

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

CF
CBE

RULE REVIEW CHECKLIST

File No. 1661 — Docket No. 05.0009.0428

DATE RECEIVED 1-26-90 — ADOPTED W/O HEARING _____

REVIEW DATE ~~2-4-90~~ 2-5-90 — EMERGENCY RULE _____

DUE DATE 2-9-90 — TO REVISOR ON 1-29-90

REVISOR APPROVED 2-1-90

APPROVED 2-8-90 — REVISOR DISAPPROVED ✓

DISAPPROVED _____ — FILED W/SEC. OF STATE 2-8-90

WITHDRAWN _____ — RETURNED TO AGENCY _____

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4 Rule as adopted (4 copies)

4 Notice to Solicit Outside Information/Opinion (if applicable)
Nov 6, 1989 Date published in State Register
_____ Comments

_____ ~~Petition for Adoption of a Rule (if applicable)~~

✓ Board's Authorizing Resolution missing
Nov 13, 1989 Date adopted

✓ Proposed Rule
_____ Revisor's Certificate

✓ Notice of Intent to Adopt Rule sub 6
179A.03 Statutory Authority
✓ Small Business Statement
_____ ~~Expenditure of public money statement~~
11-8-89 Signature

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

✓ Affidavit of Mailing Notice of Intent to Adopt Rule
11-21-89 Date 30/25 days before adoption
Yes Notice attached
_____ ~~Copy of rule~~ or summary attached

_____ Publication in State Register
11-27-89 Date 30/25 days before adoption +2 days slot

_____ 180-day deadline from: ✓ Check
_____ Effective date of law requiring rule (14.12) (both rules) approved may 25 - Nov 27
✓ end of comment period (§ 14.26) (rules without hearing) 185 days
_____ effective date of statutory authority (§ 14.29) (emergency rules)

✓ Resolution Adopting
1-9-90 Date adopted

_____ Findings of Fact, Conclusions & Order Adopting
1-25-90 Date

yes ✓ Written requests, submissions or comments

_____ Declaration of attorney
Martha Casserley Name of SAAG representing agency

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

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

FILE COPY

SF-00006-05 (4/86)

DEPARTMENT : ATTORNEY GENERAL

STATE OF MINNESOTA

Office Memorandum

DATE : February 8, 1990

TO : JERMAINE FOSLIEN, Executive Director
Public Employment Relations Board
Suite 3, 1380 Energy Lane (55108)

FROM : CHRISTIE B. ELLER
Assistant Attorney General
525 Park Street, Suite 500 (55103)

PHONE : 296-9421

SUBJECT : In the Matter of the Adopted Permanent Rule Relating to Public Employees; Arbitration

The above-referenced Permanent rule has been approved as to its legality by the Attorney General on February 8, 1990.

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.

CBE:bbl
Enclosures
cc: William Brown, Chief Judge (memo only)
MaryAnn Hruby " "
Martha J. Casserly " "

Public Employment Relations Board

Adopted Permanent Rules Relating to Public Employees; Arbitration

Rules as Adopted

7320.0010 APPLICATION.

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

7320.0020 POLICY.

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

7320.0030 DEFINITIONS.

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

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

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

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

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Employment Relations Board.

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

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

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

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

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

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

7320.0040 COMPUTATION OF TIME.

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

7320.0050 ROLE OF BOARD.

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

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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.

7320.0060 STATUS OF ARBITRATORS.

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

7320.0070 ARBITRATOR QUALIFICATIONS.

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

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

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

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

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

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

D. knowledge of principles of arbitrator ethics;

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

F. knowledge of limits of arbitrator authority;

G. knowledge of public sector finance;

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

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

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

7320.0080 ARBITRATOR APPLICANT REQUIREMENTS AND APPOINTMENT PROCEDURES.

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

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

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

A. highly qualified;

B. moderately qualified; or

C. inexperienced.

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

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

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

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

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

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

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

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have interned with a minimum of three arbitrators.

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

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

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

7320.0090 ARBITRATOR CONDUCT, STANDARDS, AND RESPONSIBILITIES.

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

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

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

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

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

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

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

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

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

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

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

B. encourage stipulations of fact;

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

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

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

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

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

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

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

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

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

B. the desirability of brevity;

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

D. the need for clarity; and

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

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

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

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

7320.0100 REMOVAL PROCEDURE.

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

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

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

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

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

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

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

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

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

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

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

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

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

7320.0110 RANKING OF ARBITRATORS.

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

7320.0120 ARBITRATION PANELS.

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

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

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

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

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selection until all numbers have been exhausted.

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

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

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

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

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

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

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

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by Revisor _____

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

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

Approved
by Revisor _____

APPROVED AS TO FORM AND LEGALITY

Feb 7 19 90

HUBERT H. HUMPHREY, III
ATTORNEY GENERAL

BY Christie B Elles
ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED

FEB 8 1990

Joan Anderson Growe
Secretary of State

12:30 pm

STATE OF MINNESOTA

PUBLIC EMPLOYMENT RELATIONS BOARD
HERBERT T. CUSTER, CHAIR

Suite 3, 1380 Energy Lane
St. Paul, Minnesota 55108

(612) 649-5450

February 7, 1990

The Honorable Rudy Perpich
130 State Capitol
St. Paul, Minnesota 55155

Dear Governor Perpich:

The Public Employment Relations Board (Board) has been advised by the Attorney General's Office that it did not meet the 180 deadline for publication of its notice of intent to adopt rules.

In a letter dated October 18, 1989, from Senator Gene Waldorf, Chair of the Legislative Commission to Review Administrative Rules (LCRAR) the Board received notice reminding the Board of a mandatory rulemaking grant from the Legislature in 1989, which pursuant to Minn. Stat. §14.12 requires that the notice of intent to adopt rules be published within 180 days. The letter identified the 180 deadline as November 26, 1989.

The Board drafted the rules, and relying upon the deadline set out in the LCRAR letter, published the notice of rulemaking on November 27, 1989. (The 26th of November was a Sunday, therefore the notice was published the following day pursuant to Minn. Stat. §645.15)

Therfore, pursuant to Minn. Stat. §14.12, the Board is reporting to you that the notice of intent to adopt rules was published four days after the expiration date of the 180 deadline, and that the reason for delay was reliance upon the LCRAR calculation.

