



STATE OF WASHINGTON
PUBLIC EMPLOYMENT RELATIONS COMMISSION

MICHAEL P. SELLARS, EXECUTIVE DIRECTOR

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MINUTES

June 8, 2021

The regular meeting of the Public Employment Relations Commission was held
at 10:00 a.m. via Zoom

Those present and participating:
Marilyn Glenn Sayan, Chairperson
Mark R. Busto, Commissioner
Kenneth J. Pedersen, Commissioner
Mike Sellars, Executive Director
Charity Atchison, Appeals Administrator
Emily Whitney, Compliance Officer
Vanessa Smith, Confidential Secretary

Also present:

Michael Snyder, PERC, Labor Relations Adjudicator/Mediator
Katelyn Sypher, PERC, Labor Relations Adjudicator/Mediator
Mark Lyon, Office of the Attorney General
Karl Nagel, Washington State Patrol
Robin Romeo

Minutes of the Previous Meetings

The minutes of the previous regular meeting held on May 11, 2021, were adopted with an amendment to state that the Commission went into “closed session” after the adjournment of the public meeting.

The minutes of the special meeting held on May 27, 2021, were adopted as presented.

Report of the Executive Director

1. PERC continued to receive fewer cases than usual in May. The quarterly year-over-year caseload comparison document will be available next month. As more workplaces reopen, we may see a change in the volume of cases. An active teacher mediation season is not currently expected.

Discussion on Senate Bill 5055 Implementation

Senate Bill 5055 requires PERC to create a roster of arbitrators to arbitrate disciplinary grievances of law enforcement personnel. The attached document explaining the law, the

requirements for both the agency and the Commission, timelines, and implementation status was provided to the Commission prior to the meeting. A discussion on the document and points raised within followed. Updates will be posted on the agency's website.

Compliance Docket

Pierce County, Case 132799-U-20. Compliance Officer Emily Whitney provided an overview of the Examiner's decision and the parties' compliance actions. Emily recommended that compliance be accepted. The Commission accepted compliance, and the case will be closed.

Court Docket

Charity reviewed the pending court cases and provided updated information where available. Pending Commission cases that have been appealed to court are available on the agency website.

Other Business

The Commission reviewed and unanimously accepted the application of Robert "Bob" Oberstein for membership on the Dispute Resolution Panel. Arbitrator Oberstein will be on both the grievance and interest arbitration lists.

Adjournment

There being nothing further to come before the Commission, the public meeting was adjourned. Marilyn Glenn Sayan, Mark Busto, and Kenneth Pedersen went into closed session to deliberate over the appeals of *City of Bellingham*, Decision 13299 (PECB, 2021); *Kitsap County*, Decision 13306 (PECB, 2021); and *Chelan County*, Decision 13308 (PECB, 2021), and to discuss the remand in the Lincoln County/Teamsters Local 690 cases. Appeals Administrator Charity Atchison joined the Commission in closed session.

APPROVED this 13th day of July, 2021.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MARILYN GLENN SAYAN, Chairperson



MARK R. BUSTO, Commissioner



KENNETH J. PEDERSEN, Commissioner

Law Enforcement Personnel Disciplinary Grievance Arbitrator Roster

Senate Bill 5055, Laws of 2021, ch. 13, was passed during this last legislative session and signed into law by Governor Inslee. The new legislation addresses the arbitration of law enforcement personnel disciplinary grievances and, specifically, who can arbitrate such grievances and how those arbitrators must be selected or appointed to a dispute.

Who May Arbitrate Law Enforcement Personnel Disciplinary Grievances?

The law requires the Commission to create a roster of 9 to 18 arbitrators to arbitrate disciplinary grievances¹ of law enforcement personnel.² The Commission may only appoint persons who have a minimum of six years' experience as

- a full-time labor relations advocate who has been the principal representative for either labor or management in at least 10 arbitration proceedings,
- a full-time labor mediator,
- an arbitrator who has decided at least 10 collective bargaining disputes, or
- a practitioner or full-time instructor of labor law or industrial relations.

