

1 Public Employment Relations Board

2

3 Adopted Permanent Rules Relating to Public Employees;

4 Arbitration

5

6 Rules as Adopted

7 7320.0010 APPLICATION.

8 This chapter applies to the impanelment, referral, conduct,
9 and removal of persons on the arbitrator roster maintained by
10 the board. This chapter applies to all persons on the
11 arbitrator roster, to all applicants for placement on the
12 roster, to all users of the roster, and to all arbitration
13 proceedings conducted as the result of a referral from the
14 roster.

15 7320.0020 POLICY.

16 It is the policy of the state of Minnesota to promote
17 orderly and constructive relationships between labor and
18 management and to avoid unresolved disputes that can be
19 injurious to the public as well as the parties. The use of
20 collective bargaining procedures and binding arbitration to
21 resolve grievances and certain interest disputes between labor
22 and management are specifically encouraged. This chapter shall
23 be liberally construed to effectuate these policies and the
24 provisions of Minnesota Statutes, chapter 179A.

25 7320.0030 DEFINITIONS.

26 Subpart 1. **Applicant.** "Applicant" means an individual who
27 is seeking appointment to the roster.

28 Subp. 2. **Arbitrator roster or roster.** "Arbitrator roster"
29 or "roster" means a listing of persons determined by the board
30 to be qualified and available for referral as an arbitrator of
31 labor disputes under this chapter.

32 Subp. 3. **Board.** "Board" means the Public Employment
33 Relations Board.

34 Subp. 4. **Chair.** "Chair" means the chair of the Public

1 Employment Relations Board.

2 Subp. 5. Close of the record. "Close of the record" means
3 the last date of hearing or the final date for posthearing
4 submission of written material, if any, whichever is later.

5 Subp. 6. Executive director. "Executive director" means
6 the executive director of the Public Employment Relations Board.

7 Subp. 7. Issuance of award. "Issuance of award" means the
8 date an award is signed and issued by the arbitrator. If an
9 award is undated, the date of receipt by the board is considered
10 the date of issuance for purposes of this chapter.

11 Subp. 8. Mock award. "Mock award" means any public sector
12 interest and grievance arbitration award written by an applicant
13 while serving as an intern to an arbitrator. These awards are
14 solely written to complete the requirements of part 7320.0080
15 and are not binding upon the parties.

16 Subp. 9. Panel. "Panel" means a listing of roster members
17 compiled by the board for referral to the parties, from which
18 they may subsequently select an arbitrator.

19 Subp. 10. Party or parties. "Party" or "parties" means an
20 employer or exclusive representative directly involved and
21 affected by a dispute for which a roster member has been
22 requested or referred, or a designated representative.

23 7320.0040 COMPUTATION OF TIME.

24 In computing any period of time prescribed or allowed by
25 this chapter, the day of act or event from which the designated
26 period of time begins to run shall not be included. The last
27 day of the time period so computed shall be included unless it
28 is a Saturday, Sunday, or legal holiday. For any time period of
29 ten days or less, Saturdays, Sundays, or legal holidays shall
30 not be included in computing the period of time.

31 7320.0050 ROLE OF BOARD.

32 The role of the board under this chapter is limited to
33 matters relating to the appointment of persons to and removal or
34 referral of names from the arbitrator roster. The board has no
35 role, responsibility, or authority under this chapter to:

- 1 A. compel parties to agree to arbitrate;
 2 B. enforce an agreement to arbitrate;
 3 C. compel parties to appear before an arbitrator;
 4 D. influence, alter, enforce, or set aside the
 5 decisions or awards of arbitrators; or
 6 E. compel, deny, or modify the payment of fees and
 7 expenses to an arbitrator.

8 7320.0060 STATUS OF ARBITRATORS.

9 Persons listed on the roster, whether or not selected or
 10 appointed to hear matters under this chapter, do not become
 11 employees or agents of the state of Minnesota or the board by
 12 virtue of their placement on the roster or their subsequent
 13 selection or appointment as an arbitrator. Except for the
 14 reporting and performance requirements of this chapter, the
 15 arbitrator's relationship is solely with the parties to the
 16 dispute. Appointment by the board to the arbitrator roster is
 17 not an inherent right to continued service on the roster.

