

Minnesota Attorney General: Administrative Rules Proceedings

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DEPARTMENT : ATTORNEY GENERAL

STATE OF MINNESOTA

Office Memorandum

DATE : November 17, 1989

TO : PAUL W. GOLDBERG, Commissioner
Bureau of Mediation Services
1380 Energy Lane, Suite 2 (55108)

FROM : MARTHA J. CASSERLY
Special Assistant Attorney General
525 Park Street, Suite 404 (55103)

PHONE : 296-6839

SUBJECT : In the Matter of the Adopted Permanent Rule Relating to Arbitration Roster

The above-referenced Permanent rule has been approved as to its legality by the Attorney General on November 15, 1989.

Enclosed is your copy of the approved rule. This office has already filed two copies with the Secretary of State, who will forward one copy to the Revisor of Statutes. The fourth is being retained by this division of the Attorney General's Office for its records.

Also enclosed are any petitions, requests, submissions or comments along with any extra copies of documents which you submitted to the Attorney General.

Your next step is to arrange for publication of the Notice of Adoption in the State Register. In a day or two, you should receive from the Revisor's Office three copies of the notice of adoption of your rule. You should submit two copies of the Notice of Adoption to the State Register for publication. A permanent rule without a hearing does not become effective until five days after a notice of adoption is published in the State Register in accordance with Minn. Stat. { 14.27. An emergency rule becomes effective five working days after approval by the Attorney General; however, the agency must publish a notice in the State Register in accordance with Minn. Stat. { 14.34.

If you have any questions in this regard please contact me.

MJC:bbl
Enclosures
cc: William Brown, Chief Judge (memo only)
MaryAnn Hruby " "
Andrea Mitau Kircher " "

Bureau of Mediation Services

Adopted Permanent Rules Relating to Arbitration Roster

Rules as Adopted

5530.0100 APPLICATION.

This chapter applies to the empanelment, referral, conduct, and removal of persons on the arbitrator roster maintained by the commissioner. 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. Nothing in this chapter is intended to limit the right of the parties to jointly select any arbitrator or arbitration procedure which is acceptable to them.

5530.0200 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, chapters 179 and 179A.

5530.0300 DEFINITIONS.

Subpart 1. **Advisory committee.** "Advisory committee" means a committee consisting of three union representatives, three employer representatives, and two roster members ~~that are~~ appointed by the commissioner under Minnesota Statutes, section 15.014, to advise the commissioner regarding the appointment and removal of persons to the arbitrator roster. The committee shall not expire as provided by Minnesota Statutes, section 15.059.

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Subp. 2. **Applicant.** "Applicant" means an individual who is seeking appointment to the roster.

Subp. 3. **Arbitrator roster or roster.** "Arbitrator roster" or "roster" means a listing of persons determined by the commissioner to be qualified and available for referral as an arbitrator of labor disputes under this chapter.

Subp. 4. **Bureau.** "Bureau" means the Bureau of Mediation Services.

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

Subp. 6. **Commissioner.** "Commissioner" means the commissioner of the Bureau of Mediation Services.

Subp. 7. **Expedited panel.** "Expedited panel" means a list established by the commissioner of roster members who are willing and able to handle expedited cases under part 5530.1100.

Subp. 8. **Initial appointment.** "Initial appointment" means a new appointment to the roster of a person who is not listed on the roster at the time application for appointment is made.

Subp. 9. **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 commissioner is considered the date of issuance for purposes of this chapter.

Subp. 10. **Panel.** "Panel" means a listing of roster members compiled by the commissioner for referral to the parties, from which they may subsequently select an arbitrator.

Subp. 11. **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.

Subp. 12. **Probationary appointment.** "Probationary appointment" means a temporary appointment not exceeding 24 months in duration for purposes of further evaluating the performance, acceptability, or conduct of a roster member.

Subp. 13. **Renewal appointment.** "Renewal appointment" means the appointment of an existing roster member to an

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additional term as a roster member.

5530.0400 ROLE OF BUREAU.

The role of the bureau 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 bureau 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, except as provided in part 5530.1000, subpart 6.

5530.0500 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 bureau 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 a dispute.

5530.0600 ARBITRATOR QUALIFICATIONS.

Subpart 1. **General labor relations background.** Persons seeking appointment to the arbitrator roster must have substantial knowledge of collective bargaining and labor relations matters in the public or private sectors, be well versed in applicable state and federal law, and be experienced and knowledgeable in the field of labor arbitration.

Subp. 2. **General abilities.** Potential applicants for placement on the roster must be willing and able to travel throughout Minnesota, conduct hearings in a fair and impartial manner, analyze and evaluate testimony and exhibits, write clear

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and concise awards in a timely manner, and be available for hearings within a reasonable time after the request of the parties.

Subp. 3. **Advocacy disqualification.** No applicant or roster member may currently, or within the preceding 12 months, have functioned as an advocate for any public or private sector employer, employee, or employee organization in any phase of labor management relations. This prohibition applies to employee discharge or disciplinary appeal proceedings, whether or not the employee is represented by an exclusive representative. The commissioner shall disqualify individuals who are closely associated with firms or organizations that function as advocates from appointment to particular panels, when the appointment would present the appearance of a conflict of interest.

Subp. 4. **Demonstrating qualifications.** The burden for establishing qualifications for appointment on the roster is on the person seeking appointment. The commissioner will examine the evidence to determine the complexity of issues the applicant claims experience in, and the technical, theoretical understanding the applicant has demonstrated in handling such matters, and shall make appointments to the roster pursuant to part 5530.0700, subpart 6. Evidence of an applicant's qualification may be advanced in one or a combination of the following ways:

A. submission of six or more arbitration awards or contested case decisions that were authored and signed by the applicant in the 24-month period preceding application;

B. a minimum of six years' experience as a full-time labor relations advocate and submission of six arbitration awards in which the applicant acted as the principal representative for either labor or management;

C. a minimum of six years' experience as a full-time labor mediator, including substantial grievance mediation experience;

D. a minimum of six years' experience as a

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practitioner or full-time instructor of labor law or industrial relations, including substantial content in the area of collective bargaining, labor agreements, and contract administration;

E. membership in the National Academy of Arbitrators; and

F. satisfactory completion of a formalized course of instruction and internship in a program that has been approved by the commissioner in advance of participation or enrollment by the applicant. The program must include the writing of not less than two mock awards under the supervision and guidance of an arbitrator already admitted to the roster or otherwise approved in advance by the commissioner.

Subp. 5. **Domicile.** To be eligible for appointment or continuation on the roster, individuals must maintain a principal place of residence in Minnesota or one of its contiguous states. The maintenance of a mail box or mail delivery point is not sufficient to satisfy the requirement of this subpart.

5530.0700 APPOINTMENT TO ROSTER.

Subpart 1. **Size of roster.** The size of the arbitrator roster shall be not fewer than 25 nor more than 50 members. Annually, the commissioner shall determine whether or not to add members to the roster based on the number of referrals over the preceding 12 months and projected referrals from the roster over the next 12 months.

Subp. 2. **Procedure; initial appointments.** When, pursuant to subpart 1, the commissioner determines that it is appropriate to make additional appointments to the roster, the commissioner shall:

A. publish notice in the State Register for not less than 30 days, indicating that applications for appointment are being accepted and establishing a deadline for the applications;

B. in conjunction with the advisory committee, conduct interviews of applicants selected for further

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consideration, to further assess the applicant's qualifications and suitability for appointment to the roster;

C. advise all applicants in writing regarding the commissioner's final determination with respect to their application;

D. actively solicit qualified applicants who will help provide balance in the racial and gender composition of the roster; and

E. conduct an initial review of applications received and, based on the information provided in the application, reference checks, and the arbitrator qualification requirements of this chapter, select or reject applications for further consideration. The commissioner may conduct additional investigations regarding the application if necessary to obtain a full understanding of the applicant's qualifications.

Subp. 3. **Procedure; renewal appointments.** The commissioner shall notify all roster members not less than 120 days before the expiration of their appointment of the procedures necessary for reappointment to the roster. The appointment of one-third of the members on the roster at the time this chapter is adopted shall expire on July 30, 1991; an additional one-third shall expire on July 30, 1992; and the final one-third shall expire on July 30, 1993. The names of roster members falling into each one-third shall be determined by lot. Persons desiring to renew their appointment on the roster shall submit a written application and fee to the commissioner not less than 60 days before the expiration of their appointment. Following receipt of a renewal application, the commissioner shall review available referral, performance, and activity records of the applicant and proceed according to subpart 6.

Subp. 4. **Application forms.** Individuals who wish to be considered for initial or renewal appointment to the roster must complete an application on forms available from the bureau. Writing samples must accompany the application.

Subp. 5. **Application fee.** A nonrefundable application fee

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of $50 for initial appointments and $25 for renewals must accompany each application for appointment or renewal. The fee must be in the form of a check or money order made payable to "State of Minnesota, Bureau of Mediation Services."

Subp. 6. **Standards for appointment.** In determining whether or not to appoint a member to the roster, the commissioner shall evaluate each application for evidence of the applicant's competence, proficiency, and qualifications in the following areas:

A. knowledge and understanding of labor relations systems and collective bargaining processes and dynamics;

B. knowledge and understanding of applicable contract, employment, and labor relations law and rules;

C. ability to hear and decide complex labor relations issues in a fair and objective manner;

D. ability to communicate, both orally and in writing, in a clear and concise manner;

E. ability to conduct orderly and effective arbitration hearings in a variety of settings and locations throughout Minnesota; and

F. high moral character and integrity.

In addition to meeting these standards for appointment, roster members seeking reappointment must satisfy the requirements of part 5530.1200.

Subp. 7. **Disposition of applications.** If an applicant has satisfied the requirements of subpart 6, the commissioner shall appoint or reappoint the applicant to the roster. If the applicant has failed to satisfy the requirements of subpart 6, the commissioner shall reject the application in writing, including the reasons for the rejection. In the event that there are more qualified applicants than vacancies on the roster, the commissioner shall appoint applicants in rank order of their qualifications or by lottery where qualifications are relatively equal.

Subp. 8. **Term of appointment.** Initial appointments to the roster shall be for a term of five years. Renewal appointments

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to the roster shall be for a term of three years. The commissioner shall establish a common July 30 expiration date for all appointments for purposes of administrative convenience.

5530.0800 ARBITRATOR CONDUCT AND STANDARDS.

Subpart 1. **Scope.** The criteria and standards in subparts 2 to 10 apply to all persons on the roster. Failure to comply with these provisions constitutes grounds for disciplinary action or removal from the roster under part 5530.1300.

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. Single copies of the code are available without charge from the commissioner, and are available through the Minitex interlibrary loan system.

Subp. 3. **Conflicts of interest.** The arbitrator must disclose any personal or professional relationships, including direct or indirect past employment, consultative relationships, or affiliation with one of the parties, which may give an appearance of partiality. The burden of disclosure is on the arbitrator.

Subp. 4. **Communication with parties.** Arbitrators shall not solicit parties for selection to cases. All matters involving a case or contact with the parties must be handled in a manner that fosters the impartiality of the arbitrator. The arbitrator shall not communicate, directly or indirectly, in connection with any issue of fact or law with any person or party, except upon notice and opportunity for all parties to participate. When this chapter authorizes communications contrary to this part, the communications shall be limited to only those matters permitted by this chapter. The arbitrator may communicate regarding dates or procedures for the hearing

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without violating this part.

Subp. 5. **Use of assistants or associates.** An arbitrator may, without prior consent of the parties, delegate research, clerical, and preliminary 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.

Subp. 6. **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. The arbitrator must adhere to the time limits of the parties' arbitration procedure. When initially accepting and scheduling a case, or at the first reasonable opportunity to become aware of the time limits, the arbitrator must indicate whether or not the time limits specified in the arbitration procedure will present a problem in the timely handling of the case. Although the time limits specified in an arbitration procedure may be waived or extended by the parties, it is improper for an arbitrator to routinely request or suggest extensions. If, after accepting and hearing a case, the arbitrator discovers that he or she will be unable 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 the delay and shall seek approval for establishing an alternate date for completion of the award.

Subp. 7. **Administrative or cancellation fees.** Arbitrators may charge an administrative fee for establishing a case file and cancellation fees for hearings that are canceled or rescheduled by one or both parties with less than 21 calendar days' notice, provided the fees and policies are clearly noted on the biographic sketch for that arbitrator that is on file with the bureau.

Subp. 8. **Arbitration fees.** All fees charged by an arbitrator selected under this chapter shall be based on the per diem fee schedule in the biographic sketch on file with the

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commissioner. The arbitrator shall maintain reasonable time and expense records related to each case and, in the event of a dispute over the reasonableness of fees and expenses in a case, shall make the records available to the parties or the commissioner, upon written demand. Disputes over the reasonableness of fees may be resolved under part 5530.1000, subpart 6.

Subp. 9. **Filing copies of awards.** Unless one or both private sector parties have specifically requested that an award not be provided to the commissioner, arbitrators shall submit copies of all awards involving Minnesota work sites to the commissioner, regardless of the source of appointment or selection. ~~Roster members shall also provide the commissioner with a copy of all Minnesota public sector awards and all hearing officer reports filed as a result of selection under Minnesota Statutes, section 125.12.~~ Awards filed with the commissioner are public documents.

Subp. 10. **Arbitrator fee and summary report.** For each award filed with the commissioner, whether originating from a bureau referral or other source, the arbitrator shall provide a summary report that discloses the following:

A. case identification information, including:

(1) arbitrator's name;

(2) case file number or bureau case number, if any;

(3) name and location of employer and name of employer's representative; and

(4) name of exclusive representative and agent of the exclusive representative;

B. case processing date information, including:

(1) date the grievance was filed or first made known to the employer;

(2) date arbitrator was notified of selection by parties;

(3) date of hearing;

(4) final date for submission of briefs or other

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written material, if any; and

(5) date award was issued; and

C. arbitrator fee and expense information for all awards resulting from a referral by the commissioner, including:

(1) number of days of hearing billed;

(2) number of days of study and preparation of award billed;

(3) number of days billed for travel;

(4) per diem rate for billing;

(5) travel expenses billed;

(6) other expenses billed;

(7) total fees and expenses charged; and

(8) amount of the total costs to be paid by each party.

Forms for reporting this information must be furnished by the bureau.

5530.0900 PANEL SELECTIONS AND REFERRALS.

Subpart 1. **Request for panels.** Individuals or organizations desiring a panel of arbitrators drawn from the roster shall submit individual or joint written requests that include the following:

A. the name and location of the employer and the name, address, and telephone number of the employer's representative;

B. the name of the employee organization and the name, address, and telephone number of the employee organization's representative;

C. a brief statement of the nature of the dispute being submitted to arbitration, for example, discharge or overtime pay;

D. the nature or type of business of the employer;

E. a description of the type of bargaining unit involved, for example, clerical, maintenance, dietary, or teacher; and

F. the date the grievance or dispute was first made

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known to the employer.

Subp. 2. **Size and selection of panels.** Unless a single arbitrator is to be apppointed under subpart 3, all panels submitted by the commissioner shall contain seven names. When the parties' arbitration agreement provides for panels of fewer than seven names, the parties may use the striking procedures in subpart 5 to reduce the size of a seven-member panel. In assembling panels, the commissioner shall use a random selection system that results in a reasonably equal number of opportunities for referral among roster members who have been on the roster for three or more years. When possible, no more than three arbitrators who have been on the roster for less than three years shall be included on a single panel, but the commissioner shall provide greater referral opportunities for those individuals. In assembling panels, the commissioner shall seek to avoid potential conflicts of interest and shall include or exclude roster members pursuant to mutual requests of the parties. Geographic location or unique and special circumstances and technical expertise must be considered by the commissioner when the parties request that those factors be considered. At least five members of the panel must be residents of Minnesota.

Subp. 3. **Direct appointment by commissioner.** The commissioner shall appoint one person from the roster to serve as the arbitrator whenever the agreement to arbitrate or other joint agreement of the parties provides for direct appointments.

Subp. 4. **Replacement panels or names.** Upon the joint request of the parties, the commissioner shall issue a new panel of seven names to replace a prior panel. No more than one replacement panel will be provided in any one case. Single-party requests for replacement panels will not be honored unless the commissioner determines that a bona fide conflict of interest exists regarding the matter in dispute between one or more parties and two or more members of the panel. If a conflict is found by the commissioner, a single replacement panel will be issued.

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Subp. 5. **Selection from panels.** The parties shall select an arbitrator or arbitrators from the panel under the terms of their agreement or grievance procedure. In the absence of an agreement, the selection shall be made by alternately deleting names from the panel until the required number of names remain. Determining which party shall delete the first name shall be accomplished by a toss of a coin.

Subp. 6. **Scheduling.** Notifying the arbitrators of their selection and the scheduling of the arbitration hearing is the responsibility of the parties. Once the initial arbitration hearing has been established, the party who requested the panel shall notify the commissioner of the arbitrators selected, the date the selection was made, and the date of the initial arbitration hearing.

Subp. 7. **Biographic data.** The bureau shall review and prepare a biographic sketch of each member on the roster annually, based on information provided by that member and other information available to the commissioner. The sketches must include information about the arbitrator's background, education, and experience, as well as data regarding the arbitrator's fee schedule and acceptance of hearing officer duties under Minnesota Statutes, section 125.12. The mean number of calendar days required by each arbitrator to issue an award during the preceding year, as well as the upper and lower limits and number of cases used to determine that mean, based on records on file with the bureau, shall be included on the biographic sketch for that arbitrator beginning July 30, 1991. Arbitrators are responsible for ensuring the accuracy of all other biographic and fee data on the sketch. Single copies of the sketches will be made available to parties with the referral of panels.

Subp. 8. **Jurisdiction of bureau.** Submission of a panel or appointment of an arbitrator under this chapter signifies nothing more than compliance with a request and is not a determination as to the legitimacy of the dispute or the competency of the arbitrators to resolve it. The bureau does

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not have jurisdiction or responsibility for enforcement, resolution, or compliance with any aspect of the arbitration process other than providing the services specifically established by this chapter.

5530.1000 ARBITRATION PROCEEDINGS.

Subpart 1. **Responsibility of arbitrators.** Arbitrators selected as a result of referral on a bureau panel must ensure that a fair, adequate, and timely hearing is conducted in a manner that reasonably minimizes cost and expense to the parties.

Subp. 2. **Transcripts or recordings.** Official verbatim recordings or transcripts of an arbitration proceeding shall not be encouraged by the arbitrator. If a single party requests a transcript be made, and the matter is not addressed in the contract or grievance procedure, the arbitrator shall permit the record to be made if the party requesting the transcript makes the necessary arrangements, pays for all costs associated with the transcript, and provides copies to the other party and the arbitrator.

Subp. 3. **Tape recordings.** An arbitrator may use a tape recording of a hearing as a supplement to his or her notes. The tape of the hearing shall be regarded as the personal property of the arbitrator, but must be maintained by the arbitrator for not less than 90 days following issuance of the award.

Subp. 4. **Briefs.** Arbitrators should not encourage the submission of post-hearing briefs unless the arbitrator determines that the case is of a sufficiently complex nature and warrants the need for a written summation of evidence and argument. If one or both parties desire to submit briefs, the arbitrator shall establish a prompt schedule.

Subp. 5. **Payment of fees and costs.** Parties requesting panels under this chapter must pay the reasonable fees and costs of the arbitrator promptly. Each party to the dispute is responsible for their pro rata share of the arbitrator's fees and costs, except as otherwise provided by the express terms of the agreement to arbitrate. In the event of a dispute between

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one or both parties and the arbitrator over the arbitrator's fees or costs, the party contesting the fee may request arbitration of the fee dispute under subpart 6.

Subp. 6. **Dispute over fees.** If a party believes that the fees or expenses charged by an arbitrator are inappropriate or incorrect and is unable to resolve the matter through discussion with the arbitrator, that party may submit a written statement of protest to the commissioner within 30 calendar days of receipt of the arbibrator's invoice. The protest shall provide the specific basis for the objection and a copy shall be provided to the arbitrator and the other party. The commissioner shall investigate and respond to the complaint promptly and if the commissioner believes further examination is necessary, the matter will be referred to a panel of the advisory committee consisting of one union representative, one employer representative, and one roster member, all of whom shall be selected by the commissioner. The panel shall investigate the matter, provide all parties at interest an opportunity to be fairly heard, and issue a written decision that is final and binding upon the parties and the arbitrator.

5530.1100 EXPEDITED ARBITRATION.

Subpart 1. **Request for expedited arbitration.** Parties may use expedited procedures for arbitrating a dispute by filing a joint written request with the commissioner. The request must be signed by authorized representatives from both parties and contain the following information:

A. name, address, and telephone number of the employer and the employer's representative;

B. name, address, and telephone number of the exclusive representative and the agent of the exclusive representative; and

C. a brief statement of the nature of the dispute, for example, discharge, discipline, or holiday pay.

Subp. 2. **Appointment of arbitrator.** The commissioner shall appoint a single arbitrator from the expedited panel of

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roster members maintained for this purpose. The arbitrator appointed by the commissioner shall hear and decide the case according to this part.

Subp. 3. **Disclosures.** If, after appointment to a case, the arbitrator discovers any circumstance likely to prevent a prompt hearing or which presents a potential conflict of interest or other circumstance detrimental to the intent of this part, the arbitrator shall promptly notify the parties and the commissioner. Under such circumstances, the commissioner shall immediately appoint a new arbitrator from the expedited panel, unless the parties otherwise mutually agree.

Subp. 4. **Scheduling of hearing.** The commissioner shall fix the time and date for a hearing on the matter in dispute. The hearing will be held in the offices of the bureau, or at a location mutually agreed upon by the parties and the arbitrator, within 15 working days of receipt of the joint request. The commissioner shall provide at least 48 hours' advance notice, written or oral, before any hearing under this part.

Subp. 5. **Conduct of hearing.** All hearings under this part shall be closed to the public, pursuant to Minnesota Statutes, section 179A.14, subdivision 3, and no verbatim transcripts or audio-magnetic recordings shall be permitted. Each party may be represented by counsel or other representative, but each party shall be limited to a total of 90 minutes for presentation of its case and arguments. The arbitrator shall determine all procedural questions not addressed by this part, including order of presentation, framing of the issue, and sequestering of witnesses, if any. Under unusual circumstances and for demonstrated good cause, as determined by the arbitrator, the arbitrator may schedule an additional hearing on the matter, provided the hearing is conducted within five working days. The arbitrator may proceed in the absence of a party who, after due notice, fails to appear, but the arbitrator must rely on the evidence actually presented when reaching an award.

Subp. 6. **Evidence.** Parties shall limit the number and extent of exhibits to those that are essential and relevant to

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the contentions of that party. The arbitrator shall be the sole judge of the relevance, materiality, and weight of the evidence offered. The arbitrator may receive and consider evidence in the form of affidavit, but shall give appropriate weight to any objections raised by the other party. All written material to be considered by the arbibrator must be presented during the hearing. There shall be no pre-hearing or post-hearing submissions.

Subp. 7. **Written briefs.** There shall be no post-hearing briefs.

Subp. 8. **Issuance of award.** The arbitrator shall issue a brief written award within five working days from the close of the hearing. The award shall be simultaneously mailed to both parties and the commissioner. The arbitrator may orally notify the parties of the decision at the time that the award is mailed, provided both parties are notified in a timely fashion.

Subp. 9. **Precedential value.** Awards issued under this expedited procedure shall have no precedential value.

Subp. 10. **Fees and expenses.** The arbitrator shall receive a total fee of $450 per award issued under this part, plus reasonable and actual expenses. Unless otherwise specifically provided by the parties' contract or agreement to arbitrate, each party is responsible for one-half of the total fee and expenses.

Subp. 11. **Cancellation fee.** If the parties withdraw a request for expedited arbitration under this part within seven calendar days of a scheduled hearing, the parties are responsible for a cancellation fee of $100 each, payable to the arbitrator.

5530.1200 PERFORMANCE MEASURES.

Subpart 1. **Renewal criteria.** When reviewing an application for renewal appointment to the roster, the commissioner shall use the criteria in subparts 2 to 7 in determining whether or not to reappoint.

Subp. 2. **Selection rate.** The commissioner shall develop

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and maintain reliable data concerning the frequency with which individuals are selected by parties from panels referred by the bureau. A selection frequency that falls in the upper three quartiles of the frequencies of all arbitrators on the roster is evidence that an arbitrator has established acceptability among the parties who use the roster. Appointments under part 5530.1100 shall not be considered in determining selection frequency. A selection rate in the lowest quartile shall not be the sole basis for failure to reappoint unless the arbitrator has been in the lowest quartile for two consecutive years and was selected for fewer than three cases in the most recent 12-month period.

Subp. 3. **Scheduling.** A lack of substantiated written complaints from parties that an arbitrator has failed to offer a reasonable number of dates on which the arbitrator is available to hear a case within 60 days of the arbitrator's notification of selection is evidence that an arbitrator is meeting the availability standards of this chapter.

Subp. 4. **Timeliness.** The commissioner shall consider the mean number of calendar days between the close of the record in a case and the issuance of an award during the preceding 12 months to determine whether or not roster members are meeting timeliness requirements. In evaluating the data, the commissioner shall rely on information provided by the arbitrator under part 5530.0800, subpart 9, and data available from awards on file with the commissioner, but shall not consider awards issued under part 5530.1100. A mean that exceeds 60 days is evidence that an arbitrator is not timely in the handling of cases, but shall not be the sole basis for a determination not to reappoint.

Subp. 5. **Evaluation by parties.** The commissioner shall encourage evaluations of the performance of roster members by the parties. Both individual and summary evaluation information shall be considered by the commissioner.

Subp. 6. **Availability.** Arbitrators who have been available to accept cases for at least 18 of the preceding 36

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months, including at least six of the preceding 12 months, meet the availability requirements for reappointment.

Subp. 7. **General professional criteria.** All roster members are required to maintain proficiency and competency in the areas in part 5530.0700, subpart 2. Failure of an arbitrator to comply with this chapter, including the submission of information or reports, shall be grounds for removing or not reappointing a roster member.

5530.1300 DISCIPLINARY OR REMOVAL PROCEDURES.

Subpart 1. **General.** Membership on the roster is a privilege and no arbitrator has a right to placement on the roster. The commissioner has authority to investigate all complaints and allegations regarding the professional performance and compliance with this chapter by members of the roster. The commissioner shall advise, counsel, suspend, or remove roster members when the results of an investigation demonstrate violation by the arbitrator of the performance, professional, or ethical standards established by this chapter.

Subp. 2. **Preliminary investigation.** When the commissioner receives a complaint regarding violation of this chapter by a member of the roster, the commissioner shall conduct an informal investigation of the matter to determine if there is probable cause to believe that a roster member has violated any requirements of this chapter. In the absence of a violation, the commissioner shall take no further action. If further action on the matter is warranted, the commissioner shall suspend the roster member from further referrals pending the conclusion of proceedings under this chapter.

Subp. 3. **Notice.** When the commissioner finds probable cause to believe that a violation of this chapter has occurred and that removal or disciplinary suspension of a roster member should be considered, the commissioner shall provide written notice to the roster member and the advisory committee. The written notice must contain the nature of the action being considered and the reasons for it. The notice shall provide an

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opportunity for the roster member to respond in writing and shall fix a date for a hearing on the matter before the commissioner or a designated representative, if the roster member wishes to contest the proposed action.

Subp. 4. **Hearing.** If a hearing on a disciplinary matter is requested by the affected roster member, the commissioner or the commissioner's representative shall convene and conduct a hearing pursuant to part 5510.1910, subparts 6, 8, 9, 10, 12, 13, and 14. Advisory committee members may attend the hearing or review the audio-magnetic recording from the proceedings.

Subp. 5. **Determination.** The commissioner shall determine the action to be taken with respect to the member's status on the roster, based on the record of the hearing, the recommendations of the advisory committee, and this chapter. The determination is a final decision.

Approved
by Revisor _____

RECEIVED
NOV 16 1989
Office of the Attorney General
Government Services Section
Government Office Bldg., Suite 500
Capitol Office Park Street
St. Paul, MN 55103

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
NOV 16 1989
Joan Anderson Growe
Secretary of State
3:30 PM

APPROVED AS TO FORM AND LEGALITY
November 15 19 89
HUBERT H. HUMPHREY, III
ATTORNEY GENERAL
BY MJ Cassidy
SPECIAL ASSISTANT ATTORNEY GENERAL

RULE REVIEW CHECKLIST

File No. 1638 — Docket No. 05-0009, 0650

DATE RECEIVED 11-1-89 — ADOPTED W/O HEARING _____

REVIEW DATE 11-10-89 — EMERGENCY RULE _____

DUE DATE 11-15-89 — To Revisor 11-7-89

APPROVED 11.15.89 MJC — REVISOR APPROVED ✓

DISAPPROVED _____ — REVISOR DISAPPROVED _____

WITHDRAWN _____ — FILED W/SEC. OF STATE 11-16-89

RETURNED TO AGENCY _____

✓ Rule as adopted (4 copies)

✓ Notice to Solicit Outside Information/Opinion (if applicable)
- April 4, 1989 Date published in State Register
- ✓ Comments

_____ Petition for Adoption of a Rule (if applicable)

_____ Board's Authorizing Resolution
- _____ Date adopted

✓ Proposed Rule
- _____ Revisor's Certificate

✓ Notice of Intent to Adopt Rule
- 179.02 Subd 4 Statutory Authority
- ✓ Small Business Statement soliciting outside opinion
- N/A Expenditure of public money statement
- July 10, 1989 Signature

✓ Statement of Need and Reasonableness (if applicable)
- yes Small Business Statement
- yes Fees - § 16A.128

_____ Affidavit of Mailing Notice of Intent to Adopt Rule
- July 11, 1989 Date (30/25 days before adoption
- _____ Notice attached indicates it is attached in the notice
- NO Copy of rule or summary attached

✓ Publication in State Register
- July 10, 1989 Date (30/25 days before adoption

✓ 180-day deadline from:
- ✓ Effective date of law requiring rule (14.12) (both rules) May 23 - July 10
- ✓ end of comment period (§ 14.26) (rules without hearing) Sept 11 - Nov 1
- _____ effective date of statutory authority (§ 14.29) (emergency rules)

_____ Resolution Adopting
- Oct 31, 1989 Date adopted

✓ Findings of Fact, Conclusions & Order Adopting
- Oct 31, 1989 Date

yes Written requests, submissions or comments

_____ Declaration of attorney
- Andrea Kuchera Name of SAAG representing agency

_____ Notice of Submission to Atty. Gen. (if applicable)

_____ Aff. of Mailing Notice to Atty. Gen. (if applicable)

SF-00006-05 (4/86)

DEPARTMENT : **ATTORNEY GENERAL/BREMER TOWER**

STATE OF MINNESOTA

Office Memorandum

DATE : October 31, 1989

TO : **Patricia Nolte**
525 Park

FROM : **Andrea Mitau Kircher** AMK
Special Assistant
Attorney General

PHONE : 296-7860

SUBJECT : Rules of the Bureau of Mediation Services
Relating to the Arbitration Roster

Please find enclosed the documents from the Bureau of Mediation Services of Minnesota regarding the above entitled matter.