If you have any questions regarding this matter, do not hesitate to contact me.

Sincerely,

Jermaine Foslien
Executive Director

cc: Patricia Nolte
Attroney General's Office

STATE OF MINNESOTA

PUBLIC EMPLOYMENT RELATIONS BOARD
HERBERT T. CUSTER, CHAIR

Suite 3, 1380 Energy Lane
St. Paul, Minnesota 55108

(612) 649-5450

February 7, 1990

Senator Gene Waldorf
Chair
Legislative Commission to
Review Administrative Rules
55 State Office Building
St. Paul, Minnesota 55155-1201

Dear Senator Waldorf:

The Public Employment Relations Board (Board) has been advised by the Attorney General's Office that it did not meet the 180 deadline for publication of its notice of intent to adopt rules.

The Board received a letter from the Legislative Commission to Review Administrative Rules (LCRAR) dated October 18, 1989. In the letter, you remind the Board, that the rulemaking grant from the Legislature in 1989 pursuant to Minn. Stat. §14.12 requires that the Board publish its notice of intent to adopt rules within 180 days. The LCRAR letter identified the 180 deadline as November 26, 1989.

Subsequently, the Board drafted the rules and relying upon the deadline set out in the LCRAR letter, published the notice of rulemaking on November 27, 1989. (The 26th of November was Sunday, therefore the notice was published the following day pursuant to Minn. Stat. §645.15)

Pursuant to Minn. Stat. §14.12, the Board is reporting to you that the notice of intent to adopt rules was published four days after the expiration of the 180 deadline, and that the reason for the delay was reliance upon the LCRAR calculation.

If you have any questions regarding this matter, do not hesitate to contact me.

Sincerely,

Jermaine Foslien

Jermaine Foslien
Executive Director

cc: Patricia Nolte
Attorney General's Office

Stat Authority 179A.05 subd 6
The board shall maintain a list of names of arbitrators by experience...
The Board shall adopt rules under chapter governing the administration of the arbitration roster

Rules
7320.0080 subd 4, A and B C
A. highly qualified arbitrator must submit 3 awards
B. moderately 6 does this make sense
C. inexperienced 9

* Did not submit the rules 180 days from effective date to notice of intent published

effective date
approved May 25, 1989
published Nov 27

185 days

STATE OF MINNESOTA
PUBLIC EMPLOYMENT RELATIONS BOARD
HERBERT T. CUSTER, CHAIR

Suite 3, 1380 Energy Lane
St. Paul, Minnesota 55108

(612) 649-5450

January 25, 1990

Patricia Nolte
Office of the Attorney
General Rules Review
Capitol Building, Suite 500
525 Park Street
St. Paul, Minnesota 55155

Dear Ms. Nolte:

Please find enclosed, the necessary documents regarding the Public Employment Relations Board's rules for the administration of its arbitrator roster that were adopted without public hearing.

Sincerely,

Jermaine Foslien

Jermaine Foslien
Executive Director

PUBLIC EMPLOYMENT RELATIONS BOARD
STATE OF MINNESOTA

Enclosure

RECEIVED

RECEIVED
JAN 26 1990
Office of the Attorney General
Government Services Section
Capitol Office Bldg., Suite 500
525 Park Street
St. Paul, MN 55103

PUBLIC EMPLOYMENT RELATIONS BOARD

In the matter of the Proposed Adoption of Rules of the State Public Employment Relations Board Governing the Public Sector 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 Public Employment Relations Board 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 179A.05, subd. 6, which requires the Board to adopt rules pursuant to Chapter 14 relative to the administration of its arbitrator roster.

(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.

(4) 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. 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 public hearing must be submitted to:

Jermaine Foslien, Executive Director
Public Employment Relations Board
1380 Energy Lane, Suite Three
St. Paul, Minnesota 55108
(612) 649-5450

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 the 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 Jermaine Foslien, Executive Director, Public Employment Relations Board, 1380 Energy Lane, Suite Three, St. Paul, Minnesota, 55108.

You are hereby advised pursuant to Minnesota Statutes, section 14.115 (1988) that the proposed rules have an impact on small business. The proposed rules set forth the requirements for enpanelment, referral, conduct and removal of persons on the arbitrator roster maintained

by the board. Small businesses are impacted by the proposed rules should they apply and are appointed, to serve on the Board's arbitrator roster. The requirements of these proposed rules are similiar 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, and is providing a copy of this notice and the proposed rules to all small businesses known to be affected by the rules. (13) Minn. Stat. 14.11 is not applicable as the proposed rules do not require expenditure of public money by local public bodies.

(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 Jermaine Foslien, Executive Director, Public Employment Relations Board, 1380 Energy Lane, Suite Three, St. Paul, Minnesota 55108.

Jermaine Foslien

Name

Executive Director

Title

Dated:

November 8, 1989

CERTIFICATE OF THE

PUBLIC EMPLOYMENT RELATIONS BOARD

RESOLUTION ADOPTING THE RULE

I, Herbert T. Custer, do hereby certify that I am a member and the Chair of the Public Employment Relations Board, a Board duly authorized under the laws of the State of Minnesota, and that the following is a true, complete, and correct copy of a resolution adopted at a meeting of the Public Employment Relations Board, duly and properly called and held on the ninth day of January, 1990, that a quorum was present, and that a majority of those present voted for the resolution which has not been rescinded or modified.

> "RESOLVED, that the rule relating to the administration of the public sector labor arbitration roster maintained by the Public Employment Relations Board is approved and adopted, pursuant to authority vested in the Board by Minnesota Statutes 179A. 05, subd. 6. Jermaine Foslien, executive director of the Board is authorized to sign the findings of fact, conclusions, and order adopting the rule and further is authorized to modify the rule if necessary to obtain the approval of the rule by the attorney general to perform the necessary acts to provide that the rule shall have the force and effect of law."

IN WITNESS WHEREOF, I have hereunto subscribed my name this ninth day of January, 1990.