18 7320.0070 ARBITRATOR QUALIFICATIONS.

19 Subpart 1. Roster. The Public Employment Relations Board
 20 shall maintain a roster of arbitrators qualified to arbitrate
 21 grievance and interest cases. To qualify for appointment to the
 22 roster, an applicant must meet the qualifications of this part
 23 and complete the requirements of part 7320.0080. The arbitrator
 24 roster shall not exceed more than 40 arbitrators.

25 Subp. 2. Conflict of interest. An arbitrator must not
 26 currently be nor within the past six months been an advocate of
 27 public or private sector employers or employer organizations, or
 28 public or private sector employees or employee organizations.
 29 An advocate is an individual who represents an organization in
 30 matters of personnel and labor relations, including but not
 31 limited to: unit determination and exclusive representation,
 32 collective bargaining, arbitration, unfair labor practices and
 33 labor-related litigation, wage and benefit administration, equal
 34 employment opportunity, unemployment compensation, and
 35 occupational health or safety standards.

1 Subp. 3. Knowledge and abilities. An arbitrator must have:

2 A. knowledge of the Minnesota Public Employment Labor
3 Relations Act and other labor law relevant to the public sector;

4 B. knowledge of Bureau of Mediation Services and
5 Public Employment Relations Board rules regarding grievance and
6 interest arbitration;

7 C. knowledge of hearing procedures and the ability to
8 conduct arbitration hearings and to develop an accurate record
9 of proceedings;

10 D. knowledge of principles of arbitrator ethics;

11 E. knowledge of labor relations concepts, principles
12 and practices about contract negotiation, contract
13 administration, and grievance and interest arbitration;

14 F. knowledge of limits of arbitrator authority;

15 G. knowledge of public sector finance;

16 H. ability to calculate costs of wage and fringe
17 benefits and improvements;

18 I. ability to write clear concise arbitration awards
19 based on logical rationale; and

20 J. ability to produce a written award within
21 reasonable time limits.

22 7320.0080 ARBITRATOR APPLICANT REQUIREMENTS AND APPOINTMENT
23 PROCEDURES.

24 Subpart 1. How to make application. An individual may
25 obtain an application for appointment to the arbitrator roster
26 from the board's executive director. An applicant must provide
27 complete and accurate information on the application form and
28 during the interview. Failure to do so shall result in
29 rejection for appointment to the roster. An applicant
30 attempting to influence board or staff members regarding
31 appointment to the roster through means other than the formal
32 appointment procedure will be rejected and barred from
33 reapplying for one year.

34 Subp. 2. Category placement of applicant. Upon receipt of
35 a completed application, the board must review the application

1 and place the applicant in one of the following three categories:

- 2 A. highly qualified;
3 B. moderately qualified; or
4 C. inexperienced.

5 Each application will be evaluated for evidence of the
6 applicant's competence and proficiency in those areas of
7 arbitrator qualifications cited in part 7320.0070. Placement in
8 a specific category is determined by the extent of labor
9 relations experience and expertise demonstrated by the
10 applicant. An applicant must be experienced in public sector
11 labor relations to be placed in the highly qualified or
12 moderately qualified category. If an applicant does not have
13 experience in the public sector, the applicant must be placed in
14 the inexperienced category.

15 Subp. 3. **Appeal of category placement.** Within ten working
16 days after receipt of the board's notification of the category
17 into which the applicant has been placed, the applicant may
18 appeal that designation in writing to the board. If an appeal
19 is made, the applicant must be interviewed before the board and
20 the board will decide the appeal.

21 Subp. 4. **Category placement requirements.** Once placement
22 is determined, the applicant will be required to submit to the
23 board a number of actual or mock public sector arbitration
24 awards as specified in items A to C.

25 A. A highly qualified applicant must submit a total
26 of three awards, two of which must be grievance arbitration
27 awards and one of which must be an interest arbitration award.

28 B. A moderately qualified applicant must submit a
29 total of six awards, three of which must be grievance
30 arbitration awards and three of which must be interest
31 arbitration awards.

32 C. An inexperienced applicant must submit a total of
33 nine awards, five of which must be grievance arbitration awards
34 and four of which must be interest arbitration awards.

