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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETY-SECOND SESSION

H. F. No. 483

01/28/2021 Authored by Ecklund

The bill was read for the first time and referred to the Committee on Labor, Industry, Veterans and Military Affairs Finance and Policy

1.1 A bill for an act
1.2 relating to labor; modifying the public employment labor relations act; amending
1.3 Minnesota Statutes 2020, sections 179A.03, subdivisions 5, 17; 179A.04,
1.4 subdivision 3; 179A.06, subdivision 2; 179A.14, subdivision 3; 179A.16,
1.5 subdivisions 4, 6, 7; 179A.21, subdivision 3; repealing Minnesota Statutes 2020,
1.6 sections 179A.102; 179A.103.

1.7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.8 Section 1. Minnesota Statutes 2020, section 179A.03, subdivision 5, is amended to read:

1.9 Subd. 5. Commissioner. ~~"Commissioner of the Minnesota Bureau of Mediation Services"~~
1.10 ~~or~~ "Commissioner" means the commissioner of the Bureau of Mediation Services.

1.11 Sec. 2. Minnesota Statutes 2020, section 179A.03, subdivision 17, is amended to read:

1.12 Subd. 17. Supervisory employee. "Supervisory employee" means a person who has the
1.13 authority to undertake a majority of the following supervisory functions in the interests of
1.14 the employer: hiring, transfer, suspension, promotion, discharge, assignment, reward, or
1.15 discipline of other employees, direction of the work of other employees, or adjustment of
1.16 other employees' grievances on behalf of the employer. To be included as a supervisory
1.17 function which the person has authority to undertake, the exercise of the authority by the
1.18 person may not be merely routine or clerical in nature but must require the use of independent
1.19 judgment. An employee, other than ~~an essential employee~~, a firefighter, a peace officer
1.20 subject to licensure under sections 626.84 to 626.863, a 911 system and police and fire
1.21 department public safety dispatcher, a guard at a correctional facility, an assistant county
1.22 attorney, and an assistant city attorney, who has authority to effectively recommend a
1.23 supervisory function; is deemed to have authority to undertake that supervisory function

2.1 for the purposes of this subdivision. The administrative head of a municipality, municipal
2.2 utility, or police or fire department, and the administrative head's assistant, are always
2.3 considered supervisory employees.

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

2.9 Sec. 3. Minnesota Statutes 2020, section 179A.04, subdivision 3, is amended to read:

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

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

2.14 (2) issue notices, subpoenas, and orders required by law to carry out duties under sections
2.15 179A.01 to 179A.25;

2.16 (3) assist the parties in formulating petitions, notices, and other ~~papers~~ documents required
2.17 to be filed with the commissioner ~~or the board~~;

2.18 (4) conduct elections;

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

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

2.23 (7) receive, catalogue, file, and make available to the public all decisions of arbitrators
2.24 and panels authorized by sections 179A.01 to 179A.25, all grievance arbitration decisions
2.25 to the extent the decision is public under section 13.43, subdivision 2, paragraph (b), and
2.26 the commissioner's orders and decisions;

2.27 (8) adopt, subject to chapter 14, a grievance procedure that fulfills the purposes of section
2.28 179A.20, subdivision 4, that is available to any employee in a unit not covered by a
2.29 contractual grievance procedure;

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

3.1 (10) collect fees ~~established by rule~~ for empanelment of persons on the labor arbitrator
3.2 roster maintained by the commissioner ~~or in conjunction with fair share fee challenges~~.
3.3 Arbitrator application fees ~~will be \$100~~ are \$150 per year for initial applications and renewals
3.4 effective ~~July 1, 2007~~ January 1, 2022;

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

3.8 (12) provide to the parties a list of arbitrators as required by section 179A.16, subdivision
3.9 4; and

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

3.16 ~~(14) upon request of the board, provide administrative support and other assistance to~~
3.17 ~~the board, including assistance in development and adoption of board rules.~~

3.18 (b) From the names provided by representative organizations, the commissioner shall
3.19 maintain a list of arbitrators to conduct teacher discharge or termination hearings according
3.20 to section 122A.40 or 122A.41. The persons on the list must meet at least one of the following
3.21 requirements:

3.22 (1) be a former or retired judge;

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

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

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

3.28 (c) The commissioner shall maintain a list of six arbitrators to hear peace officer discipline
3.29 grievance arbitrations involving written disciplinary action, suspension, or discharge as set
3.30 forth in section 626.892.