Herbert T. Custer
Chair,
Public Employment Relations Board

Member,
Public Employment Relations Board



PRIBBLE ARBITRATION & MEDIATION SERVICES, INC.
1220 North Thirteenth Street
St. Cloud, MN 56303-2733
(612) 255-9879

October 22, 1989

Jermaine Foslien, Executive Director
and Minnesota Public Employment Relations Board
13080 Energy Lane, Su. 3
St. Paul, Minnesota 55108

Re: PERB Arbitrator Rules and Policies

Dear Jermaine,

PERB's Arbitrator Policies contain Section 4E. Use of Assistants or Associates (Section 4E). This section states a standard for conduct of arbitrators. However, it contains no disclosure, monitoring or enforcement standards or methods.

I propose the addition of a subsection that I believe will correct problems in this area by a disclosure statement. I have used this method for about a year in my Awards.

Proposal:
The additional language would read:
2. An arbitrator shall state affirmatively in all awards (as applicable) that:
a. All work, except clerical duties, on this Opinion and Award was performed by this arbitrator. or
b. Research, preliminary drafting, and/or final drafting (specify which) work on this Opinion and Award was performed by [name and titles or positions, including student)]. Any Union steward or other representative affiliations or Employer supervisory or managerial affiliations of the named individual(s) shall be stated.
c. The arbitrator shall state in the Award all conflicts and potential conflicts of interests of all assistants and associates, who work on that particular award.

Some of the major reasons for this additional language in Section 4E:

1. This is a major ethics issue. Currently we are working with tools of the 1970s that are ineffective for the 1980s and 1990s. The proposal here is a moderate step that I hope will solve the problems that have occurred and result in a less biased and prejudiced arbitration system for all parties. This is disclosure language, which relies primarily on the parties to enforce after disclosure has been made.

However, it is very probable that the proposed disclosures will cause the particular arbitrators involved to examine their practices and end the offending practices.

2. The problems exist with only about five to seven of the members of the PERB roster. However, they are politically powerful and their use of assistants is very remunerative to these arbitrators. In the past some of these arbitrators have taken steps to adversely affect the careers of other arbitrators, who have privately or publicly objected to these unethical practices.

3. For approximately thirty-two of the thirty-nine PERB arbitrator roster members, the only change would be adding the single sentence to their Awards (Section 4 E2 a above). The vast majority of PERB arbitrators follow the current stated standard in practice and spirit. However, they are unable to cause the other arbitrators to change their practices or publicly disclose them.

4. Many of the parties cannot do much to end the offending practices, because the parties must use the particular arbitrators in some cases. These parties do not want to risk the possible adverse results to the cases they must present to these arbitrators.

If PERB does not act decisively to change these unethical practices, arbitration in Minnesota will continue to suffer.

5. Even when parties suspect something has gone amiss in a particular case because of these unethical practices, they must not risk a frivolous lawsuit to obtain essential evidence if they are wrong. This proposal would require arbitrators to disclose evidence of bias and prejudice of their assistants or associates.

With this proposal in effect PERB could probably end the few remaining unethical conduct cases with a letter to the particular arbitrator involved.

6. Minnesota has had major problems for many years with a few arbitrators using assistants or associates (hereafter assistants) without disclosure to the parties and apparently in violation of NAA and PERB policies in this area. My purpose here is not to hold arbitrators liable for past violations, but to attempt to substantially reduce or eliminate these abuses in the future. Based on reports to me by the writers of the awards, admissions by some of the arbitrators themselves, and reports to me by arbitrator and nonarbitrator colleagues of the arbitrators who abuse these rules, many more than a hundred awards during the past eight years have been involved in these abuses. Very briefly a few examples of the problems are:

a. Students write final and preliminary drafts of actual (not mock) awards with little or no supervision by the

arbitrator. Some of these students are stewards, business agents of unions, supervisors or managers of employers or other representatives of unions and employers. In recent years, these situations have probably increased in number as more older students take college courses as they work full-time jobs. This is the area of greatest frequency of abuses. Without exception in the many instances reported to me here, the writers have told me that they ruled in favor of the side for which they would be expected to have a bias or prejudice (for example, union business agent for union or employer personnel manager for employer).

The students usually have been surprised when they learn the rules governing arbitrator's conduct in this area. Some complaints made to me have been from current or former nonarbitrator colleagues of the arbitrators involved. These students or colleagues have usually said something to the effect that they are dependent upon the arbitrator(s) involved for recommendations for grades, grants, jobs, and or promotions. They said in effect that they, therefore, were discouraged from formally complaining about these abuses. Some of this information was given to me after I spoke to group(s) about ethics in arbitration.

b. Private practice attornies or other professionals write preliminary and final drafts of awards for arbitrators, without disclosure to the parties.

c. Arbitrators write final drafts for other arbitrators. As far as I am aware, this category has had the fewest number of ethical problems. However, at least one of the arbitrators, involved has told me of instances where the parties struck his/her name, but (s)he wrote the final draft without notice to the parties. Some of these situations have been confirmed by my conversations with both involved arbitrators.

7. For teaching purposes mock awards can provide experience value to the student without injecting potential additional bias or prejudice into the arbitration system without notice to the parties.

8. Many, if not most parties are unaware that their awards have been drafted with little or no supervision by the arbitrators, or that the draftees have particular biases or prejudices.

9. At least twice I have had problems after/when giving deference to other arbitrator's awards, because of the above abuses. In two instances of previous awards under the same agreement, I gave deference to particular language in another arbitrator's award. Thereafter, I learned from the particular arbitrator that (s)he gave the language little or no weight. The language was written by a student and given little or no review by

the arbitrator. The arbitrators who used the students have been able to avoid much responsibility by saying they did not consider that language very important.

10. I cannot think of any good objection any arbitrator, who wishes to act ethically, would have to the above proposal.

By writing this letter to PERB I realize that I am taking a great risk to my arbitration career, especially as I rebuild my practice after some medical problems. However, the overall improvement of arbitration in Minnesota, especially in ethical areas, is more important to me.

If you have questions or wish further information, please write or telephone to the numbers listed above.

Thank you for your time and effort in this matter.