35 If the awards by the applicant are mock arbitration awards
36 written while an intern to an arbitrator, the applicant must

1 have interned with a minimum of three arbitrators.

2 Subp. 5. **Notice to arbitrators.** The board will advise
3 arbitrators, who serve on the roster, by letter when an
4 arbitrator has been placed into one of the three applicant
5 categories and is thereby ready to serve an internship under the
6 board's procedures.

7 Subp. 6. **Interview of applicant.** The board will schedule
8 an applicant for an interview to determine appointment to the
9 roster upon receipt of a written statement from the applicant
10 that the requirements of the applicant's respective category
11 have been completed and written copies of the actual or mock
12 arbitration awards. The awards will be returned to the
13 applicant and not filed in the board's office. If applicable,
14 the board must also be in receipt of any written evaluations by
15 arbitrators of the applicant's performance as an intern before
16 an interview can be scheduled. It is the responsibility of the
17 applicant to request the arbitrators to forward to the board the
18 written evaluations. In the interview, the board will inquire
19 as to whether the applicant is qualified to serve as an
20 arbitrator pursuant to the criteria set forth in part 7320.0070.

21 Subp. 7. **Appointment to roster.** After the interview, the
22 board must vote as to whether the applicant is qualified to
23 serve as an arbitrator on the roster. A majority vote is
24 required for appointment to the roster. Applicants must be
25 notified by mail of their appointment or rejection. Those
26 rejected may reapply for consideration no sooner than six months
27 following notification of rejection.

28 7320.0090 ARBITRATOR CONDUCT, STANDARDS, AND RESPONSIBILITIES.

29 Subpart 1. **Scope.** The criteria and standards in subparts
30 2 to 13 apply to all persons on the roster. Arbitrators must
31 continuously demonstrate competence in labor relations,
32 including procedural and substantive matters, integrity, and
33 impartiality.

34 Subp. 2. **Professional and ethical responsibilities.**
35 Except as otherwise provided in this chapter, the Code of

1 Professional Responsibility for Arbitrators of Labor-Management
2 Disputes approved and published by the National Academy of
3 Arbitrators is incorporated by reference and is applicable to
4 and shall govern the professional behavior of persons appointed
5 to the roster. The code was adopted in 1975 and amended in 1985
6 and is not subject to frequent change. The code is available
7 for inspection and copying at the Minnesota State Law Library,
8 117 University Avenue, Saint Paul, Minnesota.

9 Subp. 3. **Arbitrator solicitation.** Arbitrators shall not
10 solicit parties for selection to cases. An arbitrator must
11 uphold the integrity of the profession and must not advertise or
12 solicit arbitration assignments. To discourage solicitation,
13 the board must not notify arbitrators that their names have been
14 placed on a list submitted to the parties for the selection of
15 an arbitrator or panel of arbitrators.

16 Subp. 4. **Use of assistants or associates.** An arbitrator
17 may, without prior consent of the parties, delegate research,
18 clerical, and drafting responsibilities to an assistant.
19 However, the assistant may not be delegated decision-making
20 functions or authority, and the arbitrator retains
21 responsibility and accountability for all aspects of the award
22 and its handling. An arbitrator may, if unable to handle all
23 decision-making aspects of a case in a timely manner, suggest to
24 the parties an allocation of responsibility between the
25 arbitrator and an assistant or associate. The parties may, but
26 are not obligated to, accept such a suggestion.

27 Subp. 5. **Timeliness.** It is the responsibility of the
28 arbitrator to schedule time commitments in a manner consistent
29 with the needs of the parties and the expeditious handling of
30 disputes. Assignment to an arbitration case must be declined if
31 the arbitrator is unable to schedule and conduct a hearing in a
32 timely manner. When scheduling problems arise, priority should
33 be given to cases in process. The arbitrator must adhere to the
34 time limits of the parties' arbitration procedure. If, after
35 accepting and hearing a case, the arbitrator discovers that it
36 is not possible to render an award within the time limits

1 specified in the arbitration procedure, the arbitrator shall
2 notify each party in writing of the reason for delay and shall
3 seek approval for establishing an alternative date for
4 completion of the award.