AMK:njm
Enclosure(s)

OFFICE MEMORANDUM

DEPARTMENT: BUREAU OF MEDIATION SERVICES
STATE OF MINNESOTA

TO: Patricia Nolte
Attorney General's Office

DATE: Oct 31, 1989 PHONE: 649-5421

FROM: Paul W. Goldberg, Commissioner
Bureau of Mediation Services

SUBJECT: Rules of the Bureau of Mediation Services Relating Relating to the Arbitration Roster

Enclosed for your review are the following documents concerning the above-entitled rule:

1. A copy of the notice of soliciation of outside information or opinions published in the State Register.

2. A copy of the proposed rule with a certificate of approval as to form by the revisor of statutes attached.

3. The notice of intent to adopt a rule without a public hearing as mailed.

4. The statement of need and reasonableness in support of the proposed rule complying with part 2010.0700.

5. The affidavit of mailing the notice of intent to adopt a rule without a public hearing.

6. A copy of the notice of intent to adopt the rule without a public hearing as published in the state register.

7. Four copies of the rule as adopted.

8. The findings of fact, conclusions, and order adopting the rule.

9. All written requests, submissions, or comments on the rule received by the agency.

10. The declaration of the attorney in the attorney general's office who represents the agency.

(No one requested notification of the submission of the rule to the Attorney General.)

BUREAU OF MEDIATION SERVICES

Notice of Solicitation of Outside Information or Opinions Regarding Proposed Rule Governing the Qualifications, Empanelment, Referral, Monitoring, Removal and Operating Procedures for Persons Appointed to the BMS Arbitration Roster.

Notice is hereby given that that Minnesota Bureau of Mediation Services is seeking outside opinions and information in preparing to propose rules governing the labor arbitration roster administered by the agency. Authority to adopt these rules is found in Minnesota Statutes, sections 14.06, 179.02, subdivision 3, and 179A.04, subdivision 3(k).

The agency has historically administered its arbitration roster under informal agency policies, but has determined that public policy interests encourage formalizing these matters through normal rulemaking procedures. Comments concerning standards or qualifications for appointment to or removal from the agency roster of arbitrators are welcomed, as are comments concerning empanelment, referral, monitoring, and operational standards.

Interested persons are encouraged to submit information and opinions orally or in writing. Written statements should be directed to: Paul W. Goldberg, Commissioner, Bureau of Mediation Services, 1380 Energy Lane, Suite Two, St. Paul, MN 55108-5253. Oral comments can be provided in person at the above address or by telephoning (612) 649-5421.

All statements of information and opinions shall be accepted until the close of business on Friday, May 6, 1988. Any written material provided shall become part of the rulemaking record to be submitted to the attorney general or administrative law judge in the event that the rule is adopted.

April 4, 1988

Paul W. Goldberg
Commissioner

Special Education Advisory Council (SEAC).

The purpose of SEAC is to assist the State in developing plans and practices that will help assure effective and efficient implementation of special education programs for handicapped students in local school districts.

There are five vacancies for the 1988-91 term. The Council meets five times from September through June each year.

To ensure appropriate representation, special consideration will be made to nominations of: 1) school board members; 2) regular education administrators; 3) special education teachers or consultants; 4) handicapped persons; 5) Congressional Districts 2, 4, 5, 6, 7, and 8.

For further information, please contact Dr. Norena Hale, Manager, at (612) 296-1793. Information may also be obtained by calling Elizabeth Watkins, SEAC staff person, at (612) 297-4682.

Minnesota Department of Health

Notice of *Public Forum* on Regulation of Occupational and Respiratory Therapists

A public forum will be held on April 27, 1988 to receive comments on the need to regulate occupational therapists and respiratory therapists in Minnesota. The Minnesota Occupational Therapy Association and the Minnesota Society of Respiratory Therapists have requested that their respective occupations be registered in Minnesota. These requests are currently under review by the Department of Health.

The public forum will be held from 5:00-9:30 p.m. in the Albert Chesley Room (#105) of the Minnesota Department of Health, 717 Delaware Street, S.E., Minneapolis, MN 55440. Comments regarding the need to regulate occupational therapists will be heard from 5:00-7:00 p.m. and for respiratory therapists from 7:30-9:30 p.m.

State law requires that before the Department can make a determination regarding the need to regulate a human service occupation, it must consider (1) whether the public will be harmed if the occupation remains unregulated; (2) what kind of specialized skill or training is needed to assure competency, on the part of both new and experienced members of the occupation; (3) possible alternatives to state regulation of the occupation; and (4) the overall cost effectiveness and economic impact of regulating the occupation.

Written comments can be submitted on the day of the forum, or mailed by May 11 to the Occupational Analysis Program, Minnesota Department of Health. For more information contact the Occupational Analysis Program at (612) 623-5611, Tom Hiendlmayr at (612) 623-5185 or Mary Cahill at (612) 623-5612.

Minnesota Historical Society

Notice of Grants Review Committee Meeting

A meeting of the Minnesota Historical Society's Grants Review Committee will be held on Wednesday, April 6, 1988 at 7:00 p.m. in the Fort Snelling History Center, St. Paul, MN, to recommend funding for state Grants-in-Aid applications, and federal Historic Preservation Fund Certified Local Government applications. For more informtion, contact Timothy Glines at (612) 726-1171.

Bureau of Mediation Services

Notice of Solicitation of Outside Information or Opinions Regarding Proposed Rule Governing the Qualifications, Empanelment, Referral, Monitoring, Removal and Operating Procedures for Persons Appointed to the BMS Arbitration Roster

Notice is hereby given that the Minnesota Bureau of Mediation Services is seeking outside opinions and information in preparing to propose rules governing the labor arbitration roster administered by the agency. Authority to adopt these rules is found in *Minnesota Statutes*, sections 14.06, 179.02, subdivision 3, and 179A.04, subdivision 3(k).

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." ADOPTED RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

The agency has historically administered its arbitration roster under informal agency policies, but has determined that public policy interests encourage formalizing these matters through normal rulemaking procedures. Comments concerning standards or qualifications for appointment to or removal from the agency roster of arbitrators are welcomed, as are comments concerning empanelment, referral, monitoring, and operational standards.

Interested persons are encouraged to submit information and opinions orally or in writing. Written statements should be directed to: Paul W. Goldberg, Commissioner, Bureau of Mediation Services, 1380 Energy Lane, Suite Two, St. Paul, MN 55108-5253. Oral comments can be provided in person at the above address or by telephoning (612) 649-5421.

All statements of information and opinions shall be accepted until the close of business on Friday, May 6, 1988. Any written material provided shall become part of the rulemaking record to be submitted to the attorney general or administrative law judge in the event that the rule is adopted.

4 April 1988

Paul W. Goldberg
Commissioner

Department of Natural Resources

Minerals Division

Notice of Intent to Solicit Outside Opinion Regarding Proposed Adoption of Rules Relating to Metallic Mineral Mineland Reclamation

Notice is hereby given that the Minnesota Department of Natural Resources is seeking information or opinions from sources outside the agency in preparing to promulgate rules relating to the reclamation of metallic mineral minelands. The promulgation of these rules is authorized by *Minnesota Statutes* section 93.481, subdivision 6, which requires the department to either adopt new rules, or amend existing rules relating to reclamation of metallic mineral minelands, before a permit to mine metallic minerals other than taconite and iron ore can be issued.

The Minnesota Department of Natural Resources requests information and comments concerning the subject matter of the proposed rules. Interested or affected persons or groups may submit statements of information or comment orally or in writing. Written statements shall be addressed to:

Paul Pojar
Department of Natural Resources
Division of Minerals
500 Lafayette Road
St. Paul, MN 55155-4045

Oral statements will be received during regular business hours over the telephone at (612) 296-4807 and in person at the above address.

All statements of information and comment shall be accepted until June 1, 1988. Any written material received by the Minnesota Department of Natural Resources shall become part of the record in the event that the rules are promulgated.

Minnesota Pollution Control Agency

Notice of Intent to Solicit Outside Opinions Concerning a Proposed Amendment to Rules for Establishing Fee Systems for Generators of Low-Level Radioactive Waste (LLRW)

Notice is hereby given that the Minnesota Pollution Control Agency (Agency) is seeking information and opinions from sources outside the Agency in preparing an amendment to rules adopted pursuant to *Minnesota Statutes* § 116C.834 (1986), which require establishment of a fee system for generators of low-level radioactive waste (LLRW), to provide funds for carrying out Minnesota's responsibilities in the Midwest Interstate Low-Level Radioactive Waste Compact.

The proposed amendment raises the LLRW generator fees to cover the increased assessment by the Midwest Interstate Low-Level Radioactive Waste Commission. The Agency requests information and comments concerning the subject matter of the proposed amendment. Written or oral statements and comments concerning these matters will be accepted for consideration until April 22, 1988 and should be addressed to:

15,059 shall expire sunset

pg 1, lines 32-34 - rule conflict w/ statute

pg 5, lines 14-19 - - Mn residence

pg 6, line 36, pg 7, line 1 - 16A.128 - DOT

103 054 1042 White Bear

BMS

BUREAU OF MEDIATION SERVICES

State of Minnesota

June 26, 1989

Senator Gene Merriam, Chairman
Senate Finance Committee
State Capitol, Room 122
St. Paul, Minnesota 55155

Dear Senator Merriam:

Pursuant to Minnesota Statutes 16A.128, subd. 2a, I am forwarding copies of the notice and proposed rules which I intend to adopt regarding the appointment, referral, conduct and removal of persons on the arbitration roster which I maintain.

These rules include a proposed new fee for the processing of applications to that roster. The purpose of this fee is primarily to reduce frivolous applications, but it will also allow us to recover administrative costs associated with processing these applications.

I anticipate that these fees will generate less than $750 annually.

Please contact me if there are any questions or concerns in this matter.

Sincerely,

PAUL W. GOLDBERG,
Commissioner

PWG:csc

cc: Senator Carl Kroening

(612) 649-5421
1380 Energy Lane • Suite #2 • St. Paul, MN 55108-5253
An Equal Opportunity Employer

BMS
BUREAU OF MEDIATION SERVICES
State of Minnesota

June 26, 1989

Representative Glen Anderson, Chairman
House Appropriations Committee
State Office Building, Room 365
St. Paul, Minnesota 55155

Dear Representative Anderson:

Pursuant to Minnesota Statutes 16A.128, subd. 2a, I am forwarding copies of the notice and proposed rules which I intend to adopt regarding the appointment, referral, conduct and removal of persons on the arbitration roster which I maintain.

These rules include a proposed new fee for the processing of applications to that roster. The purpose of this fee is primarily to reduce frivolous applications, but it will also allow us to recover administrative costs associated with processing these applications.

I anticipate that these fees will generate less than $750 annually.

Please contact me if there are any questions or concerns in this matter.

Sincerely,

PAUL W. GOLDBERG
Commissioner

PWG:csc

cc: Representative Phyllis Kahn

(612) 649-5421
1380 Energy Lane • Suite #2 • St. Paul, MN 55108-5253
An Equal Opportunity Employer

Adopted Permanent Rules Relating to Arbitration Roster

Stat. Authority 179.02 subd 4

Commissioner shall maintain a roster of persons suited and qualified by training to act as arbitrators ... The commissioner shall adopt rules governing appointments to, removals from, and administration of his roster.

Approved May 23, 1989

Small business Statement in Notice of Intent indicates will have a minor impact on small business

Findings of Fact

K (2) doesn't indicate the statement of need and reasonableness was mailed to all persons on the mailing list and published in the State Reg. because it wasn't

Part 5530.0700, Subd 5

Establishes application fees according to MN Stat 179A.04 Subd 3(K)* according to Minn Stat 16A, Subd 1A (Fee Setting - Approval) if the fee or fee adjustment is required by law to be fixed by rule, the commissioners approval must be in the Statement of Need and Reasonableness

* - it isn't

(* 179A.04 subd 3(K) collects such fees as are established by rule for empanelment of persons on the labor arbitrator roster maintained by the commissioner or in conjunction with fair share challenges.)

Part 5530.0800 Subd 7 Establishes Admin fees

5530.1100 subd 10 sets fee and expense policy $450 per award issued - $100 cancellation fee (subd 11)

* no Finance Commissoners approval
* no letter attached from Finance or Statement in Need and Reasonable

Rules were modified

Findings state why not substantial changes - don't think they are major changes

Rule submit comments

In the Matter of
Proposed Rules of the
State Bureau of Mediation Services
Governing the Labor Arbitration Roster
Maintained by the Agency.

STATEMENT OF NEED
AND REASONABLENESS

GENERAL --

The Bureau of Mediation Services 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, the Bureau compiles panels or groups of names from this roster and forwards such panels to the parties (who select one or more arbitrators from this grouping to actually arbitrate their dispute). Rules to regulate the administration of this roster are required by Minnesota Statutes (1989) section 179.02, subd. 4, and are necessary to ensure informed and uniform practice and procedure by the Bureau in this area of responsibility.

Because labor arbitrators constitute small businesses pursuant to Minnesota Statutes section 14.115, the rules have a direct impact upon small business. In addition to taking administrative and ministerial note of the legislative directive to minimize the impact of rules on small business, the agency took the following steps to reduce their impact: In preparing the proposed rules, the agency solicited comment and opinion from the labor-management community at large, with extra effort directed at the existing members of the arbitrator roster. Additionally, the Commissioner appointed an ad hoc committee to advise him in the drafting of these proposed rules, consisting of persons knowledgeable and experienced in the field of labor arbitration, four from labor organizations, four from employer organizations, one from another arbitrator empaneling agency, and two representatives of the present arbitration roster membership who were selected by their peers. Drafts of proposed rules were given broad distribution among the current roster members, and all meetings of the advisory committee were open to participation and attendance by the public. All persons currently on the agency roster were provided drafts of proposed rules and invited to attend a special public meeting held to receive their comments.

In all cases, the agency adopted the minimum and least stringent reporting requirements and schedules, consolidated reporting requirements, and established performance, rather than design or operational, standards. Because of the inherent purpose of the rules, it was impossible to exempt labor arbitrators who constitute small businesses from their requirements.

PART	NEED	REASONABLENESS
5530.0100	Defines 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 Bureau for the purpose of selecting or empaneling an arbitrator and does not restrict either the arbitrator or the parties from private arrangements which are ethical and otherwise consistent with public policy in this area.
5530.0200	Articulates 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 its need in a manner consistent with the style and thrust of Chapter 5500 rules.
5530.0300	The rule is necessary to ensure that terms are understood and uniformly applied.	Terms and phrases are defined in a manner consistent with general and customary labor relations usage and practice.
5530.0400	The rule is necessary to ensure that the role and limits of the Bureau's authority are understood.	The rule is consistent with the understood principle that arbitrators are the servants of the parties not the empaneling agency.
5530.0500	The rule is needed to ensure that persons appointed to the agency roster are not deemed to be employees or agents of the Bureau.	The rule expresses customary and reasonable treatment of a long-standing practice which protects the State from unintended third-party claims or involvement.
5530.0600	This part is necessary to establish criteria upon which to evaluate applications for appointment to the agency roster.	

PART	NEED	REASONABLENESS
5530.0600 Subp. 1	A background and understanding in labor relations matters is essential to successful functioning as an arbitrator of labor disputes.	The standards established by this rule are satisfied by every current member of the roster and are those which are expected by clients who utilize the agency roster.
5530.0600 Subp. 2	The ability to conduct hearings at sites throughout the State is necessary on the part of all roster members because the Bureau serves a statewide client base and referral systems cannot favor an arbitrator's personal preferences with regard to travel. The ability of arbitrators to perform their responsibilities in a competent manner is necessary to maintain client confidence in the agency's roster.	The standards established by this part are consistent with existing practice and the expectation of agency clients.
5530.0600 Subp. 3	Neutrality and impartiality on the part of arbitrators is crucial to the continued acceptability of the agency roster. The rule is necessary to provide a standard which ensure such impartiality in real as well as perceptual terms.	The rule comports with long-standing practice and is a fair way to protect arbitrators and the roster from appearances of partiality.
5530.0600 Subp. 4	The rule is necessary to ensure that the burden for establishing qualifications is with the applicant and to ensure that the Commissioner's decisions are based upon uniform standards.	The rule is reasonable in allowing the appointing authority to evaluate the nature of claimed experience because the Commissioner is in a position to know whether such experience will be useful and relevant to potential service on the roster. The standards set by this part are reasonable indicators of the experience, training, and acceptability necessary to perform satisfactorily as a labor arbitrator. Because there is no "apprentice" status on the roster, candidates who are unable to satisfy these standards are unlikely to be selected by the parties and to empanel them would be to risk the credibility of the agency's roster.

PART	NEED	REASONABLENESS
5530.0600 Subp. 5	This part is necessary to limit the universe of potential roster members to those likely to be selected by Minnesota clients, and to avoid unnecessary costs associated with travel. The rule also is necessary to ensure that "community" standards are applied by the arbitrators when rendering industrial justice and to ensure that arbitrators remain accountable to the selecting community for decisions and deviations from community standards and considerations.	This rule satisfies the need to keep arbitration costs low and to ensure that arbitrators know and understand the "law of the shop" as it is applied in Minnesota. Because labor relations practice and behavior varies widely across the nation, it is important to the notions of predictability and stability for the arbitrator to be familiar and sensitive to community culture and practice. Further, restricting membership to a regional basis strengthens the potential for the arbitrator to be sensitive to the future selection consequences of ignoring regional variations or standards when rendering an award.
5530.0700	This part is needed to establish procedures for administration of the roster of labor arbitrators maintained by the agency.	
5530.0700 Subp. 1	This rule is needed to ensure that administration of the roster is manageable within existing agency staff and resource levels and that empanelment on the roster results in a reasonable number of referrals for the roster member.	Historically, the roster has contained 30-35 members. The range of membership and discretion afforded to the Commissioner under this rule are consistent with existing practice and projected levels of activity, as well as the administrative capacity of the agency. With fewer than 25 members on the roster, parties will be denied adequate variation in selection opportunities; with more than 50 members, the administrative capacity of the agency to efficiently meet the requirements of these rules will be taxed.

PART	NEED	REASONABLENESS
5530.0700 Subp. 2	This subpart is need to establish the procedural steps necessary for initial appointment to the roster.	The rule provides standard methods for notifying the public of opportunities; encourages affirmative action efforts consistent with public policy; and allows the Commissioner investigative leeway to ensure that all applications receive adequate review.
5530.0700 Subp. 3	Necessary to establish procedural requirements for renewal appointments for members already on the roster.	The rule provides for substantial notice to existing members and spells out the procedures and standards to be applied in renewal situations. The rule also provides a fair system for staggering the initial terms of persons already empaneled by the agency, so that renewal applications are reasonably dispersed, ensuring that there will be a core of experienced arbitrators on the roster at all times.
5530.0700 Subp. 4	This subpart is necessary to establish standardized formats and elements upon which initial applications for placement on the roster will be evaluated.	The rule is reasonable in requiring use of a standardized application form which can be obtained from the agency without charge.
5530.0700 Subp. 5	Needed to establish the amount of the application fee required by Minnesota Statutes section 179A.04, Subd. 3(k) and to discourage frivolous applications.	The fees established by this rule are very low in comparison to potential income from placement on the roster and help offset administrative costs associated with the processing of applications.
5530.0700 Subp. 6	This rule is needed 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 and the standards of competence required by the rule are the least stringent standards consistent with maintaining the professionalism and integrity of the agency roster.
5530.0700 Subp. 7	Necessary to ensure that all application are processed in a fair and consistent manner.	Requires appointment of person meeting the standards of the rules, provides notification of the reasons for a rejection of an application, and a fair method to

PART	NEED	REASONABLENESS
		making selection decisions when necessary to appoint fewer applicants than the number who meet the standards.
5530.0700 Subp. 8	Needed to ensure that all roster members receive equal treatment when appointed to the roster.	A five year term for initial appointments allows "new" arbitrators an additional, but reasonable, period of time to gain acceptability from the parties, while a three year standard term guarantees periodic review of all roster members without creating adverse or unnecessary burdens for the roster members.
5530.0800	This part is necessary to establish uniform standards for performance and conduct by members of the agency roster so that users may be reasonably assured of high quality and integrity on the part of persons referred by the agency.	
5530.0800 Subp. 1	Establishes the scope of application of the rules and sets forth consequences for violating them.	The rule establishes uniformity of application and provides adequate notice of potential consequences of failure to comply.
5530.0800 Subp. 2	This subpart is needed to incorporate by reference the well-established standards of professional conduct for labor arbitrators as adopted by the National Academy of Arbitrators.	These standards of conduct are long-standing and uniformly accepted by labor relations practitioners throughout the country. They establish the high level of ethical and professional performance which is expected from members of the agency roster.
5530.0800 Subp. 3	This part is necessary to ensure that roster members know and accept their responsibility to disclose situations which may give rise to real or perceived conflicts of interest.	Because perception can be just as important as reality in matters of ethical appearance, it is reasonable to expect roster members to disclose relationships with a party to a dispute which may give rise to the appearance of a conflict of interest.

PART	NEED	REASONABLENESS
5530.0800 Subp. 4	This part is necessary to ensure that arbitrators and parties are aware of constraints upon communications between them made necessary to protect the impartiality of the roster members.	The rule is reasonable in that it permits routine, casual communication between roster members, such as scheduling, etc., while prohibiting solicitation of cases or discussion of the merits or facts of a case, which conduct would be detrimental to the real or perceived impartiality of the roster members.
5530.0800 Subp. 5	This part is necessary to set forth limits on the use of assistants by arbitrators and to ensure that the roster members retain full responsibility and accountability for case handling and the award.	The rule is reasonable in setting forth the commonly accepted standards in this area and comports with the ethical standards of the National Academy of Arbitrators which are incorporated by reference in these rules.
5530.0800 Subp. 6	This part is necessary to ensure that arbitrators on the panel are aware of the extreme importance of their timely handling of cases and to provide standards for the assessment of such timeliness.	Because a major reason for reliance upon arbitration as a method for resolving labor disputes is the relative speed of the process in comparison with other methods of disputes resolution, it is reasonable for these rules to emphasize this aspect of the arbitrator's responsibility. Because most agreement's to arbitrate are fashioned by the parties, and the arbitrator is, in effect, the servant of the parties' agreement, it is also reasonable for the arbitrator to be bound by the time limits of that agreement when agreeing to accept appointment to a case. If the arbitrator does not believe those limits are reasonable, he or she may request a waiver or extension. But, routine requests for waiver or extension which are solely for the convenience of the arbitrator are inconsistent with the Bureau's goal of a speedy dispute resolution system when parties rely upon the agency roster.

PART	NEED	REASONABLENESS
5530.0800 Subp. 7	This part is necessary to advise the parties and the roster members that certain administrative fees will be permitted.	The rule is reasonable in that it does not seek to regulate the amount of administrative or cancellation fees, provided adequate notice of such fees is provided in the arbitrator's biographic sketch which is provided to persons who may be subject to such fees. The rule is also reasonable in limiting cancellation fees to cases where cancellation is with less than 21 calendar days notice because the purpose of such fees is to compensate for the loss of income which may occur if the arbitrator is unable to otherwise make productive use of schedule time. Although arbitrators are not entitled to a fee merely because the parties have settled a dispute after reaching the point of selecting an arbitrator and scheduling a hearing, it is reasonable to allow a modest fee which compensates the arbitrator for time which is otherwise lost because of his or her pledge to be available for a hearing on a set date, as well as to discourage "last minute" cancellations by the parties. With three weeks advance notice, the arbitrator has adequate opportunity to make use of reserved time, either through hearing another case or in the research or writing of another award.
5530.0800 Subp. 8	This rule is necessary to ensure full disclosure of the fees charged by roster members, to ensure that reasonable records are maintained by arbitrators in conjunction with such fees, and to specify how disputes over fees may be resolved.	This rule is reasonable in that it does not seek to regulate the amount of the fee, merely ensure that it is adequately disclosed, and requires only simple time and expense records be maintained by the roster members--records which would be necessary for prudent business purposes in the first place. The rule is also reasonable in providing reference to a simple arbitration mechanism for the resolution of fee disputes.

PART	NEED	REASONABLENESS
5530.0800 Subp. 9	The rule is necessary to ensure that parties and arbitrators are aware of the obligation of arbitrators to file copies of their awards with the Bureau, and the public nature of such filings.	The rule is reasonable in continuing a long-standing requirement which provides a central depository, open to the public, of "case law" and trends in this area of industrial justice.
5530.0800 Subp 10	The rule is necessary to ensure that arbitrators are aware of the need to file certain information regarding each case with the Bureau, and to ensure that the Bureau has adequate statistical information regarding the arbitration process and roster members to ensure proper administration of the roster.	The rule is reasonable in that it does not require paperwork or reports of information other than that normally prepared and available to the arbitrator and necessary in the routine performance of the arbitrator's responsibilities. All information requested in the reports directly relates to the ability of the agency to maintain cost and timeliness profiles about the arbitration process and adherence to these rules by the members of the roster.
5530.0900	This part is necessary to establish uniform methods and procedures for referrals of names from the roster maintained by the agency to ensure that such procedures are conducted fairly and impartially.	
5530.0900 Subp. 1	This rule is necessary to inform potential users of the agency roster of the procedures to be followed and information which is necessary to access the roster.	The rule is reasonable in that it requires only routine information which is readily available to any party wishing to utilize an arbitration process and serves to help ensure that each request can be uniquely identified.
5530.0900 Subp. 2	This rule is necessary to establish uniform procedures and size for panels of arbitrators drawn from the agency roster and to ensure that such procedures are unbiased and impartial in terms of their impact on the process.	The rule is reasonable in providing a universal panel of seven members, because seven-member panels are common in labor arbitration and a panel of this size allows more selection opportunities for the parties and the roster members. Utilization of a random selection system is a reasonable way of protecting the impartiality of the selection method, and the provisions for balance between roster members based on length of roster membership helps ensure a reasonable blend of experience

PART	NEED	REASONABLENESS
		on each panel referred--giving "new" arbitrators a chance for selection, without binding parties to a list which consists of all "novice" arbitrators. Similarly, the flexibility afforded the Commissioner in avoiding conflicts helps to protect the ethical standards of the agency roster, while geographic and residency considerations help ensure that the parties have an adequate opportunity to select roster members which they feel are most suited to their circumstances, without unduly restricting roster members.
5530.0900 Subp. 3	This part is necessary to ensure that the Commissioner is empowered to comply with agreements of the parties for direct appointments of roster members.	The rule is reasonable in that it merely enables the Commissioner to comply with the bilateral agreement of the parties to a dispute.
5530.0900 Subp. 4	This part is necessary to establish procedures for dealing with the need to replace one or more panel members.	The rule is reasonable because it allows the parties to an agreement to arbitrate to jointly protect themselves from some unforeseen fluke in panel composition which may be regarded as disadvantag - eous, while preventing one party from using panel composition as a device to prolong or avoid actual disposition of a dispute without denying that party the right to object to panel membership on the basis of a conflict of interest.
5530.0900 Subp. 5	This part is necessary to set forth uniform procedures for selecting arbitrators from a panel provide under these rules.	The rule is reasonable in allowing the parties own agreement to govern, or in providing an impartial system for selection in the absence of such an agreement between the parties.
5530.0900 Subp. 6	This part is necessary to ensure that parties recognize that notification of the selected arbitrator and scheduling of a hearing is their responsibility and to ensure that the agency is notified of selections.	The rule is reasonable in that scheduling matters are best handled between the involved parties and the reporting requirement on the requesting party is not onerous and provides information which assists the Commissioner in the administration of this roster.

PART	NEED	REASONABLENESS
5530.0900 Subp. 7	This part is needed to ensure that the obligation for roster members to ensure that biographic information is available and accurate is understood and to inform parties regarding such data.	The rule is reasonable in that it only requires roster members to provide information which is necessary and commonly available to parties for the purposes of evaluating roster members for possible selection by the parties. The burden for administration of this requirement remains with the agency, although it is reasonable to hold arbitrators responsible for the content of what the agency will be saying about them.
5530.0900 Subp. 8	This part is necessary to ensure that the limits of the agency's involvement and liability in the arbitration process is set forth and know by the roster members and public.	The rule is reasonable because it merely articulates the scope and nature of agency involvement under existing state law and customary practice.
5530.1000	This part is necessary to establish uniform standards of procedure for arbitration proceedings conducted by roster members to ensure that such procedures are consistent with public policy goals of reduced cost and expeditious resolution of labor disputes.	
5530.1000 Subp. 1	This part is necessary to establish the arbitrator's obligation for compliance with the general objectives of the agency.	The rule is reasonable because it creates only general obligations, not stringent deadlines or requirements, yet it is consistent with good public policy in the field of labor arbitration.