Sincerely,

Edward D. Pribble

Edward D. Pribble
Arbitrator

PROPOSAL

E. Use of Assistants or Associates

1. An arbitrator may, without prior consent of the parties, delegate research, clerical duties or preliminary drafting or an assistant. An arbitrator must not, however, delegate any decision-making function.

2. An arbitrator shall state affirmatively in all awards, as applicable, that:

a.) All work, except clerical duties on this Opinion and Award was performed by this arbitrator. or

b.) Research, preliminary drafting, and/or final drafting (specify which) work on this Opinion and Award was performed by [name and titles or positions (including student)]. Any Union steward or other representative capacity or Employer supervisory or managerial affiliations of the named individual(s) shall be stated.

c) The arbitrator shall state in the award all conflicts and potential conflicts of interests of all assistants and associates, who work on that particular award.

3. An arbitrator may, if unable to handle all decision-making aspects of a case in a timely manner, suggest to the parties an allocation of responsibility between the arbitrator and an assistant or associate. The parties may accept such a suggestion, but are not obligated to do so.

[New language is underlined.]

LAW OFFICES
OF
DALE G. SWANSON

SUITE 13, FRANKLIN BUILDING
69 NORTH LAKE STREET
FOREST LAKE, MINNESOTA 55025

TELEPHONE 464-6555
AREA CODE 612

December 6, 1989



Ms. Jermaine Foslien
Executive Director
Public Employment Relations Board
1380 Energy Lane, Suite 3
St. Paul, MN 55108

Re: Proposed Rules Governing Public Sector Labor Arbitration Roster

Dear Ms. Foslien:

As attorney for the Minnesota Elementary School Principals' Association, please consider the following my comments concerning the above-referenced matter.

Part 7320.0070, subp. 2 defines a conflict of interest to include one "who represents an organization in matters of personnel and labor relations, including...labor-related litigation". Most vocally from the MFT, there has been controversy for some time over arbitrators accepting appointments from school boards to serve as their hearing examiners for purposes of terminations or demotions under Minn. Stat. §§125.12 and 125.17. The use of hearing examiners is not expressly provided in either of these two education laws but exists as a creature of judicial law. Those decisions in my opinion clearly create some representative relation between the school board and the hearing examiner. The employer selects and compensates the individual involved, and the latter receives evidence for and makes recommendations to the employer. I believe it is important to address whether these experiences will constitute a conflict of interest under this subpart.

Even if PERB should decide that employment as a hearing examiner is not a conflict under the previously described subpart, I note that Part 7320.0090, subp. 6 requires a disclosure by the arbitrator to the parties whenever there are "circumstances that might reasonably raise a question regarding the arbitrators impartiality". Even if employment as a hearing examiner is not considered by PERB to violate the previous subpart, this disclosure subpart is far broader by requiring disclosure whenever a question might reasonably be raised. For this additional reason, I believe the issue

of employment as hearing examiner must be dealt with one way or the other.

Part 7320.0090, subp. 8 provides that either party may request an official transcript prior to the hearing but further that the requesting party must bear the expense of providing copies to both the arbitrator and the opposing party. This conflicts with the majority of the grievance procedures I am familiar with. Most procedures provide that the requesting party assumes all of the expense but has complete discretion upon what to do with the transcript. Some procedures provide that if either party shall request a transcript, then both parties must share equally in the expense. I would recommend that the former approach be substituted for the last sentence of this subpart 8.

Part 7320.0100, subp. 4 provides that an arbitrator who has been removed from the roster may also be removed from a pending arbitration case upon the petition of either party and subsequent board review. This Part, however, contains no provision for notice to parties who may have received a list including such an arbitrator or to parties with pending matters before that arbitrator. It seems to me that when the written notice of removal is provided to the arbitrator under subpart 3, some minimum notice should be given to parties to pending matters or arbitrator lists or the opportunity to petition for removal of an arbitrator from a case will be meaningless.

Sincerely yours,

Dale G. Swanson

Dale G. Swanson

DGS:rc

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

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

STATEMENT OF NEED
AND REASONABLENESS

GENERAL

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

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

7320.0010 APPLICATION

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

7320.0020 POLICY

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

7320.0030 DEFINITIONS

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

7320.0040 COMPUTATION OF TIME

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

7320.0050 ROLE OF THE BOARD

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

7320.0060 STATUS OF ARBITRATORS

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

7320.0070 ARBITRATOR QUALIFICATIONS

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

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

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

7320.0080 ARBITRATOR APPLICANT REQUIREMENTS AND APPOINTMENT PROCEDURES

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

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

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

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

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

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

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

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

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

7320.0090 ARBITRATOR CONDUCT, STANDARDS AND RESPONSIBILITIES

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

7320.0100 REMOVAL PROCEDURE

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

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

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

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

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

7320.0110 RANKING OF ARBITRATORS

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

7320.0120 ARBITRATION PANELS

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

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

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

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

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

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

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

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

Dated at St. Paul, Minnesota
November 27, 1989

Jermaine Foslien

Jermaine Foslien
Executive Director

STATE OF MINNESOTA

MINNESOTA PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of the Proposed Adoption of the Rule of the State Public Employment Relations Board Governing the Public Sector Labor Arbitration Roster Maintained by the Agency	FINDINGS OF FACT, CONCLUSIONS, AND ORDER ADOPTING RULE WITHOUT PUBLIC HEARING

(1) Notice of the Board's intent to adopt the above-entitled rule was published in the State Register on November 27, 1989 and was sent by United States mail to all persons on the list maintained by the agency pursuant to Minnesota Statutes, sections 14.14, subdivision 1a and 14.22 on November 21, 1989. (2) The statement of need and reasonableness was prepared before the notice of intent to adopt a rule without a public hearing was mailed to all persons on the rulemaking mailing list and published in the State Register and was available to the public.

(4) All persons were given the opportunity to submit comment on the rule for 30 days after notice of proposed rulemaking. (5) No requests for a public hearing on the rule were received by the agency.

(7) No requests for notice of submission to the attorney general were received by the agency.