4.1 (d) Each year, education Minnesota shall provide a list of up to 14 names and the
4.2 Minnesota School Boards Association a list of up to 14 names of persons to be on the list.
4.3 The commissioner may adopt rules about maintaining and updating the list.

4.4 **EFFECTIVE DATE.** This section is effective August 1, 2021, except paragraph (a),
4.5 clause (10), is effective January 1, 2022.

4.6 Sec. 4. Minnesota Statutes 2020, section 179A.06, subdivision 2, is amended to read:

4.7 Subd. 2. **Right to organize.** Public employees have the right to form and join labor or
4.8 employee organizations, and have the right not to form and join such organizations. Public
4.9 employees in an appropriate unit have the right by secret ballot to designate an exclusive
4.10 representative to negotiate grievance procedures and the terms and conditions of employment
4.11 with their employer. Confidential employees of the state, confidential court employees, and
4.12 confidential University of Minnesota employees are excluded from bargaining. Supervisory
4.13 and managerial court employees are excluded from bargaining. Supervisory, managerial,
4.14 and confidential employees of Hennepin Healthcare System, Inc., are excluded from
4.15 bargaining. Other confidential employees, supervisory employees, principals, and assistant
4.16 principals may form their own organizations. An employer shall extend exclusive recognition
4.17 to a representative of or an organization of supervisory or confidential employees, or
4.18 principals and assistant principals, for the purpose of negotiating terms or conditions of
4.19 employment, in accordance with sections 179A.01 to 179A.25, applicable to essential
4.20 employees.

4.21 Supervisory or confidential employee organizations shall not participate in any capacity
4.22 in any negotiations which involve units of employees other than supervisory or confidential
4.23 employees. Except for organizations ~~which~~ that represent ~~supervisors who are supervisor~~
4.24 units consisting solely of: (1) firefighters, emergency medical service employees certified
4.25 under section 144E.28, 911 system public safety dispatchers, peace officers subject to
4.26 licensure under sections 626.84 to 626.863, guards at correctional facilities, or employees
4.27 at hospitals other than state hospitals; and (2) not state or University of Minnesota employees,
4.28 a supervisory or confidential employee organization which is affiliated with another employee
4.29 organization which is the exclusive representative of nonsupervisory or nonconfidential
4.30 employees of the same public employer shall not be certified, or act as, an exclusive
4.31 representative for the supervisory or confidential employees. For the purpose of this
4.32 subdivision, affiliation means either direct or indirect and includes affiliation through a
4.33 federation or joint body of employee organizations.

5.1 Sec. 5. Minnesota Statutes 2020, section 179A.14, subdivision 3, is amended to read:

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

5.5 Sec. 6. Minnesota Statutes 2020, section 179A.16, subdivision 4, is amended to read:

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

5.18 Sec. 7. Minnesota Statutes 2020, section 179A.16, subdivision 6, is amended to read:

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

6.1 Sec. 8. Minnesota Statutes 2020, section 179A.16, subdivision 7, is amended to read:

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

6.12 The arbitrator or panel shall render its decision within 30 days from the date that all
6.13 arbitration proceedings have concluded. The arbitrator or panel may not request that the
6.14 parties waive their right to have the decision rendered within 30 days, unless the
6.15 commissioner grants an extension of the deadline. The commissioner shall remove from
6.16 the roster for six months the name of any arbitrator who does not render the decision within
6.17 30 days or within the extension granted by the commissioner. The commissioner shall adopt
6.18 rules establishing criteria to be followed in determining whether an extension should be
6.19 granted. The decision must be for the period stated in the decision, except that decisions
6.20 determining contracts for teacher units are effective to the end of the contract period
6.21 determined by section 179A.20.