5 Subp. 6. **Required disclosures.** Arbitrators are
6 responsible for providing the board with complete and accurate
7 data and to keep the board informed of changes in personal
8 status and availability to arbitrate cases. Arbitrators must
9 disclose on their biographical sketch as to whether they serve
10 as a hearing examiner under Minnesota Statutes, chapter 125.
11 Revisions regarding changes in biographical and availability
12 data must be submitted to the board's executive director by the
13 arbitrator as changes occur. Before acceptance of an
14 arbitration case, an arbitrator must disclose to the parties and
15 the executive director of the board any personal or professional
16 relationships to the parties or other circumstances that might
17 reasonably raise a question regarding the arbitrator's
18 impartiality. If the circumstances requiring disclosure are not
19 known to the arbitrator before acceptance of the case,
20 disclosure must be made when circumstances become known to the
21 arbitrator. An arbitrator shall withdraw from an arbitration at
22 any time the arbitrator perceives a conflict of interest.
23 Arbitrators shall file written requests with the board
24 designating the cases for which they do not want their names
25 proposed on arbitration panels due to a conflict of interest.
26 The requests must be reviewed and approved by the board.

27 Subp. 7. **Prehearing conduct.** An arbitrator or panel, upon
28 notification by the board of appointment to an arbitration case,
29 must communicate with the parties as soon as possible to arrange
30 for the date, time, and location of the hearing and any other
31 necessary procedural matters. All prehearing communications
32 between the arbitrator and the parties must be done in a manner
33 that promotes complete impartiality by the arbitrator. It is
34 the arbitrator's responsibility to ensure that copies of any
35 prehearing correspondence between the arbitrator and either
36 party are made available to the other party.

1 Subp. 8. **Hearing conduct.** The parties are entitled to a
2 hearing that is conducted in a fair and impartial manner,
3 allowing the parties adequate opportunity to present their
4 respective evidence and argument. The arbitrator is responsible
5 for conducting an orderly proceeding and may:

6 A. restate the substance of issues or arguments for
7 clarification;

8 B. encourage stipulations of fact;

9 C. obtain additional pertinent information by
10 questioning the parties' representatives or witnesses; and

11 D. request that the parties verify or provide
12 additional evidence, either at the hearing or by subsequent
13 filing.

14 An accurate record must be developed by the arbitrator.
15 The arbitrator may, with notice to the parties, use a tape
16 recorder to supplement notetaking. Notes, recorded tapes, and
17 other records of the hearing developed by the arbitrator shall
18 remain the property of the arbitrator and must be retained by
19 the arbitrator for 90 days after delivery of a copy of the award
20 to the parties. The provision of an official transcript must be
21 arranged for by the arbitrator if either party requests one
22 before the hearing. The transcript must be paid for by the
23 party or parties requesting it. A copy of the official
24 transcript must be submitted to the arbitrator and made
25 available to the parties.

26 Subp. 9. **Posthearing conduct.** The purpose of posthearing
27 briefs is to discuss and summarize evidence presented at the
28 hearing and to present arguments. An arbitrator may permit the
29 parties to file posthearing briefs and shall determine a time
30 limit for filing. The arbitrator will determine whether briefs
31 that are filed late are acceptable. The arbitrator shall inform
32 the parties that submission of new evidence that was not
33 introduced at the hearing will not be accepted. Each party
34 shall be required by the arbitrator to submit a copy of its
35 brief to the other party.

36 Subp. 10. **Discussion of a case.** While an arbitrator is

1 considering a case for which a decision is pending, discussion
2 of the case by the arbitrator must be limited to situations
3 where advance approval or consent of both parties is obtained or
4 where identity of the parties and details of the case are
5 sufficiently obscured to eliminate any realistic probability of
6 identification. An exception is the discussion of a problem in
7 a case with another arbitrator or the arbitrator's assistant as
8 provided in subpart 4; however, the arbitrator selected to hear
9 the case retains sole responsibility and authority to render the
10 award.