(6) Based on comments and evidence in the record before the agency, I find the following:

That the circumstance of an arbitrator serving as a hearing examiner to hear and decide termination and demotion matters under Chapter 125, may raise a question as to the arbitrators impartiality, due to the fact that arbitrators who serve as hearing examiners are selected and compensated for by the employer. The Board concludes that those arbitrators who choose to serve as a hearing examiner must disclose this fact on their biographical sketches which are enclosed with arbitrator panels that are submitted to the parties. Therefore, Minn. Rule 7320.0090, subp. 6 is amended as follows: Arbitrators must disclose on their biographical sketch as to whether they serve as a hearing examiner under Chapter 125. This modification does not constitute substantial change because arbitrators are required to update their biographical sketches as changes occur and the rule requires disclosure of any circumstance that may raise a question of their impartiality.

(8) The above-captioned rule is needed and reasonable.

(9) NOW, THEREFORE, IT IS ORDERED that the rule identified as the rule of the State Public Employment Relations Board governing the public sector labor arbitration roster maintained by the agency, as modified is adopted this 25th day of January, 1990 pursuant to authority vested in me by Minnesota Statutes, section 179A.05, subd. 6.

Jermaine Foslien

Jermaine Foslien Director

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

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

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

Jermaine Foslien, being sworn says:

I hereby certify that the list of persons and associations who have requested, pursuant to Minnesota Statutes, section 14.14, subdivision 1a and 14.22 or 14.30, that their names be placed on the state Public Employment Relations Board's rulemaking mailing list is accurate, complete, and current as of this 20th day of November, 1989.

That on the 21st day of Novemeber, 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 Public Hearing by despositing in the State of Minnesota Central Mail System for United Stats mailing, a copy thereof, with postage prepaid, to all persons and associations on the aforementioned mailing list.

Subscribed and sworn to before me this 22nd day of January, 1990.

Linda L. Tauer

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

Jermaine Foslien

Jermaine Foslien
Executive Director

Executive Director

PUBLIC EMPLOYMENT RELATIONS BOARD

In the matter of the Proposed Adoption of Rules of the State Public Employment Relations Board Governing the Public Sector Labor Arbitration Roster Maintained by the Agency	NOTICE OF INTENT TO ADOPT A RULE WITHOUT A PUBLIC HEARING

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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. 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 public hearing must be submitted to:

Jermaine Foslien, Executive Director
Public Employment Relations Board
1380 Energy Lane, Suite Three
St. Paul, Minnesota 55108
(612) 649-5450

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 the 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 Jermaine Foslien, Executive Director, Public Employment Relations Board, 1380 Energy Lane, Suite Three, St. Paul, Minnesota, 55108.

You are hereby advised pursuant to Minnesota Statutes, section 14.115 (1988) that the proposed rules have an impact on small business. The proposed rules set forth the requirements for enpanelment, referral, conduct and removal of persons on the arbitrator roster maintained

by the board. Small businesses are impacted by the proposed rules should they apply and are appointed, to serve on the Board's arbitrator roster. The requirements of these proposed rules are similiar 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, and is providing a copy of this notice and the proposed rules to all small businesses known to be affected by the rules. Minn. Stat. 14.11 is not applicable as the proposed rules do not require expenditure of public money by local public bodies.

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 Jermaine Foslien, Executive Director, Public Employment Relations Board, 1380 Energy Lane, Suite Three, St. Paul, Minnesota 55108.

Jermaine Foslien

Name

Executive Director

Title

Dated:

November 8, 1989

Pollution Control Agency

Division of Air Quality

Notice of Intent to Solicit Outside Information Regarding Proposed Rule Governing Open Burning Restrictions and Permitting Requirements

NOTICE IS HEREBY GIVEN that the Minnesota Pollution Control Agency (Agency) is seeking information or opinions from outside sources in preparing to propose the amendment of rules governing Open Burning Restrictions and Permitting Requirements, *Minnesota Rules* 7005.0700-7005.0820. The amendment of the rule is authorized by *Minnesota Statutes* § 116.07 (1988), which authorizes the Agency to adopt and amend rules for the prevention, abatement, or control of air pollution.

The Agency requests information and opinions concerning the subject matter of the rule. Interested persons or groups may submit data or views in writing or orally. Written or oral statements or comments should be directed to:

Jacqueline M. Deneen
Minnesota Pollution Control Agency
520 Lafayette Road North
St. Paul, Minnesota 55155
Telephone: (612) 296-6707

Oral statements will be received during regular business hours, 8:00 a.m. to 4:30 p.m., Monday through Friday.

All statements of information and opinion will be accepted until December 1, 1989. Any written materials received by the Agency shall become part of the rulemaking record in the event that the rule is amended.

Gerald L. Willet
Commissioner

Public Employment Relations Board

Notice of Solicitation of Outside Information or Opinions Regarding Proposed Rules Governing Administration of the Labor Arbitrator Roster

NOTICE IS HEREBY GIVEN that the Public Employment Relations Board is seeking information or opinions from sources outside the agency in preparing to propose the adoption of the rule governing the administration of the Board's Labor Arbitrator roster. The adoption of the rule is authorized by *Minnesota Statutes*, Section 179A.05, subd. 6, which requires the Board to adopt reasonable and proper rules relative to the administration of its arbitrator roster.

The Public Employment Relations Board requests information and opinions concerning the subject matter of the rule. Interested persons or groups may submit data or views on the subject matter of concern in writing or orally. Written statements should be addressed to:

Jermaine Foslien, Executive Director
Public Employment Relations Board
1380 Energy Lane, Suite #3
St. Paul, Minnesota 55108

Oral statements will be received during regular business hours over the telephone at 612-649-5450 and in person at the above address.

All statements of information and opinions shall be accepted until November 20, 1989. Any written material received by the Public Employment Relations Board 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.

Dated: 27 October 1989

Herbert T. Custer, Chair
Public Employment Relations Board

CERTIFICATE OF THE

PUBLIC EMPLOYMENT RELATIONS BOARD

AUTHORIZING RESOLUTION

I, Herbert T. Custer, do hereby certify that I am a member and the Chair, of the Public Employment Relations Board, a board duly authorized under the laws of the State of Minnesota, and that the following is a true, complete and correct copy of a resolution adopted at a meeting of the Public Employment Relations Board duly and properly called and held on the fifteenth day of November, 1989, that a quorum was present, and that a majority of those present voted for the resolution which has not been rescinded or modified.

