

CHAPTER 7320
PUBLIC EMPLOYMENT RELATIONS BOARD
PUBLIC EMPLOYEES; ARBITRATION

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7320.0010 APPLICATION.

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

Statutory Authority: *Ms s 216B 08; 216B.095*

History: *14 SR 2158*

7320.0020 POLICY.

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

Statutory Authority: *Ms s 216B.08; 216B.095*

History: *14 SR 2158*

7320.0030 DEFINITIONS.

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

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

Subp. 3. Board. "Board" means the Public Employment Relations Board.

Subp. 4. Chair. "Chair" means the chair of the Public Employment Relations Board.

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

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

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

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

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

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

Statutory Authority: *Ms s 216B.08; 216B.095*

History: *14 SR 2158*

7320.0040 COMPUTATION OF TIME.

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

Statutory Authority: *Ms s 216B.08; 216B.095*

History: *14 SR 2158*

7320.0050 ROLE OF BOARD.

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

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

Statutory Authority: *Ms s 216B.08; 216B.095*

History: *14 SR 2158*

7320.0060 STATUS OF ARBITRATORS.

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

Statutory Authority: *Ms s 216B.08; 216B.095*

History: *14 SR 2158*

7320.0070 ARBITRATOR QUALIFICATIONS.

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

Subp. 2. **Conflict of interest.** An arbitrator must not currently be nor within the past six months been an advocate of public or private sector employers or employer organizations, or public or private sector employees or employee organizations. An advocate is an individual who represents an organization in mat-

ters of personnel and labor relations, including but not limited to: unit determination and exclusive representation, collective bargaining, arbitration, unfair labor practices and labor-related litigation, wage and benefit administration, equal employment opportunity, unemployment compensation, and occupational health or safety standards.

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

- A. knowledge of the Minnesota Public Employment Labor Relations Act and other labor law relevant to the public sector;
- B. knowledge of Bureau of Mediation Services and Public Employment Relations Board rules regarding grievance and interest arbitration;
- C. knowledge of hearing procedures and the ability to conduct arbitration hearings and to develop an accurate record of proceedings;
- D. knowledge of principles of arbitrator ethics;
- E. knowledge of labor relations concepts, principles and practices about contract negotiation, contract administration, and grievance and interest arbitration;
- F. knowledge of limits of arbitrator authority;
- G. knowledge of public sector finance;
- H. ability to calculate costs of wage and fringe benefits and improvements;
- I. ability to write clear concise arbitration awards based on logical rationale; and
- J. ability to produce a written award within reasonable time limits.

Statutory Authority: *Ms s 216B.08; 216B.095*

History: *14 SR 2158*

7320.0080 ARBITRATOR APPLICANT REQUIREMENTS AND APPOINTMENT PROCEDURES.

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

Subp. 2. Category placement of applicant. Upon receipt of a completed application, the board must review the application and place the applicant in one of the following three categories:

- A. highly qualified;
- B. moderately qualified; or
- C. inexperienced.

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

Subp. 3. Appeal of category placement. Within ten working days after receipt of the board's notification of the category into which the applicant has been placed, the applicant may appeal that designation in writing to the board. If an

appeal is made, the applicant must be interviewed before the board and the board will decide the appeal.

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

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

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

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

If the awards by the applicant are mock arbitration awards written while an intern to an arbitrator, the applicant must have interned with a minimum of three arbitrators.

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

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

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

Statutory Authority: *Mss 216B.08; 216B.095*

History: *14 SR 2158*

7320.0090 ARBITRATOR CONDUCT, STANDARDS, AND RESPONSIBILITIES.

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

Subp. 2. **Professional and ethical responsibilities.** Except as otherwise provided in this chapter, the Code of Professional Responsibility for Arbitrators of Labor-Management Disputes approved and published by the National Academy of Arbitrators is incorporated by reference and is applicable to and shall govern the professional behavior of persons appointed to the roster. The code was adopted in 1975 and amended in 1985 and is not subject to frequent change. The code is available for inspection and copying at the Minnesota State Law Library, 117 University Avenue, Saint Paul, Minnesota.

