exceed five days. Teachers are limited to one notice of intent to strike for each contract negotiation period, provided, however, that a strike notice may be renewed for an additional ten days, the first five of which shall be a notice period during which no strike may occur, if the following conditions have been satisfied:

(1) an original notice was provided pursuant to this section; and

(2) a tentative agreement to resolve the dispute was reached during the original strike notice period; and

(3) such tentative agreement was rejected by either party during or after the original strike notice period.

The first day of the renewed strike notice period shall commence on the day following the expiration of the previous strike notice period or the day following the rejection of the tentative agreement, whichever is later. Notification of intent to strike under subdivisions 1, clause (1); and 2, clause (1), may not be served until the collective bargaining agreement has expired, or if there is no agreement, on or after the date impasse under section 179A.17 has occurred.

**History:** 1984 c 462 s 19; 1985 c 157 s 7,8; 1987 c 186 s 15; 1992 c 582 s 20; 1994 c 560 art 2 s 19

### 179A.19 ILLEGAL STRIKES.

**Subdivision 1. Other strikes illegal.** Except as authorized by section 179A.18, all strikes by public employees are illegal. Except as provided in this section, no unfair labor practice or violation of sections 179A.01 to 179A.25 by a public employer gives public employees a right to strike. Those factors may be considered, however, by the court in mitigation of or retraction of any penalties provided by this section.

**Subd. 2. Individual penalties.** Notwithstanding any other law, public employees who strike in violation of this section may have their appointment or employment terminated by the employer effective the date the violation first occurs. The termination shall be made by serving written notice upon the employee. Service may be made by certified mail.

**Subd. 3. Presumption of strike.** For purposes of this section, an employee who is absent from any portion of a work assignment without permission, or who abstains wholly or in part from the full performance of duties without permission from the employer on a day when a strike not authorized by this section occurs is prima facie presumed to have engaged in an illegal strike on that day.

**Subd. 4. Reappointment.** A public employee who knowingly participates in a strike in violation of this section and whose employment has been terminated under this section may subsequently be appointed or reappointed, employed or reemployed, but the employee shall be on probation for two years with respect to the civil service status, tenure of employment, or contract of employment to which the employee was previously entitled.

**Subd. 5. Compensation.** No employee is entitled to any daily pay, wages, reimbursement of expenses, or per diem for the days on which the employee engaged in a strike.

**Subd. 6. Hearings.** Any public employee is entitled to request the opportunity to establish that the employee did not violate this section. The request shall be filed in writing with the officer or body having the power to remove the employee, within ten days after notice of termination is served upon the employee. The employing officer or body shall within ten days commence a proceeding at which the employee shall be entitled to be heard for the purpose of determining whether the provisions of this section have been violated by the public employee. If there are contractual grievance procedures, laws or rules establishing proceedings to remove the public employee, the hearing shall be conducted in accordance with whichever procedure the employee elects. The election shall be binding and shall terminate any right to the alternative procedures. The same proceeding may include more than one employee's employment status if the employees' defenses are identical, analogous, or reasonably similar. The proceedings shall be undertaken without unnecessary delay.

Any person whose termination is sustained in the administrative or grievance proceeding may appeal in accordance with chapter 14.

**Subd. 7. Employee organization penalties.** An employee organization which has been found pursuant to section 179A.13 to have violated this section: (1) shall lose its status, if any, as exclusive representative; and (2) may not be so certified by the commissioner for a period of two years following the finding. No employer may deduct employee payments to any such organization for a period of two years.

**History:** 1984 c 462 s 20; 1986 c 444; 1987 c 186 s 15

## 179A.20 CONTRACTS.

**Subdivision 1. Written contract.** The exclusive representative and the employer shall execute a written contract or memorandum of contract containing the terms of the negotiated agreement or interest arbitration decision and any terms established by law.