> "RESOLVED, that Jermaine Foslien, Executive Director of the Public Employment Relations Board, is hereby granted the authority and directed to sign and to give the Notice of the Public Employment Relations Board's Intent to Adopt a Rule without public hearing governing the administration of the arbitrator roster to all persons who have registered their names with the Board for that purpose and publish the Notice and rule in the State Register, and to perform any and all acts incidental thereto."

IN WITNESS WHEREOF, I have hereunto subscribed my name this fifteenth day of November, 1989.

Herbert T. Custer
Chair,
Public Employment Relations Board

Member,
Public Employment Relations Board

Public Employment Relations Board

Proposed Permanent Rules Relating to Public Employees; Arbitration

Rules as Proposed (all new material)

7320.0010 APPLICATION.

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

7320.0020 POLICY.

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

7320.0030 DEFINITIONS.

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

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

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

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

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Employment Relations Board.

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

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

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

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

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

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

7320.0040 COMPUTATION OF TIME.

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

7320.0050 ROLE OF BOARD.

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

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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.

7320.0060 STATUS OF ARBITRATORS.

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

7320.0070 ARBITRATOR QUALIFICATIONS.

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

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

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

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

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

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

D. knowledge of principles of arbitrator ethics;

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

F. knowledge of limits of arbitrator authority;

G. knowledge of public sector finance;

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

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

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

7320.0080 ARBITRATOR APPLICANT REQUIREMENTS AND APPOINTMENT PROCEDURES.

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

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

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

A. highly qualified;

B. moderately qualified; or

C. inexperienced.

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

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

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

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

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

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

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

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have interned with a minimum of three arbitrators.

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

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

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

7320.0090 ARBITRATOR CONDUCT, STANDARDS, AND RESPONSIBILITIES.

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

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

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

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

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

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

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

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

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

Subp. 8. **Hearing conduct.** The parties are entitled to a hearing that is conducted in a fair and impartial manner,

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allowing the parties adequate opportunity to present their respective evidence and argument. The arbitrator is responsible for conducting an orderly proceeding and may:

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

B. encourage stipulations of fact;

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

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

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

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

Subp. 10. **Discussion of a case.** While an arbitrator is considering a case for which a decision is pending, discussion of the case by the arbitrator must be limited to situations

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where advance approval or consent of both parties is obtained or where identity of the parties and details of the case are sufficiently obscured to eliminate any realistic probability of identification. An exception is the discussion of a problem in a case with another arbitrator or the arbitrator's assistant as provided in subpart 4; however, the arbitrator selected to hear the case retains sole responsibility and authority to render the award.

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

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

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

B. the desirability of brevity;

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

D. the need for clarity; and

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

The board encourages the parties to submit written evaluations of the arbitrator's awards. The arbitrator must not discuss an award with either party until after the award has been simultaneously issued to both parties. The arbitrator's responsibility does not extend to the enforcement of an award. Request for clarifications or interpretation of an award shall

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be made by a party or parties in conformity with Minnesota Statutes, chapter 572.

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

7320.0100 REMOVAL PROCEDURE.

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

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

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

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

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

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

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

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

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

Subp. 2. **Notice of removal and suspension.** An arbitrator who is being considered for removal must be provided written

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

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

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

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continued assignment to the case would be in the best interests of the parties. The chair may act on behalf of the board if the reasons for removal from the arbitration case require an expeditious decision. The board is not liable for any costs relating to the case from which the arbitrator has been removed.

7320.0110 RANKING OF ARBITRATORS.

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

7320.0120 ARBITRATION PANELS.

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

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

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

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

Subp. 5. **Replacements of arbitration panels.** The board

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must replace arbitration panels under the following circumstances.

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

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

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

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

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

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

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removal from the arbitrator list.

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

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Office of the Revisor of Statutes

Administrative Rules

TITLE: Proposed Permanent Rules Relating to Public Employees; Arbitration

AGENCY: Public Employment Relations Board

MINNESOTA RULES: Chapter 7320

INCORPORATIONS BY REFERENCE:

Rule Number and Material Incorporated:

7320.0090, subpart 2: Code of Professional Responsibility for Arbitrators of Labor-Management Disputes published by National Academy of Arbitrators. Available at Minnesota State Law Library.

The attached rules are approved for publication in the State Register

John C. Fuller
Assistant Deputy Revisor

[For text of item G, see M.R. 1989]

[For text of subp 3, see M.R. 1989]

Subp. 4. **Override clauses.** Licensees shall not seek to enforce an override clause:

A. ~~unless~~ if a protective list has not been furnished to the seller within 72 hours after the expiration of the listing agreement; or

B. if the seller has entered into another listing contract with another licensed real estate broker.

Subp. 5. **Protective lists.** A broker or salesperson has the burden of demonstrating that each person on the protective list has, during the period of the listing agreement, either made an affirmative showing of interest in the property by responding to an advertisement or by contacting the broker or salesperson involved or has been physically shown the property by the broker or salesperson. For the purpose of this part the mere mailing or other distribution by a licensee of literature setting forth information about the property in question does not, of itself, constitute an affirmative showing of interest in the property on the part of a subsequent purchaser.

The protective list shall contain the following notice in boldface type:

"~~IF YOU RELIST WITH ANOTHER BROKER WITHIN THE OVERRIDE PERIOD AND THEN SELL YOUR PROPERTY TO ANYONE WHOSE NAME APPEARS ON THIS LIST, YOU COULD BE LIABLE FOR FULL COMMISSIONS TO BOTH BROKERS. IF THIS NOTICE IS NOT FULLY UNDERSTOOD, SEEK COMPETENT ADVICE~~ YOU WILL NOT BE OBLIGATED TO PAY THE LICENSEE A FEE OR COMMISSION UNDER THIS AGREEMENT IF YOU HAVE EXECUTED ANOTHER LISTING AGREEMENT PURSUANT TO WHICH YOU ARE OBLIGATED TO PAY A FEE OR COMMISSION TO ANOTHER LICENSEE FOR THE SALE, LEASE, OR EXCHANGE OF THE LISTED REAL PROPERTY."