11 Subp. 11. Jurisdiction. In ruling on a grievance, an
12 arbitrator must comply with the limitations of authority found
13 in a labor agreement. In interest arbitration cases, the
14 arbitrator or arbitration panel has jurisdiction to rule on the
15 issues or the arbitrability of the issues certified to impasse
16 by the commissioner of the bureau of mediation services. At any
17 stage of interest or grievance arbitration proceedings, the
18 parties may settle some or all of the issues. In those
19 circumstances, the agreement of the parties must be incorporated
20 by the arbitrator into the award. The jurisdiction of the
21 arbitrator continues until all issues certified to impasse have
22 been resolved.

23 Subp. 12. Rendering an award. In deciding and writing the
24 award, an arbitrator shall consider the following principles:

25 A. the necessity for adequately addressing the issues
26 on a rational basis;

27 B. the desirability of brevity;

28 C. the use of a style that can be readily understood
29 by the parties;

30 D. the need for clarity; and

31 E. the avoidance of discourse not essential to
32 resolution of the issues.

33 The board encourages the parties to submit written
34 evaluations of the arbitrator's awards. The arbitrator must not
35 discuss an award with either party until after the award has
36 been simultaneously issued to both parties. The arbitrator's

1 responsibility does not extend to the enforcement of an award.
2 Request for clarifications or interpretation of an award shall
3 be made by a party or parties in conformity with Minnesota
4 Statutes, chapter 572.

5 Subp. 13. **Filing copies of awards.** Members of the roster
6 shall provide the board with a copy of all arbitration awards
7 for which they have been selected and the interest or grievance
8 arbitration case has originated with the board.

9 7320.0100 REMOVAL PROCEDURE.

10 Subpart 1. **Grounds for removal.** An arbitrator must be
11 removed from the arbitrator roster if the arbitrator requests to
12 be withheld from proposal for inclusion on arbitration panels
13 for more than six months. Arbitrators so removed may reapply
14 for placement on the list in accordance with the board's regular
15 qualification procedures.

16 Arbitrators may be removed from the roster on any of the
17 grounds in items A to F:

18 A. failure to comply with board arbitration statutes
19 or rules;

20 B. failure to meet, on a continuing basis, the
21 board's arbitrator qualifications;

22 C. failure to provide the board with complete and
23 accurate biographical data and to keep the board informed of
24 changes in personal status and availability to arbitrate cases;

25 D. refusal to comply with requests from the board
26 concerning arbitration activities and potential conflicts of
27 interest;

28 E. delinquency in submitting awards. An award is
29 delinquent, regardless of any waiver of the parties, if 45
30 calendar days have elapsed since the close of the record; or

31 F. unacceptability to the parties, which may be
32 evidenced by a low rate of selection over a period of years.

33 In reviewing the arbitrator's low rate of selection, the
34 board must take into consideration factors such as the date of
35 placement on the roster and unavailability due to illness.

1 Subp. 2. **Notice of removal and suspension.** An arbitrator
2 who is being considered for removal must be provided written
3 notice to that effect at least 45 calendar days before the
4 board's hearing on the removal. The notice must include: the
5 board's basis for removal; provide an opportunity for written
6 response; and the time and date of the board's hearing to
7 consider removal. An arbitrator may provide a written response
8 to the board about the removal. The written response must be
9 received by the board within 30 calendar days of the date of
10 notice for removal. An arbitrator who is being considered for
11 removal may be immediately suspended from the roster upon a
12 flagrant violation of this chapter and it is in the best
13 interest of the parties to suspend the arbitrator from further
14 referrals. Notice of the immediate suspension must be included
15 in the notice of consideration for removal from the arbitrator
16 roster.

17 Subp. 3. **Hearing.** Before removing an arbitrator from the
18 roster, the board must provide a hearing to consider and decide
19 whether to remove the arbitrator. At the hearing, the
20 arbitrator must be provided an opportunity to orally respond to
21 the board's basis for removal. The decision of the board is
22 final. Written notice of the decision must be provided to the
23 arbitrator, including the reasons for the board's removal.