PART	NEED	REASONABLENESS
5530.1000 Subp. 2	This part is necessary to reduce the potential for one party to unnecessarily drive up the cost of arbitration for the other and to encourage an atmosphere which is less litigious in nature.	The rule is reasonable because it comports with the underlying premise of labor arbitration as a less-formal, faster and non-litigious way for resolving disputes than the courts. The rule permits the taking of transcripts in cases where the parties agree that the case warrants such measures, yet discourages such transcripts. Single parties are not denied the right to secure a transcript under this subpart, but may not impose the expense of such a record on the other party, nor create a disadvantage to the other party or the arbitrator because of the economic advantage of being able to afford such legalistic devices.
5530.1000 Subp. 3	This part is necessary to establish procedures and obligations if the arbitrator wishes to utilize a tape recorder during a hearing on a case.	The rule is reasonable in that it imposes the least stringent standard possible upon the arbitrator while remaining consistent with good business practice and due process.
5530.1000 Subp. 4	This part is necessary to establish policy with regard to written briefs in arbitration proceedings initiated under these rules.	The rule is reasonable in that the purpose of arbitration is to reduce the litigious nature of dispute resolution and that briefs are frequently regarded as a "crutch" which increase the cost and time required in arbitration, rather than a necessity to effective resolution of the case. The rule allows maximum discretion with the arbitrator to discourage briefs and to ensure a prompt schedule where they are needed.
5530.1000 Subp. 5	This part is needed to ensure that parties are aware of their obligations for the fees and expenses of the arbitrator for proceedings initiated under these rules.	The rule is reasonable in requiring prompt, pro rata payment of costs by the parties who benefit from the arbitrator's services and in establishing an arbitration mechanism for the resolution of disputes over such fees and expenses.

PART	NEED	REASONABLENESS
5530.1000 Subp. 6	The rule is needed to establish procedures and obligations for the resolution of disputes which may arise over the fees and expenses charged by a roster member.	The rule is reasonable in that it provides for informal administrative investigation of disputes by the Commissioner in an effort to resolve them at the lowest possible threshold, while ensuring the availability of tripartite arbitration of the matter by a representative panel of interests in the event the dispute is not easily resolved.
5530.1100	This part is needed to establish an impartial uniform procedure for expediting the processing of disputes which the parties agree are suitable for resolution under the constraints of this part. Although there is much call among labor and management officials for more efficient arbitration proceedings, agency experience and observation indicates that the absence of an alternative model is a barrier to the actual implementation of new methodologies.	The rule is reasonable in that it is totally voluntary on the part of parties and roster members and is consistent with customary practice and policy in the area of expedited arbitration procedures. No party or roster member is bound by this part unless they voluntarily agree to participate in the expedited procedures.
5530.1100 Subp. 1	This part is needed to establish procedures for accessing the expedited arbitration procedure.	The rule is reasonable in that it ensures that both parties to the matter in dispute agree to submit the matter to expedited proceedings and requires the parties to provide only such information as is necessary to distinguish one case from another.
5530.1100 Subp. 2	This part is needed to specify that the arbitrator of cases expedited pursuant to these parts is appointed by the Commissioner, rather than selected by the parties.	The rule is reasonable in that the appointment process is consistent with the goal of expedited handling and will not impose conditions upon roster members unless they have indicated a desire to be included in such appointments.
5530.1100 Subp. 3	This part is needed to ensure that expedited proceedings do not compromise the ethical standards of the agency's roster and overall arbitration procedures.	The rule is reasonable in providing for full disclosure and knowledge by the parties and in establishing a fair and efficient administrative procedure for remedying situations which the parties find discomforting.

PART	NEED	REASONABLENESS
5530.1100 Subp. 4	This part is needed to specify that the time, date and place of expedited proceedings are set by the Commissioner unless otherwise agreed upon by the parties and the arbitrator.	The rule is reasonable in providing administrative procedures which ensure prompt hearing of the expedited matter in a neutral location at no cost to the parties or the arbitrator. The rule is also reasonable in ensuring that the arbitrator has an equal voice in scheduling such matters since it is probable that the arbitrator will have more than one case scheduled for the same day in an expedited proceeding.
5530.1100 Subp. 5	This part is necessary to establish uniform standards and procedures for expedited cases.	It is well-established that private sector labor disputes are private matters which should not be made public through unintended devices such as reliance upon these rules for resolving a dispute. It is also well-established that, while the results of public sector arbitrations are a matter of public record, the closing of the actual hearing is a matter within the discretion of the arbitrator or the commissioner. This subpart sets a reasonable and uniform policy which ensures a dignified atmosphere at arbitration proceedings which is conducive to frank discussion and disclosure, without jeopardizing any public interest in the final outcome of the matter. The prohibition of transcripts and recordings is consistent with the goal of informal, yet judicious, resolution of disputes in a prompt fashion, as are time constraints for the presentation of cases. The time constraints upon roster members are consistent with the goals of this part and the standards imposed upon the arbitrator are the least stringent conditions consistent with general integrity of the process.

PART	NEED	REASONABLENESS
5530.1100 Subp. 6	This part is necessary to ensure that parties enter the expedited process fully informed and prepared to present their case.	The rule is reasonable in following custom and practice in vesting the arbitrator with the authority to resolve issues which arise regarding evidence in a case. Restricting the presentation of material to the course of the hearing is a reasonable restraint on the parties which is consistent with the expedited goals of this part.
5530.1100 Subp. 7	This part is needed to emphasize the ban on written post-hearing briefs.	This part is reasonable in ensuring that all arguments are made in a manner which is consistent with the expedited goals of the process and takes administrative note of the fact that a complex case requiring briefs is not a likely candidate for this expedited process.
5530.1100 Subp. 8	This part is needed to establish uniform constraints on the issuance of the award.	The rule is reasonable in providing a uniform and fair period of time for the resolution of the dispute by the arbitrator and an impartial method for notification of the parties as to the award.
5530.1100 Subp. 9	Because the procedures of this expedited process may abridge rights otherwise available to parties in an arbitration forum, and because the arbitrator is compelled to render an award within short time frames, there is often reluctance to enter into an expedited form unless the issue of precedential value is resolved. This part is needed to establish policy regarding such precedential value of an award under this part in a manner which reduces the likelihood of disputes over that matter and which encourages parties to take advantage of these expedited procedures.	The rule is reasonable in providing that all awards under an expedited procedure shall have no precedential value because the issue of precedence may preclude parties from referring an otherwise innocuous case to arbitration.

PART	NEED	REASONABLENESS
5530.1100 Subp. 10	This part is needed to establish uniform fee and expense policy under this expedited procedure.	The rule is reasonable in setting a fee and actual expense policy which is consistent with contemporary fee practices among roster members and because the policies do not bind any party or roster member who does not voluntarily agree to be bound by them.
5530.1100 Subp. 11	This part is needed to establish a uniform policy with regard to cancellation fees in the expedited arbitration procedure.	The rule is reasonable in providing a modest fee which makes it cost effective for parties to resolve their own disputes, yet provides the arbitrator with reasonable protection from frivolous filings and last minute cancellations.
5530.1200	This part is needed to establish uniform standards for measuring the performance of members of the agency roster.	The part is reasonable in that it adopts general standards rather than specific operational requirements and uses the least stringent standards which are consistent with maintaining the professional and ethical standards of the agency roster.
5530.1200 Subp. 1	This part is necessary to establish the standards to be used in evaluating applications for reappointment to the agency roster.	The rule is reasonable in that it creates uniform standards for the Commissioner to apply for all applicants.
5530.1200 Subp. 2.	This part is necessary to establish selection frequency as a standard upon which reappointments will be considered.	Because the parties to an arbitration agreement are the final deciders of acceptability of the members of the agency roster, and express their acceptance of an arbitrator by whether or not they strike that individual's name from the panel provided by the agency, it is reasonable to look at the frequency of selection as a measure of continued acceptability as an arbitrator. The standard established by this part is not stringent in that it guarantees that 3/4 of the entire roster will satisfy the standard and does not permit removal on this singular basis unless acceptability has been demonstrably low.

PART	NEED	REASONABLENESS
5530.1200 Subp. 3	This part is needed to establish that the availability of an arbitrator to hear a case is an element which is related to the roster member's continued appointment.	The rule is reasonable in that it does not establish an affirmative obligation upon the arbitrator to report or give notice to the agency or the parties, but it does provide for the right of parties to file written complaints about availability and for the agency to take notice of such complaints when reviewing reappointment requests.
5530.1200 Subp. 4	This part is needed to establish that the arbitrator's compliance with his or her obligation to render awards in a timely manner is directly related to reappointment considerations.	The rule is reasonable in that it guarantees that at least half of the roster members will not even be scrutinized on the matter of timeliness, while establishing a standard which can be demonstrated as attainable in most circumstances. Although the most common time limit allowed arbitrators under arbitration agreements is 30 days, the rule establishes a less stringent 60 day standard--and, even then, provides that the lack of timeliness shall not be the sole basis for refusal to reappoint an arbitrator.
5530.1200 Subp. 5	This part is necessary to ensure that parties are aware of the desirability of their evaluations of arbitrators and to permit the Commissioner to take note of such evaluations when considering applications for reappointment to the agency roster.	The rule is reasonable because it encourages the actual end-user to express opinions regarding the performance of the roster members and allows the Commissioner reasonable administrative flexibility in the use of such information.
5530.1200 Subp. 6	This part is needed to establish a linkage between availability to hear cases and the likelihood of reappointment to the roster.	The rule is reasonable in that it presupposes that arbitrators who have demonstrated their availability and willingness to accept cases will continue to do so for the future, the least stringent standard which can be applied in this area of performance.

PART	NEED	REASONABLENESS
5530.1200 Subp. 7	This part is needed to establish a requirement for roster members to remain proficient and competent and to comply with these parts.	The rule is reasonable in establishing that it is necessary to comply with these parts in order to benefit from them and that members of the agency roster are expected to remain competent and proficient.
5530.1300	This part is necessary to establish uniform and impartial procedures for handling potential complaints regarding performance or conduct of roster members.	
5530.1300 Subp. 1	This part is necessary to emphasize that the agency roster is a service to both labor-management clients and the arbitrators who are empaneled on it and that the agency has both professional interests in and authority to ensure that its professional and ethical standards are adhered to.	The rule is reasonable in providing the appointing authority with the right to investigate complaints and with a range of options designed to protect both the roster member and the integrity of the agency and the roster.
5530.1300 Subp. 2	This part is needed to establish procedures for handling a complaint at the least complex level possible.	The rule is reasonable because it allows matters to be resolved at the lowest possible level of tension and complexity, without compromising the ability to provide adequate review of the matter with appropriate due process considerations.
5530.1300 Subp. 3	This part is necessary to establish procedures for formal disciplinary action against a roster member.	The rule is reasonable in that probable cause is required prior to triggering a formal proceeding against a roster member and in that adequate due process rights of the roster member are protected.
5530.1300 Subp. 4	This part is needed to establish uniform procedures for conducting disciplinary hearings involving a roster member.	The rule is reasonable in that it provides for a fair and adequate administrative investigation and hearing on the matter by the Commissioner, relying upon conventional rules used by the agency for the conduct of contested hearings.

PART	NEED	REASONABLENESS
5530.1300 Subp. 5	This part is needed to ensure that the final authority in such matters remains vested with the Commissioner.	This rule is reasonable in that the Commissioner has final accountability for the administration and practice of labor arbitration under these parts and for the overall image and reputation of the agency.

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April 5, 1988

Mr. Paul W. Goldberg
Commissioner, Bureau of Mediation Services
Suite 2, 1380 Energy Lane
St. Paul, MN 55108

Re: Proposed Arbitration Process Rules

Dear Mr. Goldberg:

In response to your notice and solicitation dated April 4, 1988 respecting the above-referenced matter, I would like to suggest at this time one area for your consideration. Approximately nine or ten years ago, I encountered a situation in a termination proceeding under Minn. Stat. §125.12 where the attorneys for the district selected a "hearing examiner" to conduct the hearing who purported to be a prominent arbitrator who frequently appeared on PERB and BMS arbitrator lists. The individual, a non-lawyer, made some atrocious rulings in procedural matters and volunteered a series of legal opinions which were not only inappropriate but failed to cast any reflection of reality and the true state of the law. While there is often acrimony in such proceedings, this individual personally contributed to that atmosphere. When the appeal was subsequently taken from the resulting termination, we had no choice but to argue the performance and conduct of this individual as a part of our claim of denial of fundamental fairness. I was then faced with the prospect of this individual appearing on future arbitrator lists and confronted the fact that no procedure existed for anything resembling an affidavit of prejudice or notice of removal as the latter exist in judicial proceedings. In the absence of any precedent, I submitted copies of portions of the record in that proceeding and my request that no list thenafter be submitted to me with this individual included. For whatever reason including perhaps coincidence, this individual never appeared on subsequent lists.

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Later when we began to have the PERB and BMS discussion sessions, I raised this problem and the need for some standards or procedures. While the latter has never been accomplished completely, some progress was made by the adoption of the Code of Professional Responsibility for Arbitrators

promulgated by the AAA.

It seems to me that circumstances can and do arise between individual arbitrators and one of the prospective parties to arbitration or its representative which any reasonable person would agree would create an appearance of bias or prejudice if that person were selected. While the party is always entitled to strike that individual, the result is forfeiture of a "strike", and I do not believe this is a fair result or that striking was intended to deal with circumstances of obvious or apparent bias or prejudice. As I did informally years ago, I suggest that a party be permitted to make such a request prior to any submission of a list in a pending matter with appropriate substantiation to the agencies impaneling arbitrators. The same could be treated as "private data" and even referred to the subject for any response. In the majority of situations truly meriting such treatment for a particular party or its representative, I believe the arbitrator involved would concede at least the appearance of bias or prejudice. If not conceded, I would be more than willing to submit to the final discretion of the agency. If the basis for such a request is insufficient for the agency, the party should then and appropriatly be left to expending a strike.

As an additional matter, I confess to never completely understanding the proprietary interest that Mac McLellan took in the tapes of arbitration proceedings he presided over. It is often only after the award is issued that the parties discover some basis for review under the Uniform Arbitration Act. To the extent this is simply an economic consideration, perhaps a party should be permitted to reserve the opportunity to receive a copy of the tapes or obtain a transcription before proceedings commence and in turn assume the expense of at least the tapes in advance. If a record is later requested, the arbitrator could deliver the tapes to a court reporter for transcription and certification as to accuracy.

Thank you for this opportunity to submit preliminary comments, and I look forward to receiving any additional information in regard to this enterprise.

Sincerely yours,

Dale G. Swanson

Dale G. Swanson

DGS:rc

cc: Mr. Robert Arnold
Exec. Dir., MESPA

April 7, 1988

Bureau of Mediation Services
State of Minnesota
1380 Energy Lane
St.Paul, Minnesota 55108

Dear Commissioners,

This response to your letter of April 4th is being written on behalf of a number of established arbitrators listed on the Bureau's panel, who (for obvious reasons) chose to remain anonymous.

As the Commission considers procedures for "formal rule making", we strongly urge that you resist any temptation to standardize the process by imposing unwanted rules and regulations. It is our collective perception that there is not now a need to impose upon the process governmental procedures which would truly benefit no one. We cannot find any overriding evidence of existing conditions which would compel a state agency to engage in such a self-serving project. In reality, those who would gain the most from the imposition of such rules and regulations would be the people who would be left to administer them. Already, it is readily apparent that the parties for whom the process is intended to serve, have grown dissatisfied with the PERB's attempt to formalize their procedures, resulting in an increased use of other listing agencies or methods of selecting arbitrators to hear their disputes.

Candidly, we find no evidence of "public policy reasons in favor of formal relemaking", as you contend in your letter. Rather, matters such as the qualifications, fee structures and the performance and conduct of arbitrators have, and should continue to be, left to the natural process which occurs in the "open market." Through the utilization of biographical information provided to the parties, for example, they are readily able to ascertain the experience, background and training of any neutral. Should they determine, based upon this information that an individual's fees are excessive, in their opinion, or that he/she does not possess the preferred experience to handle a specific dispute, then the appropriate "regulation" will take place through the simple rejection of that name. In following this procedure (one that has been in existence and worked well long before the establishment of the Bureau) the apparent goals of the Commission will still be met, but without the unwelcomed

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governmental interference. Indeed, it is naive to presume that the imposition of formal rules by a state agency would have any significant impact upon the process as a whole. It is no secret that the selection of a neutral arbitrator ultimately depends more upon the information gathered by the advocates through their own "sources" than anything else. In short then, we most strongly suggest that the methodology already in place be preserved, and that the Commission refrain from the temptation to carve out a name for itself by creating yet another bureaucratic set of unwanted regulations.

Thank you for your consideration of these matters.

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April 11, 1988

Paul W. Goldberg, Commissioner
Bureau of Mediation Services
1380 Energy Lane, Suite 2
St. Paul, MN 55108-5253

RE: Arbitration Rule Making

Dear Commissioner Goldberg:

This is in response to your letter dated April 4, 1988, soliciting comments and suggestions pertaining to Arbitration Rule Making.

I strongly urge the Rule Making Committee to seriously consider requiring that all arbitration hearings be recorded, either by means of a stenographer or tape recorder. The current practice allows the arbitrator to create the official record which is his personal property. By having the entire proceeding recorded, an accurate record will be produced that will act as a check and balance on the arbitrator's factual findings. As the system presently exists, it is virtually impossible to challenge the arbitrator's findings because the only record maintained is that of the arbitrator's and his recollection of the facts is subject to his built-in prejudices and biases. It is absolutely imperative that an accurate record be produced. It is unfair to the parties involved to require them to make arrangements for a stenographer or tape-recording system. I do not believe that requiring arbitrators to tape record or arrange for a stenographer would place an unreasonable burden on their responsibilities because, of all the parties involved in the proceeding, the arbitrator should have the greatest interest in finding the truth and even more importantly, basing his conclusions on facts that are contained in the record that is subject to objective review.

I feel very strongly about requiring arbitrators to produce a reliable record by means of a stenographer or tape-recording device. The present system denies the parties concerned due process especially if they wish to appeal an adverse ruling.

I thank you for providing me the opportunity to submit a recommendation.

Very truly yours,

William H. Dolan
Meeker County Attorney

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April 13, 1988

Paul Goldberg
Bureau of Mediation Services
State of Minnesota
1380 Energy Lane, Suite #2
St. Paul, MN 55108-5253

Dear Paul:

This is in response to your letter of April 4, 1988 regarding proposed rules for the arbitration rosters and for arbitrator performance and conduct.

I am generally supportive of the need for more formal rules applicable to procedural matters in this area. Rules covering the specific areas proposed in your letter could help to facilitate the arbitration process and provide some needed public policy coordination.

However, one area listed in the letter, i.e., Expedited Arbitration, is a part of the process where I'm not certain regulation is appropriate. My feeling is that unlike the other areas listed, expedited arbitration is something that is generally negotiated by the parties to a labor agreement. I think that procedures for expedited arbitration are best left to that process in order to best reflect the particular needs and desires of the parties to a collective bargaining agreement.

Thank you for the opportunity to make some preliminary comments on this matter.

Sincerely,

Lance

Lance Teachworth
State Labor Negotiator

Law Enforcement Labor Services, Inc.

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Phone: 612/881-5005

April 13, 1988

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Mr. Paul Goldberg
Commissioner
Bureau of Mediation Services
1380 Energy Lane, Suite 2
St. Paul, MN 55108

Dear Paul,

It was with great interest that I received a copy of your letter dated April 4, 1988 dealing with the establishment of procedures and standards for the Bureau's administration of its' arbitration rooster.

In regards to arbitrator qualification, it is my opinion that this would be a good time to consider both tightening up initial qualifications and requiring, for the first time, continuing education requirements for arbitrators. At times, I have been suprised that arbitrators have not known how to run in arbitration or to deal with common rulings under the Uniform Arbitration Act. I feel with initial training followed by continuing education, arbitrators would be able to stay abreast as to what their powers and obligations as arbitrators include. It would be my suggestion that the qualifications insure that arbitrators understand both procedural and substantive arbitrability and how to actually conduct a hearing and write decisions.

Your proposed standards for arbitrator performance and conduct are a very good idea. In this regard, the main problem I have found has been in the problems both employer and employee groups have had in obtaining decisions in a timely manner. Often times, the groups are powerless to do anything after a decision has been heard and both parties waiting for decisions, sometimes, even for months. The whole purpose of arbitration is as a dispute mechanism, that is a speedy and inefficient alternative. Obviously, by such delays, the goals of arbitration are not being met. It would be my suggestion that some sort of standard be set up for the issuance of awards and that if certain time periods are not met, or that so many deadlines are missed over a certain period without adequate cause being shown that arbitrators be removed from the BMS panel.

Another area of interest to me is the procedural requirements for entry and removal from the agency rooster. At this time, I have been unsure under which what conditions certain arbitrators may be removed from a list or taken off the rooster. For exampie, should an arbitrator be maintained on a particular parties list when they are seeking to vacate that arbitrator's decision in a previous matter? I feel establishing written procedural requirements for entry and removal from both the agency rooster and parties listings would assist all parties involved in the process.

The above are some of my initial thoughts in regards to your proposals. I would be very interested in serving on any joint labor management panel that is set up to suggest recommended procedures as standards in the above areas.

Sincerely yours,

Phillip Finkelstein

Phillip I. Finkelstein
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April 13, 1988

Mr. Paul W. Goldberg, Commissioner
Bureau of Mediation Services
1380 Energy Lane, Suite 2
Saint Paul, MN 55108-5253

In Re: Arbitration and Arbitrator Procedures,
Standards and Conduct in Rule-making

Dear Commissioner:

The vitality of sound arbitration procedure and policy practice, administered by arbitrators sworn to uphold high ethical standards, can radiate to everyone in the arbitration community through BMS Rules. Some comments on areas for rule-making follow.

Arbitration Qualifications

1. A minimum of 10 years experience as a labor/management or neutral spokesperson.

2. Thorough knowledge of labor laws.

3. Demonstrated ability to speak and write clearly, logically and concisely.

4. Knowledge of the dynamics that influence management/union postures.

5. Ability to command respect for the arbitration process in conducting expeditious hearings.

6. Thorough knowledge of accounting procedures.

7. Adherence to a BMS Code of Ethics.

8. Continuing education as a requirement.

Arbitrator Powers, Standards and Performance

1. Statutes and Rules should empower the arbitrator to order discovery and issue subpoenas.

2. The arbitrator must control the hearing while allowing wide latitude to each party in the presentation of evidence.

3. Off-the-record discussions should be summarized on-the-record to avoid later misunderstanding.

4. Arbitrator decisions are secret until released to the parties.

5. Ex parte communications are improper.

6. Expedited arbitrations, when requested by the parties, is permissible in simple cases.

7. Arbitrator decisions should include specific findings on all major facts in issue.

8. Citations must be sufficiently detailed.

9. The arbitrator should make the determination as to the decisive issues. A decision must, however, rest upon a point raised in the hearing. All issues necessary to dispose of the case must be decided.

10. Decisions should be brief and findings positive.

11. Complicated statistical and financial findings may be developed in appendices.

12. Some factual findings are best supported by specific citations to the record.

13. Arbitrator jurisdiction generally terminates on issuance of decision.

Respectfully submitted,

Phillip L. Johnson

PLJ/kkw

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April 20, 1988

Mr. Paul W. Goldberg
Bureau of Mediation Services
1380 Energy Lane
Suite 2
St. Paul MN 55108-5253

Dear Paul:

I am in receipt of your letter of April 12, 1988 as well as your prior letter. Both, as I understand it, deal with an effort on the part of the Bureau to establish more formalized rules governing the selection of arbitrators to serve on behalf of the Bureau, as well as procedural rules governing the administration and operation of the Bureau. I have given the matter a great deal of thought, and unlike the arbitrators who did not wish to identify themselves, I have never been accused of being bashful or, indeed, timid in my opinion writing. If you do not believe me, just ask the Teamsters or Cy Smythe. (Hopefully, this makes me a good arbitrator, not simply opinionated.)

I have not replied before this time to your first letter because I was not clear as to the precise areas of rule-making regarding which you sought to engage our opinion. I was also somewhat bemused as to the reason for my receipt of the letter, considering the fact that I have repeatedly been rebuffed in my attempts to be placed upon the Bureau's roster of arbitrators. (Unless, of course, the rule-making will also apply to PERB and arbitrators appointed directly through PERB.)

I have also not responded because, since the operations and rules which govern BMS have always been somewhat of a mystery to me, I did not have the slightest idea as to what I could recommend in terms of change. I would applaud any effort at rule-making which clarifies the Bureau's rules or operations for arbitrators, although I do share with those arbitrators who "unsigned" their letter a very strong concern regarding rigidity. Besides, how do I know whether or not the rules which you adopt will help me get on the panel? I suppose that, given my current lack of success in that regard, like the Jewish women who offers chicken soup to the corpse, "it couldn't hurt."

You, of course, know my gripe. If I am qualified enough to be repeatedly selected by parties from the PERB panel, to have had numerous opinions published in Labor Arbitration Reports and LLRM, if I am qualified enough to have been nominated for

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appointment to permanent panels on behalf of the Postal Workers Union and the Letter Carriers Union, and am qualified enough to serve on the permanent panel for the 49er's along with such distinguished colleagues as Mario Bognano and Tom Gallagher, and if I am qualified enough to be asked by the National Office of the American Arbitration Association to be a featured speaker at arbitration seminars, then why am I not able to serve on the BMS panel? If rule-making will assist me and others similarlylqualified to obtain membership on the panel, then I am all for it. If the rules are going to be designed to continue to restrict the tradition of qualified new arbitrators being admitted to the panel, then I would oppose such an effort. I would also oppose any rules which would serve to further ossify or restrict the manner in which we conduct hearings or prepare opinions, other than the requirement that we conduct ourselves within the context of the general concepts of due process and fair play.

My final comments concern the proposed bifurcation between members of the National Academy of Arbitrators and other arbitrators currently serving on the panel. I am strongly in opposition to this manner of bifurcating the roster. Membership in the Academy has no legal standing per se; it is a voluntary organization, and many if not all of the Non-Academy members on the BMS panel simply have not bothered to apply, and for this reason alone are not in the Academy. For example, my father, Joseph L. Bard, would clearly qualify but he has simply never bothered to fill out the rather onerous forms. It is something which arbitrators occasionally choose to do because they feel it will increase their prestige and ability to secure appointments. However, in no way do I believe that it is a fair reflection or an accurate reflection of their quality as arbitrators or their ability and, therefore, I would oppose the manner in which the list has been split. If it were up to me, and an advisory panel were necessary, I would have my father serve along with Mr. Gallagher regardless of their status as Academy or Non-Academy members.

Very truly yours,

BARD AND BARD, LTD.

Howard Bard

Howard M. Bard

HMB/ts/136

BMS
BUREAU OF MEDIATION SERVICES
State of Minnesota

April 21, 1988

Mr. Howard Bard, Attorney at Law
Bard and Bard, Ltd.
400 Norwest Midland Building
Minneapolis, MN 55401

Dear Howard:

Thanks for your letter of April 20. Unless you object, I will make it a part of the material available to the advisory group I plan to utilize in this matter.

I can assure you that your letter is better than chicken soup!

Regards.

Sincerely,

PAUL W. GOLDBERG,
Commissioner

PWG:csc

(612) 649-5421
1380 Energy Lane • Suite #2 • St. Paul, MN 55108-5253
An Equal Opportunity Employer

RECEIVED BMS-
4 MAY 88 13:02

UNIVERSITY OF MINNESOTA
TWIN CITIES

Physical Plant Operations
200 Shops Building
319 15th Avenue S.E.
Minneapolis, Minnesota 55455

May 2, 1988

Mr. Paul W. Goldberg
Commissioner
Bureau of Mediation Services
State of Minnesota
1380 Energy Lane, Suite No. 2
St. Paul, Minnesota 55108-5253

RE: Formal Rule Making - Invitation to Comment - Letter of April 4, 1988

Dear Mr. Goldberg:

Thank you for the opportunity to comment.

There is a companion effort by the Minnesota State Bar Association that addresses arbitrator development. I have enclosed a copy of my response to their questionnaire. The question responses are general in nature but do represent my concerns from what little knowledge I have of the arbitration process. I offer them as my comments to the process of formal rule making and the rules to be developed. The responses address more specifically arbitrator qualifications and their performance and conduct standards.

As to procedural requirements in securing panels for the selection of an arbitrator, I would comment that historically arbitrators develop a reputation for being pro-labor or pro-management which can and does aggrevate the process of arbitrator selection for one or the other of the parties involved. Arbitrators need to develop the attitude and perspective of the judiciary in 1) removing their bias, 2) providing for equal representation in hearings and 3) securing all the facts known or available before granting a decision.

Sincerely,

Victor C. Potter
Associate Director

VCP:je

Attachment

5.45.16

ARBITRATOR DEVELOPMENT COMMITTEE

MINNESOTA STATE BAR ASSOCIATION
Labor and Employment Law Section

1. Do you believe there is a need to expand the ranks of qualified labor arbitrators in Minnesota?

Yes [X] No [ ] Please explain why or why not:

I perceive there is a need for much less partiality to labor in arbitration decisions. A better understanding of management character, philosophy and intent would be helpful.