Laws of 2021, ch. 13, § 1(4)(a).

The Commission must also, as applicable, consider the following in making appointments to the roster:

- A candidate's familiarity, experience, and technical and theoretical understanding of and experience with labor law, the grievance process, and the field of labor arbitration;
- A candidate's ability and willingness to travel through the state, conduct hearings in a fair and impartial manner, analyze and evaluate testimony and exhibits, write clear and concise awards in a timely manner, and be available for hearings within a reasonable time after the request of the parties;
- A candidate's experience and training in cultural competency, racism, implicit bias, and recognizing and valuing community diversity and cultural differences; and

¹ "Disciplinary grievance" is defined as "a dispute or disagreement regarding any disciplinary action, discharge, or termination decision arising under a collective bargaining agreement covering law enforcement personnel." Laws of 2021, ch. 13, § 1(1)(c).

² (b)(i) "Law enforcement personnel" means:

(A) Any individual employed, hired, or otherwise commissioned to enforce criminal laws by any municipal, county, or state agency or department, or combination thereof, that has, as its primary function, the enforcement of criminal laws in general, rather than the implementation or enforcement of laws related to specialized subject matter areas. For the purposes of this subsection (1)(b), officers employed, hired, or otherwise commissioned by the department of fish and wildlife are considered law enforcement personnel.

(B) Corrections officers and community corrections officers employed by the department of corrections.

(ii) "Law enforcement personnel" does not include any individual hired as an attorney to prosecute or litigate state or local criminal laws or ordinances, nor any civilian individuals hired to do administrative work.

Laws of 2021, ch. 13, § 1(1)(b)(i)–(ii).

- A candidate's familiarity and experience with the law enforcement profession, including ride-alongs with on-duty officers, participation in a citizen's academy conducted by a law enforcement agency, or other activities that provide exposure to the environments, choices, and judgments required by officers in the field.

Laws of 2021, ch. 13, § 1(1)(4)(b).

Appointments to the roster are effective upon selection by the Commission and generally last three years, expiring on the first Monday in January. Laws of 2021, ch. 13, § 1(5). Individuals may be reappointed by the Commission, and there is no limit on the number of terms an individual may serve. Laws of 2021, ch. 13, § 1(9). The Commission may remove individuals from the roster by a majority vote. Laws of 2021, ch. 13, § 1(10).

Initial appointments by the Commission vary somewhat, with three appointments expiring on the first Monday in January 2024, three appointments expiring on the first Monday in January 2025, and three appointments expiring on the first Monday in January 2026. These initial appointments may last longer than three years. Laws of 2021, ch. 13, § 1(6).

Training Requirements for Individuals Appointed to the Law Enforcement Personnel Disciplinary Grievance Arbitrator Roster

Within six months of appointment to the roster, individuals must complete training developed, implemented, and required by the Executive Director. The training must include at least the following:

- Six hours on the topics of cultural competency, racism, implicit bias, and recognizing and valuing community diversity and cultural differences; and
- Six hours on topics related to the daily experience of law enforcement officers, which may include
 - ride-alongs with on-duty officers,
 - participation in citizens' academies conducted by a law enforcement agency,
 - shoot/don't shoot training provided by a law enforcement agency, or
 - other activities that provide exposure to the environments, choices, and judgments required of officers in the field.

Laws of 2021, ch. 13, § 1(11).

The Commission may adopt rules establishing training requirements consistent with this legislation. *Id.*

How Will Arbitrators Be Appointed?

According to the legislation, all arbitrators of law enforcement personnel disciplinary grievances must come from the roster of arbitrators. Laws of 2021, ch. 13, § 1(13)(a). The appointment of the arbitrator must be made by the Executive Director on rotation through the roster alphabetically by last name. If the appointed arbitrator is unable to hear the case within three months from the request for an arbitrator, the Executive Director appoints the next arbitrator from the roster alphabetically. Laws of 2021, ch. 13, § 1(13)(a)(i).