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

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

6.30 Sec. 9. Minnesota Statutes 2020, section 179A.21, subdivision 3, is amended to read:

6.31 Subd. 3. **Limits.** Arbitration decisions authorized or required by a grievance procedure
6.32 are subject to the limitations contained in section 179A.16, subdivision 5. The arbitrator
6.33 shall send the commissioner a copy of each grievance arbitration decision and any written
6.34 explanation immediately upon its issuance and no later than 30 days after the close of the

7.1 record. If any issues submitted to arbitration are settled voluntarily before the arbitrator
7.2 issues a decision, the arbitrator shall report the settlement to the commissioner.

7.3 Sec. 10. **REPEALER.**

7.4 Minnesota Statutes 2020, sections 179A.102; and 179A.103, are repealed.

179A.102 TRANSITION TO NEW BARGAINING UNIT STRUCTURE.

Subdivision 1. **Application of section.** Notwithstanding the provisions of section 179A.12 or any other law, this section governs, where contrary to other law, the initial certification and decertification, if any, of exclusive representatives for the appropriate units established by section 179A.101. Subsequent to the initial certification and decertification, if any, pursuant to this section, this section does not apply.

Subd. 2. **Existing majority.** The commissioner shall certify an employee organization as exclusive representative for an appropriate unit established under section 179A.101 upon a petition filed with the commissioner by the organization within 30 days of the effective date of the judicial district coming under section 480.181, subdivision 1, paragraph (b), demonstrating that the petitioner is certified pursuant to section 179A.12 as the exclusive representative of a majority of the employees included within the unit established by section 179A.101 as of that effective date. Two or more employee organizations that represent the employees in a unit established by section 179A.101 may petition jointly under this subdivision, provided that any organization may withdraw from a joint certification in favor of the remaining organizations on 30 days' notice to the remaining organizations, the employer, and the commissioner, without affecting the rights and obligations of the remaining organizations or the employer. The commissioner shall make a determination on a timely petition within 45 days of its receipt.

Subd. 3. **No existing majority.** (a) If no exclusive representative is certified under subdivision 2, the commissioner shall certify an employee organization as exclusive representative for an appropriate unit established under section 179A.101 upon a petition filed by the organization within the time period provided in subdivision 2 demonstrating that the petitioner is certified under section 179A.12 as the exclusive representative of fewer than a majority of the employees included within the unit established by section 179A.101, if no other employee organization so certified has filed a petition within the time period provided in subdivision 2 and a majority of the employees in the unit established by section 179A.101 are represented by employee organizations under section 179A.12 on the effective date of the judicial district coming under section 480.181, subdivision 1, paragraph (b). Two or more employee organizations, each of which represents employees included in the unit established by section 179A.101, may petition jointly under this paragraph, provided that any organization may withdraw from a joint certification in favor of the remaining organizations on 30 days' notice to the remaining organizations, the employer, and the commissioner without affecting the rights and obligations of the remaining organizations or the employer. The commissioner shall make a determination on a timely petition within 45 days of its receipt.

(b) If no exclusive representative is certified under subdivision 2 or paragraph (a), and an employee organization petitions the commissioner within 90 days of the effective date of the judicial district coming under section 480.181, subdivision 1, paragraph (b), demonstrating that a majority of the employees included within a unit established by section 179A.101 wish to be represented by the petitioner, where this majority is evidenced by current dues deduction rights, signed statements from court employees in counties within the district that are not currently represented by any employee organization plainly indicating that the signatories wish to be represented for collective bargaining purposes by the petitioner rather than by any other organization, or a combination of those, the commissioner shall certify the petitioner as exclusive representative of the employees in the unit established by section 179A.101. The commissioner shall make a determination on a timely petition within 45 days of its receipt.

(c) If no exclusive representative is certified under subdivision 2 or paragraph (a) or (b), and an employee organization petitions the commissioner subsequent to the effective date of the judicial district coming under section 480.181, subdivision 1, paragraph (b), demonstrating that at least 30 percent of the employees included within a unit established by section 179A.101 wish to be represented by the petitioner, where this 30 percent is evidenced by current dues deduction rights, signed statements from court employees in counties within the district that are not currently represented by any employee organization plainly indicating that the signatories wish to be represented for collective bargaining purposes by the petitioner rather than by any other organization, or a combination of those, the commissioner shall conduct a secret ballot election to determine the wishes of the majority. The election must be conducted within 45 days of receipt or final decision on any petitions filed pursuant to subdivision 2, whichever is later. The election is governed by section 179A.12, where not inconsistent with other provisions of this section.

