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February 16, 2016

The Honorable Jeanne M. Cochran  
Office of Administrative Hearings  
600 Robert St N  
PO Box 64620  
St. Paul, MN 55164-0620

VIA U.S. MAIL

**Re: Hearing on Proposed Rules of Minnesota Public Employment Relations Board Governing the Hearing of Charges and Appeals of Unfair Labor Practices Under Minnesota Statutes, 179A; Minnesota Rules, Chapter 7325; Revisor's ID Number R-04345**

Dear Judge Cochran:

On behalf of the Coalition of Greater Minnesota Cities, I respectfully submit the enclosed Written Testimony of Coalition of Greater Minnesota Cities (CGMC) by Shaunna Johnson, City Administrator, City of Waite Park, and CGMC Labor and Employee Relations Committee Co-Chair for Hearing on Proposed Rules of Minnesota Public Employment Relations Board Governing the Hearing of Charges and Appeals of Unfair Labor Practices Under Minnesota Statutes, 179A; Minnesota Rules, Chapter 7325; Revisor's ID Number R-04345

Thank you for your consideration.

Sincerely,

A handwritten signature in cursive script that reads 'Brandon M. Fitzsimmons'.

Brandon M. Fitzsimmons,  
Shareholder Attorney  
Attorney No. 0328406

cc: Steven Hoffmeyer, Interim General Counsel/Executive Director, PERB

Enc.



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Dedicated to a Strong Greater Minnesota

**Written Testimony of Coalition of Greater Minnesota Cities (CGMC)  
by Shaunna Johnson, City Administrator, City of Waite Park, and  
CGMC Labor and Employee Relations Committee Co-Chair  
for Hearing on Proposed Rules of Minnesota Public Employment Relations Board  
Governing the Hearing of Charges and Appeals of Unfair Labor Practices Under  
Minnesota Statutes, 179A; Minnesota Rules, Chapter 7325; Revisor's ID Number R-04345**

**February 16, 2016**

Dear Judge Cochran:

On behalf of the Coalition of Greater Minnesota Cities, I appreciate the opportunity to submit as evidence this written testimony for the hearing on Possible Adoption of Rules Governing the Procedures of Investigations, Hearings, and Appeals of Unfair Labor Practices Under Minnesota Statutes 179A.

**Introduction**

My name is Shaunna Johnson. I am City Administrator for City of Waite Park, Minnesota and Coalition of Greater Minnesota Cities (CGMC) Labor and Employee Relations Committee Co-Chair.

CGMC opposes the entire set of proposed rules because the rules:

1. Are deficient in ensuring accountability;
2. Do not address required qualifications for those serving as hearing officers or investigators; and
3. Are deficient in ensuring timely and efficient processing of charges.

• **CGMC Background**

The CGMC is a nonprofit, nonpartisan advocacy organization representing over 85 cities outside of the Twin Cities metropolitan area. CGMC cities are dedicated to a strong Greater Minnesota.

CGMC's mission is to develop viable, progressive communities for businesses and families through strong economic growth and good local government.

One of the primary purposes of CGMC's Labor & Employee Relations Committee is to develop a coordinated effort among greater Minnesota cities on managing labor and employee relations and negotiating labor contracts through researching and developing databases, advocating positive changes to labor processes, and by providing a forum for networking, discussing and implementing uniform labor policies and negotiating strategies.

CGMC member cities, including the City of Waite Park, make up over 50% of the population of Greater Minnesota cities with CGMC cities ranging in size from 1,000 to 111,000.<sup>1</sup> The CGMC member cities are, therefore, a reflection of Greater Minnesota cities. I am here today on their behalf to share a greater Minnesota city perspective.