~~The protective list need not contain this notice if the written listing agreement specifically states that after its expiration the seller will not be obligated to pay the licensee a fee or commission if the seller has executed another valid listing agreement pursuant to which the seller is obligated to pay a fee or commission to another licensee for the sale, lease, or exchange of the real property in question.~~

2805.1700 COMPENSATION.

[For text of subps 1 and 2, see M.R. 1989]

Subp. 3. **Limitation on broker when transaction not completed.** When the owner fails or is unable to consummate a real estate transaction, through no fault of the purchaser, the listing broker may not claim any portion of any trust funds deposited with the broker by the purchaser~~, absent a separate agreement with the purchaser~~.

Public Employment Relations Board

Proposed Permanent Rules Relating to Public Employees; Arbitration

Notice of Intent to Adopt Rules Without a Public Hearing and Notice of Intent to Adopt Rules With a Public Hearing if Twenty-Five or More Persons Request a Hearing

NOTICE IS HEREBY GIVEN that the Minnesota Public Utilities Commission (Commission) 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* §§ 14.22 to 14.28 (1988). The Commission's authority to adopt the rule is set forth in *Minnesota Statutes* § 216B.08 (1988) and *Minnesota Statutes* § 216B.095 (1989 Supp.).

All persons have until 4:30 p.m. on Wednesday, December 27, 1989, to submit comments in support of or in opposition to the proposed rules or any part or subpart of the rules. Comment is encouraged. Each comment should identify the portion of the proposed rules addressed, the reason for the comment, and any change proposed. PLEASE USE DOCKET NO. G,3-999/R-86-322 ON ALL CORRESPONDENCE.

Any person may make a written request for a public hearing on the rules within the comment period. If 25 or more persons submit a written request for a public hearing within the comment period, a public hearing will be held unless a sufficient number withdraw their requests 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 rules addressed, the reason for the request, and any change proposed.

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.

If a public hearing is required, the Commission will proceed pursuant to *Minnesota Statutes* §§ 14.131 to 14.20 (1988). PLEASE NOTE THAT IF TWENTY-FIVE OR MORE PERSONS SUBMIT WRITTEN REQUESTS FOR A PUBLIC HEARING WITHIN THE 30-DAY COMMENT PERIOD, A HEARING WILL BE HELD ON WEDNESDAY, JANUARY 17, 1990, AND, IF NECESSARY, THURSDAY, JANUARY 18, 1990, IN ACCORDANCE WITH THE NOTICE OF PUBLIC HEARING OF THESE SAME RULES PUBLISHED IN THIS *STATE REGISTER* AND MAILED TO PERSONS REGISTERED WITH THE COMMISSION. To verify whether a hearing will be held, please call the Commission between January 1, 1990, and January 5, 1990 at (612) 296-7124.

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

Dan Lipschultz
Minnesota Public Utilities Commission
780 American Center Building
150 East Kellogg Boulevard
St. Paul, Minnesota 55101
(612) 296-9617

The proposed rules may be modified if the modifications are supported by data and views submitted to the Commission and do not result in a substantial change in the proposed rules as noticed.

The proposed rules, if adopted, will amend the Commission's disconnection during cold weather rules, *Minnesota Rules*, parts 7820.1500 to 7820.2300. The proposed rules are published below. One free copy of the rules is available upon request from the Commission by contacting the Commission's receptionist, Kris Kline, at the above address or by calling (612) 296-7124.

A STATEMENT OF NEED AND REASONABLENESS that describes the need for and reasonableness of each provision of the proposed rules and identifies the data and information relied upon to support the proposed rules has been prepared and is available from the Commission by contacting the Commission's receptionist, Kris Kline, at the above address or by calling (612) 296-7124.

YOU ARE HEREBY ADVISED, pursuant to *Minnesota Statutes* § 14.115 (1988 and 1989 Supp.), "Small business considerations in rulemaking," that the proposed rules will affect small utility businesses. The proposed rules require utilities to provide customer notices, allow eligible customers to pay ten percent of monthly income to retain service, allow eligible customers to enter a reconnection plan, and provide for various customer and utility appeals.

Pursuant to *Minnesota Statutes* § 14.11, subd. 1 (1988), the Commission estimates that the total cost to all local public bodies in the state to implement the rules for the two years immediately following adoption of the rules will not exceed $100,000 in either of the two years.

The adoption of these rules by the Commission will not have a direct impact on agricultural land. Therefore, *Minnesota Statutes* § 14.11, subd. 2 (198) is inapplicable to this rulemaking proceeding.

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 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 rule submitted to the Attorney General, must submit a written request to Dan Lipschultz at the above address.

Lee Larson
Acting Executive Secretary

Notice of Intent to Adopt a Rule Without a Public Hearing

NOTICE IS HEREBY GIVEN that the State Public Employee Relations Board 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* 179A.05, subd. 6, which requires the Board to adopt rules pursuant to Chapter 14 relative to the administration of its arbitrator roster.

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 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. 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 public hearing must be submitted to:

Jermaine Foslien, Executive Director
Public Employment Relations Board
1380 Energy Lane, Suite Three
St. Paul, Minnesota 55108
(612) 649-5450

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 the 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 Jermaine Foslien, Executive Director, Public Employment Relations Board, 1380 Energy Lane, Suite Three, St. Paul, Minnesota, 55108.

YOU ARE HEREBY ADVISED pursuant to *Minnesota Statutes*, section 14.115 (1988) that the proposed rules have an impact on small business. The proposed rules set forth the requirements for enpanelment, referral, conduct and removal of persons on the arbitrator roster maintained by the board. Small businesses are impacted by the proposed rules should they apply and are appointed to serve on the Board's arbitrator roster. 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, and is providing a copy of this notice and the proposed rules to all small businesses known to be affected by the rules. *Minnesota Statutes* 14.11 is not applicable as the proposed rules do not require expenditure of public money by local public bodies.

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 Jermaine Foslien, Executive Director, Public Employment Relations Board, 1380 Energy Lane, Suite Three, St. Paul, Minnesota 55108.