Subd. 4. **Decertification.** The commissioner may not consider a petition for decertification of an exclusive representative certified under this section for one year after certification. After that time a petition must be considered under the provisions of section 179A.12.

Subd. 5. **Existing collective bargaining agreements.** The terms and conditions of collective bargaining agreements covering judicial district employees in districts that come under section 480.181, subdivision 1, paragraph (b), remain in effect until a successor agreement becomes effective.

Subd. 6. **Contract and representation responsibilities.** (a) Notwithstanding the provisions of section 179A.101, the exclusive representatives of units of court employees certified prior to the effective date of the judicial district coming under section 480.181, subdivision 1, paragraph (b), remain responsible for administration of their contracts and for other contractual duties and have the right to dues and fair share fee deduction and other contractual privileges and rights until a contract is agreed upon with the state court administrator for a new unit established under section 179A.101. Exclusive representatives of court employees certified after the effective date of Laws 1999, chapter 216, article 7, section 10, in the judicial district are immediately upon certification responsible for bargaining on behalf of employees within the unit. They are also responsible for administering grievances arising under previous contracts covering employees included within the unit which remain unresolved upon agreement with the state court administrator on a contract for a new unit established under section 179A.101. Where the employer does not object, these responsibilities may be varied by agreement between the outgoing and incoming exclusive representatives. All other rights and duties of representation begin on July 1 of the year in which the state assumes the funding of court administration in the judicial district, except that exclusive representatives certified after the effective date of Laws 1999, chapter 216, article 7, section 10, shall immediately, upon certification, have the right to all employer information and all forms of access to employees within the bargaining unit which would be permitted to the current contract holder, including the rights in section 179A.07, subdivision 6. This section does not affect an existing collective bargaining contract. Incoming exclusive representatives of court employees from judicial districts that come under section 480.181, subdivision 1, paragraph (b), are immediately, upon certification, responsible for bargaining on behalf of all previously unrepresented employees assigned to their units. All other rights and duties of exclusive representatives begin on July 1 of the year in which the state assumes the funding of court administration in the judicial district.

(b) Nothing in Laws 2001, First Special Session chapter 5, or Laws 1999, chapter 216, article 7, sections 3 to 15, prevents an exclusive representative certified after the effective dates of those provisions from assessing fair share or dues deductions immediately upon certification for employees in a unit established under section 179A.101 if the employees were unrepresented for collective bargaining purposes before that certification.

179A.103 GENERAL PROVISIONS FOR COURT EMPLOYEES.

Subdivision 1. **Contracts.** Contracts for the period commencing July 1 of the year in which the state assumes the cost of court administration in the judicial district for the judicial district court employees must be negotiated with the state court administrator. Negotiations for those contracts may begin any time after July 1 of the year before the state assumes the cost, and may be initiated by either party notifying the other of the desire to begin the negotiating process. Negotiations are subject to this chapter.

Subd. 2. **Date of employment.** The date of first employment by the state court system is the date on which services were first performed by the employee for the employer from which the employee is being transferred.

Subd. 3. **Probationary periods.** Except as otherwise provided in a successor contract, probationary periods are not affected by the transfer of employees to the state court system.

Subd. 4. **Wage protection.** Court employees in judicial districts coming under section 480.181, subdivision 1, paragraph (b), may not have a decrease in wages as a result of their transfer to state employment. Wage scales negotiated in a judicial district contract are not to be applied to a court employee of a judicial district who was a court employee of a county within the judicial district at the time the judicial district came under section 480.181, subdivision 1, paragraph (b), until the wage for the employee under the scale is equal to or greater than the wage the employee was receiving on the date the judicial district came under section 480.181, subdivision 1, paragraph (b).