

April 5, 2004

This letter is in response to your letter questioning the Bureau's position on contract reopeners. Please accept my apology for the delay in getting back to you. The delay was caused by some internal questions regarding the Bureau's historic position on reopeners. My staff and I had an opportunity to discuss the matter fully today and your letter was at the center of those discussions.

Your letter asked for an explanation about a Bureau mediator's opinion that non-essential groups do not have the right to strike upon a failed contract reopener, while essential employees have a right to interest arbitration. Your letter questions the apparent difference in each group's ability to engage in an "ultimate job action". You believe that the ultimate job action for non-essential employees is a strike, while the ultimate job action for essential employees is interest arbitration.

The Bureau's opinion is a result of our interpretation of Minn. Stat. § 179A.01 (2002) and the corresponding Minnesota Rule found at Minn. R. 5510.3005 (2003).

Essential employees are specifically prohibited from striking under Minn. Stat. § 179A.18. With regard to non-essential employees, Minn. Stat. § 179A.18, subd. 1, states in pertinent part:

“Except as otherwise provided ... 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....”

The Bureau's opinion regarding contract reopeners is based on the belief that the failure of a party to achieve a contract reopener is not the same as an expired contract. Since a reopener does not involve an expired contract, a non-essential bargaining unit may not exercise the right to strike if the parties cannot agree on a contract reopener. However, the parties may certainly agree to resolve the reopener issue by way of a voluntary interest arbitration hearing.

The analysis regarding essential employees is different because essential employees are prohibited from striking under Minn. Stat. §179A.18.

As you correctly note in your letter, essential units have the ability to go to interest arbitration in situations where reopeners have failed. The provisions for interest arbitration under PELRA are found at Minnesota Statutes § 179A.16, subd. 2. That provision states in pertinent part:

“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.”

In the case of an essential group, the statute does not require that the collective bargaining agreement be expired. It requires the Commissioner to believe that the parties have made a substantial good-faith effort to bargain to impasse.

Minnesota Rule 5510.2930, Subp. 1 allows either party to request interest arbitration. In the majority of cases, there would be no potential arbitration as all terms and conditions of employment have been reduced to writing for the term of the contract. However, on a reopener, the parties have typically a particular that issue open in their contract, so it is considered a “matter not previously agreed upon” as required in Minnesota R. 5510.2930, Subp. 3. Further, “matters not previously agreed upon” become arbitrable based on a single or joint party petition to the Bureau.

While I can appreciate your concern with the appearance of inconsistency between the ability of essential and non-essential groups to engage in an “ultimate job action,” I believe that the Bureau’s legal obligation under PELRA clearly mandates that we treat essential and non-essential groups differently and in accordance with state law. Absent a change in the law, the Bureau will continue to opine that non-essential groups do not have the ability to strike on a failed contract reopener while essential groups continue to have the ability to go to interest arbitration. Several changes to PELRA would have to be made to prohibit essential groups from going to interest arbitration on a failed reopener. I am not aware of any legislative efforts to address this issue at present. Additionally, I do not anticipate any action by the Bureau to effect a change in PELRA regarding this issue in the near future. The Bureau will however continue to encourage parties that agree on a contract reopener to contemplate and mutually agree to use interest arbitration in cases where the parties fail to achieve a mutually satisfactory negotiated resolution.

Please contact me if you have any questions or if there is anything else I can do for you.

Very truly yours,

James A. Cunningham Jr.  
Commissioner