Dated: 8 November 1989

Jermaine Foslien
Executive Director

Rules as Proposed (all new material)

7320.0010 APPLICATION.

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

7320.0020 POLICY.

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

7320.0030 DEFINITIONS.

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

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

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

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

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

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

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

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

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

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

7320.0040 COMPUTATION OF TIME.

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

7320.0050 ROLE OF BOARD.

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

A. compel parties to agree to arbitrate;

B. enforce an agreement to arbitrate;

C. compel parties to appear before an arbitrator;

D. influence, alter, enforce, or set aside the decisions or awards of arbitrators; or

E. compel, deny, or modify the payment of fees and expenses to an arbitrator.

7320.0060 STATUS OF ARBITRATORS.

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

7320.0070 ARBITRATOR QUALIFICATIONS.

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

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

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

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

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

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

D. knowledge of principles of arbitrator ethics;

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

F. knowledge of limits of arbitrator authority;

G. knowledge of public sector finance;

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

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

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

7320.0080 ARBITRATOR APPLICANT REQUIREMENTS AND APPOINTMENT PROCEDURES.

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

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

A. highly qualified;

B. moderately qualified; or

C. inexperienced.

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

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

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

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

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

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

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

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

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

Subp. 7. **Appointment to roster.** After the interview, the board must vote as to whether the applicant is qualified to serve as an

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arbitrator on the roster. A majority vote is required for appointment to the roster. Applicants must be notified by mail of their appointment or rejection. Those rejected may reapply for consideration no sooner than six months following notification of rejection.

7320.0090 ARBITRATOR CONDUCT, STANDARDS, AND RESPONSIBILITIES.

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

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

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

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

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

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

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

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

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

B. encourage stipulations of fact;

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

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

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

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

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

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

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

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

B. the desirability of brevity;

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

D. the need for clarity; and

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

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

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

7320.0100 REMOVAL PROCEDURE.

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

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

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

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

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

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

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

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

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

Subp. 2. **Notice of removal and suspension.** An arbitrator who is being considered for removal must be provided written notice to that effect at least 45 calendar days before the board's hearing on the removal. The notice must include: the board's basis for removal;

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

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

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

7320.0110 RANKING OF ARBITRATORS.

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

7320.0120 ARBITRATION PANELS.

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

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

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

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

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

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

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

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

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

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

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

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

Public Utilities Commission

Proposed Permanent Rules Relating to Utility Service Disconnection During Cold Weather

Notice of Hearing and Notice of Intent to Cancel Hearing if Fewer Than Twenty-Five Persons Request a Hearing In Response to Notice of Intent to Adopt Rules Without a Public Hearing

NOTICE IS HEREBY GIVEN that the Minnesota Public Utilities Commission (Commission) will hold a public hearing in the above-entitled matter in the Commission's Large Hearing Room, commencing at 9:00 a.m. on Wednesday, January 17, 1990, and, if necessary, Thursday, January 18, 1990, and continuing until all interested or affected persons will have an opportunity to participate by submitting either oral or written data, statements, or arguments. Statements or briefs may be submitted to the presiding Administrative Law Judge, as hereinafter indicated, without appearing at the hearing.

PLEASE NOTE, HOWEVER, THAT THE HEARING WILL BE CANCELLED IF FEWER THAN TWENTY-FIVE PERSONS REQUEST A HEARING IN RESPONSE TO THE NOTICE OF INTENT TO ADOPT THESE SAME RULES WITHOUT A PUBLIC HEARING PUBLISHED IN THIS *STATE REGISTER* AND MAILED TO PERSONS REGISTERED WITH THE COMMISSION. To verify whether a hearing will be held, please call the Commission between January 1, 1990 and January 5, 1990 at (612) 296-7124.

The matter will be heard before Administrative Law Judge Allen E. Giles, Office of Administrative Hearings, 500 Flour Exchange Building, 310 Fourth Avenue South, Minneapolis, Minnesota 55415, (612) 349-2543. The rule hearing procedure is governed by *Minnesota Statutes* §§ 14.131 to 14.20 (1988) and by the rules of the Office of Administrative Hearings, *Minnesota Rules*, parts 1400.0200 to 1400.1200 (1985). Questions concerning the rule hearing procedure should be directed to the Administrative Law Judge at the address and telephone number stated above.

The subject of the hearing will be the proposed rules governing disconnection during cold weather, *Minnesota Rules*, parts 7820.1500 to 7820.2300. The proposed rules are authorized by *Minnesota Statutes* § 216B.08 (1988) and *Minnesota Statutes* § 216B.095 (1989 Supp.). The proposed rules are published below. One free copy of the rules is available on request by contacting:

Kris Kline
Minnesota Public Utilities Commission
780 American Center Building
150 East Kellogg Boulevard
St. Paul, Minnesota 55101
(612) 296-7124

NOTICE IS HEREBY GIVEN that a Statement of Need and Reasonableness is now available for review at the Commission offices and at the Office of Administrative Hearings. The Statement of Need and Reasonableness includes a summary of all the evidence and argument which the Commission anticipates presenting at the hearing justifying both the need for and reasonableness of the proposed rules. Copies of the Statement of Need and Reasonableness may be reviewed at the Commission offices or at the Office of Administrative Hearings and copies may be obtained from the Office of Administrative Hearings at the cost of reproduction.

Any person may present his or her views on the proposed rules in one or more of the following ways: by submitting written data to the Administrative Law Judge at any time before the close of the hearing; by submitting oral or written data at the hearing; and by submitting written data to the Administrative Law Judge during the comment period following the hearing. The comment period will be not less than five working days after the public hearing ends. The comment period may be extended for a longer period not to exceed 20 calendar days if ordered by the Administrative Law Judge at the hearing. The written material received during the comment period shall be available for review at the Office of Administrative Hearings. Within three business days after the expiration of the

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.

In the Matter of the Adoption
of the Rule of the State Public
Employment Relations Board
Governing the Public Sector
Labor Arbitration Roster
Maintained by the Agency

DECLARATION
OF COUNSEL

I, Martha Casserly, 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 0428

Martha J. Casserly

Martha Casserly
Special Assistant
Attorney General

Dated: January 25, 1990