

In the Matter of  
Proposed Rules of the  
Public Employment Relations Board  
Governing the Public Sector Labor  
Arbitration Roster Maintained  
by the Agency

STATEMENT OF NEED  
AND REASONABLENESS

GENERAL

The Public Employment Relations Board maintains a roster of persons who are not employees of the agency, but who are deemed to be qualified and competent to serve as arbitrators of labor disputes. At the request of a labor union or employer, or an individual authorized by contract or law to select the arbitrator of a grievance, the Board compiles a panel of names from this roster and forwards such panels to the parties. The parties must select one arbitrator or a group of three arbitrators from the panel to arbitrate the dispute or the interest arbitration case. Rules to regulate the administration of this roster are required by Minnesota Statutes 179A.05, subd. 6 (supp. 1989) and are necessary to ensure informed and uniform practice and procedure by the Board in this area of responsibility.

The Board considered all of the methods listed in Minn. Stat. 14.115, subd. 2, for reducing the impact of the rule on small businesses. To the extent possible, PERB adopted the least stringent regulations for all businesses. The professional standards adopted are customary for this profession and to provide less stringent standards for small businesses would be confusing and unfair to the parties. Equally important, less stringent standards would be contrary to the statutory objective of providing qualified arbitrators.

7320.0010 APPLICATION

Need to define the scope and application of the rules to ensure public understanding of their boundaries. The rule is reasonable in that it applies only to persons who utilize the services of the Board for the purpose of selecting or empaneling an arbitrator.

7320.0020 POLICY

Need to articulate the public policy of the State with regard to resolution of labor disputes to provide a framework for application of the rules in a manner consistent with such public policy. The rule accomplishes these goals and is therefore reasonable.

7320.0030 DEFINITIONS

Need to ensure that terms are understood and uniformly applied. The rule is reasonable in that it provides clarification, eliminates repetition and defines terms and phrases in a manner consistent with general and customary labor relations usage and practice.

#### 7320.0040 COMPUTATION OF TIME

Need to ensure that computation of time is understood and uniformly applied. The rule is reasonable in that it sets forth a consistent method for computation of time.

#### 7320.0050 ROLE OF THE BOARD

Need to clarify the role and limit of the Board's authority in its administration of the roster. The rule is consistent with the understood principle that arbitrators are employed by the parties not the empaneling agency.

#### 7320.0060 STATUS OF ARBITRATORS

Need to clarify that persons appointed to the agency roster are not deemed to be employees or agents of the Board. Arbitrators do not have a contract with the state, they are not paid by the state, nor are they agents of the state. This rule protects the state from unintended third-party claims or involvement.

#### 7320.0070 ARBITRATOR QUALIFICATIONS

Subp.1. Roster. Need to advise applicants of qualifications and requirements for appointment to the roster and restrict the roster to certain number of arbitrators. The rule is reasonable in that it provides clarification to applicants seeking appointment and ensures that the administration of the roster will not be unwieldy by restricting the number of appointments.

Subp. 2. Conflict of Interest. There is a need for arbitrators to be neutral and impartial in the performance of their arbitrator responsibilities. The rule is reasonable in that it provides a standard to ensure such impartiality and thus provide for the continued acceptability of the agency roster by the users. This rule also comports with a long-standing practice among arbitrators.

Subp. 3. Knowledge and Abilities. Need to establish criteria and standards upon which appointment decisions are to be based. The rule is reasonable because each factor required by the rule is essential to successful performance as a labor arbitrator.

#### 7320.0080 ARBITRATOR APPLICANT REQUIREMENTS AND APPOINTMENT PROCEDURES

This part establishes that certain requirements, in addition to the qualifications of 7320.0070 are necessary for an applicant to be appointed to the roster. This part also establishes procedures for making application and penalties for noncompliance.

Subp. 1. How to Make Application. Need for application forms to be readily available to applicants seeking appointment.

Information contained in the application form must be accurate and complete as the Board relies upon this information for category placement of the applicant. The rule is reasonable in requiring the use of an application form that is available without cost from the agency. Penalties for inaccurate information or an attempt by the applicant to influence the Board are reasonable because they aim to assure compliance and forewarn the applicant of certain consequences should compliance not occur.

Subp. 2. Category Placement of Applicant. Need to establish procedures that require an applicant who has experience and expertise in labor relations but lacks experience in public sector arbitration to acquire such experience prior to appointment to the roster. This rule is reasonable because it maintains the integrity of the roster by establishing 3 categories for which criteria for placement of the applicant in one of the three is also established. An applicant's completion of their respective category will provide the necessary public sector arbitration experience prior to appointment to the roster.

Subp. 3. Appeal of Category Placement. Need for an applicant to appeal their respective category placement. The rule provides a process in which the applicant may appeal the Board's designation of category placement.

Subp. 4. Category Placement Requirements. Need to spell out the requirements of each applicant category and restrict the applicant to serving under a minimum of 3 arbitrators to meet the requirements of their respective category. The rule is reasonable in that it provides clear direction to the applicant as to the Board's expectations for appointment to the roster. The restriction that the applicant serve an internship under a minimum of 3 arbitrators is to facilitate an applicant in acquiring a broad perspective of public sector arbitration.

