

MEMORANDUM



TO: Arbitrators on the NMB's Roster of Arbitrators

FROM: Roland Watkins *Roland Watkins*
Director, Office of Arbitration Services

DATE: March 11, 2009

RE: Uniform Procedures for Placement and Retention on the National
Mediation Board's Roster of Arbitrators

The attached Uniform Procedures for Placement and Retention on the National Mediation Board's Roster of Arbitrators is effective immediately and will remain in effect until further notice.

All arbitrators will be contacted in July 2009 to determine if you desire continuation on the Roster of Arbitrators for the next fiscal year.

Any questions must be directed to Darrell Dancer, Arbitration Paralegal Specialist, at (202) 692-5055.



NATIONAL MEDIATION BOARD
WASHINGTON, D.C. 20572

March 11, 2009

**Uniform Procedures for Placement
and Retention on the
National Mediation Board's Roster of Arbitrators**

I. Placement on the NMB's Roster of Arbitrators

Anyone seeking to be on the National Mediation Board's Roster of Arbitrators must complete an application form. Placement on the Roster is for one fiscal year and arbitrators must re-apply to be retained for the next fiscal year. The NMB will consider whether the applicant has met one of the following categories in determining initial acceptance to the Roster of Arbitrators:

A. Qualification Based on Experiences in Labor Arbitration or Labor-Management Relations

An individual, not disqualified from consideration pursuant to these procedures, will be eligible for placement on the NMB's roster of arbitrators if any one of the following conditions is satisfied:

- a) Personally has adjudicated and issued at least five (5) written arbitration awards as the arbitrator of record in connection with labor/management disputes.
- b) Has ten (10) years of substantive experience in connection with collective bargaining or labor agreement administration in the railroad and/or airline industries.
- c) Has fully demonstrated an exceptional understanding of labor/management relations through at least ten (10) years of substantive experience in subject areas particularly relevant to matters arising in dispute resolution in the railroad and/or airline industries.

B. Qualification Based on Comity with National Academy of Arbitrators

An individual, not disqualified, shall be eligible for placement on the NMB's roster of arbitrators if he or she currently is a member in good standing of the National Academy of Arbitrators.

II. Conditions for disqualification on the NMB's Roster of Arbitrators.

Notwithstanding the above qualifications, an individual will not be placed on the NMB's roster if any one of the following disqualifying conditions is applicable:

- a) The individual currently is employed by the United States Government or is an employee of any state, municipal, county or other governmental entity within the United States, its territories, protectorates or possessions. This subpart applies to governmental employment in a full-time, part time, ad hoc, per diem, or other periodic capacity. Approval of the individual by the governmental employer will not lift or modify this restriction. The receipt of compensation from a governmental entity for service as an arbitrator, fact finder, mediator or other neutral, or ad hoc service as an arbitrator in cases in which a government entity is a party, shall not constitute a disqualifying relationship for the purpose of these procedures. Nor shall employment (full time, part time, ad hoc or other periodic capacity) with a governmental agency mentioned above disqualify an individual who: (1) serves as a professor or

instructor at a public academic institution; (2) serves in a neutral capacity at a federal, state or local dispute resolution agency or entity. Federal employees within this exception must comply with all federal ethics rules.

- b) The individual is an employee, officer, trustee, director or otherwise is in a full-time or periodic employment relationship with any labor organization currently representing or seeking to represent employees under the Railway Labor Act (RLA), any carrier subject to the RLA, or any company in which proceedings are pending alleging its coverage by the RLA. Employment with any joint labor/management entity or as an arbitrator, mediator, conciliator, ombudsman, member/trustee on any pension plan board, or similar service shall not constitute a disqualifying relationship for the purpose of these procedures.
- c) The individual is a partner, associate employee, contractor or otherwise associated in full-time or periodic employment relationship with any law firm, consulting firm, trade association, corporation, or other entity which advocates or seeks to advocate the partisan interests of any labor organization currently representing or seeking to represent employees under RLA, any carrier subject to the RLA, or any company in which proceedings are pending alleging its coverage by the RLA. Employment with any neutral institution such as the National Academy of Arbitrators, the American Arbitration Association or the Industrial Relations Research Association shall not constitute a disqualifying relationship for the purpose of these procedures.
- d) The individual is a partner, associate, member, employee, contractor or otherwise associated in a full-time or periodic employment relationship with any law firm, consulting firm, trade association, corporation, or other entity which provides or seeks to provide any partisan-oriented services in connection with labor/management relations in the United States or otherwise including, but not limited to, advocacy, advice, consultation, lobbying or related functions with respect to such services. Activities as ombudsman, arbitrator, mediator, conciliator or other neutral, or service with any association thereof shall not constitute a disqualifying relationship for purposes of these procedures. Examples of such neutral associations include the National Academy of Arbitrators, the American Arbitration Association and the Industrial Relations Research Association.
- e) The individual currently is suspended or disbarred from arbitral service following a determination in an appropriate forum that he or she violated the Code of Professional Responsibility for Arbitrators of Labor-Management Disputes.
- f) The individual is not "wholly disinterested in the controversy to be arbitrated and impartial and without bias as between the parties" as provided by 45 U.S.C. § 155, Third. The individual is "pecuniarily or otherwise interested in any organization of employees or any carrier" as provided by 45 U.S.C. § 160. Employment with any joint labor/management entity or as an arbitrator, mediator, conciliator, ombudsman, member/trustee on any pension plan board, or similar service shall not constitute a disqualifying interest for purpose of these procedures.
- g) The individual has failed to comply with the requirements prescribed by the National Mediation Board in connection with the application process.

III. Duration of Placement on the Roster of Arbitrators

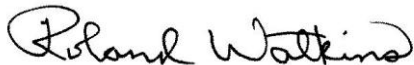
Placement on the NMB's roster of arbitrators is valid for one (1) fiscal year. Continuation on the roster is not automatic and arbitrators are required to annually submit an application for retention. No arbitrator will be allowed to hear new cases brought to the NMB without current, approved placement on the roster.

IV. Retention on the NMB's Roster of Arbitrators

The NMB will review annually an arbitrator's application for retention on the roster.

- A. An arbitrator will be retained on the roster if he or she has complied with the applicable requirements associated with the arbitration process and if, over the course of the prior fiscal year, he or she has complied with the six-month time limit for rendering case decisions as prescribed in the certification.
- B. If an arbitrator is not retained on the roster based upon non-completion of overdue cases, such arbitrator may re-apply for placement on the roster when all overdue case decisions are rendered.
- C. When an arbitrator re-applies to be placed on the NMB roster, his or her application will be reviewed for compliance with all NMB requirements. Retention on the roster is not automatic.
- D. The arbitrator will be notified if the arbitrator has been denied retention on the roster and a brief explanation of the reasons therefore. The Chairman of the National Mediation Board may consider an appeal from an arbitrator for reinstatement on the roster of eligible and approved arbitrators. The Chairman of the National Mediation Board may consider such appeal upon a showing by the affected arbitrator that the failure to adhere to the NMB's requirements for the processing, final decision, and disposition of one or more cases was due to exigent circumstances beyond the arbitrator's control and clearly could not have been avoided through the arbitrator's exercise of due diligence. The Chairman's determination and decision on any such appeals for reinstatement shall be final and conclusive and not subject to further review.

By direction of the NATIONAL MEDIATION BOARD.

A handwritten signature in cursive script that reads "Roland Watkins". The signature is written in black ink and is positioned to the left of the typed name below it.

Roland Watkins, Director of Arbitration Services