**Subd. 2. No contract provisions contrary to law.** No provision of a contract shall be in conflict with:

(1) the laws of Minnesota; or

(2) rules promulgated under law, or municipal charters, ordinances, or resolutions, provided that the rules, charters, ordinances, and resolutions are consistent with this chapter.

**Subd. 2a. Former employee benefits.** A contract may not obligate an employer to fund all or part of the cost of health care benefits for a former employee beyond the duration of the contract, subject to section 179A.20, subdivision 6. A personnel policy may not obligate an employer to fund all or part of health care benefits for a former employee beyond the duration of the policy. A policy may not extend beyond the termination of the contract of longest duration covering other employees of the employer or, if none, the termination of the budgetary cycle during which the policy is adopted.

**Subd. 3. Duration.** The duration of the contract is negotiable but shall not exceed three years. Any contract between a school board and an exclusive representative of teachers shall be for a term of two years, beginning on July 1 of each odd-numbered year. A contract between a school board and an exclusive representative of teachers shall contain the teachers' compensation including fringe benefits for the entire two-year term and shall not contain a wage reopening clause or any other provision for the renegotiation of the teachers' compensation.

**Subd. 4. Grievance procedure.** (a) All contracts must include a grievance procedure providing for compulsory binding arbitration of grievances including all written disciplinary actions. If the parties cannot agree on the grievance procedure, they are subject to the grievance procedure promulgated by the commissioner under section 179A.04, subdivision 3, clause (h).

(b) Notwithstanding any home rule charter to the contrary, after the probationary period of employment, any disciplinary action is subject to the grievance procedure and compulsory binding arbitration.

(c) Employees covered by civil service systems created under chapter 43A, 44, 375, 387, 419, or 420, by a home rule charter under chapter 410, or by Laws 1941, chapter 423, may pursue a grievance through the procedure established under this section. When the grievance is also within the jurisdiction of appeals boards or appeals procedures created by chapter 43A, 44, 375, 387, 419, or 420, by a home rule charter under chapter 410, or by Laws 1941, chapter 423, the employee may proceed through the grievance procedure or the civil service appeals procedure, but once a written grievance or appeal has been properly filed or submitted by the employee or on the employee's behalf with the employee's consent the employee may not proceed in the alternative manner.

(d) A teacher who elects a hearing before an arbitrator under section 125.12, subdivision 9a, or 125.17, subdivision 10a, or who elects or acquiesces to a hearing before the school board may not later proceed in the alternative manner nor challenge the termination or discharge through a grievance procedure required by this subdivision.

(e) This section does not require employers or employee organizations to negotiate on matters other than terms and conditions of employment.

**Subd. 5. Implementation.** Upon execution of the contract, the employer shall implement it in the form of an ordinance or resolution. If implementation of the contract requires adoption of a law, ordinance, or charter amendment, the employer shall make every reasonable effort to propose and secure the enactment of this law, ordinance, resolution, or charter amendment.

**Subd. 6. Contract in effect.** During the period after contract expiration and prior to the date when the right to strike matures, and for additional time if the parties agree, the terms of an existing contract shall continue in effect and shall be enforceable upon both parties.

**History:** 1984 c 462 s 21; 1986 c 444; 1987 c 186 s 15; 1988 c 605 s 7; 1989 c 255 s 11; 1991 c 196 s 6; 1992 c 582 s 21

#### 179A.21 GRIEVANCE ARBITRATION.

**Subdivision 1. Definition.** For purposes of this section, "grievance" means a dispute or disagreement as to the interpretation or application of any term or terms of any contract required by section 179A.20.

**Subd. 2. Selection.** If the parties to a contract cannot agree upon an arbitrator or panel of arbitrators as provided by the contract grievance procedures or the procedures established by the commissioner, the parties shall alternately strike names from a list of arbitrators selected by the commissioner until only one name remains. This arbitrator shall decide the grievance and the decision is binding upon the parties. The parties shall share equally the costs and fees of the arbitrator.