If you believe that there is a need for additional arbitrators, is the need for grievance arbitrators? [ ] for interest arbitrators? [ ] or for both interest and grievance arbitrators? [X]

2. Do you believe a structured training program such as that described in the letter would be an appropriate means to train new arbitrators?

Yes [X] No [ ]

3. If you believe a structured program should be used, what elements should it contain?

Managing changes, long term effects of an arbitrator's decision, implications for management and labor, equal representation for management and labor.

4. If you believe a structured program such as that described in the letter is inappropriate, what alternative method would you suggest?

N/A

5. Would you or those you represent be willing to provide some financial assistance to support an arbitrator training program?

Yes [X] No [ ]

[over]

6. Would you be willing to assist in the training program by participating in a mock hearing or having a trainee observe one of your arbitration hearings?

Yes [X] No [ ]

7. Would you be willing to make a commitment to select graduates of the training program to hear your grievance arbitration cases?

Yes [X] No [ ] If so, under what circumstances?

Knowledge and experience in labor-management relations, maturity, stature, success in training program.

Name: Victor C. Potter

Title: Associate Director, Physical Plant Operations

Address: 319 - 15th Avenue SE
Minneapolis, MN 55455

Phone: 612-625-6884

Representing: University of Minnesota

PLEASE RETURN, NO LATER THAN MAY 9, 1988, TO: Attorney James M. Dawson, Felhaber, Larson, Fenlon & Vogt, 1935 Piper Jaffray Tower, 222 South Ninth Street, Minneapolis, MN 55402.

A return address envelope is enclosed.

OPPENHEIMER WOLFF & DONNELLY

First Bank Building
Suite 1700
St. Paul, MN 55101
(612) 223-2500
Telex: 701879
FAX: (612) 223-2596

Brussels
Chicago
Minneapolis
New York
Paris
St. Paul
Washington, D.C.

RECEIVED BMS
24 JUL 89 12:09

July 21, 1989

Mr. Paul W. Goldberg
Commissioner
Bureau of Mediation Services
1380 Energy Lane, Suite 2
St. Paul, Minnesota 55108

Re: In the Matter of the Proposed Adoption of Rules of State Bureau of Mediation Services Governing the Labor Arbitration Roster Maintained by the Agency

Dear Mr. Goldberg:

This correspondence is submitted on behalf of the Minnesota Education Association to comment on a certain aspect of the above-referenced proposed rules. Specifically, the MEA objects to proposed Rule 5530.0800, subpart 9 as presently worded. This subpart not only requires roster members to submit their public sector arbitration awards, but also requires the submission to the Bureau of hearing officer reports filed as a result of selection under Minnesota Statutes § 125.12. The proposed rule goes on to provide that the awards filed with the Commissioner are "public documents."

It is the MEA's position that hearing officer reports are "private data" within the meaning of the Minnesota Governmental Data Practices Act, Minnesota Statute Chapter 13. Unlike arbitration awards in discipline or discharge cases, the hearing officer's report is not the final adjudication in a teacher termination proceeding under Minnesota Statute § 125.12. Further, it is often the case that teacher termination proceedings are settled between the parties subsequent to the hearing officer report, but prior to final action by the school board. The Minnesota Supreme Court has recently recognized that investigative reports in connection with a discipline proceeding are "private data." Annandale Advocate v. City of Annandale, 435 N.W.2d 24 (Minn. 1989). Under these circumstances, it is the MEA's position that the Bureau lacks jurisdiction to require the submission to it of this private data. Even more clearly, the Bureau may not treat this data as "public information" to the extent that it obtains such reports. Accordingly, the MEA urges the Bureau to delete that portion of

this proposed rule requiring the submission of hearing officer reports rendered pursuant to Minnesota Statute § 125.12.

Thank you for your consideration in this matter.

Very truly yours,

Donald W. Selzer, Jr.

DWS/cmp

cc: Roger Barrett

BMS

BUREAU OF MEDIATION SERVICES

State of Minnesota

August 31, 1989

Mr. Donald W. Selzer, Jr.
Oppenheimer, Wolf & Donnelly
1700 First Bank Building
St. Paul, MN 55101

RE: Proposed BMS Rules Governing
Labor Arbitration Roster
Maintained by the Agency

Dear Mr. Selzer:

This is in response to your letter of July 21, 1989, commenting upon the referenced rules proposal.

Please be advised that I will be deleting the portion of proposed rule 5530.0800, subpart 9, which requires hearings officers appointed pursuant to Minn. Stat. S 125.12 to file copies of their reports with the agency, pursuant to the objections which you raise.

Sincerely,

PAUL W. GOLDBERG
Commissioner

PWG:csc

bcc: Dave Morocco
Roger Barrett

BARD AND BARD, LTD.
ATTORNEYS AT LAW
SUITE 2415
OFFICES AT CENTRE VILLAGE
431 SOUTH SEVENTH STREET
MINNEAPOLIS, MINNESOTA 55415

STEPHEN A. BARD
HOWARD M. BARD

TELEPHONE: (612) 333-6691
FAX: (612) 344-1683

July 28, 1989

Bureau of Mediation Services
1380 Energy Lane
Suite 2
St. Paul, MN 55108

Re: Proposed Adoption of Rules of the State Bureau Mediation Services governing the labor arbitration roster maintained by the agency.

Dear Mr. Goldberg:

The undersigned herewith request a public hearing in connection with the proposed adoption of the above referred rules. Our objections to various portions of the proposed rules and proposed changes or suggestions are as follows:

1. Section 5530.0300, subpart 1, "Advisory Committee." The definition of "Advisory Committee" contains no explanation as to how the Advisory Committee will be selected. Presumably the Commissioner will be responsible for the selection process of the Advisory Committee; however, it would be prudent to have some information contained in subpart 1 as to the method of selection or dismissal of appointees from the Advisory Committee.

2. Section 5530.0600, subpart 2, "General Abilities." This section quite correctly requires as part of the requisite abilities of an arbitrator that he be able to "write clear and concise awards in a timely manner." Our concern regarding this section relates to the Commissioner's comments and criticisms in the past that awards are frequently too lengthy and/or complex. However, the nature in which arbitrations are presented to arbitrators, the highly legalistic setting in which the hearings now frequently take place, and the number of issues which the parties frequently wish to raise, result in long and complex opinions. There is no other manner in which to address the issues and concerns raised by the parties. It is the experience of the undersigned that most parties appreciate clear explanations, no matter how long they take. When parties present concise cases or request expedited hearings, the decisions themselves tend to be concise and expedited. We therefore suggest that the language be changed and/or amended to reflect the submission of awards which are "clear and concise or otherwise clearly address the issues raised by the parties in the arbitration process."

3. Section 5530.0600, "Arbitrator Qualifications," subdivision 4E. The section in question contemplates that membership in the National Academy of Arbitrators is sufficient unto itself to qualify an arbitrator for entry for membership on the panel. The objection to this section is not intended to denigrate the prestige of the National Academy; however, the National Academy is a private organization and the State should not be subordinating its own review process to a private organization regardless of its prestige. There are many other organizations and panels on which arbitrators can sit, many of which also reflect great prestige. The National Academy of Arbitrators is but one, and there are many arbitrators who do not belong simply because they have not troubled themselves to apply for membership, which is a difficult process. Singling out an any private organization denigrates the responsibility of the Commissioner and lessens the "level playing field" established by the demonstrative qualifications provisions set forth in subpart 4 of the proposed rules.

4. Section 5530.0700 subpart 1, "Size of Roster." It was never clearly explained at the meeting held last winter how the appropriate size of an arbitrator roster was to be determined. Is this based on an average number of arbitrations per year as performed in prior years? "Not fewer than 25 nor more than 50 members" is a large spread. The purpose of enacting rules is to rationalize the selection process and to base the selection of arbitrators on some methodology over and above the subjective judgment of the Commissioner; therefore, a more rational explanation for the size of the roster ought to be provided or otherwise justified.

5. Section 5530.0700, subpart 2, "Procedures; Initial Appointments." The undersigned wish to object in the strongest possible fashion to the procedure adopted by the Commissioner for the creation of initial appointments to the list. In the past, the Commissioner has always kept applications on file; in effect, applications were screened for qualifications and an informal "waiting list" maintained. With a little bit more structure there is nothing wrong with the waiting list concept. By refusing to keep applications on file and forcing potential applicants to rely on published notice in the State Register, the Commissioner is placing an unfair and unnecessary burden on potential applicants.

It should not be necessary to rely upon a "grapevine" for this information; virtually no one reads the State Register unless individuals subscribe to it (the cost is, frankly, prohibitive relative to its general usefulness to most individuals). It will be virtually impossible, therefore, to know with any consistency when the BMS is seeking new applicants. The undersigned strongly urge this subpart to be modified to permit applicants to keep permanent applications on file. When a new arbitrator is going to be added to the list by the Commissioner, qualified applications based on published notice can be added to old applications; if necessary, the Commissioner can, without a great deal of trouble, request the old applications be updated.

6. Section 5530.0700, subpart 2B. If the function of the adopted rules is to provide some objective basis for appointment to the roster, then subpart 2B should be specifically amended to state that applicants selected for further consideration "will be based on qualifications and that the most qualified applicants shall be brought back for interviews," or something to that effect. If a provision regarding qualifications is to be included in the rules, then the screening process rule should make reference to the qualifications provisions and the two should be coordinated.

7. Section 5530.0700, subpart D. This provision is for all intents and purposes an Affirmative Action program. There would be no purpose for having a subparagraph of this nature unless the Commissioner intended to give such qualified applicants the strongest possible consideration. If it is not an affirmative action provision and the Commissioner does not intend to give such applicants additional consideration, but only wishes them to enter into the application process, then the revised rule should say so in the clearest possible terms. Recent Supreme Court decisions have strongly limited the application of Affirmative Action programs. The undersigned are totally unaware of any bias by BMS in the past in connection with race or gender or in connection with the composition of the roster; rather, the composition of the roster appears to have been based upon then qualified candidates. The Commissioner should not be actively trying to compensate for a problem which has never existed. It is the opinion of the undersigned that subpart D may be strongly suspect on constitutional grounds and urges that it be deleted. Further, an opinion of the Attorney General should be obtained if not already done so.

8. Section 5530.0700, subpart 4, "Application Form." According to this subpart, individual arbitrators who have already served on the Bureau's Roster must complete application forms and reapply. It is difficult to object to this provision since the undersigned do not know what will appear on the application form. However, individuals who are already on the roster should not be subjected to the same sort of thorough screening and submission of writing samples as are new applicants (see subparts 3 and 4, rule 5530.0700). Such a requirement would be both unfair and ungracious to individuals who have served with distinction in past years. If there is a rational basis for the removal of such individuals, then other procedures adopted for review and removal of individual members from the roster can and should be employed.

9. Section 5530.0700, subpart 6, "Standards for Appointment." It is obvious that subpart 2, Section 5530.0600 and subpart 6 of this section clearly overlap. The two provisions should be merged and placed in the "Arbitrator Qualifications" section so there would be no confusion. There is no purpose for having two different sections that deal with the same subject and they will only serve to create confusion on the part of someone reviewing the rules. Subpart 2 adds nothing to subpart 6 and should be eliminated or merged into subpart 6, and subpart 6 should be moved from the section in which it now exists and put in section 5530.0600. The undersigned have no objections to the specific standards set forth therein other than comments made previously in paragraph 2 above.

10. Section 5530.0700, subpart 7, "Disposition of Application." If the commissioner were to determine that a standing list of applications should be retained, then a lottery need not be employed for purposes of placing people on the roster "where qualifications are relatively equal." It is patently unfair that someone who has waited for several years and is clearly qualified should be placed in a lottery with someone who is a "newly minted" arbitrator. There should be some advantage to having worked and made efforts to obtain an appointment to the roster in the past.

11. Section 5530.0800, "Arbitrator Conduct and Standards," subpart 6, "Timeliness." At the winter meeting there was strong criticism of the provision in subpart 6 which states

that "although the time limits specify that an arbitration procedure may be waived or extended by the parties, it is improper for an arbitrator to routinely request or suggest extensions." Virtually everyone present was unanimous in wanting this language deleted. The reason for this is that the time limits specified in most labor contracts are unreasonably short. Having to ask for such extensions later only creates additional labor. Although the undersigned are not privy to the records of the Bureau of Mediation Services, the average time for arbitrators submitting awards from the PERB panel and other panels is generally 4-8 weeks. This is almost always longer than the time periods provided in labor contracts.

The undersigned believe that it is imperative that arbitrators determine whether or not the issues presented in any grievance are such that time is of the essence, and guide themselves accordingly. This is frequently true in discharge cases and cases involving rules which effect the entire bargaining unit on a daily basis. Other grievances are less pressing. It would be inappropriate for an arbitrator in a case where issues are pressing to request a routine extension. It is less so in other cases and the decision should be left to the sound discretion of arbitrators. Furthermore, since the Commissioner retains the right to review the performance of arbitrators already on the roster, individuals who are routinely late in the issuance of their awards always can be made subject to discipline or removal. A general pattern of untimeliness could be discerned based on work product rather than by creating an unnecessary burden on arbitrators.

12. Section 5530.1000, "Arbitration Proceedings," subpart 6, "Dispute Over Fees." The undersigned have no objection to fee disputes being submitted to a panel for binding arbitration provided all parties, including the arbitrator, agree. However, as pointed out in the rules, arbitrators are not the employees of the BMS. This subpart provides for a complete waiver of contract rights of arbitrators to set fees and to collect for their time. It prohibits them from going to court to assert their legal, contract rights. Because state action is clearly involved in the administration of arbitrations in Minnesota, the due process clause of the United States Constitution is involved. This subpart is highly suspect on constitutional grounds inasmuch as it

deprives the arbitrators of due process by forcing them to a binding arbitration procedure and by depriving them as a matter of state action of the right to a fair trial. This provision is extremely tenuous on constitutional grounds, is ill advised, and should be reviewed in any event by the Attorney General.

We trust that the Commissioner will accept these criticisms in the spirit in which they are intended, which is to improve the quality of the roster, and to make the roster more reasonably available to qualified candidates and members of the roster applying for reapplication. Many of these criticisms were addressed in the meeting last winter, but apparently the Commissioner did not believe they were probative, and as a result the undersigned are requesting a public hearing on the matter.

Very truly yours,

BARD AND BARD, LTD.

Howard Bard

Howard M. Bard

Stephen A. Bard

Stephen A. Bard

Joseph L. Bard

Joseph L. Bard

HMB/chp/7261

BMS

BUREAU OF MEDIATION SERVICES

State of Minnesota

August 31, 1989

Howard, Stephan and Joseph Bard
431 South Seventh Street
Minneapolis, MN 55415

RE: Proposed BMS Rules Governing
Labor Arbitration Roster
Maintained by the Agency

Dear Messrs. Bard:

This is to acknowledge your letter of July 28, 1989, providing comments on the proposed rules governing the arbitration roster maintained by the agency and requesting a public hearing. Because you were the only persons requesting a public hearing on these rules, no such hearing will be held and the rules will be adopted with such modifications as are supported by the data and views submitted to me during the comment period.

I provide the following information with regard to your comments:

1. 5530.0300, subpart 1. I am modifying the proposed rule to delete the words "that are" immediately following the phrase "and two roster members" to make it abundantly clear that all members of the Advisory Committee are appointed by the Commissioner.

2. 5530.0600, subpart 2. The proposed rule will be adopted without modification and I see no need for the qualifier which you suggest.

3. 5530.0600, subpart 4E. The rule will be adopted without modification since it provides a uniform and objective method for determining whether or not an applicant meets the qualifications desireable in a labor arbitrator.

4. 5530.0700, subpart 1. The rule will be adopted without modification. The reasonableness of this rule was adequately set forth in the

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Statement of Need and Reasonableness prepared and available from the agency when these rules were prepared for publication.

5. 5530.0700, subpart 2. The rule will be adopted without modification. The use of the State Register for notices of this nature is a common and accepted practice--which guards against the kinds of favoritism and manipulation which correspondents are so concerned with in other areas of these rules.

6. 5530.0700, subpart 2B. The rule will be adopted without modification since the criteria upon which appointment decisions will be made are set forth fully at 5530.0700, subpart 6.

7. 5530.0700, subpart 2D. The rule will be adopted without modification. No comments by correspondents were particularly persuasive regarding this matter.

8. 5530.0700, subpart 4. The rule will be adopted without modification. It is noted, however, that the agency contemplates a distinction in application requirements for persons renewing an appointment in contrast with persons seeking an initial appointment.

9. 5530.0700, subpart 6. The rule will be adopted without modification. Subpart 2 and subpart 6 are distinguishable and have caused no confusion among other reviewers.

10. 5530.0700, subpart 7. The rule will be adopted without modification. In the eyes of the agency, all persons not already on the Bureau roster are "newly minted" and to attempt subjective variations would be to open the agency to charged of favoritism and manipulation.

11. 5530.0800, subpart 6. The rule will be adopted without modification. The strongest criticism raised by arbitrators at the pre-publication meeting to solicit comment on these proposed rules was directed at fixed criteria for determining delinquency, not to the ethical matter of inducing parties to accept delays. Even if such matters were the primary concern

of arbitrators, however, the Commissioner is mindful of the fact that arbitration is intended to serve the parties, not the arbitrators! The parties' agreement creates the role for the arbitrator; it should also create constraints. The concerns of the people who use (and pay for) arbitration services is exemplified by the enclosed copy of policy adopted by SEIU Local 284.

12. 5530.1000, subpart 6. THe rule will be adopted without modification. It seems paradoxical for arbitrators to be concerned about resolving disputes via arbitration.

Sincerely,

PAUL W. GOLDBERG
Commissioner

PWG:csc

Enclosure

PRESIDENT
JOHN H. ALLERS

UNION REPRESENTATIVES:
KARL F. LANDHOLM
DANIEL KLINGENSMITH
ROBERT LARSON
JEFFERY ALLERS

School Service Employees
LOCAL NO. 284
A.F.L.-C.I.O.
7529 LYNDALE AVENUE SOUTH—RICHFIELD, MN 55423
PHONE 861-7495

August 17, 1989

Please be advised that Local 284 has an arbitration policy consistent with the Uniform Arbitration Act Minnesota Statutes Chapter §572, specifically §572.15 (B) "an award shall be made within the time fixed therefore by the agreement".

The parties to the arbitration may extend the time for the arbitrator's decision in writing but in no instance will any arbitration entered into by Local 284 allow for decisions rendered by an arbitrator to exceed the following time-frames without penalty.

Said penalty shall be of an equal amount deducted each week of delinquency from the arbitrator's fee as the amount referenced in the arbitrator's statement of charges for cancellations and as referenced in the initial arbitration listing to the parties.

The time-frames for decisions are:

A) The time-frame stipulated in the agreement

B) or 30 Days from the arbitration hearing

C) or 30 days from the submission of post hearing briefs whichever is later.

This policy is not a reflection of any particular arbitrator's performance. It is, however, our purpose to reestablish a timely and orderly arbitration process that will serve all parties involved.

John H. Allers

John H. Allers, President
School Service Employees Local 284

30 AUG 89 10:52

Thomas A. Ebert, *President*

DIRECTORS

Robert L. Findorff, *Chairman*
Senior Vice President
Donaldson Company, Inc.

D. Russell Norha, *Vice Chairman*
Vice President
General Mills, Inc.

Clifford I. Anderson, *Secretary*
President
Crown Holdings, Inc.

Karl Schurr, *Treasurer*
President
Minco Products Incorporated

Kent M. Bank
President
Minneapolis Washer & Stamping, Inc.

John Barrett
Executive Director
Rise, Inc.

Anthony Bechik
President
Bechik Products, Inc.

James E. Carufel
Senior V.P. & Chief Financial Officer
KTCA

Barbara Christiansen
Personnel Manager
West Publishing Co.

Wilbur A. Cleveland
President
Deep Draw Corporation

Elizabeth B. Cole
Chairman of the Board
Quality Tool, Inc.
Quality Assemblies, Inc.

Kay L. Fredericks
President & CEO
TREND enterprises, Inc.

Saul S. Garelick
President
Garelick Manufacturing Company

David W. Goodwin
President
Dealers Manufacturing

William B. Hammack
General Manager
Dayton's

Donald T. Hansen
President
Precise Products Corporation

John A. Hanson
Vice President
Minnegasco

Mark E. Hegman
President
Minnesota Store Equipment Company

James T. Lilly
President
Russ E. Smith Co.

G. H. (Mike) Lynch
Vice President
Honeywell, Inc.

Jerome M. Mandel
President
Waterous Company

Peter Miller
President
Shaw Lumber Co.

Bernard D. Reisberg
President
Goodin Company

Walter M. (Joe) Ringer III
Vice Chairman
Foley-Belsaw Company

Bradley M. Robinson
President
Robinson Rubber Products Co.

Hugh K. Schilling
President
Horton Manufacturing Co.

Alex M. Scott
President
Scott-Atwater-Foundry

Nicholas P. Strenglis
Consultant
Pies, Inc.

John A. Wielgosz
President
Metallurgical, Inc.

Hal Wilson
President
SICO INCORPORATED

Employers Association, Inc.
9400 Golden Valley Road, Minneapolis, Minnesota 55427
Phone 612 546-9100 FAX 612 546-5312

August 1, 1989

Mr. Paul W. Goldberg, Commissioner
Bureau of Mediation Services
1380 Energy Lane, Suite Two
St. Paul, Minnesota 55108

RE: Proposed Rules Relating to State Arbitration Roster

Dear Mr. Commissioner:

On July 21 I telephoned the Bureau and requested a copy of the Statement of Need and Reasonableness as is provided for in the State Register, Monday 10 July 1989.

I have not yet received that document. The time for review of the proposed rule and its justification are quickly coming to a close. Therefore, I renew my request for a copy of the Statement of Needs and Reasonableness.

Until it is received and I have had sufficient opportunity review its contents, you may consider this letter to be a request for a public hearing.

Sincerely,

Kevin S. Wilkins
Legislative Affairs Department

2 AUG 89 11:30

RECEIVED BMS

cc: Maryanne Hruby, Legislative Commission to Review Administrative Rules

Sent 8/2

EDP 18

To: Paul Goldberg, BMS Commissioner and Arbitrator Rules Advisory Committee

August 19, 1988

From: Edward D. Pribble, Arbitrator

Re: Proposed BMS Arbitrator Rule Changes

I. OPENING STATEMENT

This arbitrator states for the record that he did not prepare, join in or mail the April 7, 1988 dated anonymous letter to the BMS (Copy with the April 12, 1988 Goldberg reply to the BMS arbitrators is attached as Exhibit No. 1). I also decline to join that fray.

However, I wish to make some constructive comments and criticisms about certain of these proposed rules and recommend changes. I hope all of my comments are received in the constructive manner in which they are offered.

Better communication with all BMS roster arbitrators giving us copies of the proposed new rules with reasons for changes and at least thirty days review time would have reduced or eliminated the tension that has developed between the arbitrators and the Commissioner.

For those of you who do not know me, I have been arbitrating in Minnesota for more than five years. In that time I have issued decisions in more than 130 cases. Currently, I am preparing my application for the National Academy of Arbitrators.

My comments are organized by the sections of these proposed rules, which I received from the Commissioner about twelve days ago.

II. ARBITRATOR QUALIFICATIONS (pp. 3-4)

A. Subpart 4--Demonstrating Qualifications

1) Need to have advisory committee of Labor Management advocates and neutrals to review qualifications and make written recommendations with reasons enumerated to Commissioner.

The Commissioner is a political position. Especially in removal situations, the commissioner may be tempted to use the politically expedient solution of removal of an arbitrator after a tough controversial decision has been made by an arbitrator. (e.g. Jack Flagler's decision to reinstate an employee for patient abuse or my August 1983 decision not to reinstate a state officer of a Union for patient abuse, as discussed below under fees disputes.)

2) Add provision or clarify subpart 4D to include NLRB or similar Federal or State Agency labor relations experience--5 years. It is important for arbitrators to be able to tap this potential well qualified pool of neutrals in labor relations.

3) From the information available to me his list of qualifications for initial appointment would have excluded at least the following current BMS arbitrator panel (about twenty-

nine) members, if these qualifications had been in effect when they initially were accepted on the panel.

1) J.C. Fogelberg
2) Thomas Gallagher
3) Frank Kapsch Sr.
4) Richard Miller
5) Christine Ver Ploeg
6) Laura Cooper
7) Joseph Daly
8) Mary Beth Koehler
9) Nancy Powers
10) Edward Pribble
11) James Reynolds
12) Max Rotenberg

B) Subpart 5--Residency

Add a provision making reciprocal for respective contiguous State public employment boards. Since about 1981 Wisconsin ERC refuses to admit arbitrators to its panel who are not residents of Wisconsin. There is some effort to require removal of even current members of the WERC arbitration panel, who are not Wisconsin residents.

III. APPOINTMENT TO ROSTER

A. Subpart 2--

Change "may" in line one to "shall" and other changes thereafter to correspond to that change.

a) There have been very long delays in the past for consideration for panel membership. I waited about three years for review of my application.
b) The Commissioner's position is inherently political.
c) Need to remove perception of Commissioner's decisions as politically motivated.
d) MN BMS is only public arbitration panel in MN, Iowa, and Wisconsin where entire authority is vested in one person, a political appointee. This causes a perception by many of abuses or politically motivated actions by the Commissioner in arbitration panel matters, even when there are not such abuses or motivations.

6. Subpart 7--Term of Appointment

Three, rather than two, to five years should be the minimums. It takes five years to build an initial acceptance and sometimes three years to rebuild a practice after illness or one or more very controversial decisions. The shorter periods proposed would eliminate many well qualified arbitrators.

IV. ARBITRATOR CONDUCT AND STANDARDS

A. Subpart 1

The May 29, 1985 Code of Professional Responsibility, for Arbitrators of Labor-Management Disputes with the changes and limitations stated in PERB Rule 7310.0600 should be used. The Code stated in the proposed rules is outdated.

B. Subpart 3--Communication with Parties

Line two appears to require joint telephone calls to schedule hearings. This will add delay and costs to scheduling hearings. Under the proposed rule it appears that the contact need not relate to the case at issue. It is recommended that these matters be clarified.

C. I also recommend that provisions be added to clarify contact with the arbitrator after an arbitration award issues. I recommend that:

1) there be no unilateral contact with the arbitrator for twenty-one days after an award has issued, or other applicable time for motion for clarification or amendment of an award under the Uniform Arbitration Act in Minnesota statues (MNUAA).

2) All contact thereafter until the applicable time period appeal or enforcement of an award expires, shall be in writing. All the arbitrators replies shall be written.

I have had two experiences in Minnesota public employment cases that caused me and the Parties much wasted, but necessary time and expenses.

One in Kandiyohi County and LELS ended after nearly two years of litigation. The County's case was dismissed with prejudice and my award provisions incorporated in the collective agreement. This case started as a telephone call from one party, which complimented me for an expeditious award. The second began as an inquiry left on my answering machine concerning when my decision would issue. This latter case ended with my decision and the discussion there. (See attached Exhibit 2.)

CPR,Code of Professional Responsibility 6E Enforcement of Award limits an arbitrator's participation in legal enforcement proceedings. Subpart 3 and 4 in these proposed rules need clarification to specify where and how CPR rules are being modified.

D. The last part of the last sentence of Subpart 4 contradicts the MN UAA and UAAct. Under MN UAA and UAAct the arbitrator has the authority to modify, correct or clarify the award for a specified period after the award. Mutual consent of both parties is not required nor contemplated. (Section 9 UAA, Changes in Award)

E. Subpart 7--Cancellation Fees

The structure of the fees proposed here has several problems.

1) It encourages parties to stall in setting the hearing and rescheduling the hearing, as a tactic for settling the grievance in that particular party's favor.

2) This stalling will now reflect adversely on the

arbitrators reappointment to the BMS arbitration panel (See Performance Measures, subparts 1, 2, and 4), even though the arbitrator has little control over setting the hearing date.

3) The costs of slow setting of hearing dates and resetting the hearing dates is shifted from the Parties to the arbitrators.

4) It will require the arbitrators ultimately to raise their fees in order to recapture these cancellation costs. The burden of these cancellation costs is ultimately shifted from those who cancel and stall hearings to those who have awards issued. This is not fair and equitable.

5) My experience during the past five years is that the proposed system results in an average pending hearing load that is twice that for my current cancellation fee method. The result was that I had few near dates available for hearings.

I propose one of the following changes:

A) Alternative A: No change from the present practice of having the arbitrators set their cancellation fees and policies,

1) This is the best policy. Arbitrators costs of cancellation vary widely. Some arbitrators (myself included) set all their own hearings. Others use the secretaries and telephone or other equipment, whether properly or improperly, of the particular institutions for which they work to set their hearings. For this latter group the costs of cancellation may not exceed ten minutes of their time.

2) Subpoenas and prehearing motions to arbitrators vary considerably with the particular case, because of the nature of the Parties and the issues of the cases. Some arbitrators rarely, if ever, have subpoenas or prehearing motions. My arbitration practice includes a larger number of difficult and more contentious cases than many arbitrators.

3) Long distance telephone and secretarial and computer use costs vary considerably among arbitrators.

4) My current cancellation fees and methods have reduced my average pending hearing load from thirty-five to forty percent to ten to fifteen percent of my average annual case load.

5) Recently, my cancellation fees and policies have resulted in a near break even in costs and time spent on cancelled cases, when compared to these fees collected. Previously my costs far exceeded these fees.

6) If hearing schedules are too crowded, arbitrators must refuse cases unnecessarily. For we full-time arbitrators, that is a loss of work, perhaps the loss of those clients.

7) Arbitrators may use a consistent fee structure for all cases, whatever the referral agency.