Subp. 3. **Arbitrator solicitation.** Arbitrators shall not solicit parties for selec-

tion to cases. An arbitrator must uphold the integrity of the profession and must not advertise or solicit arbitration assignments. To discourage solicitation, the board must not notify arbitrators that their names have been placed on a list submitted to the parties for the selection of an arbitrator or panel of arbitrators.

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

Subp. 5. Timeliness. It is the responsibility of the arbitrator to schedule time commitments in a manner consistent with the needs of the parties and the expeditious handling of disputes. Assignment to an arbitration case must be declined if the arbitrator is unable to schedule and conduct a hearing in a timely manner. When scheduling problems arise, priority should be given to cases in process. The arbitrator must adhere to the time limits of the parties' arbitration procedure. If, after accepting and hearing a case, the arbitrator discovers that it is not possible to render an award within the time limits specified in the arbitration procedure, the arbitrator shall notify each party in writing of the reason for delay and shall seek approval for establishing an alternative date for completion of the award.

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

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

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

- A. restate the substance of issues or arguments for clarification;
- B. encourage stipulations of fact;
- C. obtain additional pertinent information by questioning the parties' representatives or witnesses; and

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

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

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

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

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

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

- A. the necessity for adequately addressing the issues on a rational basis;
- B. the desirability of brevity;
- C. the use of a style that can be readily understood by the parties;
- D. the need for clarity; and
- E. the avoidance of discourse not essential to resolution of the issues.

The board encourages the parties to submit written evaluations of the arbitrator's awards. The arbitrator must not discuss an award with either party until after the award has been simultaneously issued to both parties. The arbitrator's responsibility does not extend to the enforcement of an award. Request for clarifications or interpretation of an award shall be made by a party or parties in conformity with Minnesota Statutes, chapter 572.

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

Statutory Authority: *Ms s 216B.08; 216B.095*

History: *14 SR 2158*

7320.0100 REMOVAL PROCEDURE.

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

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

- A. failure to comply with board arbitration statutes or rules;
- B. failure to meet, on a continuing basis, the board's arbitrator qualifications;
- C. failure to provide the board with complete and accurate biographical data and to keep the board informed of changes in personal status and availability to arbitrate cases;
- D. refusal to comply with requests from the board concerning arbitration activities and potential conflicts of interest;
- E. delinquency in submitting awards. An award is delinquent, regardless of any waiver of the parties, if 45 calendar days have elapsed since the close of the record; or
- F. unacceptability to the parties, which may be evidenced by a low rate of selection over a period of years.

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

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

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

Subp. 4. Removal from an arbitration case. An arbitrator who has been removed from the roster may also be removed from an arbitration case if either party petitions the board for the arbitrator's removal from the case. The petition must contain a written request for removal and a concise statement as to why the party seeks the arbitrator's removal from the case. The board must review the petition and provide notice by certified mail to the arbitrator that removal from the arbitration case is being considered. If the arbitrator does not respond within ten calendar days from the certified mailing date, the arbitrator will be removed from the case, and be notified that a new panel of arbitrators will then be submitted to the parties so that the selection process can begin and another arbitrator selected to hear and decide the matter. If a timely response is received from the arbitrator, the board will review and decide whether continued assignment to the case would be in the best interests of the parties. The chair may act on behalf of

the board if the reasons for removal from the arbitration case require an expeditious decision. The board is not liable for any costs relating to the case from which the arbitrator has been removed.

Statutory Authority: *Ms s 216B.08; 216B.095*

History: *14 SR 2158*

7320.0110 RANKING OF ARBITRATORS.

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

Statutory Authority: *Ms s 216B.08; 216B.095*

History: *14 SR 2158*

7320.0120 ARBITRATION PANELS.

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

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

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

Subp. 4. Assignment of panels to pending cases. Each panel shall be assigned a number. To propose an arbitration panel, a number will be randomly selected and assigned to a pending case. That number will not be available again for selection until all numbers have been exhausted.

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

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

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

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

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

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

Subp. 7. Arbitrator requests for inactive status. An arbitrator may request in writing not to be proposed on arbitration panels for up to six months without being subject to removal from the arbitrator list.

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

Statutory Authority: *Ms s 216B.08; 216B.095*

History: *14 SR 2158*