

**SENATE
STATE OF MINNESOTA
NINETY-THIRD SESSION**

S.F. No. 857

(SENATE AUTHORS: LUCERO)

DATE
01/27/2023

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Introduction and first reading
Referred to Labor

OFFICIAL STATUS

1.1 A bill for an act
1.2 relating to public employment; repealing authority for exclusive representatives
1.3 to charge fair share fees; amending Minnesota Statutes 2022, sections 13.43,
1.4 subdivision 6; 179A.04, subdivisions 1, 3; 179A.051; 179A.102, subdivision 6;
1.5 179A.60, subdivision 7; 256B.0711, subdivision 4; 402A.40, subdivision 6;
1.6 repealing Minnesota Statutes 2022, sections 179A.03, subdivision 9; 179A.06,
1.7 subdivision 3.

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

1.9 Section 1. Minnesota Statutes 2022, section 13.43, subdivision 6, is amended to read:

1.10 Subd. 6. **Access by labor organizations.** Personnel data may be disseminated to labor
1.11 organizations to the extent that the responsible authority determines that the dissemination
1.12 is necessary to conduct elections, ~~notify employees of fair share fee assessments,~~ and
1.13 implement the provisions of chapters 179 and 179A. Personnel data shall be disseminated
1.14 to labor organizations and to the Bureau of Mediation Services to the extent the dissemination
1.15 is ordered or authorized by the commissioner of the Bureau of Mediation Services.

1.16 Sec. 2. Minnesota Statutes 2022, section 179A.04, subdivision 1, is amended to read:

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

1.19 (1) certification or decertification as the exclusive representative of an appropriate unit;

1.20 (2) mediation services;

1.21 (3) any election or other voting procedures provided for in sections 179A.01 to 179A.25;

1.22 and

2.1 (4) certification to arbitration; ~~and~~.

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

2.4 Sec. 3. Minnesota Statutes 2022, section 179A.04, subdivision 3, is amended to read:

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

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

2.9 (2) issue notices, subpoenas, and orders required by law to carry out duties under sections
2.10 179A.01 to 179A.25;

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

2.13 (4) conduct elections;

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

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

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

2.22 (8) adopt, subject to chapter 14, a grievance procedure that fulfills the purposes of section
2.23 179A.20, subdivision 4, that is available to any employee in a unit not covered by a
2.24 contractual grievance procedure;

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

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

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

3.4 (12) provide to the parties a list of arbitrators as required by section 179A.16, subdivision
 3.5 4;

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

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

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

3.18 (1) be a former or retired judge;

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

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

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

3.24 Each year, education Minnesota shall provide a list of up to 14 names and the Minnesota
 3.25 School Boards Association a list of up to 14 names of persons to be on the list. The
 3.26 commissioner may adopt rules about maintaining and updating the list.

3.27 Sec. 4. Minnesota Statutes 2022, section 179A.051, is amended to read:

3.28 **179A.051 APPEALS OF COMMISSIONER'S DECISIONS.**

3.29 (a) Decisions of the commissioner relating to supervisory, confidential, essential, and
 3.30 professional employees, or appropriateness of a unit, ~~or fair share fee challenges~~ may be
 3.31 reviewed on certiorari by the court of appeals. A petition for a writ of certiorari must be
 3.32 filed and served on the other party or parties and the commissioner within 30 days from the

4.1 date of the mailing of the commissioner's decision. The petition must be served on the other
4.2 party or parties at the party's or parties' last known address.

4.3 (b) Decisions of the commissioner relating to unfair labor practices under section
4.4 179A.12, subdivision 11, may be appealed to the board if the appeal is filed with the board
4.5 and served on all other parties no later than 30 days after service of the commissioner's
4.6 decision.

