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STATE OF MINNESOTA

Office Memorandum

DEPARTMENT : EMPLOYEE RELATIONS - 3RD FLOOR
520 LAFAYETTE ROAD

DATE : July 27, 1990

TO : Personnel Directors and Designees
All State Agencies

FROM : Nina Rothchild
Commissioner

PHONE : 296-8366

SUBJECT : Retention of Salary on Demotion (M.S. 43A.17, Subd. 5)

The purpose of this memo is to clarify the statutory provision under which an employee may be paid at a salary rate above the maximum rate for the classification to which the employee is demoting.

POLICY -

Minnesota Statutes 43A.17, subdivision 5 reads as follows:

> The Commissioner may, upon request of an appointing authority, approve payment of an employee with permanent status at a salary rate above the maximum of the class to which the employee is demoted. The Commissioner shall take such action as required by collective bargaining agreements or plans pursuant to section 43A.18. If the action is justified by the employee's long or outstanding service, exceptional or technical qualifications, age, health, or substantial changes in work assignment beyond the control of the employee, the Commissioner may approve a rate up to and including the employee's salary immediately prior to demotion. Thereafter, so long as the employee remains in the same position, the employee shall not be eligible to receive any increase in salary until the employee's salary is within the range of the class to which the employee's position is allocated unless such increases are specifically provided in collective bargaining agreements or plans pursuant to section 43A.18.

ANALYSIS -

The following points are clear:

1. The decision to apply this provision is a joint decision of the Appointing Authority and the Commissioner of Employee Relations. The Appointing Authority may make a request, but cannot commit the Commissioner to the application of the statute. Likewise, the Commissioner of Employee Relations cannot act without the request of the Appointing Authority.

2. The statute applies only to employees in the classified service with permanent status.

3. The Commissioner may authorize payment above the maximum only when it is consistent with the provisions of the applicable collective bargaining agreement or compensation plan. If a contract or plan requires reduction of an employee's salary on demotion, the law cannot be used to circumvent the contract or plan.

4. The Commissioner may approve payment at any rate between the maximum of the new salary range and the employee's current salary rate.

5. The employee is not eligible for future salary increases until the salary range for the new classification equals or exceeds the employee's salary, unless salary increases are provided by specific language in the applicable collective bargaining agreement or compensation plan.

6. There are five factors which the legislature has said may be used to justify application of the statute. Those factors are:

   A. the employee's long or outstanding service;

   B. the employee's exceptional or technical qualifications;

   C. the employee's age;

   D. the employee's health, and;

   E. substantial changes in the employee's work assignment beyond the control of the employee.

INTERPRETATION -

The factors listed in points 6 A through E above require interpretation and the use of discretion in their application to individual circumstances. I have developed the following positions with respect to the factors listed:

1. While long or outstanding service alone is not sufficient justification for approval of a request, such service may be a contributing factor in approving a request primarily based upon one or more of the other factors.

2. The employee's exceptional technical qualifications may justify approval of a request if the qualifications are uniquely related to the position to which the employee is demoting, candidates with these qualifications are not otherwise available and the employee is willing to accept the lower position only if allowed to retain a higher rate of pay.

3. Because of concerns about discrimination based upon age, it is not appropriate to consider the employee's age when making or reviewing requests.

4. Substantial changes in the employee's health status may serve as justification for approval of a request if they directly affect the employee's ability to perform their assigned duties and it is not possible to assign the employee a position at a similar compensation level.

5. Substantial changes in work assignments might result from reorganization of the agency, introduction of new technology, and/or the abolition or removal of certain key duties through legislation or executive order or other reasons beyond the control of the employee. The critical factor here is that the change in work assignment must have been beyond the employee's control. Appointing Authorities should not make requests behalf of employees whose poor work performance has resulted in their duties being reassigned to other positions or whose performance has suffered because they have not kept pace with gradual changes in the nature of the work performed in their occupational field (e.g. engineers or scientists who have not kept current with changes in their fields).

Question regarding the application of this statute should be directed to Jim Lee, Compensation Manager, at 296-2398.