8) About twenty percent of my case selections are received with the Parties agreed to a few dates two to four weeks away.

or B) Alternative B: Docking Fees

1) A docking fee half of the arbitrator's per diem rate for all cases. An additional fee of one-half day per day of scheduled hearing beyond one hearing day for cases cancelled within twenty days of the initially scheduled hearing date.

2) Travel and at hearing place time and other costs of arbitrator may be charged.

These Alternative B policies may in favorable circumstances allow an arbitrator to break even for time and costs of cancellations.

The best method to fairly reduce all cancellation costs is for each party to reevaluate their cases prior to notification of the arbitrator. In a recent discussion with the FMCS Assistant Director for Arbitrator Services, she told me there has been a recent nationwide increase in the percentage of cancellations of arbitration cases after work has been performed by the arbitrator.

F. Subpart 9--Copies of Awards

Minnesota awards is not defined. This needs clarification. In the past the commissioner has not published some of my awards where the Union representative or Union was based in Minnesota, but the Employer's office or facility was located outside of Minnesota. At minimum for reasonably informed advocates, Minnesota Employers or Unions cases should be collected and published.

One of the very best ways to train and have better informed advocates or arbitrators is to have as many cases as possible published, especially in the discipline area. This arbitrator recommends that this broader policy of collection and publication of all decisions of arbitrators on the BMS panel be adopted.

G. Subpart 10

I recommend that item D be changed to "Date that the arbitrator received notice of selection by the parties."

This date is the one that causes action by the arbitrator. I have received some cases a month or more after selection by the Parties from Minnesota public employers.

V. PERFORMANCE MEASURES

A. Subpart 1--Selection Rate

This provision has little relevance to arbitrators' performance.

This arbitrator has been on the BMS panel for more than four years. The commissioners have refused to make available to this arbitrator any of the information necessary to determine selection rates or referrals of any arbitrators. From data available to me I do not know if the rates listed are low or high

or the number of current arbitrators that would be affected.

For most of 1986, 1987, and two months in early 1988, I requested that I not be referred at all because of health problems--surgery and a cancer scare. I do not know how this affected my selection rate.

Based on the studies that I have read, selection rates often reflect the number of referrals and how often particular a arbitrator's name is seen by parties. Selection rates vary considerably for many arbitrators. If an arbitrator issues a particularly controversial decision, the arbitrator's selection rate often will drop considerably A great sole dependency, as here, on selection rates will cause some arbitrators, even if unconsciously, to compromise on decisions rather than make needed hard decisions.

Representatives of parties change. An arbitrator that was out of favor for two or three years may suddenly be selected again.

Reports of cases in the BMS arbitration award summaries (BMS Summaries) sometimes adversely affect selections. Many parties have told me that they thought that all awards of arbitration panel members are published in BMS Summaries. About forty percent of this arbitrator's cases have been so published. The published cases often skew the actual results of my decision-making, so the reported cases do not accurately reflect the overall results of my decisions.

B. Subpart 2--Timeliness

I offer every party hearing dates within two weeks of my receipt of selection. In Minnesota public employment, both parties have never accepted these early dates. My Minnesota public employment hearing dates average about fifty days from selection. My Iowa hearing dates average about twenty days. My private practice cases average about thirty days.

What is needed, if anything, is a collection of data on all cases and the reasons for each date, and which party(ies) or the arbitrator were unavailable.

A reasonable rule would be that the arbitrator offer at least five dates within the next forty-five days after receipt of the selection.

The arbitrator can control the offer of available dates, but not their acceptance by the Parties.

The number of hearings set should also be noted on the biographical sheet with the mean days for scheduling and issuance.

With these amendments the mean of 90 days for scheduling hearings and thirty days for issuance of award is reasonable.

This arbitrator's mean time for issuance of awards is about fifteen days from the close of record.

C. Subpart 4--Evaluation by Parties

The following changes are recommended:

1) At minimum add that the source of all comments shall be classified in the summaries as from the winners or losers in the

cases involved.

2) Also add that only public information may be considered in the determination of removal or reappointment to the roster.

These changes are needed for a minimum of due process rights and to achieve acceptance by the arbitration community that removals are not political decisions rather than based on the merits of the work of the particular arbitrator.

VI. REMOVAL PROCEDURES

A. Standards for Removal.

1) The "minimal showing of cause" standard is replete with opportunities for abuse for political reasons, rather than reflecting merits of the arbitrator's work.

2) There is a very important need for arbitrators to be insulated from removal for political reasons. It is important that arbitrators know they can make hard decisions without secret political reprisals.

B. Subpart 4--Determination

For the Commissioner's determinations to have credibility with arbitrators, an appeal to the PERB is a minimum requirement.

VII. PANEL SELECTIONS AND REFERRALS

A. Subpart 2--Size and Selection of Panel

It is recommended that the last sentence be changed to require that at least six members of the panel shall be residents of the State of Minnesota, unless both Parties request otherwise in writing.

The proposed rule allows out of State residents to be included on panels fourtimes more often than these non-Minnesota residents percentage composition on the entire roster. (For example, currently these non-Minnesota residents comprise about seven percent of roster members, but could be referred out about thirty percent of all referrals.)

B. Subpart 2--Replacement of Panels or Names.

This provision is needed to prevent unwarranted harassment of some arbitrators by some parties and to increase administrative efficiency.

VIII. ARBITRATION PROCEEDINGS

A. Subparts 1 and 2

These provisions should reduce procedural wrangling and wasting of time. At thesame time they should encourage obtaining more accurate arbitration records, consistent with the needs of both parties and the arbitrator.

B. Subpart 5--Clarification of Awards

This section appears to be contrary to PELRA and the Minnesota Uniform Arbitration Act. This proposal attempts by rules to remove authority granted by Minnesota statute to the arbitrator.

C. Subpart 8 and 9--Payment of Fees and Costs

Aribtrators should have a right to the arbitration process here for resolution of failure to pay fees by the Parties.

This arbitrator currently has two fees in Minnesota outstanding in which the parties have not disputed the reasonableness or have agreed the fees are reasonable.

In the first case the Union has not paid about the $1320.00 balance of its share of the fee for a multiday hearing. It agreed that the fee is reasonable. The decision issued about five years ago. This arbitrator upheld the discharge of a State officer of the Union. This was a patient abuse case in which the grievant essentially said that she would repeat her misconduct if I reinstated her, because she considered the conduct proper. She also refused reinstatement to another position.

In the second case the Employer refuses to pay about a $620.00 fee for its share in an interest arbitration case after more than two years. The Employer appealed my award, but settled the case wtih a stipulated dismissal with prejudice. It placed the provisions of my award in effect.

Other arbitrators have similar problems with the losing parties not paying.

Thank you for your consideration and time.

Edward D. Pribble

Edward D. Pribble
Arbitrator

EXHIBIT 1

BMS

BUREAU OF MEDIATION SERVICES

State of Minnesota

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April 12, 1988

Dear Colleagues:

Enclosed is a copy of a letter which purports to represent the perspective of a number of the arbitrators on the Bureau's roster. Although I will repress my desire to circulate this letter among the clients we all serve, it does seem appropriate to share it with all of you--since there is another business purpose for me to write in any event.

Although the very timidity of anonymous mail limits its persuasiveness, clearly there are good public policy reasons for government to regulate those who sup at the public trough. The letter brings to mind that Shakespearean admonition, "methinks thou doth protest too much!"

The insight and input of the arbitrator community is, however, a valued commodity, and one which I counted on as we decided to go forward in this arena. It is mainly for that purpose that I write.

The rule-making process of the agency is regulated by the Administrative Procedures Act and will, thus, involve much public notice and opportunity for comment. To aid in the formation of actual policy proposals and rule drafting, it is my intent to establish an advisory group consisting of representatives from the arbitrator, employer, and union communities. I would like to have two representatives from the arbitration community serve in this capacity. My struggle has been to devise a method for securing representation from the arbitrator community which is perceptually--as well as actually--a representative and persuasive voice.

The Bureau roster actually includes two groups of arbitrators: Those who are members of the National Academy of Arbitrators and those who are not. It seems fitting to select a representative from each of these groups--and it seems proper to allow you to do the actual selecting.

(612) 649-5421
1380 Energy Lane • Suite #2 • St. Paul, MN 55108-5253
An Equal Opportunity Employer

Enclosed is a listing of all current BMS arbitrators, grouped by Academy membership status. In about fifteen days I will be sending you a ballot requesting that you vote for one person from each group to represent your initial interests in the rule-making process. Those individuals who receive a plurality, and who have not declined the opportunity to serve in this fashion, will be named to the advisory group. I anticipate that the advisory group will meet about three times and, depending upon its extent of discussion, that it will conclude its role prior to September 1st.

If you do not wish to accept appointment to this advisory group, please let my secretary (Carol Cox) or myself know prior to April 22, 1988, and your name will be omitted from the ballot.

I appreciate your interest and cooperation in this matter. I am most comfortable in our ability to promulgate reasonable and meaningful rules which will benefit your professional interests as well as those of the parties and public policy.

Sincerely,

PAUL W. GOLDBERG,
Commissioner

PWG:csc

Enclosure

April 7, 1988

Bureau of Mediation Services
State of Minnesota
1380 Energy Lane
St.Paul, Minnesota 55108

Dear Commissioners,

This response to your letter of April 4th is being written on behalf of a number of established arbitrators listed on the Bureau's panel, who (for obvious reasons) chose to remain anonymous.

As the Commission considers procedures for "formal rule making", we strongly urge that you resist any temptation to standardize the process by imposing unwanted rules and regulations. It is our collective perception that there is not now a need to impose upon the process governmental procedures which would truly benefit no one. We cannot find any overriding evidence of existing conditions which would compel a state agency to engage in such a self-serving project. In reality, those who would gain the most from the imposition of such rules and regulations would be the people who would be left to administer them. Already, it is readily apparent that the parties for whom the process is intended to serve, have grown dissatisfied with the PERB's attempt to formalize their procedures, resulting in an increased use of other listing agencies or methods of selecting arbitrators to hear their disputes.

Candidly, we find no evidence of "public policy reasons in favor of formal relemaking", as you contend in your letter. Rather, matters such as the qualifications, fee structures and the performance and conduct of arbitrators have, and should continue to be, left to the natural process which occurs in the "open market." Through the utilization of biographical information provided to the parties, for example, they are readily able to ascertain the experience, background and training of any neutral. Should they determine, based upon this information that an individual's fees are excessive, in their opinion, or that he/she does not possess the preferred experience to handle a specific dispute, then the appropriate "regulation" will take place through the simple rejection of that name. In following this procedure (one that has been in existence and worked well long before the establishment of the Bureau) the apparent goals of the Commission will still be met, but without the unwelcomed

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governmental interference. Indeed, it is naive to presume that the imposition of formal rules by a state agency would have any significant impact upon the process as a whole. It is no secret that the selection of a neutral arbitrator ultimately depends more upon the information gathered by the advocates through their own "sources" than anything else. In short then, we most strongly suggest that the methodology already in place be preserved, and that the Commission refrain from the temptation to carve out a name for itself by creating yet another bureaucratic set of unwanted regulations.

Thank you for your consideration of these matters.

BMS ARBITRATOR ROSTER
April 11, 1988

ACADEMY MEMBERS

Mario Bognanno	612-933-4515
John Boyer, Jr.	218-726-7254
John Flagler	612-559-4644
J. C. Fogelberg	612-926-3533
Thomas Gallagher	612-330-3020
Francis Kapsch, Sr.	612-869-0368
Leonard Lindquist	612-371-3211
Richard Miller	612-535-0072
Anthony Sinicropi	319-353-5639
Christine Ver Ploeg	612-227-9171
Gil Vernon	715-839-0190

NON-ACADEMY MEMBERS

Joseph Bard	612-333-6691
William Berquist	612-332-8611
Martin Conway	612-332-8611
Laura Cooper	612-625-4320
Joseph Daly	612-641-2121
George Deretich	612-228-0986
Antonio Felicetta	612-874-7727
Robert Grabb	612-373-2717
Daniel Jacobowski	612-227-7577
Viola Kanatz	612-561-3069
Mary Beth Koehler	612-474-9727
Charlotte Neigh	612-488-1525
Nancy Powers	612-377-0158
Edward Pribble	612-255-9879
James Reynolds	612-474-7060
Max Rotenberg	612-861-3613
Lewis Solomon	612-222-6362
Charles Swenson	612-636-2478

6. The Parties agreed that all provisions of the old Contract shall remain the same in the 1987-88 (new Agreement) Contract, except for the four issue(s) certified at impasse and the previously agreed to changes.

7. The Parties stipulated at the hearing that this arbitrator shall consider and decide, as the arbitrator considers necessary, all issues concerning comparable worth. The Parties gave this arbitrator full authority to make a final and binding decision concerning comparable worth. The BMS Director declined to certify comparable worth as an issue.

8. Ramsey is a suburban city of approximately 12,000. In 1970 its population was about 2400. It is located in Anoka County, which is northwest of the Twin Cities.

The City is governed by a home rule charter. It has a five member City council. The Council is composed of a mayor and four other council members. The City employs about twenty-one full-time employees.

The City contracts with Anoka and Elk River for fire fighting services.

The City has eight sworn police officers, including the Police Chief and one office person (C. Wages 30; U.W. 7). The LELS represented bargaining unit (Unit) excludes the Police Chief and the one full-time clerical employee. Anoka County dispatches the City police. There are six patrol officers in the Unit.

9. The Parties' positions are summarized herein whenever possible without detracting from their import, but all details of their positions have been carefully considered by this arbitrator.

Unilateral Contact With Arbitrator And Other Reasons For Delay In This Award

At the hearing the Union initially objected that the six weeks requested by the Employer for briefs was excessive. After discussion this arbitrator granted the Employer's request. He set briefs due no later than postmark of November 9, 1987. If this schedule was maintained this arbitrator said he would probably issue this decision within about two weeks. This arbitrator told the Parties that briefs must be received promptly as scheduled or his schedule would probably not allow him to issue this decision for sixty to ninety days after his receipt of briefs. This arbitrator told the Parties that his schedule problems were caused in part by very time consuming litigation over which he had no control.

On November 5, 1987, Roland J. Miles, Union Business Agent, left a message on this arbitrator's telephone recorder. This message said at the Union's request the Parties had agreed to an extension for filing briefs from November 9 to November 16 postmark. This was substantially verified by letter dated November 5, 1987, from Mr. Miles with copy indicated to Karen Olson, the City's representative. On November 19 and 21, 1987, the City and Union's, respectively, briefs were received by this arbitrator.

About December 26 to 29, 1987, Mr. Miles left the following message on this arbitrator's recorder:

> "This is Roland Miles from LELS. The number is 881-5005. Kind of curious about what is happening with the City of Ramsey arbitration award. Thank you. Bye Bye."

This message was received by this arbitrator on December 30, 1987.

If this message had not been received this arbitrator's Decision and Award would have issued by January 15, 1988. This would have been sooner than the sixty to ninety days promised to the Parties at the hearing. However, because of problems of possible improper unilateral (ex parte)contact with one Party after the hearing and prior to the issuance of this arbitrator's Decision, this Decision was delayed. This was a particular concern of this arbitrator because part of the litigation referred to at the hearing was a Minnesota interest arbitration case involving post decision unilateral and bilateral contact with this arbitrator by Greg Bastien, LELS Business Agent. In that case the unilateral contact consisted primarily of complimenting this arbitrator for issuing his decision promptly in ten days. As a result in that case this arbitrator spent more than two weeks preparing for his deposition and motion(s), giving his deposition, and preparing for trial. The employer in that case alleged that this arbitrator's conduct in receiving this telephone call violated the standards of Crosby-Ironton Federation of Teachers, Local 1325 v. ISD No. 182, 285 N.W.2d 667 (1979) and that this arbitrator's decision should be set aside as procedure by corruption, fraud or other undue means. The trial attornies for LELS in February, 1988, informed me that the matter was being dismissed with prejudice.

As a result of the above, this arbitrator set aside the completion of this Decision, until he could fully research arbitrator's duties and responsibilities in this area. This arbitrator's first concern was that he might be required to recuse and order The Parties to select a new arbitrator and return this case for a new hearing. However, this arbitrator has found no court or arbitration case which requires this result. This arbitrator found no applicable code of professional responsibility which required a course other than that selected by this arbitrator. Sec. 8MCAR (MN PERB Rules) Section 3.041 (1983). The results of informal discussions with Minnesota PERB were that this arbitrator should complete and issue this Decision.

About January 19, 1987, this arbitrator injured his right hand in an accident. As a result, this hand was in splints for about three weeks. During nearly all of this time this arbitrator was unable to type on his computers, efficiently use his dictation equipment, or write efficiently. About January 26, representatives of the Parties observed this injury at a labor relations meeting.

On January 27, about 2:18 p.m., Roland Miles again telephoned and left the following message on my telephone recorder:

> "Yeah, Ed, this is Roland Miles. Could you call me at 881-5005? Thank you. Bye."

On February 4, Roland Miles telephoned and left the following message on my telephone recorder:

> "Hi Ed. This is Roland Miles. Could you give me a call at 881-5005. Thank you. Bye Bye."

In these latter two telephone messages, there is no statement these concerned this case. However, this arbitrator had no other pending or new arbitration cases with LELS. In the above referred to pending court litigation concerning LELS, this arbitrator communicated only with the attornies for LELS or the employer concerning that matter since that litigation began.

Before he had fully recovered from this hand injury, this arbitrator was in bed with pneumonia. This arbitrator's doctor ordered me to full bed rest for about two and one-half weeks. This pneumonia persisted until March 2. By letter dated and mailed by my wife on February 29 this arbitrator briefly informed the Parties of his pneumonia as a reason for delay and that he would explain with this Decision the reasons for the delay. He also indicated when he expected to issue this Decision.

On March 4, 1988, this arbitrator received a joint letter from the Parties, dated March 1, and postmarked March 3 p.m. on LELS envelope. This letter inquired about when my Decision would issue.

During this about seven week period, this arbitrator rescheduled several arbitrations and requested that his name not be referred on panels to parties from this arbitrator's major panels.

In Crosby-Ironton, supra, the Minnesota Supreme Court held that the trial court properly refused to resubmit the matter for change of award to the arbitrator, where the motion to resubmit matter was not filed within twenty days after delivery of the arbitrator's award to the applicant.

This case involved a school district labor relations interest arbitration decision award. In Crosby-Ironton, p. 670, the Court also stated:

> "[6,7] The parties at oral argument and in their briefs, make much of the procedure to be followed by the parties in arbitration matters. Respondent claims lack of due process by reason of the ex parte contacts made by the appellant's representative. While we do not decide the case on this issue, we deem it important enough to state that due process may be lacking if some applicable code of responsibility is not followed. One such code is the Code of Professional Responsibility for Arbitrators of Labor-Management Disputes of the National Academy of Arbitrators, American Arbitration Association, and Federal Mediation and Conciliation Service. See 8 MCAR Sec. 3.041, 3.055 (1978). Any case reaching this court involving review of arbitration awards where ex parte contacts are made orally or in writing, in regard to the issues under dispute, without notifying all other parties to the dispute, will raise a strong presumption that the ultimate award made was procured by corruption, fraud or other undue means, and thus subject to vacation pursuant to Minn. Stat. Sec. 572.19, subd. 1(1) (1978)." "(Emphasis added.)"

In Beebot v. St. Paul Fire & Marine Insurance Co., et. al., 365 N.W.2d 271 (Minn. App. 1985), the Court held that to invalidate an arbitration award, fraud must be established by clear allegations and proof. It stated that in other cases contacts with a neutral umpire might justify an inference of undue means, but here they do not, citing Crosby-Ironton, supra. The Court further stated, "To guard against such an inference, these contacts should be made only by arbitrators themselves or by the parties counsel by agreement." This was a triparte insurance arbitration.

There is no evidence or information in this arbitrator's possession that LELS contacted me by telephone only after agreement with the City's representative. If that was the situation, the Union should have included that information in its telephone messages.

In Safeco Insurance Company of America v. Stariha, 346 N.W.2d 663 (Minn. App. 1984), the Court held that the existence of an unrelated and remote attorney-client relationship between a neutral arbitrator and counsel for a party to the arbitration proceedings is not evidence of undue means or evident partiality under Minn. Stat. Sec. 572.19 concerning vacation of arbitration awards. The arbitration award was the result of unanimous agreement among the arbitrators. The Court then prospectively adopted disclosure standards for arbitrators in commercial disputes.

In Pinkney v. Independent School District, No. 691, 366 N.W.2d (Minn. App. 1985), the Court of Appeals held that neutral hearing examiners should be appointed in school board hearings concerning unrequested leaves of absences. It stated that "hearing examiners in teacher termination proceedings should conduct themselves in accordance with the Minnesota Code of Judicial Conduct Canon 3C. and the principles set forth in Safeco" supra. Two of the three teachers were ordered reinstated for these reasons. The Court found that the third teacher did not make a timely request for a hearing.

In Northwest Mechanical Inc. v. PUC of City Of Virginia, 283 N.W.2d 522 (Minn. S. Ct. 1979), the Supreme Court reversed the trial court and set aside a commercial arbitration award where there were undisclosed business dealings (legal work for closely related entity). The Court stated 1) the contacts "even if not producing actual prejudice, are dealings that might create an impression of possible bias' as the phrase is used in Commonwealth Coatings, 393 US 149," and 2) "These contacts were not disclosed to the parties as required by Commonwealth Coatings."

Similar results were reached in Egan & Sons Company v. Mears Park Development Company, 414 N.W.2d 785 (Minn. App. 1987). There the Court held that failure to disclose an attorney-client relationship by the arbitrator constitutes evident partiality. It also found that there was insufficient evidence of waiver of the right to contest the commercial arbitration award. The Court held "that where an arbitrator had a substantial interest in a firm which did more than trivial business with a party, that fact must be disclosed."

This arbitrator works exclusively as an arbitrator, including lecturing or teaching. He has no relationships with LELS that have not been disclosed to the City.

The problem here is limited to attempted ex parte contacts. This arbitrator has disclosed the information concerning these contacts to the City. However, this arbitrator well recognizes that a court may ultimately have to determine whether or not the Crosby-Ironton standards have been violated. This arbitrator did not directly reply to any of the late December, 1987, January 27 or February 4, 1988, telephone messages of Roland Miles. However, this arbitrator has fully disclosed these contacts to the City.

When I received the late December, 1987, telephone message, I had already finally decided the Duration, Insurance and Comparable Worth issues. However,

on the Wages 1987 and 1988 issues, I had only made a tentative decision. My final decisions here were not made until this past week. This arbitrator has done his best to exclude the ex parte contacts from any consideration in his decisions herein.

Separate of whether or not Crosby-Ironton standard have been violated or whether a court may decide that stricter standards are applicable to contacts from the hearing to issuance of the arbitration award, this arbitrator has a few suggestions.

As a practice or policy all parties should have an absolute rule, which prohibits (unilateral) ex parte contacts for any reason concerning any arbitration case pending before an arbitrator after hearing until the period for the arbitrator's changes/corrections of an award has expired. In Minnesota this time period usually expires twenty-one days after issuance of the arbitrator's award.

There are several major reasons for this rule or policy. 1) This would help preserve the integrity and appearance of integrity of the process. 2) Time and resources of the parties and arbitrators would be saved by avoiding delay, as here, caused by these unilateral contacts and the shroud of uncertainty that is bound to hang over any arbitration award issued under these circumstances. 3) Ex parte contacts may raise unwarranted questions within the arbitration community about the integrity of the particular agent of the party or the party involved. 4) No experienced arbitrator wishes (unilateral) ex parte communications with any party concerning a pending matter. This arbitrator avoids whenever possible even conversing with parties at labor relations conferences, if he has a matter pending after hearing involving those parties.

COMPARABLE WORTH

1. Although this arbitrator has very carefully reviewed the voluminous materials on Comparable Worth presented by the Parties, a more detailed discussion of Comparable Worth than follows is unnecessary, because it would not change the award results here.

2. In the initial Comparable Worth statute (1984) M.S. 471.991, Definitions, Subd. 5 "Equitable compensation relationships" was defined to mean "that a primary consideration in negotiating, establishing, recommending, and approving total compensation is comparable work value in relationship to other employee positions within the political subdivision." (Emphasis added.)

The original bill was amended in the Minnesota Legislature from "the" to "a" primary consideration.

3. In 1984 M.S. 471.992, Sub. 2. Arbitration stated "In all interest arbitrations held pursuant to section 179A.01 to 179A.25 the arbitrator shall follow the equitable compensation relationship standards established...." (Emphasis added.)

BUREAU OF MEDIATION SERVICES

In the Matter of the Proposed Adoption of Rules of the State Bureau of Mediation Services Governing the Labor Arbitration Roster Maintained by the Agency	NOTICE OF INTENT TO ADOPT A RULE WITHOUT A PUBLIC HEARING

(1) Notice is hereby given that the State Bureau of Mediation Service intends to adopt the above-entitled rules without a public hearing following the procedures set forth in the Administrative Procedure Act for adopting rules without a public hearing, Minnesota Statutes, sections 14.22 to 14.29. The statutory authority to adopt the rule is Minnesota Statutes, section 179.02, subdivision 4.

(2) All persons have 30 days in which to submit comment in support of or in opposition to the proposed rule or any part or subpart of the rule. Comment is encouraged. (3) Each comment should identify the portion of the proposed rule addressed, the reason for the comment, and any change proposed.

Any person may make written request for a public hearing on the rule within the 30-day comment period. (4) If 25 or more persons submit a written request for a public hearing within the 30-day comment period, a public hearing will be held unless a sufficient number withdraw their request in writing. (6) Any person requesting a public hearing should state his or her name and address, and is encouraged to identify the portion of the proposed rule addressed, the reasons for the request and any change proposed. (7) If a public hearing is required the agency will proceed pursuant to Minnesota

Statutes, sections 14.131 to 14.20.

(5) Comments or written requests for a public hearing must be submitted to:

Paul W. Goldberg, Commissioner
Bureau of Mediation Services
1380 Energy Lane, Suite Two
St. Paul, MN 55108
(612) 649-5421

(8) The proposed rule may be modified if the modifications are supported by data and views submitted to the agency and do not result in a substantial change in the proposed rule as noticed.

(11) A copy of the proposed rule is attached to this notice.

(12) A Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rule and identifies that data and information relied upon to support the proposed rule has been prepared and is available from Paul W. Goldberg, Commissioner, Bureau of Mediation Services, 1380 Energy Lane, Suite Two, St. Paul, Minnesota, 55108.

(14) You are hereby advised pursuant to Minnesota Statutes, section 14.115 (1988) that the proposed rules have a minor impact on small business. The requirements of these proposed rules are similar to the requirements of other state and federal agencies which empanel labor arbitrators and, therefore, do not impose additional requirements of a substantive or burdensome nature than would normally be faced by persons engaged in this profession. The agency has considered all of the provisions of Minnesota Statutes, section 14.115, subd. 2, in reducing the impact of these rules upon

small business, has solicited opinions from directly affected small businesses, and is providing a copy of this notice and the proposed rules to all small businesses known to be affected by the rules.

(9) If no hearing is required, upon adoption of the rule, the rule and the required supporting documents will be submitted to the Attorney General for review as to legality and form to the extent the form relates to legality. Any person may request notification of the date of submission to the Attorney General. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the adopted rule, must submit the written request to Paul W. Goldberg, Commissioner, Bureau of Mediation Services, 1380 Energy Lane, Suite Two, St. Paul, Minnesota, 55108.

Dated: July 10, 1989

Name

Commissioner

Title

Bureau of Mediation Services

Proposed Permanent Rules Relating to Arbitration Roster

Rules as Proposed (all new material)

5530.0100 APPLICATION.

This chapter applies to the empanelment, referral, conduct, and removal of persons on the arbitrator roster maintained by the commissioner. 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. Nothing in this chapter is intended to limit the right of the parties to jointly select any arbitrator or arbitration procedure which is acceptable to them.

5530.0200 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, chapters 179 and 179A.

5530.0300 DEFINITIONS.

Subpart 1. **Advisory committee.** "Advisory committee" means a committee consisting of three union representatives, three employer representatives, and two roster members that are appointed by the commissioner under Minnesota Statutes, section 15.014, to advise the commissioner regarding the appointment and removal of persons to the arbitrator roster. The committee shall not expire as provided by Minnesota Statutes, section 15.059.

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Subp. 2. **Applicant.** "Applicant" means an individual who is seeking appointment to the roster.

Subp. 3. **Arbitrator roster or roster.** "Arbitrator roster" or "roster" means a listing of persons determined by the commissioner to be qualified and available for referral as an arbitrator of labor disputes under this chapter.

Subp. 4. **Bureau.** "Bureau" means the Bureau of Mediation Services.

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

Subp. 6. **Commissioner.** "Commissioner" means the commissioner of the Bureau of Mediation Services.

Subp. 7. **Expedited panel.** "Expedited panel" means a list established by the commissioner of roster members who are willing and able to handle expedited cases under part 5530.1100.

Subp. 8. **Initial appointment.** "Initial appointment" means a new appointment to the roster of a person who is not listed on the roster at the time application for appointment is made.

Subp. 9. **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 commissioner is considered the date of issuance for purposes of this chapter.

Subp. 10. **Panel.** "Panel" means a listing of roster members compiled by the commissioner for referral to the parties, from which they may subsequently select an arbitrator.

Subp. 11. **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.

Subp. 12. **Probationary appointment.** "Probationary appointment" means a temporary appointment not exceeding 24 months in duration for purposes of further evaluating the performance, acceptability, or conduct of a roster member.

Subp. 13. **Renewal appointment.** "Renewal appointment" means the appointment of an existing roster member to an

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additional term as a roster member.

5530.0400 ROLE OF BUREAU.

The role of the bureau 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 bureau 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, except as provided in part 5530.1000, subpart 6.

5530.0500 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 bureau 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 a dispute.