24 Subp. 4. **Removal from an arbitration case.** An arbitrator
25 who has been removed from the roster may also be removed from an
26 arbitration case if either party petitions the board for the
27 arbitrator's removal from the case. The petition must contain a
28 written request for removal and a concise statement as to why
29 the party seeks the arbitrator's removal from the case. The
30 board must review the petition and provide notice by certified
31 mail to the arbitrator that removal from the arbitration case is
32 being considered. If the arbitrator does not respond within ten
33 calendar days from the certified mailing date, the arbitrator
34 will be removed from the case, and be notified that a new panel
35 of arbitrators will then be submitted to the parties so that the
36 selection process can begin and another arbitrator selected to

1 hear and decide the matter. If a timely response is received
2 from the arbitrator, the board will review and decide whether
3 continued assignment to the case would be in the best interests
4 of the parties. The chair may act on behalf of the board if the
5 reasons for removal from the arbitration case require an
6 expeditious decision. The board is not liable for any costs
7 relating to the case from which the arbitrator has been removed.

8 7320.0110 RANKING OF ARBITRATORS.

9 On an annual basis, the board must review statistics
10 showing the selection rates of its arbitrators, and rank the
11 arbitrators according to their usage by the number of times
12 proposed and the number of times selected.

13 7320.0120 ARBITRATION PANELS.

14 Subpart 1. **Random selection.** Arbitration panels shall be
15 created by a random selection process. Each arbitration panel
16 shall contain a mix of frequently-used, moderately-used, and
17 infrequently-used arbitrators, pursuant to the ranking list
18 determined in the board's review. The panels shall be drawn
19 according to subparts 2 to 6.

20 Subp. 2. **Interest arbitration.** If the arbitrator list
21 contains an even number of names, panels will be drawn up using
22 every fifth name, every seventh name, and every ninth name on
23 the ranking list. If the list contains an odd number of
24 arbitrators, panels will be drawn up using every fourth name,
25 every sixth name, and every eighth name on the ranking list.

26 Subp. 3. **Grievance arbitration.** If the arbitrator list
27 contains an even number of names, panels will be drawn up using
28 every ninth name, every 13th name, and every 11th name on the
29 ranking list. If the list contains an odd number of
30 arbitrators, panels will be drawn up using every eighth name,
31 every tenth name, and every 12th name on the ranking list.

32 Subp. 4. **Assignment of panels to pending cases.** Each
33 panel shall be assigned a number. To propose an arbitration
34 panel, a number will be randomly selected and assigned to a
35 pending case. That number will not be available again for

1 selection until all numbers have been exhausted.

2 Subp. 5. Replacements of arbitration panels. The board
3 must replace arbitration panels under the following
4 circumstances.

5 A. In proposing an arbitration panel, if the number
6 which has been selected for a particular case is assigned to a
7 panel which includes an arbitrator who has on file a written
8 notice of a conflict of interest in that case, that number shall
9 not be used for that case and another number shall be selected.

10 B. The board will consider any objections raised by
11 either party, as to whether an arbitrator on the proposed panel
12 has a conflict of interest in that particular case. The party
13 raising the objection must submit a written request for a
14 replacement panel and the rationale for which the objection is
15 being raised. A copy of the request for a replacement panel
16 must be forwarded to the other party of the dispute. Any
17 response by the other party must be in writing and submitted to
18 the board within ten calendar days from the date of the request
19 for the replacement panel. The board at its next scheduled
20 meeting will determine if pursuant to part 7320.0070, subpart 2,
21 a conflict of interest exists. If it is found that a conflict
22 exists, a replacement panel must be provided to the parties. If
23 it is determined that a conflict of interest does not exist, the
24 parties shall proceed to select an arbitrator from the initial
25 panel of arbitrators submitted to the parties. The decision is
26 final.

27 C. All joint written requests to substitute a
28 proposed list of arbitrators with a second list shall be honored.

29 Subp. 6. Selection of arbitration panels. Approximately
30 once a week, pursuant to a schedule established at a regular
31 board meeting, the chair and executive director will meet to
32 select the arbitration panels to be proposed in pending cases.

33 The board may designate any of its members, other than the
34 chair, or the executive director to select the arbitration
35 panels for pending cases.

36 Subp. 7. Arbitrator requests for inactive status. An

1 arbitrator may request in writing not to be proposed on
2 arbitration panels for up to six months without being subject to
3 removal from the arbitrator list.

4 An arbitrator who requests to be withheld from proposal on
5 arbitration panels for more than six months shall be removed
6 from the arbitrator list. That arbitrator may reapply for
7 placement on the list according to the board's qualification
8 procedures.