4.7 Sec. 5. Minnesota Statutes 2022, section 179A.102, subdivision 6, is amended to read:

4.8 Subd. 6. **Contract and representation responsibilities.** (a) Notwithstanding the
4.9 provisions of section 179A.101, the exclusive representatives of units of court employees
4.10 certified prior to the effective date of the judicial district coming under section 480.181,
4.11 subdivision 1, paragraph (b), remain responsible for administration of their contracts and
4.12 for other contractual duties and have the right to dues ~~and fair share fee deduction~~ and other
4.13 contractual privileges and rights until a contract is agreed upon with the state court
4.14 administrator for a new unit established under section 179A.101. Exclusive representatives
4.15 of court employees certified after the effective date of Laws 1999, chapter 216, article 7,
4.16 section 10, in the judicial district are immediately upon certification responsible for
4.17 bargaining on behalf of employees within the unit. They are also responsible for administering
4.18 grievances arising under previous contracts covering employees included within the unit
4.19 which remain unresolved upon agreement with the state court administrator on a contract
4.20 for a new unit established under section 179A.101. Where the employer does not object,
4.21 these responsibilities may be varied by agreement between the outgoing and incoming
4.22 exclusive representatives. All other rights and duties of representation begin on July 1 of
4.23 the year in which the state assumes the funding of court administration in the judicial district,
4.24 except that exclusive representatives certified after the effective date of Laws 1999, chapter
4.25 216, article 7, section 10, shall immediately, upon certification, have the right to all employer
4.26 information and all forms of access to employees within the bargaining unit which would
4.27 be permitted to the current contract holder, including the rights in section 179A.07,
4.28 subdivision 6. This section does not affect an existing collective bargaining contract.
4.29 Incoming exclusive representatives of court employees from judicial districts that come
4.30 under section 480.181, subdivision 1, paragraph (b), are immediately, upon certification,
4.31 responsible for bargaining on behalf of all previously unrepresented employees assigned to
4.32 their units. All other rights and duties of exclusive representatives begin on July 1 of the
4.33 year in which the state assumes the funding of court administration in the judicial district.

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

5.6 Sec. 6. Minnesota Statutes 2022, section 179A.60, subdivision 7, is amended to read:

5.7 Subd. 7. **Contract negotiations and administration.** The exclusive representative of
5.8 employees of a new joint powers entity shall upon certification be responsible to negotiate
5.9 a new collective bargaining agreement, file grievances, and otherwise administer the prior
5.10 collective bargaining agreement until a new collective bargaining agreement is agreed to,
5.11 and to receive dues ~~or fair share fees~~.

5.12 Sec. 7. Minnesota Statutes 2022, section 256B.0711, subdivision 4, is amended to read:

5.13 Subd. 4. **Duties of the commissioner of human services.** (a) The commissioner shall
5.14 afford to all participants within a covered program the option of employing an individual
5.15 provider to provide direct support services.

5.16 (b) The commissioner shall ensure that all employment of individual providers is in
5.17 conformity with this section and section 179A.54, including by modifying program operations
5.18 as necessary to ensure proper classification of individual providers, to require that all relevant
5.19 vendors within covered programs assist and cooperate as needed, including providers of
5.20 fiscal support, fiscal intermediary, financial management, or similar services to provide
5.21 support to participants and participants' representatives with regard to employing individual
5.22 providers, and to otherwise fulfill the requirements of this section, including the provisions
5.23 of paragraph (f).

5.24 (c) The commissioner shall:

5.25 (1) establish for all individual providers compensation rates, payment terms and practices,
5.26 and any benefit terms, provided that these rates and terms may permit individual provider
5.27 variations based on traditional and relevant factors otherwise permitted by law;

5.28 (2) provide for required orientation programs within three months of hire for individual
5.29 providers newly hired on or after January 1, 2015, regarding their employment within the
5.30 covered programs through which they provide services;

5.31 (3) have the authority to provide for relevant training and educational opportunities for
5.32 individual providers, as well as for participants and participants' representatives who receive

6.1 services from individual providers, including opportunities for individual providers to obtain
6.2 certification documenting additional training and experience in areas of specialization;

6.3 (4) have the authority to provide for the maintenance of a public registry of individuals
6.4 who have consented to be included to:

6.5 (i) provide routine, emergency, and respite referrals of qualified individual providers
6.6 who have consented to be included in the registry to participants and participants'
6.7 representatives;

6.8 (ii) enable participants and participants' representatives to gain improved access to, and
6.9 choice among, prospective individual providers, including by having access to information
6.10 about individual providers' training, educational background, work experience, and
6.11 availability for hire; and

6.12 (iii) provide for appropriate employment opportunities for individual providers and a
6.13 means by which they may more easily remain available to provide services to participants
6.14 within covered programs; and

6.15 (5) establish other appropriate terms and conditions of employment governing the
6.16 workforce of individual providers.

6.17 (d) The commissioner's authority over terms and conditions of individual providers'
6.18 employment, including compensation, payment, and benefit terms, employment opportunities
6.19 within covered programs, individual provider orientation, training, and education
6.20 opportunities, and the operation of public registries shall be subject to the state's obligations
6.21 to meet and negotiate under chapter 179A, as modified and made applicable to individual
6.22 providers under section 179A.54, and to agreements with any exclusive representative of
6.23 individual providers, as authorized by chapter 179A, as modified and made applicable to
6.24 individual providers under section 179A.54. Except to the extent otherwise provided by
6.25 law, the commissioner shall not undertake activities in paragraph (c), clauses (3) and (4),
6.26 prior to July 1, 2015, unless included in a negotiated agreement and an appropriation has
6.27 been provided by the legislature to the commissioner.