5530.0600 ARBITRATOR QUALIFICATIONS.

Subpart 1. **General labor relations background.** Persons seeking appointment to the arbitrator roster must have substantial knowledge of collective bargaining and labor relations matters in the public or private sectors, be well versed in applicable state and federal law, and be experienced and knowledgeable in the field of labor arbitration.

Subp. 2. **General abilities.** Potential applicants for placement on the roster must be willing and able to travel throughout Minnesota, conduct hearings in a fair and impartial manner, analyze and evaluate testimony and exhibits, write clear

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and concise awards in a timely manner, and be available for hearings within a reasonable time after the request of the parties.

Subp. 3. **Advocacy disqualification.** No applicant or roster member may currently, or within the preceding 12 months, have functioned as an advocate for any public or private sector employer, employee, or employee organization in any phase of labor management relations. This prohibition applies to employee discharge or disciplinary appeal proceedings, whether or not the employee is represented by an exclusive representative. The commissioner shall disqualify individuals who are closely associated with firms or organizations that function as advocates from appointment to particular panels, when the appointment would present the appearance of a conflict of interest.

Subp. 4. **Demonstrating qualifications.** The burden for establishing qualifications for appointment on the roster is on the person seeking appointment. The commissioner will examine the evidence to determine the complexity of issues the applicant claims experience in, and the technical, theoretical understanding the applicant has demonstrated in handling such matters, and shall make appointments to the roster pursuant to part 5530.0700, subpart 6. Evidence of an applicant's qualification may be advanced in one or a combination of the following ways:

A. submission of six or more arbitration awards or contested case decisions that were authored and signed by the applicant in the 24-month period preceding application;

B. a minimum of six years' experience as a full-time labor relations advocate and submission of six arbitration awards in which the applicant acted as the principal representative for either labor or management;

C. a minimum of six years' experience as a full-time labor mediator, including substantial grievance mediation experience;

D. a minimum of six years' experience as a

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practitioner or full-time instructor of labor law or industrial relations, including substantial content in the area of collective bargaining, labor agreements, and contract administration;

E. membership in the National Academy of Arbitrators; and

F. satisfactory completion of a formalized course of instruction and internship in a program that has been approved by the commissioner in advance of participation or enrollment by the applicant. The program must include the writing of not less than two mock awards under the supervision and guidance of an arbitrator already admitted to the roster or otherwise approved in advance by the commissioner.

Subp. 5. **Domicile.** To be eligible for appointment or continuation on the roster, individuals must maintain a principal place of residence in Minnesota or one of its contiguous states. The maintenance of a mail box or mail delivery point is not sufficient to satisfy the requirement of this subpart.

5530.0700 APPOINTMENT TO ROSTER.

Subpart 1. **Size of roster.** The size of the arbitrator roster shall be not fewer than 25 nor more than 50 members. Annually, the commissioner shall determine whether or not to add members to the roster based on the number of referrals over the preceding 12 months and projected referrals from the roster over the next 12 months.

Subp. 2. **Procedure; initial appointments.** When, pursuant to subpart 1, the commissioner determines that it is appropriate to make additional appointments to the roster, the commissioner shall:

A. publish notice in the State Register for not less than 30 days, indicating that applications for appointment are being accepted and establishing a deadline for the applications;

B. in conjunction with the advisory committee, conduct interviews of applicants selected for further

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consideration, to further assess the applicant's qualifications and suitability for appointment to the roster;

C. advise all applicants in writing regarding the commissioner's final determination with respect to their application;

D. actively solicit qualified applicants who will help provide balance in the racial and gender composition of the roster; and

E. conduct an initial review of applications received and, based on the information provided in the application, reference checks, and the arbitrator qualification requirements of this chapter, select or reject applications for further consideration. The commissioner may conduct additional investigations regarding the application if necessary to obtain a full understanding of the applicant's qualifications.

Subp. 3. **Procedure; renewal appointments.** The commissioner shall notify all roster members not less than 120 days before the expiration of their appointment of the procedures necessary for reappointment to the roster. The appointment of one-third of the members on the roster at the time this chapter is adopted shall expire on July 30, 1991; an additional one-third shall expire on July 30, 1992; and the final one-third shall expire on July 30, 1993. The names of roster members falling into each one-third shall be determined by lot. Persons desiring to renew their appointment on the roster shall submit a written application and fee to the commissioner not less than 60 days before the expiration of their appointment. Following receipt of a renewal application, the commissioner shall review available referral, performance, and activity records of the applicant and proceed according to subpart 6.

Subp. 4. **Application forms.** Individuals who wish to be considered for initial or renewal appointment to the roster must complete an application on forms available from the bureau. Writing samples must accompany the application.

Subp. 5. **Application fee.** A nonrefundable application fee

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of $50 for initial appointments and $25 for renewals must accompany each application for appointment or renewal. The fee must be in the form of a check or money order made payable to "State of Minnesota, Bureau of Mediation Services."

Subp. 6. **Standards for appointment.** In determining whether or not to appoint a member to the roster, the commissioner shall evaluate each application for evidence of the applicant's competence, proficiency, and qualifications in the following areas:

A. knowledge and understanding of labor relations systems and collective bargaining processes and dynamics;

B. knowledge and understanding of applicable contract, employment, and labor relations law and rules;

C. ability to hear and decide complex labor relations issues in a fair and objective manner;

D. ability to communicate, both orally and in writing, in a clear and concise manner;

E. ability to conduct orderly and effective arbitration hearings in a variety of settings and locations throughout Minnesota; and

F. high moral character and integrity.

In addition to meeting these standards for appointment, roster members seeking reappointment must satisfy the requirements of part 5530.1200.

Subp. 7. **Disposition of applications.** If an applicant has satisfied the requirements of subpart 6, the commissioner shall appoint or reappoint the applicant to the roster. If the applicant has failed to satisfy the requirements of subpart 6, the commissioner shall reject the application in writing, including the reasons for the rejection. In the event that there are more qualified applicants than vacancies on the roster, the commissioner shall appoint applicants in rank order of their qualifications or by lottery where qualifications are relatively equal.

Subp. 8. **Term of appointment.** Initial appointments to the roster shall be for a term of five years. Renewal appointments

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to the roster shall be for a term of three years. The commissioner shall establish a common July 30 expiration date for all appointments for purposes of administrative convenience.

5530.0800 ARBITRATOR CONDUCT AND STANDARDS.

Subpart 1. **Scope.** The criteria and standards in subparts 2 to 10 apply to all persons on the roster. Failure to comply with these provisions constitutes grounds for disciplinary action or removal from the roster under part 5530.1300.

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. Single copies of the code are available without charge from the commissioner, and are available through the Minitex interlibrary loan system.

Subp. 3. **Conflicts of interest.** The arbitrator must disclose any personal or professional relationships, including direct or indirect past employment, consultative relationships, or affiliation with one of the parties, which may give an appearance of partiality. The burden of disclosure is on the arbitrator.

Subp. 4. **Communication with parties.** Arbitrators shall not solicit parties for selection to cases. All matters involving a case or contact with the parties must be handled in a manner that fosters the impartiality of the arbitrator. The arbitrator shall not communicate, directly or indirectly, in connection with any issue of fact or law with any person or party, except upon notice and opportunity for all parties to participate. When this chapter authorizes communications contrary to this part, the communications shall be limited to only those matters permitted by this chapter. The arbitrator may communicate regarding dates or procedures for the hearing

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without violating this part.

Subp. 5. **Use of assistants or associates.** An arbitrator may, without prior consent of the parties, delegate research, clerical, and preliminary 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.

Subp. 6. **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. The arbitrator must adhere to the time limits of the parties' arbitration procedure. When initially accepting and scheduling a case, or at the first reasonable opportunity to become aware of the time limits, the arbitrator must indicate whether or not the time limits specified in the arbitration procedure will present a problem in the timely handling of the case. Although the time limits specified in an arbitration procedure may be waived or extended by the parties, it is improper for an arbitrator to routinely request or suggest extensions. If, after accepting and hearing a case, the arbitrator discovers that he or she will be unable 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 the delay and shall seek approval for establishing an alternate date for completion of the award.

Subp. 7. **Administrative or cancellation fees.** Arbitrators may charge an administrative fee for establishing a case file and cancellation fees for hearings that are canceled or rescheduled by one or both parties with less than 21 calendar days' notice, provided the fees and policies are clearly noted on the biographic sketch for that arbitrator that is on file with the bureau.

Subp. 8. **Arbitration fees.** All fees charged by an arbitrator selected under this chapter shall be based on the per diem fee schedule in the biographic sketch on file with the

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commissioner. The arbitrator shall maintain reasonable time and expense records related to each case and, in the event of a dispute over the reasonableness of fees and expenses in a case, shall make the records available to the parties or the commissioner, upon written demand. Disputes over the reasonableness of fees may be resolved under part 5530.1000, subpart 6.

Subp. 9. **Filing copies of awards.** Unless one or both private sector parties have specifically requested that an award not be provided to the commissioner, arbitrators shall submit copies of all awards involving Minnesota work sites to the commissioner, regardless of the source of appointment or selection. Roster members shall also provide the commissioner with a copy of all Minnesota public sector awards and all hearing officer reports filed as a result of selection under Minnesota Statutes, section 125.12. Awards filed with the commissioner are public documents.

Subp. 10. **Arbitrator fee and summary report.** For each award filed with the commissioner, whether originating from a bureau referral or other source, the arbitrator shall provide a summary report that discloses the following:

A. case identification information, including:

(1) arbitrator's name;

(2) case file number or bureau case number, if any;

(3) name and location of employer and name of employer's representative; and

(4) name of exclusive representative and agent of the exclusive representative;

B. case processing date information, including:

(1) date the grievance was filed or first made known to the employer;

(2) date arbitrator was notified of selection by parties;

(3) date of hearing;

(4) final date for submission of briefs or other

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written material, if any; and

(5) date award was issued; and

C. arbitrator fee and expense information for all awards resulting from a referral by the commissioner, including:

(1) number of days of hearing billed;

(2) number of days of study and preparation of award billed;

(3) number of days billed for travel;

(4) per diem rate for billing;

(5) travel expenses billed;

(6) other expenses billed;

(7) total fees and expenses charged; and

(8) amount of the total costs to be paid by each party.

Forms for reporting this information must be furnished by the bureau.

5530.0900 PANEL SELECTIONS AND REFERRALS.

Subpart 1. **Request for panels.** Individuals or organizations desiring a panel of arbitrators drawn from the roster shall submit individual or joint written requests that include the following:

A. the name and location of the employer and the name, address, and telephone number of the employer's representative;

B. the name of the employee organization and the name, address, and telephone number of the employee organization's representative;

C. a brief statement of the nature of the dispute being submitted to arbitration, for example, discharge or overtime pay;

D. the nature or type of business of the employer;

E. a description of the type of bargaining unit involved, for example, clerical, maintenance, dietary, or teacher; and

F. the date the grievance or dispute was first made

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known to the employer.

Subp. 2. **Size and selection of panels.** Unless a single arbitrator is to be apppointed under subpart 3, all panels submitted by the commissioner shall contain seven names. When the parties' arbitration agreement provides for panels of fewer than seven names, the parties may use the striking procedures in subpart 5 to reduce the size of a seven-member panel. In assembling panels, the commissioner shall use a random selection system that results in a reasonably equal number of opportunities for referral among roster members who have been on the roster for three or more years. When possible, no more than three arbitrators who have been on the roster for less than three years shall be included on a single panel, but the commissioner shall provide greater referral opportunities for those individuals. In assembling panels, the commissioner shall seek to avoid potential conflicts of interest and shall include or exclude roster members pursuant to mutual requests of the parties. Geographic location or unique and special circumstances and technical expertise must be considered by the commissioner when the parties request that those factors be considered. At least five members of the panel must be residents of Minnesota.

Subp. 3. **Direct appointment by commissioner.** The commissioner shall appoint one person from the roster to serve as the arbitrator whenever the agreement to arbitrate or other joint agreement of the parties provides for direct appointments.

Subp. 4. **Replacement panels or names.** Upon the joint request of the parties, the commissioner shall issue a new panel of seven names to replace a prior panel. No more than one replacement panel will be provided in any one case. Single-party requests for replacement panels will not be honored unless the commissioner determines that a bona fide conflict of interest exists regarding the matter in dispute between one or more parties and two or more members of the panel. If a conflict is found by the commissioner, a single replacement panel will be issued.

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Subp. 5. **Selection from panels.** The parties shall select an arbitrator or arbitrators from the panel under the terms of their agreement or grievance procedure. In the absence of an agreement, the selection shall be made by alternately deleting names from the panel until the required number of names remain. Determining which party shall delete the first name shall be accomplished by a toss of a coin.

Subp. 6. **Scheduling.** Notifying the arbitrators of their selection and the scheduling of the arbitration hearing is the responsibility of the parties. Once the initial arbitration hearing has been established, the party who requested the panel shall notify the commissioner of the arbitrators selected, the date the selection was made, and the date of the initial arbitration hearing.

Subp. 7. **Biographic data.** The bureau shall review and prepare a biographic sketch of each member on the roster annually, based on information provided by that member and other information available to the commissioner. The sketches must include information about the arbitrator's background, education, and experience, as well as data regarding the arbitrator's fee schedule and acceptance of hearing officer duties under Minnesota Statutes, section 125.12. The mean number of calendar days required by each arbitrator to issue an award during the preceding year, as well as the upper and lower limits and number of cases used to determine that mean, based on records on file with the bureau, shall be included on the biographic sketch for that arbitrator beginning July 30, 1991. Arbitrators are responsible for ensuring the accuracy of all other biographic and fee data on the sketch. Single copies of the sketches will be made available to parties with the referral of panels.

Subp. 8. **Jurisdiction of bureau.** Submission of a panel or appointment of an arbitrator under this chapter signifies nothing more than compliance with a request and is not a determination as to the legitimacy of the dispute or the competency of the arbitrators to resolve it. The bureau does

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not have jurisdiction or responsibility for enforcement, resolution, or compliance with any aspect of the arbitration process other than providing the services specifically established by this chapter.

5530.1000 ARBITRATION PROCEEDINGS.

Subpart 1. **Responsibility of arbitrators.** Arbitrators selected as a result of referral on a bureau panel must ensure that a fair, adequate, and timely hearing is conducted in a manner that reasonably minimizes cost and expense to the parties.

Subp. 2. **Transcripts or recordings.** Official verbatim recordings or transcripts of an arbitration proceeding shall not be encouraged by the arbitrator. If a single party requests a transcript be made, and the matter is not addressed in the contract or grievance procedure, the arbitrator shall permit the record to be made if the party requesting the transcript makes the necessary arrangements, pays for all costs associated with the transcript, and provides copies to the other party and the arbitrator.

Subp. 3. **Tape recordings.** An arbitrator may use a tape recording of a hearing as a supplement to his or her notes. The tape of the hearing shall be regarded as the personal property of the arbitrator, but must be maintained by the arbitrator for not less than 90 days following issuance of the award.

Subp. 4. **Briefs.** Arbitrators should not encourage the submission of post-hearing briefs unless the arbitrator determines that the case is of a sufficiently complex nature and warrants the need for a written summation of evidence and argument. If one or both parties desire to submit briefs, the arbitrator shall establish a prompt schedule.

Subp. 5. **Payment of fees and costs.** Parties requesting panels under this chapter must pay the reasonable fees and costs of the arbitrator promptly. Each party to the dispute is responsible for their pro rata share of the arbitrator's fees and costs, except as otherwise provided by the express terms of the agreement to arbitrate. In the event of a dispute between

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one or both parties and the arbitrator over the arbitrator's fees or costs, the party contesting the fee may request arbitration of the fee dispute under subpart 6.

Subp. 6. **Dispute over fees.** If a party believes that the fees or expenses charged by an arbitrator are inappropriate or incorrect and is unable to resolve the matter through discussion with the arbitrator, that party may submit a written statement of protest to the commissioner within 30 calendar days of receipt of the arbibrator's invoice. The protest shall provide the specific basis for the objection and a copy shall be provided to the arbitrator and the other party. The commissioner shall investigate and respond to the complaint promptly and if the commissioner believes further examination is necessary, the matter will be referred to a panel of the advisory committee consisting of one union representative, one employer representative, and one roster member, all of whom shall be selected by the commissioner. The panel shall investigate the matter, provide all parties at interest an opportunity to be fairly heard, and issue a written decision that is final and binding upon the parties and the arbitrator.

5530.1100 EXPEDITED ARBITRATION.

Subpart 1. **Request for expedited arbitration.** Parties may use expedited procedures for arbitrating a dispute by filing a joint written request with the commissioner. The request must be signed by authorized representatives from both parties and contain the following information:

A. name, address, and telephone number of the employer and the employer's representative;

B. name, address, and telephone number of the exclusive representative and the agent of the exclusive representative; and

C. a brief statement of the nature of the dispute, for example, discharge, discipline, or holiday pay.

Subp. 2. **Appointment of arbitrator.** The commissioner shall appoint a single arbitrator from the expedited panel of

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roster members maintained for this purpose. The arbitrator appointed by the commissioner shall hear and decide the case according to this part.

Subp. 3. **Disclosures.** If, after appointment to a case, the arbitrator discovers any circumstance likely to prevent a prompt hearing or which presents a potential conflict of interest or other circumstance detrimental to the intent of this part, the arbitrator shall promptly notify the parties and the commissioner. Under such circumstances, the commissioner shall immediately appoint a new arbitrator from the expedited panel, unless the parties otherwise mutually agree.

Subp. 4. **Scheduling of hearing.** The commissioner shall fix the time and date for a hearing on the matter in dispute. The hearing will be held in the offices of the bureau, or at a location mutually agreed upon by the parties and the arbitrator, within 15 working days of receipt of the joint request. The commissioner shall provide at least 48 hours' advance notice, written or oral, before any hearing under this part.

Subp. 5. **Conduct of hearing.** All hearings under this part shall be closed to the public, pursuant to Minnesota Statutes, section 179A.14, subdivision 3, and no verbatim transcripts or audio-magnetic recordings shall be permitted. Each party may be represented by counsel or other representative, but each party shall be limited to a total of 90 minutes for presentation of its case and arguments. The arbitrator shall determine all procedural questions not addressed by this part, including order of presentation, framing of the issue, and sequestering of witnesses, if any. Under unusual circumstances and for demonstrated good cause, as determined by the arbitrator, the arbitrator may schedule an additional hearing on the matter, provided the hearing is conducted within five working days. The arbitrator may proceed in the absence of a party who, after due notice, fails to appear, but the arbitrator must rely on the evidence actually presented when reaching an award.

Subp. 6. **Evidence.** Parties shall limit the number and extent of exhibits to those that are essential and relevant to

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the contentions of that party. The arbitrator shall be the sole judge of the relevance, materiality, and weight of the evidence offered. The arbitrator may receive and consider evidence in the form of affidavit, but shall give appropriate weight to any objections raised by the other party. All written material to be considered by the arbibrator must be presented during the hearing. There shall be no pre-hearing or post-hearing submissions.

Subp. 7. **Written briefs.** There shall be no post-hearing briefs.

Subp. 8. **Issuance of award.** The arbitrator shall issue a brief written award within five working days from the close of the hearing. The award shall be simultaneously mailed to both parties and the commissioner. The arbitrator may orally notify the parties of the decision at the time that the award is mailed, provided both parties are notified in a timely fashion.

Subp. 9. **Precedential value.** Awards issued under this expedited procedure shall have no precedential value.

Subp. 10. **Fees and expenses.** The arbitrator shall receive a total fee of $450 per award issued under this part, plus reasonable and actual expenses. Unless otherwise specifically provided by the parties' contract or agreement to arbitrate, each party is responsible for one-half of the total fee and expenses.

Subp. 11. **Cancellation fee.** If the parties withdraw a request for expedited arbitration under this part within seven calendar days of a scheduled hearing, the parties are responsible for a cancellation fee of $100 each, payable to the arbitrator.

5530.1200 PERFORMANCE MEASURES.

Subpart 1. **Renewal criteria.** When reviewing an application for renewal appointment to the roster, the commissioner shall use the criteria in subparts 2 to 7 in determining whether or not to reappoint.

Subp. 2. **Selection rate.** The commissioner shall develop

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and maintain reliable data concerning the frequency with which individuals are selected by parties from panels referred by the bureau. A selection frequency that falls in the upper three quartiles of the frequencies of all arbitrators on the roster is evidence that an arbitrator has established acceptability among the parties who use the roster. Appointments under part 5530.1100 shall not be considered in determining selection frequency. A selection rate in the lowest quartile shall not be the sole basis for failure to reappoint unless the arbitrator has been in the lowest quartile for two consecutive years and was selected for fewer than three cases in the most recent 12-month period.

Subp. 3. **Scheduling.** A lack of substantiated written complaints from parties that an arbitrator has failed to offer a reasonable number of dates on which the arbitrator is available to hear a case within 60 days of the arbitrator's notification of selection is evidence that an arbitrator is meeting the availability standards of this chapter.

Subp. 4. **Timeliness.** The commissioner shall consider the mean number of calendar days between the close of the record in a case and the issuance of an award during the preceding 12 months to determine whether or not roster members are meeting timeliness requirements. In evaluating the data, the commissioner shall rely on information provided by the arbitrator under part 5530.0800, subpart 9, and data available from awards on file with the commissioner, but shall not consider awards issued under part 5530.1100. A mean that exceeds 60 days is evidence that an arbitrator is not timely in the handling of cases, but shall not be the sole basis for a determination not to reappoint.

Subp. 5. **Evaluation by parties.** The commissioner shall encourage evaluations of the performance of roster members by the parties. Both individual and summary evaluation information shall be considered by the commissioner.

Subp. 6. **Availability.** Arbitrators who have been available to accept cases for at least 18 of the preceding 36

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months, including at least six of the preceding 12 months, meet the availability requirements for reappointment.

Subp. 7. **General professional criteria.** All roster members are required to maintain proficiency and competency in the areas in part 5530.0700, subpart 2. Failure of an arbitrator to comply with this chapter, including the submission of information or reports, shall be grounds for removing or not reappointing a roster member.

5530.1300 DISCIPLINARY OR REMOVAL PROCEDURES.

Subpart 1. **General.** Membership on the roster is a privilege and no arbitrator has a right to placement on the roster. The commissioner has authority to investigate all complaints and allegations regarding the professional performance and compliance with this chapter by members of the roster. The commissioner shall advise, counsel, suspend, or remove roster members when the results of an investigation demonstrate violation by the arbitrator of the performance, professional, or ethical standards established by this chapter.

Subp. 2. **Preliminary investigation.** When the commissioner receives a complaint regarding violation of this chapter by a member of the roster, the commissioner shall conduct an informal investigation of the matter to determine if there is probable cause to believe that a roster member has violated any requirements of this chapter. In the absence of a violation, the commissioner shall take no further action. If further action on the matter is warranted, the commissioner shall suspend the roster member from further referrals pending the conclusion of proceedings under this chapter.

Subp. 3. **Notice.** When the commissioner finds probable cause to believe that a violation of this chapter has occurred and that removal or disciplinary suspension of a roster member should be considered, the commissioner shall provide written notice to the roster member and the advisory committee. The written notice must contain the nature of the action being considered and the reasons for it. The notice shall provide an

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opportunity for the roster member to respond in writing and shall fix a date for a hearing on the matter before the commissioner or a designated representative, if the roster member wishes to contest the proposed action.

Subp. 4. **Hearing.** If a hearing on a disciplinary matter is requested by the affected roster member, the commissioner or the commissioner's representative shall convene and conduct a hearing pursuant to part 5510.1910, subparts 6, 8, 9, 10, 12, 13, and 14. Advisory committee members may attend the hearing or review the audio-magnetic recording from the proceedings.

Subp. 5. **Determination.** The commissioner shall determine the action to be taken with respect to the member's status on the roster, based on the record of the hearing, the recommendations of the advisory committee, and this chapter. The determination is a final decision.

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Office of the Revisor of Statutes

Administrative Rules

TITLE: Proposed Permanent Rules Relating to Arbitration Roster

AGENCY: Bureau of Mediation Services

MINNESOTA RULES: Chapter 5530

INCORPORATIONS BY REFERENCE:

Rule Numbers and Material Incorporated:

5530.0800, subpart 2: Code of Professional Responsibility for Arbitrators of Labor-Management Disputes approved and published by National Academy of Arbitrators.

The attached rules are approved for publication in the State Register

John C. Fuller
Assistant Deputy Revisor

Bureau of Mediation Services

Proposed Permanent Rules Relating to Arbitration Roster

Rules as Proposed (all new material)

5530.0100 APPLICATION.

This chapter applies to the empanelment, referral, conduct, and removal of persons on the arbitrator roster maintained by the commissioner. 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. Nothing in this chapter is intended to limit the right of the parties to jointly select any arbitrator or arbitration procedure which is acceptable to them.

5530.0200 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, chapters 179 and 179A.

5530.0300 DEFINITIONS.

Subpart 1. **Advisory committee.** "Advisory committee" means a committee consisting of three union representatives, three employer representatives, and two roster members that are appointed by the commissioner under Minnesota Statutes, section 15.014, to advise the commissioner regarding the appointment and removal of persons to the arbitrator roster. The committee shall not expire as provided by Minnesota Statutes, section 15.059.

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Subp. 2. **Applicant.** "Applicant" means an individual who is seeking appointment to the roster.

Subp. 3. **Arbitrator roster or roster.** "Arbitrator roster" or "roster" means a listing of persons determined by the commissioner to be qualified and available for referral as an arbitrator of labor disputes under this chapter.

Subp. 4. **Bureau.** "Bureau" means the Bureau of Mediation Services.

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

Subp. 6. **Commissioner.** "Commissioner" means the commissioner of the Bureau of Mediation Services.

Subp. 7. **Expedited panel.** "Expedited panel" means a list established by the commissioner of roster members who are willing and able to handle expedited cases under part 5530.1100.

Subp. 8. **Initial appointment.** "Initial appointment" means a new appointment to the roster of a person who is not listed on the roster at the time application for appointment is made.

Subp. 9. **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 commissioner is considered the date of issuance for purposes of this chapter.

Subp. 10. **Panel.** "Panel" means a listing of roster members compiled by the commissioner for referral to the parties, from which they may subsequently select an arbitrator.

Subp. 11. **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.

Subp. 12. **Probationary appointment.** "Probationary appointment" means a temporary appointment not exceeding 24 months in duration for purposes of further evaluating the performance, acceptability, or conduct of a roster member.

Subp. 13. **Renewal appointment.** "Renewal appointment" means the appointment of an existing roster member to an

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additional term as a roster member.

5530.0400 ROLE OF BUREAU.

The role of the bureau 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 bureau 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, except as provided in part 5530.1000, subpart 6.

5530.0500 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 bureau 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 a dispute.

5530.0600 ARBITRATOR QUALIFICATIONS.

Subpart 1. **General labor relations background.** Persons seeking appointment to the arbitrator roster must have substantial knowledge of collective bargaining and labor relations matters in the public or private sectors, be well versed in applicable state and federal law, and be experienced and knowledgeable in the field of labor arbitration.

Subp. 2. **General abilities.** Potential applicants for placement on the roster must be willing and able to travel throughout Minnesota, conduct hearings in a fair and impartial manner, analyze and evaluate testimony and exhibits, write clear

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and concise awards in a timely manner, and be available for hearings within a reasonable time after the request of the parties.

Subp. 3. **Advocacy disqualification.** No applicant or roster member may currently, or within the preceding 12 months, have functioned as an advocate for any public or private sector employer, employee, or employee organization in any phase of labor management relations. This prohibition applies to employee discharge or disciplinary appeal proceedings, whether or not the employee is represented by an exclusive representative. The commissioner shall disqualify individuals who are closely associated with firms or organizations that function as advocates from appointment to particular panels, when the appointment would present the appearance of a conflict of interest.

Subp. 4. **Demonstrating qualifications.** The burden for establishing qualifications for appointment on the roster is on the person seeking appointment. The commissioner will examine the evidence to determine the complexity of issues the applicant claims experience in, and the technical, theoretical understanding the applicant has demonstrated in handling such matters, and shall make appointments to the roster pursuant to part 5530.0700, subpart 6. Evidence of an applicant's qualification may be advanced in one or a combination of the following ways:

A. submission of six or more arbitration awards or contested case decisions that were authored and signed by the applicant in the 24-month period preceding application;

B. a minimum of six years' experience as a full-time labor relations advocate and submission of six arbitration awards in which the applicant acted as the principal representative for either labor or management;

C. a minimum of six years' experience as a full-time labor mediator, including substantial grievance mediation experience;

D. a minimum of six years' experience as a

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practitioner or full-time instructor of labor law or industrial relations, including substantial content in the area of collective bargaining, labor agreements, and contract administration;

E. membership in the National Academy of Arbitrators; and

F. satisfactory completion of a formalized course of instruction and internship in a program that has been approved by the commissioner in advance of participation or enrollment by the applicant. The program must include the writing of not less than two mock awards under the supervision and guidance of an arbitrator already admitted to the roster or otherwise approved in advance by the commissioner.

Subp. 5. **Domicile.** To be eligible for appointment or continuation on the roster, individuals must maintain a principal place of residence in Minnesota or one of its contiguous states. The maintenance of a mail box or mail delivery point is not sufficient to satisfy the requirement of this subpart.

5530.0700 APPOINTMENT TO ROSTER.

Subpart 1. **Size of roster.** The size of the arbitrator roster shall be not fewer than 25 nor more than 50 members. Annually, the commissioner shall determine whether or not to add members to the roster based on the number of referrals over the preceding 12 months and projected referrals from the roster over the next 12 months.