- **Greater Minnesota Cities Impact**

Greater Minnesota cities are impactful statewide in local government. The most recent data from the State provides that Greater Minnesota local governments employed a majority of local government employees in the State.<sup>2</sup> Greater Minnesota local governments paid over \$5 billion in wages to employees in 2014.<sup>3</sup> Compared to Twin Cities metropolitan-area cities, Greater Minnesota cities must often provide and fund more services independently, such as water, wastewater treatment, libraries, and airports, with a substantially lower property tax base per capita to fund these services. As a result, many Greater Minnesota cities, such as Waite Park, are unable to employ any or a sufficient number of human resource professional employees and/or outside legal counsel to advise and represent cities on labor and employment matters and related processes. And, the generally smaller population of Greater Minnesota cities and workforce size of Greater Minnesota city governments, make Greater Minnesota city governments more conducive to resolving workplace issues person-to-person in lieu of legal proceedings. For these reasons, it is critical that the rules adopted by the Public Employment Relations Board (PERB) take into account Greater Minnesota cities unique finances, operations, and workplace culture and the substantial negative impact the proposed rules would have on greater Minnesota cities.

### **Concerns with Proposed Rules**

CGMC's concerns with the proposed rules follow:

- **Accountability**

First, the proposed rules are deficient in ensuring accountability.

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<sup>1</sup> *Annual estimates of city and township population, households, and persons per household, 2010-2014*, Minnesota State Demographic Center (released July 2015), accessed on February 1, 2016, available at <http://mn.gov/admin/demography/data-by-topic/population-data/our-estimates/index.jsp>

<sup>2</sup> *Quarterly Census of Employment and Wages*, Minnesota Department of Employment and Economic Development (2<sup>nd</sup> Qtr., 2015), accessed on Jan. 29, 2016, available at <https://apps.deed.state.mn.us/lmi/qcew/ResultsDisp.aspx>

<sup>3</sup> *Id.*

The median population of Greater Minnesota cities is over nine times less than Twin Cities Metropolitan area cities.<sup>4</sup> The average number of employees per local government in Greater Minnesota is far less than one-half than that of the Twin Cities Metropolitan area local governments.<sup>5</sup> Based on this and the high likelihood of the direct relations Greater Minnesota employees are likely to have with other individuals within the same employer, Greater Minnesota employers and employees are more inclined to deal with workplace issues person-to-person. This is the case in Waite Park.

Most labor organizations representing Greater Minnesota public employees, however, are headquartered in the Twin Cities metropolitan area or regional centers. For example, the union representing the three bargaining units in Waite Park is headquartered in Minneapolis. Accordingly, most labor organizations and their agents representing Greater Minnesota employees have no relationship to specific Greater Minnesota local governments. None of the labor union business agents for Waite Park employees has any specific relationship to Waite Park. This makes labor organizations and their employees more inclined to address problems on behalf of Greater Minnesota local government employees through a legal or labor contract process instead of person-to-person.

In addition to these dynamics, the lack of accountability in the proposed rules for parties pursuing unfair labor practice (ULP) charges undermines informal resolution to workplace issues and encourages the filing of ULP charges against employers to resolve workplace issues. Such a result would place unnecessary, time consuming, costly, and employee morale burdens on Greater Minnesota cities who rarely have any or sufficient administrative staff or in-house legal counsel to handle charges like the City of Waite Park. Therefore, charges may often be used by labor organizations or employees as leverage if labor contract negotiations are at an impasse, employees simply do not like action taken by City management or to obtain a more favorable resolution to a labor contract grievance.

The specific concerns CGMC has on the proposed rules related to accountability are as follows:

1. It is important for all parties involved in a ULP proceeding to know and share the financial responsibility for bringing forth a charge as well as responding to a charge. There is currently no fee. There should be a non-prohibitive fee for filing a charge to minimize non-meritorious charges, such as a \$50 fee.
2. There is no provision establishing that chargeable PERB costs following the initial filing fee be shared equally by all parties, except for attorneys' fees. The rules should require this.