6.28 (e) The commissioner shall cooperate in the implementation of section 179A.54 with
6.29 the commissioner of management and budget in the same manner as would be required of
6.30 an appointing authority under section 179A.22 with respect to any negotiations between
6.31 the executive branch of the state and the exclusive representative of individual providers,
6.32 as authorized under sections 179A.22 and 179A.54. Any entity providing relevant services
6.33 within covered programs, including providers of fiscal support, fiscal intermediary, financial
6.34 management, or similar services to provide support to participants and participants'

7.1 representatives with regard to employing individual providers shall assist and cooperate
7.2 with the commissioner of human services in the operations of this section, including with
7.3 respect to the commissioner's obligations under paragraphs (b) and (f).

7.4 (f) The commissioner shall, no later than September 1, 2013, and then monthly thereafter,
7.5 compile and maintain a list of the names and addresses of all individual providers who have
7.6 been paid for providing direct support services to participants within the previous six months.
7.7 The list shall not include the name of any participant, or indicate that an individual provider
7.8 is a relative of a participant or has the same address as a participant. The commissioner shall
7.9 share the lists with others as needed for the state to meet its obligations under chapter 179A
7.10 as modified and made applicable to individual providers under section 179A.54, and to
7.11 facilitate the representational processes under section 179A.54, subdivisions 9 and 10. In
7.12 order to effectuate this section and section 179A.54, questions of employee organization
7.13 access to other relevant data on individual providers relating to their employment or
7.14 prospective employment within covered programs shall be governed by chapter 179A and
7.15 section 13.43, and shall be treated the same as labor organization access to personnel data
7.16 under section 13.43, subdivision 6. This shall not include access to private data on participants
7.17 or participants' representatives. Nothing in this section or section 179A.54 shall alter the
7.18 access rights of other private parties to data on individual providers.

7.19 (g) The commissioner shall immediately commence all necessary steps to ensure that
7.20 services offered under all covered programs are offered in conformity with this section, to
7.21 gather all information that may be needed for promptly compiling lists required under this
7.22 section, including information from current vendors within covered programs, and to
7.23 complete any required modifications to currently operating covered programs by September
7.24 1, 2013.

7.25 (h) Beginning January 1, 2014, the commissioner of human services shall specifically
7.26 require that any fiscal support, fiscal intermediary, financial management, or similar entities
7.27 providing payroll assistance services with respect to individual providers shall make all
7.28 needed deductions on behalf of the state of dues check off amounts ~~or fair-share fees~~ for
7.29 the exclusive representative, as provided in section 179A.06, ~~subdivisions 3 and~~ subdivision
7.30 6. All contracts with entities for the provision of payroll-related services shall include this
7.31 requirement.

7.32 Sec. 8. Minnesota Statutes 2022, section 402A.40, subdivision 6, is amended to read:

7.33 Subd. 6. **Contract and representation responsibilities.** (a) The exclusive representatives
7.34 of units of employees certified prior to the creation of the service delivery authority remain

8.1 responsible for administration of their contracts and for other contractual duties and have
8.2 the right to dues ~~and fair share fee deduction~~ and other contractual privileges and rights
8.3 until a contract is agreed upon with the service delivery authority. Exclusive representatives
8.4 of service delivery authority employees certified after the creation of the service delivery
8.5 authority are immediately upon certification responsible for bargaining on behalf of
8.6 employees within the unit. They are also responsible for administering grievances arising
8.7 under previous contracts covering employees included within the unit that remain unresolved
8.8 upon agreement with the service delivery authority on a contract. Where the employer does
8.9 not object, these responsibilities may be varied by agreement between the outgoing and
8.10 incoming exclusive representatives. All other rights and duties of representation begin upon
8.11 the creation of a service delivery authority, except that exclusive representatives certified
8.12 upon or after the creation of the service delivery authority shall immediately, upon
8.13 certification, have the right to all employer information and all forms of access to employees
8.14 within the bargaining unit which would be permitted to the current contract holder, including
8.15 the rights in section 179A.07, subdivision 6. This section does not affect an existing collective
8.16 bargaining contract. Incoming exclusive representatives are immediately, upon certification,
8.17 responsible for bargaining on behalf of all previously unrepresented employees assigned to
8.18 their units.

8.19 (b) Nothing in this section prevents an exclusive representative certified after the effective
8.20 dates of these provisions from assessing ~~fair share or~~ dues deductions immediately upon
8.21 certification if the employees were unrepresented for collective bargaining purposes before
8.22 that certification.

8.23 **Sec. 9. REPEALER.**

8.24 Minnesota Statutes 2022, sections 179A.03, subdivision 9; and 179A.06, subdivision 3,
8.25 are repealed.

8.26 **Sec. 10. EFFECTIVE DATE.**

8.27 This act is effective the day following final enactment.

179A.03 DEFINITIONS.

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.

179A.06 RIGHTS AND OBLIGATIONS OF EMPLOYEES.

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 rendered 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.