Subp. 2. **Procedure; initial appointments.** When, pursuant to subpart 1, the commissioner determines that it is appropriate to make additional appointments to the roster, the commissioner shall:

A. publish notice in the State Register for not less than 30 days, indicating that applications for appointment are being accepted and establishing a deadline for the applications;

B. in conjunction with the advisory committee, conduct interviews of applicants selected for further

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consideration, to further assess the applicant's qualifications and suitability for appointment to the roster;

C. advise all applicants in writing regarding the commissioner's final determination with respect to their application;

D. actively solicit qualified applicants who will help provide balance in the racial and gender composition of the roster; and

E. conduct an initial review of applications received and, based on the information provided in the application, reference checks, and the arbitrator qualification requirements of this chapter, select or reject applications for further consideration. The commissioner may conduct additional investigations regarding the application if necessary to obtain a full understanding of the applicant's qualifications.

Subp. 3. **Procedure; renewal appointments.** The commissioner shall notify all roster members not less than 120 days before the expiration of their appointment of the procedures necessary for reappointment to the roster. The appointment of one-third of the members on the roster at the time this chapter is adopted shall expire on July 30, 1991; an additional one-third shall expire on July 30, 1992; and the final one-third shall expire on July 30, 1993. The names of roster members falling into each one-third shall be determined by lot. Persons desiring to renew their appointment on the roster shall submit a written application and fee to the commissioner not less than 60 days before the expiration of their appointment. Following receipt of a renewal application, the commissioner shall review available referral, performance, and activity records of the applicant and proceed according to subpart 6.

Subp. 4. **Application forms.** Individuals who wish to be considered for initial or renewal appointment to the roster must complete an application on forms available from the bureau. Writing samples must accompany the application.

Subp. 5. **Application fee.** A nonrefundable application fee

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of $50 for initial appointments and $25 for renewals must accompany each application for appointment or renewal. The fee must be in the form of a check or money order made payable to "State of Minnesota, Bureau of Mediation Services."

Subp. 6. **Standards for appointment.** In determining whether or not to appoint a member to the roster, the commissioner shall evaluate each application for evidence of the applicant's competence, proficiency, and qualifications in the following areas:

A. knowledge and understanding of labor relations systems and collective bargaining processes and dynamics;

B. knowledge and understanding of applicable contract, employment, and labor relations law and rules;

C. ability to hear and decide complex labor relations issues in a fair and objective manner;

D. ability to communicate, both orally and in writing, in a clear and concise manner;

E. ability to conduct orderly and effective arbitration hearings in a variety of settings and locations throughout Minnesota; and

F. high moral character and integrity.

In addition to meeting these standards for appointment, roster members seeking reappointment must satisfy the requirements of part 5530.1200.

Subp. 7. **Disposition of applications.** If an applicant has satisfied the requirements of subpart 6, the commissioner shall appoint or reappoint the applicant to the roster. If the applicant has failed to satisfy the requirements of subpart 6, the commissioner shall reject the application in writing, including the reasons for the rejection. In the event that there are more qualified applicants than vacancies on the roster, the commissioner shall appoint applicants in rank order of their qualifications or by lottery where qualifications are relatively equal.

Subp. 8. **Term of appointment.** Initial appointments to the roster shall be for a term of five years. Renewal appointments

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to the roster shall be for a term of three years. The commissioner shall establish a common July 30 expiration date for all appointments for purposes of administrative convenience.

5530.0800 ARBITRATOR CONDUCT AND STANDARDS.

Subpart 1. **Scope.** The criteria and standards in subparts 2 to 10 apply to all persons on the roster. Failure to comply with these provisions constitutes grounds for disciplinary action or removal from the roster under part 5530.1300.

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. Single copies of the code are available without charge from the commissioner, and are available through the Minitex interlibrary loan system.

Subp. 3. **Conflicts of interest.** The arbitrator must disclose any personal or professional relationships, including direct or indirect past employment, consultative relationships, or affiliation with one of the parties, which may give an appearance of partiality. The burden of disclosure is on the arbitrator.

Subp. 4. **Communication with parties.** Arbitrators shall not solicit parties for selection to cases. All matters involving a case or contact with the parties must be handled in a manner that fosters the impartiality of the arbitrator. The arbitrator shall not communicate, directly or indirectly, in connection with any issue of fact or law with any person or party, except upon notice and opportunity for all parties to participate. When this chapter authorizes communications contrary to this part, the communications shall be limited to only those matters permitted by this chapter. The arbitrator may communicate regarding dates or procedures for the hearing

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without violating this part.

Subp. 5. **Use of assistants or associates.** An arbitrator may, without prior consent of the parties, delegate research, clerical, and preliminary 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.

Subp. 6. **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. The arbitrator must adhere to the time limits of the parties' arbitration procedure. When initially accepting and scheduling a case, or at the first reasonable opportunity to become aware of the time limits, the arbitrator must indicate whether or not the time limits specified in the arbitration procedure will present a problem in the timely handling of the case. Although the time limits specified in an arbitration procedure may be waived or extended by the parties, it is improper for an arbitrator to routinely request or suggest extensions. If, after accepting and hearing a case, the arbitrator discovers that he or she will be unable 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 the delay and shall seek approval for establishing an alternate date for completion of the award.

Subp. 7. **Administrative or cancellation fees.** Arbitrators may charge an administrative fee for establishing a case file and cancellation fees for hearings that are canceled or rescheduled by one or both parties with less than 21 calendar days' notice, provided the fees and policies are clearly noted on the biographic sketch for that arbitrator that is on file with the bureau.

Subp. 8. **Arbitration fees.** All fees charged by an arbitrator selected under this chapter shall be based on the per diem fee schedule in the biographic sketch on file with the

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commissioner. The arbitrator shall maintain reasonable time and expense records related to each case and, in the event of a dispute over the reasonableness of fees and expenses in a case, shall make the records available to the parties or the commissioner, upon written demand. Disputes over the reasonableness of fees may be resolved under part 5530.1000, subpart 6.

Subp. 9. **Filing copies of awards.** Unless one or both private sector parties have specifically requested that an award not be provided to the commissioner, arbitrators shall submit copies of all awards involving Minnesota work sites to the commissioner, regardless of the source of appointment or selection. Roster members shall also provide the commissioner with a copy of all Minnesota public sector awards and all hearing officer reports filed as a result of selection under Minnesota Statutes, section 125.12. Awards filed with the commissioner are public documents.

Subp. 10. **Arbitrator fee and summary report.** For each award filed with the commissioner, whether originating from a bureau referral or other source, the arbitrator shall provide a summary report that discloses the following:

A. case identification information, including:

(1) arbitrator's name;

(2) case file number or bureau case number, if any;

(3) name and location of employer and name of employer's representative; and

(4) name of exclusive representative and agent of the exclusive representative;

B. case processing date information, including:

(1) date the grievance was filed or first made known to the employer;

(2) date arbitrator was notified of selection by parties;

(3) date of hearing;

(4) final date for submission of briefs or other

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written material, if any; and

(5) date award was issued; and

C. arbitrator fee and expense information for all awards resulting from a referral by the commissioner, including:

(1) number of days of hearing billed;

(2) number of days of study and preparation of award billed;

(3) number of days billed for travel;

(4) per diem rate for billing;

(5) travel expenses billed;

(6) other expenses billed;

(7) total fees and expenses charged; and

(8) amount of the total costs to be paid by each party.

Forms for reporting this information must be furnished by the bureau.

5530.0900 PANEL SELECTIONS AND REFERRALS.

Subpart 1. **Request for panels.** Individuals or organizations desiring a panel of arbitrators drawn from the roster shall submit individual or joint written requests that include the following:

A. the name and location of the employer and the name, address, and telephone number of the employer's representative;

B. the name of the employee organization and the name, address, and telephone number of the employee organization's representative;

C. a brief statement of the nature of the dispute being submitted to arbitration, for example, discharge or overtime pay;

D. the nature or type of business of the employer;

E. a description of the type of bargaining unit involved, for example, clerical, maintenance, dietary, or teacher; and

F. the date the grievance or dispute was first made

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known to the employer.

Subp. 2. **Size and selection of panels.** Unless a single arbitrator is to be apppointed under subpart 3, all panels submitted by the commissioner shall contain seven names. When the parties' arbitration agreement provides for panels of fewer than seven names, the parties may use the striking procedures in subpart 5 to reduce the size of a seven-member panel. In assembling panels, the commissioner shall use a random selection system that results in a reasonably equal number of opportunities for referral among roster members who have been on the roster for three or more years. When possible, no more than three arbitrators who have been on the roster for less than three years shall be included on a single panel, but the commissioner shall provide greater referral opportunities for those individuals. In assembling panels, the commissioner shall seek to avoid potential conflicts of interest and shall include or exclude roster members pursuant to mutual requests of the parties. Geographic location or unique and special circumstances and technical expertise must be considered by the commissioner when the parties request that those factors be considered. At least five members of the panel must be residents of Minnesota.

Subp. 3. **Direct appointment by commissioner.** The commissioner shall appoint one person from the roster to serve as the arbitrator whenever the agreement to arbitrate or other joint agreement of the parties provides for direct appointments.

Subp. 4. **Replacement panels or names.** Upon the joint request of the parties, the commissioner shall issue a new panel of seven names to replace a prior panel. No more than one replacement panel will be provided in any one case. Single-party requests for replacement panels will not be honored unless the commissioner determines that a bona fide conflict of interest exists regarding the matter in dispute between one or more parties and two or more members of the panel. If a conflict is found by the commissioner, a single replacement panel will be issued.

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Subp. 5. **Selection from panels.** The parties shall select an arbitrator or arbitrators from the panel under the terms of their agreement or grievance procedure. In the absence of an agreement, the selection shall be made by alternately deleting names from the panel until the required number of names remain. Determining which party shall delete the first name shall be accomplished by a toss of a coin.

Subp. 6. **Scheduling.** Notifying the arbitrators of their selection and the scheduling of the arbitration hearing is the responsibility of the parties. Once the initial arbitration hearing has been established, the party who requested the panel shall notify the commissioner of the arbitrators selected, the date the selection was made, and the date of the initial arbitration hearing.

Subp. 7. **Biographic data.** The bureau shall review and prepare a biographic sketch of each member on the roster annually, based on information provided by that member and other information available to the commissioner. The sketches must include information about the arbitrator's background, education, and experience, as well as data regarding the arbitrator's fee schedule and acceptance of hearing officer duties under Minnesota Statutes, section 125.12. The mean number of calendar days required by each arbitrator to issue an award during the preceding year, as well as the upper and lower limits and number of cases used to determine that mean, based on records on file with the bureau, shall be included on the biographic sketch for that arbitrator beginning July 30, 1991. Arbitrators are responsible for ensuring the accuracy of all other biographic and fee data on the sketch. Single copies of the sketches will be made available to parties with the referral of panels.

Subp. 8. **Jurisdiction of bureau.** Submission of a panel or appointment of an arbitrator under this chapter signifies nothing more than compliance with a request and is not a determination as to the legitimacy of the dispute or the competency of the arbitrators to resolve it. The bureau does

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not have jurisdiction or responsibility for enforcement, resolution, or compliance with any aspect of the arbitration process other than providing the services specifically established by this chapter.

5530.1000 ARBITRATION PROCEEDINGS.

Subpart 1. **Responsibility of arbitrators.** Arbitrators selected as a result of referral on a bureau panel must ensure that a fair, adequate, and timely hearing is conducted in a manner that reasonably minimizes cost and expense to the parties.

Subp. 2. **Transcripts or recordings.** Official verbatim recordings or transcripts of an arbitration proceeding shall not be encouraged by the arbitrator. If a single party requests a transcript be made, and the matter is not addressed in the contract or grievance procedure, the arbitrator shall permit the record to be made if the party requesting the transcript makes the necessary arrangements, pays for all costs associated with the transcript, and provides copies to the other party and the arbitrator.

Subp. 3. **Tape recordings.** An arbitrator may use a tape recording of a hearing as a supplement to his or her notes. The tape of the hearing shall be regarded as the personal property of the arbitrator, but must be maintained by the arbitrator for not less than 90 days following issuance of the award.

Subp. 4. **Briefs.** Arbitrators should not encourage the submission of post-hearing briefs unless the arbitrator determines that the case is of a sufficiently complex nature and warrants the need for a written summation of evidence and argument. If one or both parties desire to submit briefs, the arbitrator shall establish a prompt schedule.

Subp. 5. **Payment of fees and costs.** Parties requesting panels under this chapter must pay the reasonable fees and costs of the arbitrator promptly. Each party to the dispute is responsible for their pro rata share of the arbitrator's fees and costs, except as otherwise provided by the express terms of the agreement to arbitrate. In the event of a dispute between

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one or both parties and the arbitrator over the arbitrator's fees or costs, the party contesting the fee may request arbitration of the fee dispute under subpart 6.

Subp. 6. **Dispute over fees.** If a party believes that the fees or expenses charged by an arbitrator are inappropriate or incorrect and is unable to resolve the matter through discussion with the arbitrator, that party may submit a written statement of protest to the commissioner within 30 calendar days of receipt of the arbibrator's invoice. The protest shall provide the specific basis for the objection and a copy shall be provided to the arbitrator and the other party. The commissioner shall investigate and respond to the complaint promptly and if the commissioner believes further examination is necessary, the matter will be referred to a panel of the advisory committee consisting of one union representative, one employer representative, and one roster member, all of whom shall be selected by the commissioner. The panel shall investigate the matter, provide all parties at interest an opportunity to be fairly heard, and issue a written decision that is final and binding upon the parties and the arbitrator.

5530.1100 EXPEDITED ARBITRATION.

Subpart 1. **Request for expedited arbitration.** Parties may use expedited procedures for arbitrating a dispute by filing a joint written request with the commissioner. The request must be signed by authorized representatives from both parties and contain the following information:

A. name, address, and telephone number of the employer and the employer's representative;

B. name, address, and telephone number of the exclusive representative and the agent of the exclusive representative; and

C. a brief statement of the nature of the dispute, for example, discharge, discipline, or holiday pay.

Subp. 2. **Appointment of arbitrator.** The commissioner shall appoint a single arbitrator from the expedited panel of

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roster members maintained for this purpose. The arbitrator appointed by the commissioner shall hear and decide the case according to this part.

Subp. 3. **Disclosures.** If, after appointment to a case, the arbitrator discovers any circumstance likely to prevent a prompt hearing or which presents a potential conflict of interest or other circumstance detrimental to the intent of this part, the arbitrator shall promptly notify the parties and the commissioner. Under such circumstances, the commissioner shall immediately appoint a new arbitrator from the expedited panel, unless the parties otherwise mutually agree.

Subp. 4. **Scheduling of hearing.** The commissioner shall fix the time and date for a hearing on the matter in dispute. The hearing will be held in the offices of the bureau, or at a location mutually agreed upon by the parties and the arbitrator, within 15 working days of receipt of the joint request. The commissioner shall provide at least 48 hours' advance notice, written or oral, before any hearing under this part.

Subp. 5. **Conduct of hearing.** All hearings under this part shall be closed to the public, pursuant to Minnesota Statutes, section 179A.14, subdivision 3, and no verbatim transcripts or audio-magnetic recordings shall be permitted. Each party may be represented by counsel or other representative, but each party shall be limited to a total of 90 minutes for presentation of its case and arguments. The arbitrator shall determine all procedural questions not addressed by this part, including order of presentation, framing of the issue, and sequestering of witnesses, if any. Under unusual circumstances and for demonstrated good cause, as determined by the arbitrator, the arbitrator may schedule an additional hearing on the matter, provided the hearing is conducted within five working days. The arbitrator may proceed in the absence of a party who, after due notice, fails to appear, but the arbitrator must rely on the evidence actually presented when reaching an award.

Subp. 6. **Evidence.** Parties shall limit the number and extent of exhibits to those that are essential and relevant to

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the contentions of that party. The arbitrator shall be the sole judge of the relevance, materiality, and weight of the evidence offered. The arbitrator may receive and consider evidence in the form of affidavit, but shall give appropriate weight to any objections raised by the other party. All written material to be considered by the arbibrator must be presented during the hearing. There shall be no pre-hearing or post-hearing submissions.

Subp. 7. **Written briefs.** There shall be no post-hearing briefs.

Subp. 8. **Issuance of award.** The arbitrator shall issue a brief written award within five working days from the close of the hearing. The award shall be simultaneously mailed to both parties and the commissioner. The arbitrator may orally notify the parties of the decision at the time that the award is mailed, provided both parties are notified in a timely fashion.

Subp. 9. **Precedential value.** Awards issued under this expedited procedure shall have no precedential value.

Subp. 10. **Fees and expenses.** The arbitrator shall receive a total fee of $450 per award issued under this part, plus reasonable and actual expenses. Unless otherwise specifically provided by the parties' contract or agreement to arbitrate, each party is responsible for one-half of the total fee and expenses.

Subp. 11. **Cancellation fee.** If the parties withdraw a request for expedited arbitration under this part within seven calendar days of a scheduled hearing, the parties are responsible for a cancellation fee of $100 each, payable to the arbitrator.

5530.1200 PERFORMANCE MEASURES.

Subpart 1. **Renewal criteria.** When reviewing an application for renewal appointment to the roster, the commissioner shall use the criteria in subparts 2 to 7 in determining whether or not to reappoint.

Subp. 2. **Selection rate.** The commissioner shall develop

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and maintain reliable data concerning the frequency with which individuals are selected by parties from panels referred by the bureau. A selection frequency that falls in the upper three quartiles of the frequencies of all arbitrators on the roster is evidence that an arbitrator has established acceptability among the parties who use the roster. Appointments under part 5530.1100 shall not be considered in determining selection frequency. A selection rate in the lowest quartile shall not be the sole basis for failure to reappoint unless the arbitrator has been in the lowest quartile for two consecutive years and was selected for fewer than three cases in the most recent 12-month period.

Subp. 3. **Scheduling.** A lack of substantiated written complaints from parties that an arbitrator has failed to offer a reasonable number of dates on which the arbitrator is available to hear a case within 60 days of the arbitrator's notification of selection is evidence that an arbitrator is meeting the availability standards of this chapter.

Subp. 4. **Timeliness.** The commissioner shall consider the mean number of calendar days between the close of the record in a case and the issuance of an award during the preceding 12 months to determine whether or not roster members are meeting timeliness requirements. In evaluating the data, the commissioner shall rely on information provided by the arbitrator under part 5530.0800, subpart 9, and data available from awards on file with the commissioner, but shall not consider awards issued under part 5530.1100. A mean that exceeds 60 days is evidence that an arbitrator is not timely in the handling of cases, but shall not be the sole basis for a determination not to reappoint.

Subp. 5. **Evaluation by parties.** The commissioner shall encourage evaluations of the performance of roster members by the parties. Both individual and summary evaluation information shall be considered by the commissioner.

Subp. 6. **Availability.** Arbitrators who have been available to accept cases for at least 18 of the preceding 36

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months, including at least six of the preceding 12 months, meet the availability requirements for reappointment.

Subp. 7. **General professional criteria.** All roster members are required to maintain proficiency and competency in the areas in part 5530.0700, subpart 2. Failure of an arbitrator to comply with this chapter, including the submission of information or reports, shall be grounds for removing or not reappointing a roster member.

5530.1300 DISCIPLINARY OR REMOVAL PROCEDURES.

Subpart 1. **General.** Membership on the roster is a privilege and no arbitrator has a right to placement on the roster. The commissioner has authority to investigate all complaints and allegations regarding the professional performance and compliance with this chapter by members of the roster. The commissioner shall advise, counsel, suspend, or remove roster members when the results of an investigation demonstrate violation by the arbitrator of the performance, professional, or ethical standards established by this chapter.

Subp. 2. **Preliminary investigation.** When the commissioner receives a complaint regarding violation of this chapter by a member of the roster, the commissioner shall conduct an informal investigation of the matter to determine if there is probable cause to believe that a roster member has violated any requirements of this chapter. In the absence of a violation, the commissioner shall take no further action. If further action on the matter is warranted, the commissioner shall suspend the roster member from further referrals pending the conclusion of proceedings under this chapter.

Subp. 3. **Notice.** When the commissioner finds probable cause to believe that a violation of this chapter has occurred and that removal or disciplinary suspension of a roster member should be considered, the commissioner shall provide written notice to the roster member and the advisory committee. The written notice must contain the nature of the action being considered and the reasons for it. The notice shall provide an

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opportunity for the roster member to respond in writing and shall fix a date for a hearing on the matter before the commissioner or a designated representative, if the roster member wishes to contest the proposed action.

Subp. 4. **Hearing.** If a hearing on a disciplinary matter is requested by the affected roster member, the commissioner or the commissioner's representative shall convene and conduct a hearing pursuant to part 5510.1910, subparts 6, 8, 9, 10, 12, 13, and 14. Advisory committee members may attend the hearing or review the audio-magnetic recording from the proceedings.

Subp. 5. **Determination.** The commissioner shall determine the action to be taken with respect to the member's status on the roster, based on the record of the hearing, the recommendations of the advisory committee, and this chapter. The determination is a final decision.

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Office of the Revisor of Statutes

Administrative Rules

TITLE: Proposed Permanent Rules Relating to Arbitration Roster

AGENCY: Bureau of Mediation Services

MINNESOTA RULES: Chapter 5530

INCORPORATIONS BY REFERENCE:

Rule Numbers and Material Incorporated:

5530.0800, subpart 2: Code of Professional Responsibility for Arbitrators of Labor-Management Disputes approved and published by National Academy of Arbitrators.

The attached rules are approved for publication in the State Register

John C. Fuller
Assistant Deputy Revisor

In the Matter of the Adoption of Rules of the State Bureau of Mediation Services Relating to the Arbitration Roster

DECLARATION OF COUNSEL

I, Andrea Kircher, Special Assistant Attorney General, do hereby declare that I have examined the above-captioned rule, and the supporting rulemaking record, and that, based on my examination, the Administrative Procedure Act and Minnesota Rules, chapter 2010 have been followed. Any exceptions are listed below. For Attorney General billing purposes, the four-digit docket client code is 0650.

A M Kircher

Andrea Kircher
Special Assistant
Attorney General

Dated: 10-31-89

STATE OF MINNESOTA

BUREAU OF MEDIATION SERVICES

In the Matter of Permanent Rules Relating to Arbitration Roster	FINDINGS OF FACT, CONCLUSIONS, AND ORDER ADOPTING RULES WITHOUT PUBLIC HEARING

(1) Notice of the Commissioner's intent to adopt the above-entitled rules was published in the State Register on July 10, 1989, and was sent by United States mail to all persons on the list maintained by the agency pursuant to Minn. Stat. S 14.14 (1988), subd. 1a and 14.22 on July 10, 1989. (2) The statement of need and reasonableness was prepared before July 10, 1989, and was available to the public.

(4) All persons were given the opportunity to submit comments on the rules for 30 days after notice of proposed rulemaking. (5) Two requests for a public hearing on the rule were received by the agency. (3) A copy of the notice and the proposed rule were submitted to the chairs of the House Appropriations Committee and Senate Finance Committee prior to submission to the State Register.

(7) Twelve submissions or comments on the rules were received by the agency. No requests for notice of submission to the attorney general were received by the agency.

Based upon the comments and evidence in the record before the agency, I find the following:

(6) 1. Part 5530.0300, subp. 1, of the proposed rules as published on July 10, 1989, defines an advisory committee of eight members to be appointed by the Commissioner pursuant to Minn. Stat. S 15.014. The rule as adopted deletes the words "that are" from this subpart to provide grammatical clarity to the fact that the Commissioner appoints all eight members of this advisory committee.

2. Part 5530.0800, subp. 9, of the proposed rules as published on July 10, 1989, required members of the Bureau's arbitration roster to submit to the agency copies of reports prepared by such members as a result of service as a hearing officer under teacher tenure laws (Minn. Stat. S 125.12) and further provided that such copies would be considered a public document. The rule as adopted removes this requirement, thus eliminating the inconsistency between the proposed rule and data privacy provisions of the Minnesota Government Data Practices Act, Minn. Stat. chapter 13.

3. The adopted rules are not a substantial change from the rules as proposed because:

a) The classes of persons who might be expected to comment on the proposed rule and who are affected by the rule is unchanged: Labor unions, employer, and labor arbitrators;

b) The subject matter covered by the proposed and adopted rules is the same: Labor arbitration and the roster of labor arbitrators maintained by the agency; and

c) The changes made in the rule as adopted merely clarify policies, remove ambiguity, and bring the rules into conformance with state law. The proposed rules were adequately notices and invited comments are to their technical aspects. No person or class of persons affected by the rules is disadvantaged by the change in the adopted rule.

4. (8) The above captioned rules are needed and reasonable.

NOW, THEREFORE, IT IS ORDERED that the rules identified as Minnesota Rules: Parts 5530.0100 to 5530.1300 are adopted this 31st day of October, 1989, pursuant to the authority vested in me by Minn. Stat. S 179.02, subd. 4 (1989).

(9)

Signature: Paul W. Goldberg
Name: PAUL W. GOLDBERG
Title: Commissioner

In the Matter of the Proposed Adoption of Rules of the State Bureau of Mediation Services Relating to the Arbitration Roseter

AFFIDAVIT OF MAILING THE NOTICE OF INTENT TO ADOPT A RULE WITHOUT A PUBLIC HEARING AND CERTIFICATE OF MAILING LIST

STATE OF MINNESOTA)
)ss.
COUNTY OF RAMSEY)

Carol S. Clifford being sworn, says:

I hereby certify that the list of persons and associations who have requested, pursuant to Minnesota Statutes, sections 14.14, subdivision 1a and 14.22 or 14.30, that their names be placed on the State Bureau of Mediation Services rulemaking mailing list is accurate, complete, and current as of this 11th day of July, 1989.

That on the 11th day of July, 1989, at the City of St. Paul, County of Ramsey, State of Minnesota, I mailed the attached Notice of Intent to Adopt A Rule Without a Public Hearing by depositing in the State of Minnesota Central Mail System for United States mailing, a copy thereof, with postage prepaid, to all persons and associations on the aforementioned mailing list.

Carol S. Clifford
Name

Administrative Secretary
Title

LINDA L. TAUER
NOTARY PUBLIC—MINNESOTA
RAMSEY COUNTY
MY COMM. EXPIRES DEC. 29, 1991

Subscribed and sworn to before me this 13th day of September 1989.

Linda L. Tauer

B. the variable nature of benefits provided; and

C. any mortality guarantees.

As a minimum, the separate account liability will equal the surrender value based upon the market-value adjustment formula contained in the contract. If that liability is greater than the market value of the assets, a transfer of assets will be made into the separate account so that the market value of the assets at least equals that of the liabilities. Also, any additional reserve that is needed to cover future guaranteed benefits will also be set up by the valuation actuary.

The market-value adjustment formula, the interest guarantee, and the degree to which projected cash flow of assets and liabilities are matched must also be considered. Each year, the valuation actuary must provide an opinion on whether the assets in the separate account are adequate to provide all future benefits that are guaranteed.

2751.0900 SEPARATE ACCOUNTS.

Subpart 1. **Establishment and administration.** Any domestic insurer issuing modified guaranteed annuities shall establish one or more separate accounts pursuant to *Minnesota Statutes*, section 61A.14.

Subp. 2. **Amounts.** The insurer shall maintain in each separate account assets with a market or other value meeting the standards set out in *Minnesota Statutes*, section 61A.14, at least equal to the valuation reserves and other contract liabilities respecting such account.

Subp. 3. **Valuation of assets.** Investments of the separate account shall be valued at their market value on the date of valuation, or at amortized cost if it approximates market value, or pursuant to standards contained in *Minnesota Statutes*, section 61A.14.

Subp. 4. **Applicability of other laws.** Unless otherwise approved by the commissioner, separate accounts relating to modified guaranteed annuities will be subject to investment laws applicable to the insurer's general asset account.

2751.1000 REPORTS TO POLICYHOLDERS.

Companies shall annually provide their contract holders with a report showing both the account value and the cash surrender value. The report must clearly indicate that the account value is prior to the application of any surrender charges or market value adjustment formula. It must also specify the surrender charge and market value adjustment used to determine the cash surrender value.

2751.1100 FOREIGN COMPANIES.

If the law or regulation in the place of domicile of a foreign company provides a degree of protection to the policyholders and the public which is substantially similar to that provided by this chapter, the commissioner to the extent the commissioner considers appropriate may consider compliance with that law or regulation as compliance with this chapter.

2751.1200 AUTHORIZATION OF AGENTS.

No person, corporation, partnership, or other legal entity may sell or offer for sale in this state any modified guaranteed annuity contract unless licensed to sell variable annuities under the insurance laws of this state.

Bureau of Mediation Services

Proposed Permanent Rules Relating to Arbitration Roster

Notice of Intent to Adopt a Rule Without a Public Hearing

NOTICE IS HEREBY GIVEN that the State Bureau of Mediation Services intends to adopt the above-entitled rules without a public hearing following the procedures set forth in the Administrative Procedure Act for adopted rules without a public hearing, *Minnesota Statutes*, sections 14.22 to 14.29. The statutory authority to adopt the rule is *Minnesota Statutes*, section 179.02, subdivision 4.

All persons have 30 days in which to submit comment in support of or in opposition to the proposed rule or any part or subpart of the rule. Comment is encouraged. Each comment should identify the portion of the proposed rule addressed, the reason for the comment, and any change proposed.

Any person may make written request for a public hearing on the rule within the 30-day comment period. If 25 or more persons submit a written request for a public hearing within the 30-day comment period, a public hearing will be held unless a sufficient number withdraw their request in writing. Any person requesting a hearing should state his or her name and address, and is encouraged to identify the portion of the proposed rule addressed, the reasons for the request and any change proposed. If a public hearing is required, the agency will proceed pursuant to *Minnesota Statutes*, sections 14.13 to 14.20.