Subp. 5. Notice to Arbitrators. Need to advise arbitrators that an applicant has been placed in a specific category and is ready to serve an internship. The rule is reasonable in that it forewarns each arbitrator on the roster that the applicant may contact them and request to serve part of their internship under them.

Subp. 6. Interview of Applicant. Need to advise the applicant as to the Board's procedures for conducting the interview for appointment to the roster. The rule clarifies for the applicant their responsibilities prior to the scheduling of the interview, at the time of the interview, and the applicant is further advised as to type of inquiry that the Board will conduct.

Subp. 7. Appointment to the Roster. Need to establish procedures as to how the Board will make appointment to the roster. The rule is straightforward in that it requires a majority vote, written notice to the applicant of appointment or rejection and a procedure for reapplication.

## 7320.0090 ARBITRATOR CONDUCT, STANDARDS AND RESPONSIBILITIES

Need to establish uniform standards for conduct and responsibilities for arbitrators appointed to the roster. The rule is reasonable because these standards of conduct and responsibilities are long-standing and generally accepted by labor relation practitioners. The rule clarifys the Board's expectations and ensures the continuous integrity of the roster by requiring an on-going high level of ethical and professional conduct.

## 7320.0100 REMOVAL PROCEDURE

This part advises arbitrators on the roster and the parties as to what circumstances constitute a basis for removal or suspension from the roster. This part also provides due process rights to an arbitrator being considered for removal or suspension from the roster or removal from an arbitration case.

Subp.1. Grounds for Removal. Need to establish criteria upon which an arbitrator may be removed from the roster. The rule is reasonable because it foretells what conditions or type of actions are not acceptable to the Board for continued listing on the roster and provides a penalty if an arbitrator acts in such a manner or certain conditions exist.

Subp. 2. Notice of Removal or Suspension. Need to provide a procedure which will ensure due process rights to an arbitrator being considered for removal and suspension from the roster. The rule is reasonable because it clarifys due process rights and provides procedures for uniform application.

Subp. 3. Hearing. Need to establish a procedure in which the Board can determine as to whether a basis for removal from the roster exists. The rule is reasonable in that it requires the Board to conduct a hearing and clarifys procedures the Board will utilize in its conduction of the meeting.

Subp. 4. Removal from an Arbitration Case. Need to establish a procedure to provide for the removal of an arbitrator from a arbitration case when such arbitrator is being considered for removal from the roster. The rule is reasonable in that it clarifys what factors constitute the basis for removal of an arbitrator from a case and provides a way in which the interests of the party can be protected.

## 7320.0110 RANKING OF ARBITRATORS

Need to establish a method for the purpose of ranking arbitrators on the roster by their selection rates. The rule is reasonable in that it clarifys the process for ranking arbitrators and provides integrity by requiring that rankings be conducted on an annual basis.

## 7320.0120 ARBITRATION PANELS

This part sets forth the manner in which panels of arbitrators will be referred by the Board to the parties for interest and grievance arbitration cases.

Subp. 1. Random Selection. Need to establish a procedure that will ensure that balanced panels of arbitrators are referred to the parties. The rule is reasonable because it clarifys how the panels will be compiled and requires that a random selection process be used to assign panels to arbitration cases.

Subp. 2. Interest Arbitration. Need to establish a method for the creation of arbitration panels for interest arbitration cases. The rule is reasonable because it provides a formula to create such panels and clarifies how the procedure will be applied.

Subp. 3. Grievance Arbitration. Need to establish a method for the creation of arbitration panels for grievance arbitration cases. The rule is reasonable because it provides a formula to create such panels and clarifies how the procedure will be applied.

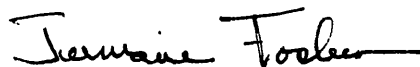
Subp. 4. Assignment of Panels to Pending Cases. Need to establish a procedure to assign panels to arbitration cases. The rule is reasonable because it clarifys how panels will be assigned and provides a procedure that is uniform and unbiased in it application.

Subp. 5. Replacement of Arbitration Panels. Need to establish under what circumstances an arbitration panel can be replaced. The rule is reasonable in that it clarifys what circumstances are acceptable for replacement of a panel and provides a procedure to the parties or party seeking replacement.

Subp. 6. Selection of Arbitrator Panels. Need to establish when arbitration panels will be selected and who will select the panels. The rule is reasonable in that it clarifys who will select the panels and provides that a meeting be set in advance for the random selection of panels.

Subp. 7. Arbitrator Request for Inactive Status. Need to establish a procedure for which an arbitrator may request inactive status on the roster. The rule is reasonable because it clarifys the procedure for an arbitrator to request inactive status and protects the integrity of the roster by retring inactive status to a certain ammount of time.

Dated at St. Paul, Minnesota  
November 27, 1989



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Jermaine Foslien  
Executive Director