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<sup>4</sup> *Annual estimates of city and township population, households, and persons per household, 2010-2014*, Minnesota State Demographic Center (released July 2015), accessed on February 1, 2016, available at <http://mn.gov/admin/demography/data-by-topic/population-data/our-estimates/index.jsp>

<sup>5</sup> *Quarterly Census of Employment and Wages, Minnesota Department of Employment and Economic Development (2<sup>nd</sup> Qtr., 2015)*, accessed on Jan. 29, 2016, available at <https://apps.deed.state.mn.us/lmi/qcew/ResultsDisp.aspx>

3. There is no provision requiring parties to declare that they read the charge and that the statements are true to the best of their knowledge and belief. The rules should require this.
4. The rules provide for e-mail filing and service which is unreliable without a web-based e-filing and service system in place. The rules should not provide for e-mail filing and service until such a system is in place.
5. The rules do not specify the appropriate individual that should be served with the charge form when entities are charged. This may result in individuals not designated by employers from receiving charge forms. Waite Park has experienced this problem extensively with its union not initiating or pursuing labor contract grievances with the appropriate City representative. This causes unnecessary confusion and delay. The rules should specify the appropriate individuals to be served with a charge form.
6. There is no provision requiring that a party receive evidence submitted to the investigator by the other party thereby making it unclear whether an employer has access to all information it needs to appropriately respond to a charge. The rules should specify this.

- **Investigator and Hearing Officer Qualifications**

The second primary concern CGMC has related to the rules is that the rules do not address required qualifications for those serving as hearing officers or investigators.

Individuals that have participated in labor relations matters are often predisposed to agree more with labor or management on such matters. Therefore, it is critical that the rules specify the qualifications for investigators and hearing officers.

The specific concerns CGMC has on the proposed rules related to investigator and hearing officer qualifications are as follows:

1. The rules do not, but should, specify that these individuals have knowledge and experience in labor law and administrative law and procedure; demonstrated skills in legal analysis and writing; and similar qualifications to arbitrator qualifications and standards for arbitrator appointment under BMS' arbitrator roster rules, which includes the ability to hear and decide complex labor relations issues in a fair and objective manner.
2. Due to the fact that Bureau of Mediation Services (BMS) mediators must maintain neutrality during mediation, the rules should specify that they cannot be investigators or hearing officers.

- **Timely and Efficient Processing of Charges**

The final primary concern CGMC has related to the rules is that the rules are deficient in ensuring timely and efficient processing of charges.

To comply with the policy, intent and letter of the ULP statute, charges should be processed in a timely and efficient manner. These objectives can be further met through an enhancement of the timing specified for completion of investigations and service of decisions and orders. This will avoid the harm to parties of lengthy proceedings and uncertainty, which harm is compounded with any labor contract negotiations, workplace or labor contract grievance matter related to a charge – a harm that Waite Park has experienced extensively in the past decade.

The specific concerns CGMC has on the proposed rules related to timely and efficient processing of charges are as follows:

1. Provisions should be included, consistent with Minn. Stat. § 179A.13, subd. 1(b), that the investigations should be completed promptly, which should be defined as 30 days from the filing of the charge, and that a failure to promptly complete the investigation will result in dismissal of the charge.
2. The PERB should expressly be authorized to dismiss charges that do not comply with the procedural requirements for a charge
3. A provision should be added that PERB's decision and order should be required to be served within 30 days of the latest date that exceptions, cross-exceptions, and responses to a hearing officer's decision and order can and must be filed.
4. There is no required timeline for notifying all parties that the board has dismissed a charge. We recommend that notification be given within five working days.

### **Conclusion**

Greater Minnesota local governments employ a majority of local government employees in the State and pay billions of dollars in wages to employees. Due to the extent of service and financial constraints on Greater Minnesota Cities, however, they often lack any or sufficient human resources to navigate and defend themselves in labor and employment proceedings like the City of Waite Park. In addition, Greater Minnesota city employees and employers have a high likelihood of dealing with workplace issues person-to-person. The deficiencies in the proposed PERB rules undermine informal resolution to workplace issues in Greater Minnesota cities and encourage the filing of ULP charges against employers to resolve workplace issues with a corresponding, unnecessary, time consuming, costly, and employee morale burden on Greater Minnesota cities.

CGMC respectfully requests that you consider and accept the Joint Comments of League of Minnesota Cities, CGMC and other organizations and this testimony to ensure the rules: ensure accountability, address required qualifications for those serving as hearing officers or investigators; and ensure timely and efficient processing of charges.

Thank you for your consideration.

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