Comments or written requests for a public hearing must be submitted to:

Paul W. Goldberg, Commissioner
Bureau of Mediation Services
1380 Energy Lane, Suite Two
St. Paul, MN 55108
(612) 649-5421

The proposed rule may be modified if the modifications are supported by data and views submitted to the agency and do not result in a substantial change in the proposed rule as noticed.

A copy of the proposed rule is attached to this notice.

A Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rule and identifies that data and information relied upon to support the proposed rule has been prepared and is available from Paul W. Goldberg, Commissioner, Bureau of Mediation Services, 1380 Energy Lane, Suite Two, St. Paul, Minnesota 55108.

You are hereby advised pursuant to *Minnesota Statutes*, section 14.115 (1988) that the proposed rules have a minor impact on small business. The requirements of these proposed rules are similar to the requirements of other state and federal agencies which empanel labor arbitrators and, therefore, do not impose additional requirements of a substantive or burdensome nature than would normally be faced by persons engaged in this profession. The agency has considered all of the provisions of *Minnesota Statutes*, section 14.115, subd. 2, in reducing the impact of these rules upon small businesses, has solicited opinions from directly affected small businesses, and is providing a copy of this notice and the proposed rules to all small businesses known to be affected by the rules.

If no hearing is required, upon adoption of the rule, the rule and the required supporting documents will be submitted to the Attorney General for review as to legality and form to the extent the form relates to legality. Any person may request notification of the date of submission to the Attorney General. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the adopted rule, must submit the written request to Paul W. Goldberg, Commissioner, Bureau of Mediation Services, 1380 Energy Lane, Suite Two, St. Paul, Minnesota, 55108.

Dated: 10 July 1989

Paul W. Goldberg
Commissioner

Rules as Proposed (all new material)

5530.0100 APPLICATION.

This chapter applies to the empanelment, referral, conduct, and removal of persons on the arbitrator roster maintained by the commissioner. 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. Nothing in this chapter is intended to limit the right of the parties to jointly select any arbitrator or arbitration procedure which is acceptable to them.

5530.0200 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*, chapters 179 and 179A.

5530.0300 DEFINITIONS.

Subpart 1. **Advisory committee.** "Advisory committee" means a committee consisting of three union representatives, three employer representatives, and two roster members that are appointed by the commissioner under *Minnesota Statutes*, section 15.014, to advise the commissioner regarding the appointment and removal of persons to the arbitrator roster. The committee shall not expire as provided by *Minnesota Statutes*, section 15.059.

Subp. 2. **Applicant.** "Applicant" means an individual who is seeking appointment to the roster.

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Subp. 3. **Arbitrator roster or roster.** "Arbitrator roster" or "roster" means a listing of persons determined by the commissioner to be qualified and available for referral as an arbitrator of labor disputes under this chapter.

Subp. 4. **Bureau.** "Bureau" means the Bureau of Mediation Services.

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

Subp. 6. **Commissioner.** "Commissioner" means the commissioner of the Bureau of Mediation Services.

Subp. 7. **Expedited panel.** "Expedited panel" means a list established by the commissioner of roster members who are willing and able to handle expedited cases under part 5530.1100.

Subp. 8. **Initial appointment.** "Initial appointment" means a new appointment to the roster of a person who is not listed on the roster at the time application for appointment is made.

Subp. 9. **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 commissioner is considered the date of issuance for purposes of this chapter.

Subp. 10. **Panel.** "Panel" means a listing of roster members compiled by the commissioner for referral to the parties, from which they may subsequently select an arbitrator.

Subp. 11. **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.

Subp. 12. **Probationary appointment.** "Probationary appointment" means a temporary appointment not exceeding 24 months in duration for purposes of further evaluating the performance, acceptability, or conduct of a roster member.

Subp. 13. **Renewal appointment.** "Renewal appointment" means the appointment of an existing roster member to an additional term as a roster member.

5530.0400 ROLE OF BUREAU.

The role of the bureau 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 bureau 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, except as provided in part 5530.1000, subpart 6.

5530.0500 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 bureau 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 a dispute.

5530.0600 ARBITRATOR QUALIFICATIONS.

Subpart 1. **General labor relations background.** Persons seeking appointment to the arbitrator roster must have substantial knowledge of collective bargaining and labor relations matters in the public or private sectors, be well versed in applicable state and federal law, and be experienced and knowledgeable in the field of labor arbitration.

Subp. 2. **General abilities.** Potential applicants for placement on the roster must be willing and able to travel throughout Minnesota, conduct hearings in a fair and impartial manner, analyze and evaluate testimony and exhibits, write clear and concise awards in a timely manner, and be available for hearings within a reasonable time after the request of the parties.

Subp. 3. **Advocacy disqualification.** No applicant or roster member may currently, or within the preceding 12 months, have functioned as an advocate for any public or private sector employer, employee, or employee organization in any phase of labor management relations. This prohibition applies to employee discharge or disciplinary appeal proceedings, whether or not the employee is represented by an exclusive representative. The commissioner shall disqualify individuals who are closely associated with firms or organizations that function as advocates from appointment to particular panels, when the appointment would present the appearance of a conflict of interest.

Subp. 4. **Demonstrating qualifications.** The burden for establishing qualifications for appointment on the roster is on the person

seeking appointment. The commissioner will examine the evidence to determine the complexity of issues the applicant claims experience in, and the technical, theoretical understanding the applicant has demonstrated in handling such matters, and shall make appointments to the roster pursuant to part 5530.0700, subpart 6. Evidence of an applicant's qualification may be advanced in one or a combination of the following ways:

A. submission of six or more arbitration awards or contested case decisions that were authored and signed by the applicant in the 24-month period preceding application;

B. a minimum of six years' experience as a full-time labor relations advocate and submission of six arbitration awards in which the applicant acted as the principal representative for either labor or management;

C. a minimum of six years' experience as a full-time labor mediator, including substantial grievance mediation experience;

D. a minimum of six years' experience as a practitioner or full-time instructor of labor law or industrial relations, including substantial content in the area of collective bargaining, labor agreements, and contract administration;

E. membership in the National Academy of Arbitrators; and

F. satisfactory completion of a formalized course of instruction and internship in a program that has been approved by the commissioner in advance of participation or enrollment by the applicant. The program must include the writing of not less than two mock awards under the supervision and guidance of an arbitrator already admitted to the roster or otherwise approved in advance by the commissioner.

Subp. 5. **Domicile.** To be eligible for appointment or continuation on the roster, individuals must maintain a principal place of residence in Minnesota or one of its contiguous states. The maintenance of a mail box or mail delivery point is not sufficient to satisfy the requirement of this subpart.

5530.0700 APPOINTMENT TO ROSTER.

Subpart 1. **Size of roster.** The size of the arbitrator roster shall be not fewer than 25 nor more than 50 members. Annually, the commissioner shall determine whether or not to add members to the roster based on the number of referrals over the preceding 12 months and projected referrals from the roster over the next 12 months.

Subp. 2. **Procedure; initial appointments.** When, pursuant to subpart 1, the commissioner determines that it is appropriate to make additional appointments to the roster, the commissioner shall:

A. publish notice in the *State Register* for not less than 30 days, indicating that applications for appointment are being accepted and establishing a deadline for the applications;

B. in conjunction with the advisory committee, conduct interviews of applicants selected for further consideration, to further assess the applicant's qualifications and suitability for appointment to the roster;

C. advise all applicants in writing regarding the commissioner's final determination with respect to their application;

D. actively solicit qualified applicants who will help provide balance in the racial and gender composition of the roster; and

E. conduct an initial review of applications received and, based on the information provided in the application, reference checks, and the arbitrator qualification requirements of this chapter, select or reject applications for further consideration. The commissioner may conduct additional investigations regarding the application if necessary to obtain a full understanding of the applicant's qualifications.

Subp. 3. **Procedure; renewal appointments.** The commissioner shall notify all roster members not less than 120 days before the expiration of their appointment of the procedures necessary for reappointment to the roster. The appointment of one-third of the members on the roster at the time this chapter is adopted shall expire on July 30, 1991; an additional one-third shall expire on July 30, 1992; and the final one-third shall expire on July 30, 1993. The names of roster members falling into each one-third shall be determined by lot. Persons desiring to renew their appointment on the roster shall submit a written application and fee to the commissioner not less than 60 days before the expiration of their appointment. Following receipt of a renewal application, the commissioner shall review available referral, performance, and activity records of the applicant and proceed according to subpart 6.

Subp. 4. **Application forms.** Individuals who wish to be considered for initial or renewal appointment to the roster must complete an application on forms available from the bureau. Writing samples must accompany the application.

Subp. 5. **Application fee.** A nonrefundable application fee of $50 for initial appointments and $25 for renewals must accompany

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each application for appointment or renewal. The fee must be in the form of a check or money order made payable to "State of Minnesota, Bureau of Mediation Services."

Subp. 6. **Standards for appointment.** In determining whether or not to appoint a member to the roster, the commissioner shall evaluate each application for evidence of the applicant's competence, proficiency, and qualifications in the following areas:

A. knowledge and understanding of labor relations systems and collective bargaining processes and dynamics;

B. knowledge and understanding of applicable contract, employment, and labor relations law and rules;

C. ability to hear and decide complex labor relations issues in a fair and objective manner;

D. ability to communicate, both orally and in writing, in a clear and concise manner;

E. ability to conduct orderly and effective arbitration hearings in a variety of settings and locations throughout Minnesota; and

F. high moral character and integrity.

In addition to meeting these standards for appointment, roster members seeking reappointment must satisfy the requirements of part 5530.1200.

Subp. 7. **Disposition of applications.** If an applicant has satisfied the requirements of subpart 6, the commissioner shall appoint or reappoint the applicant to the roster. If the applicant has failed to satisfy the requirements of subpart 6, the commissioner shall reject the application in writing, including the reasons for the rejection. In the event that there are more qualified applicants than vacancies on the roster, the commissioner shall appoint applicants in rank order of their qualifications or by lottery where qualifications are relatively equal.

Subp. 8. **Term of appointment.** Initial appointments to the roster shall be for a term of five years. Renewal appointments to the roster shall be for a term of three years. The commissioner shall establish a common July 30 expiration date for all appointments for purposes of administrative convenience.

5530.0800 ARBITRATOR CONDUCT AND STANDARDS.

Subpart 1. **Scope.** The criteria and standards in subparts 2 to 10 apply to all persons on the roster. Failure to comply with these provisions constitutes grounds for disciplinary action or removal from the roster under part 5530.1300.

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. Single copies of the code are available without charge from the commissioner, and are available through the Minitex interlibrary loan system.

Subp. 3. **Conflicts of interest.** The arbitrator must disclose any personal or professional relationships, including direct or indirect past employment, consultative relationships, or affiliation with one of the parties, which may give an appearance of partiality. The burden of disclosure is on the arbitrator.

Subp. 4. **Communication with parties.** Arbitrators shall not solicit parties for selection to cases. All matters involving a case or contact with the parties must be handled in a manner that fosters the impartiality of the arbitrator. The arbitrator shall not communicate, directly or indirectly, in connection with any issue of fact or law with any person or party, except upon notice and opportunity for all parties to participate. When this chapter authorizes communications contrary to this part, the communications shall be limited to only those matters permitted by this chapter. The arbitrator may communicate regarding dates or procedures for the hearing without violating this part.

Subp. 5. **Use of assistants or associates.** An arbitrator may, without prior consent of the parties, delegate research, clerical, and preliminary 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.

Subp. 6. **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. The arbitrator must adhere to the time limits of the parties' arbitration procedure. When initially accepting and scheduling a case, or at the first reasonable opportunity to become aware of the time limits, the arbitrator must indicate whether or not the time limits specified in the arbitration procedure will present a problem in the timely handling of the case. Although the time limits specified in an arbitration procedure may be waived or extended by the parties, it is improper for an arbitrator to routinely request or suggest extensions. If, after accepting and hearing a case, the arbitrator discovers that he or she will be unable 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 the delay and shall seek approval for establishing an alternate date for completion of the award.

Subp. 7. **Administrative or cancellation fees.** Arbitrators may charge an administrative fee for establishing a case file and cancellation fees for hearings that are canceled or rescheduled by one or both parties with less than 21 calendar days' notice, provided the fees and policies are clearly noted on the biographic sketch for that arbitrator that is on file with the bureau.

Subp. 8. **Arbitration fees.** All fees charged by an arbitrator selected under this chapter shall be based on the per diem fee schedule in the biographic sketch on file with the commissioner. The arbitrator shall maintain reasonable time and expense records related to each case and, in the event of a dispute over the reasonableness of fees and expenses in a case, shall make the records available to the parties or the commissioner, upon written demand. Disputes over the reasonableness of fees may be resolved under part 5530.1000, subpart 6.

Subp. 9. **Filing copies of awards.** Unless one or both private sector parties have specifically requested that an award not be provided to the commissioner, arbitrators shall submit copies of all awards involving Minnesota work sites to the commissioner, regardless of the source of appointment or selection. Roster members shall also provide the commissioner with a copy of all Minnesota public sector awards and all hearing officer reports filed as a result of selection under *Minnesota Statutes*, section 125.12. Awards filed with the commissioner are public documents.

Subp. 10. **Arbitrator fee and summary report.** For each award filed with the commissioner, whether originating from a bureau referral or other source, the arbitrator shall provide a summary report that discloses the following:

A. case identification information, including:

(1) arbitrator's name;

(2) case file number or bureau case number, if any;

(3) name and location of employer and name of employer's representative; and

(4) name of exclusive representative and agent of the exclusive representative;

B. case processing date information, including:

(1) date the grievance was filed or first made known to the employer;

(2) date arbitrator was notified of selection by parties;

(3) date of hearing;

(4) final date for submission of briefs or other written material, if any; and

(5) date award was issued; and

C. arbitrator fee and expense information for all awards resulting from a referral by the commissioner, including:

(1) number of days of hearing billed;

(2) number of days of study and preparation of award billed;

(3) number of days billed for travel;

(4) per diem rate for billing;

(5) travel expenses billed;

(6) other expenses billed;

(7) total fees and expenses charged; and

(8) amount of the total costs to be paid by each party.

Forms for reporting this information must be furnished by the bureau.

5530.0900 PANEL SELECTIONS AND REFERRALS.

Subpart 1. **Request for panels.** Individuals or organizations desiring a panel of arbitrators drawn from the roster shall submit individual or joint written requests that include the following:

A. the name and location of the employer and the name, address, and telephone number of the employer's representative;

B. the name of the employee organization and the name, address, and telephone number of the employee organization's

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representative;

C. a brief statement of the nature of the dispute being submitted to arbitration, for example, discharge or overtime pay;

D. the nature or type of business of the employer;

E. a description of the type of bargaining unit involved, for example, clerical, maintenance, dietary, or teacher; and

F. the date the grievance or dispute was first made known to the employer.

Subp. 2. **Size and selection of panels.** Unless a single arbitrator is to be apppointed under subpart 3, all panels submitted by the commissioner shall contain seven names. When the parties' arbitration agreement provides for panels of fewer than seven names, the parties may use the striking procedures in subpart 5 to reduce the size of a seven-member panel. In assembling panels, the commissioner shall use a random selection system that results in a reasonably equal number of opportunities for referral among roster members who have been on the roster for three or more years. When possible, no more than three arbitrators who have been on the roster for less than three years shall be included on a single panel, but the commissioner shall provide greater referral opportunities for those individuals. In assembling panels, the commissioner shall seek to avoid potential conflicts of interest and shall include or exclude roster members pursuant to mutual requests of the parties. Geographic location or unique and special circumstances and technical expertise must be considered by the commissioner when the parties request that those factors be considered. At least five members of the panel must be residents of Minnesota.

Subp. 3. **Direct appointment by commissioner.** The commissioner shall appoint one person from the roster to serve as the arbitrator whenever the agreement to arbitrate or other joint agreement of the parties provides for direct appointments.

Subp. 4. **Replacement panels or names.** Upon the joint request of the parties, the commissioner shall issue a new panel of seven names to replace a prior panel. No more than one replacement panel will be provided in any one case. Single-party requests for replacement panels will not be honored unless the commissioner determines that a bona fide conflict of interest exists regarding the matter in dispute between one or more parties and two or more members of the panel. If a conflict is found by the commissioner, a single replacement panel will be issued.

Subp. 5. **Selection from panels.** The parties shall select an arbitrator or arbitrators from the panel under the terms of their agreement or grievance procedure. In the absence of an agreement, the selection shall be made by alternately deleting names from the panel until the required number of names remain. Determining which party shall delete the first name shall be accomplished by a toss of a coin.

Subp. 6. **Scheduling.** Notifying the arbitrators of their selection and the scheduling of the arbitration hearing is the responsibility of the parties. Once the initial arbitration hearing has been established, the party who requested the panel shall notify the commissioner of the arbitrators selected, the date the selection was made, and the date of the initial arbitration hearing.

Subp. 7. **Biographic data.** The bureau shall review and prepare a biographic sketch of each member on the roster annually, based on information provided by that member and other information available to the commissioner. The sketches must include information about the arbitrator's background, education, and experience, as well as data regarding the arbitrator's fee schedule and acceptance of hearing officer duties under Minnesota Statutes, section 125.12. The mean number of calendar days required by each arbitrator to issue an award during the preceding year, as well as the upper and lower limits and number of cases used to determine that mean, based on records on file with the bureau, shall be included on the biographic sketch for that arbitrator beginning July 30, 1991. Arbitrators are responsible for ensuring the accuracy of all other biographic and fee data on the sketch. Single copies of the sketches will be made available to parties with the referral of panels.

Subp. 8. **Jurisdiction of bureau.** Submission of a panel or appointment of an arbitrator under this chapter signifies nothing more than compliance with a request and is not a determination as to the legitimacy of the dispute or the competency of the arbitrators to resolve it. The bureau does not have jurisdiction or responsibility for enforcement, resolution, or compliance with any aspect of the arbitration process other than providing the services specifically established by this chapter.

5530.1000 ARBITRATION PROCEEDINGS.

Subpart 1. **Responsibility of arbitrators.** Arbitrators selected as a result of referral on a bureau panel must ensure that a fair, adequate, and timely hearing is conducted in a manner that reasonably minimizes cost and expense to the parties.

Subp. 2. **Transcripts or recordings.** Official verbatim recordings or transcripts of an arbitration proceeding shall not be encouraged by the arbitrator. If a single party requests a transcript be made, and the matter is not addressed in the contract or grievance procedure, the arbitrator shall permit the record to be made if the party requesting the transcript makes the necessary arrangements, pays for all costs associated with the transcript, and provides copies to the other party and the arbitrator.

Subp. 3. **Tape recordings.** An arbitrator may use a tape recording of a hearing as a supplement to his or her notes. The tape of the hearing shall be regarded as the personal property of the arbitrator, but must be maintained by the arbitrator for not less than 90 days following issuance of the award.

Subp. 4. **Briefs.** Arbitrators should not encourage the submission of post-hearing briefs unless the arbitrator determines that the case is of a sufficiently complex nature and warrants the need for a written summation of evidence and argument. If one or both parties desire to submit briefs, the arbitrator shall establish a prompt schedule.

Subp. 5. **Payment of fees and costs.** Parties requesting panels under this chapter must pay the reasonable fees and costs of the arbitrator promptly. Each party to the dispute is responsible for their pro rata share of the arbitrator's fees and costs, except as otherwise provided by the express terms of the agreement to arbitrate. In the event of a dispute between one or both parties and the arbitrator over the arbitrator's fees or costs, the party contesting the fee may request arbitration of the fee dispute under subpart 6.

Subp. 6. **Dispute over fees.** If a party believes that the fees or expenses charged by an arbitrator are inappropriate or incorrect and is unable to resolve the matter through discussion with the arbitrator, that party may submit a written statement of protest to the commissioner within 30 calendar days of receipt of the arbibrator's invoice. The protest shall provide the specific basis for the objection and a copy shall be provided to the arbitrator and the other party. The commissioner shall investigate and respond to the complaint promptly and if the commissioner believes further examination is necessary, the matter will be referred to a panel of the advisory committee consisting of one union representative, one employer representative, and one roster member, all of whom shall be selected by the commissioner. The panel shall investigate the matter, provide all parties at interest an opportunity to be fairly heard, and issue a written decision that is final and binding upon the parties and the arbitrator.

5530.1100 EXPEDITED ARBITRATION.

Subpart 1. **Request for expedited arbitration.** Parties may use expedited procedures for arbitrating a dispute by filing a joint written request with the commissioner. The request must be signed by authorized representatives from both parties and contain the following information:

A. name, address, and telephone number of the employer and the employer's representative;

B. name, address, and telephone number of the exclusive representative and the agent of the exclusive representative; and

C. a brief statement of the nature of the dispute, for example, discharge, discipline, or holiday pay.

Subp. 2. **Appointment of arbitrator.** The commissioner shall appoint a single arbitrator from the expedited panel of roster members maintained for this purpose. The arbitrator appointed by the commissioner shall hear and decide the case according to this part.

Subp. 3. **Disclosures.** If, after appointment to a case, the arbitrator discovers any circumstance likely to prevent a prompt hearing or which presents a potential conflict of interest or other circumstance detrimental to the intent of this part, the arbitrator shall promptly notify the parties and the commissioner. Under such circumstances, the commissioner shall immediately appoint a new arbitrator from the expedited panel, unless the parties otherwise mutually agree.

Subp. 4. **Scheduling of hearing.** The commissioner shall fix the time and date for a hearing on the matter in dispute. The hearing will be held in the offices of the bureau, or at a location mutually agreed upon by the parties and the arbitrator, within 15 working days of receipt of the joint request. The commissioner shall provide at least 48 hours' advance notice, written or oral, before any hearing under this part.

Subp. 5. **Conduct of hearing.** All hearings under this part shall be closed to the public, pursuant to *Minnesota Statutes*, section 179A.14, subdivision 3, and no verbatim transcripts or audio-magnetic recordings shall be permitted. Each party may be represented by counsel or other representative, but each party shall be limited to a total of 90 minutes for presentation of its case and arguments. The arbitrator shall determine all procedural questions not addressed by this part, including order of presentation, framing of the issue, and sequestering of witnesses, if any. Under unusual circumstances and for demonstrated good cause, as determined by the arbitrator, the arbitrator may schedule an additional hearing on the matter, provided the hearing is conducted within five working days. The arbitrator may proceed in the absence of a party who, after due notice, fails to appear, but the arbitrator must rely on the evidence actually presented when reaching an award.

Subp. 6. **Evidence.** Parties shall limit the number and extent of exhibits to those that are essential and relevant to the contentions of that party. The arbitrator shall be the sole judge of the relevance, materiality, and weight of the evidence offered. The arbitrator may receive and consider evidence in the form of affidavit, but shall give appropriate weight to any objections raised by the other party. All written material to be considered by the arbibrator must be presented during the hearing. There shall be no pre-hearing or post-hearing submissions.

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Subp. 7. **Written briefs.** There shall be no post-hearing briefs.

Subp. 8. **Issuance of award.** The arbitrator shall issue a brief written award within five working days from the close of the hearing. The award shall be simultaneously mailed to both parties and the commissioner. The arbitrator may orally notify the parties of the decision at the time that the award is mailed, provided both parties are notified in a timely fashion.

Subp. 9. **Precedential value.** Awards issued under this expedited procedure shall have no precedential value.

Subp. 10. **Fees and expenses.** The arbitrator shall receive a total fee of $450 per award issued under this part, plus reasonable and actual expenses. Unless otherwise specifically provided by the parties' contract or agreement to arbitrate, each party is responsible for one-half of the total fee and expenses.

Subp. 11. **Cancellation fee.** If the parties withdraw a request for expedited arbitration under this part within seven calendar days of a scheduled hearing, the parties are responsible for a cancellation fee of $100 each, payable to the arbitrator.

5530.1200 PERFORMANCE MEASURES.

Subpart 1. **Renewal criteria.** When reviewing an application for renewal appointment to the roster, the commissioner shall use the criteria in subparts 2 to 7 in determining whether or not to reappoint.

Subp. 2. **Selection rate.** The commissioner shall develop and maintain reliable data concerning the frequency with which individuals are selected by parties from panels referred by the bureau. A selection frequency that falls in the upper three quartiles of the frequencies of all arbitrators on the roster is evidence that an arbitrator has established acceptability among the parties who use the roster. Appointments under part 5530.1100 shall not be considered in determining selection frequency. A selection rate in the lowest quartile shall not be the sole basis for failure to reappoint unless the arbitrator has been in the lowest quartile for two consecutive years and was selected for fewer than three cases in the most recent 12-month period.

Subp. 3. **Scheduling.** A lack of substantiated written complaints from parties that an arbitrator has failed to offer a reasonable number of dates on which the arbitrator is available to hear a case within 60 days of the arbitrator's notification of selection is evidence that an arbitrator is meeting the availability standards of this chapter.

Subp. 4. **Timeliness.** The commissioner shall consider the mean number of calendar days between the close of the record in a case and the issuance of an award during the preceding 12 months to determine whether or not roster members are meeting timeliness requirements. In evaluating the data, the commissioner shall rely on information provided by the arbitrator under part 5530.0800, subpart 9, and data available from awards on file with the commissioner, but shall not consider awards issued under part 5530.1100. A mean that exceeds 60 days is evidence that an arbitrator is not timely in the handling of cases, but shall not be the sole basis for a determination not to reappoint.

Subp. 5. **Evaluation by parties.** The commissioner shall encourage evaluations of the performance of roster members by the parties. Both individual and summary evaluation information shall be considered by the commissioner.

Subp. 6. **Availability.** Arbitrators who have been available to accept cases for at least 18 of the preceding 36 months, including at least six of the preceding 12 months, meet the availability requirements for reappointment.

Subp. 7. **General professional criteria.** All roster members are required to maintain proficiency and competency in the areas in part 5530.0700, subpart 2. Failure of an arbitrator to comply with this chapter, including the submission of information or reports, shall be grounds for removing or not reappointing a roster member.

5530.1300 DISCIPLINARY OR REMOVAL PROCEDURES.

Subpart 1. **General.** Membership on the roster is a privilege and no arbitrator has a right to placement on the roster. The commissioner has authority to investigate all complaints and allegations regarding the professional performance and compliance with this chapter by members of the roster. The commissioner shall advise, counsel, suspend, or remove roster members when the results of an investigation demonstrate violation by the arbitrator of the performance, professional, or ethical standards established by this chapter.

Subp. 2. **Preliminary investigation.** When the commissioner receives a complaint regarding violation of this chapter by a member of the roster, the commissioner shall conduct an informal investigation of the matter to determine if there is probable cause to believe that a roster member has violated any requirements of this chapter. In the absence of a violation, the commissioner shall take no further action. If further action on the matter is warranted, the commissioner shall suspend the roster member from further referrals pending the conclusion of proceedings under this chapter.

Subp. 3. **Notice.** When the commissioner finds probable cause to believe that a violation of this chapter has occurred and that removal or disciplinary suspension of a roster member should be considered, the commissioner shall provide written notice to the roster member and the advisory committee. The written notice must contain the nature of the action being considered and the reasons for it. The notice shall provide an opportunity for the roster member to respond in writing and shall fix a date for a hearing on the matter before the commissioner or a designated representative, if the roster member wishes to contest the proposed action.

Subp. 4. **Hearing.** If a hearing on a disciplinary matter is requested by the affected roster member, the commissioner or the commissioner's representative shall convene and conduct a hearing pursuant to part 5510.1910, subparts 6, 8, 9, 10, 12, 13, and 14. Advisory committee members may attend the hearing or review the audio-magnetic recording from the proceedings.

Subp. 5. **Determination.** The commissioner shall determine the action to be taken with respect to the member's status on the roster, based on the record of the hearing, the recommendations of the advisory committee, and this chapter. The determination is a final decision.

Board of Medical Examiners

Proposed Permanent Rules Relating to Fee Splitting

Notice of Intent to Adopt a Rule Without a Public Hearing

NOTICE IS HEREBY GIVEN that the Minnesota Board of Medical Examiners intends to adopt the above-entitled rule without a public hearing following the procedures set forth in the Administrative Procedure Act for adopting rules without a public hearing in *Minnesota Statutes*, sections 14.22 to 14.28. The statutory authority to adopt the rule is *Minnesota Statutes*, section 147.01, subdivision 3.

All persons have 30 days in which to submit comment in support of or in opposition to the proposed rule or any part or subpart of the rule. Comment is encouraged. Each comment should identify the portion of the proposed rule addressed, the reason for the comment, and any change proposed.

Any person may make a written request for a public hearing on the rule within the 30-day comment period. If 25 or more persons submit a written request for a public hearing within the 30-day comment period, a public hearing will be held unless a sufficient number withdraw their request in writing. Any person requesting a public hearing should state his or her name and address, and is encouraged to identify the portion of the proposed rule addressed, the reason for the request, and any change proposed. If a public hearing is required, the agency will proceed pursuant to *Minnesota Statutes*, sections 14.131 to 14.20.

Comments or written requests for a public hearing must be submitted to:

H. Leonard Boche, Executive Director
Minnesota Board of Medical Examiners
2700 University Avenue West, #106
St. Paul, MN 55114-1080
612-642-0538

The proposed rule may be modified if the modifications are supported by data and views submitted to the agency and do not result in a substantial change in the proposed rule as noticed.

A copy of the proposed rule is attached to this notice. A free copy of the rule is available upon request from H. Leonard Boche.

A Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rule and identifies the data and information relied upon to support the proposed rule has been prepared and is available from H. Leonard Boche upon request.

If no hearing is required, upon adoption of the rule, the rule and the required supporting documents will be submitted to the Attorney General for review as to legality and form to the extent the form relates to legality. Any person may request notification of the date of submission to the Attorney General. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the adopted rule, must submit the written request to H. Leonard Boche.

Dated: 24 April 1989

H. Leonard Boche
Executive Director

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