**Subd. 3. Limits.** Arbitration decisions authorized or required by a grievance procedure are subject to the limitations contained in section 179A.16, subdivision 5. The arbitrator shall send the commissioner a copy of each grievance arbitration decision and any written explanation. If any issues submitted to arbitration are settled voluntarily before the arbitrator issues a decision, the arbitrator shall report the settlement to the commissioner.

**History:** 1984 c 462 s 22; 1987 c 186 s 15; 1992 c 582 s 22,23

#### 179A.22 STATE AND ITS EMPLOYEES; NEGOTIATIONS.

**Subdivision 1. Appointing authority.** For purposes of this section the term "appointing authority" has the meaning given it by section 43A.02, subdivision 5.

**Subd. 2. Employer.** The employer of state employees shall be, for purposes of sections 179A.01 to 179A.25, the commissioner of employee relations or the commissioner's representative.

**Subd. 3. Duties.** In all negotiations between the state and exclusive representatives the state shall be represented by the commissioner of employee relations or the commissioner's representative. The attorney general, and each appointing authority shall cooperate with the commissioner of employee relations in conducting negotiations and shall make available any personnel and other resources necessary to enable the commissioner to conduct effective negotiations.

**Subd. 4. Agreements.** The commissioner of employee relations is authorized to enter into agreements with exclusive representatives. The negotiated agreements and arbitration decision must be submitted to the legislature to be accepted or rejected in accordance with this section and section 3.855.

**History:** 1984 c 462 s 23; 1986 c 444; 1992 c 582 s 24; 1994 c 560 art 2 s 20

### **179A.23 LIMITATION ON CONTRACTING—OUT OF SERVICES PROVIDED BY MEMBERS OF A STATE OF MINNESOTA OR UNIVERSITY OF MINNESOTA BARGAINING UNIT.**

Any contract entered into after March 23, 1982, by the state of Minnesota or the University of Minnesota involving services, any part of which, in the absence of the contract, would be performed by members of a unit provided in sections 179A.10 and 179A.11, shall be subject to section 16B.07 and shall provide for the preferential employment by a party of members of that unit whose employment with the state of Minnesota or the University of Minnesota is terminated as a result of that contract.

Contracts entered into by the state of Minnesota for the purpose of providing court reporter services or transcription of the record of a hearing which was recorded by means of an audio magnetic recording device shall be subject to section 16B.17 and the preferential employment provisions enumerated in this section. Any court reporter seeking a contract pursuant to the preferential employment provisions of this section shall be given preference when the services are needed only if that court reporter's charges for the services requested are no greater than the average of the charges made for the identical services by other court reporters in the same locality who are also under contract with the state for those services.

**History:** 1984 c 462 s 24; 1987 c 384 art 2 s 1

### **179A.24 APPLICATION OF SECTIONS 185.07 TO 185.19.**

Sections 185.07 to 185.19, apply to all public employees, including those specifically excepted from the definition of public employee in section 179A.03, subdivision 14, except as sections 185.07 to 185.19 are inconsistent with section 179A.13.

**History:** 1984 c 462 s 25

### **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.

**History:** 1984 c 462 s 26; 1986 c 444; 1992 c 582 s 25

### **179A.30 REGIONAL TREATMENT CENTER, NURSING HOME, AND COMMUNITY-BASED FACILITY EMPLOYEES.**

**Subdivision 1. Exclusive representative.** The exclusive representative of employees may meet and negotiate with the commissioner of employee relations, in consultation with

the commissioner of human services, concerning possible changes in hours or work schedules that could produce cost reductions in the regional treatment centers.

**Subd. 2. Commissioner of employee relations.** The commissioner of employee relations shall meet and negotiate in accordance with this chapter with the appropriate exclusive representative of the regional treatment center employees concerning the terms and conditions of employment that result from state-operated, community-based residential programs established under section 252.50.

**History:** 1988 c 689 art 2 s 62