Arbitrators must disclose to the Executive Director any conflict of interest that may reasonably be expected to materially impact the arbitrator's impartiality. The Executive Director may determine whether the conflict merits assigning the next arbitrator on the roster. Either party may also petition the Executive Director to have an assigned arbitrator removed due to a conflict of interest that may reasonably be expected to materially impact the arbitrator's impartiality. If the petition is granted, the Executive Director assigns the next arbitrator on the roster. Laws of 2021, ch. 13, § 1(13)(a)(ii).

The parties may not participate in, negotiate for, or agree to the selection of the arbitrator. Parties may not negotiate collective bargaining agreement provisions that are inconsistent with this legislation. Laws of 2021, ch. 13, § 1(13)(c).

Fees and Costs

The Commission establishes the fee schedule for arbitrations conducted under this legislation. The Commission sets the fee schedule on an annual basis. The parties are responsible for paying the arbitrator's fees as set forth in the parties' collective bargaining agreement. In the absence of any provisions in a collective bargaining agreement, the fees and costs must be borne equally by the parties. Laws of 2021, ch. 13, § 1(3).

The Commission may establish fees in order to cover the costs of developing and providing the required training to arbitrators. Laws of 2021, ch. 13, § 1(11).

Posting of Arbitration Decisions

The agency must post on its website law enforcement grievance arbitration decisions made under this legislation within 30 days of the decision. The names of the grievant and witnesses are to be redacted. Laws of 2021, ch. 13, § 1(14).

When Will the New Processes Take Effect?

The new legislation becomes effective on July 25, 2021. It has several time frames within.

- First, the arbitrator selection provisions apply to all law enforcement personnel disciplinary grievance arbitrations that are heard on or after January 1, 2022. Laws of 2021, ch. 13, § 1(2)(a).
- The grievance arbitration provisions for all collective bargaining agreements covering law enforcement personnel that are negotiated or renewed on or after January 1, 2022, must include the arbitrator selection procedure set forth in this legislation. Laws of 2021, ch. 13, § 1(2)(b)(i).
- The grievance arbitration provisions of collective bargaining agreements negotiated or renewed before January 1, 2022, that do not contain the arbitrator selection procedures of this legislation expire upon the expiration date of the collective bargaining agreement and may not be extended or rolled over beyond the expiration date of the agreement. Laws of 2021, ch. 13, § 1(2)(b)(ii).
- With respect to reopeners, expired contracts, or renegotiations, the legislation states,

This section does not require any party to a collective bargaining agreement in existence on the effective date of this section to reopen negotiations of the agreement or to apply any of the rights and responsibilities under this act unless

and until the existing agreement is reopened or renegotiated by the parties or expires.

Laws of 2021, ch. 13, § 1(2)(c).

Implementation Status

As mentioned at the last Commission meeting, Charity Atchison, Chris Casillas, Dario de la Rosa, Jamie Siegel, and I have been meeting to map out the implementation. What follows is the current status on a variety of implementation topics.

Applications

We anticipate soliciting applications for the new roster beginning this month for Commission action as soon as the July 13, 2021, Commission meeting. The application materials will be submitted to the Commission for consideration in the same manner that we currently send materials from applicants to our Dispute Resolution Panel.

Fee Schedule

We have reviewed the fee schedules of arbitrators on our current Dispute Resolution Panel to get a sense of their fees and costs. The per diem rate for grievance arbitration ranges from \$980 to \$2,800. The average per diem rate is \$1,595. The vast majority of panel members charge a cancellation fee of one day's per diem if cancelled within 21–30 days of the hearing. Likewise, the majority of panel members charge actual costs for travel expenses and mileage at the IRS reimbursement rate. With respect to arbitrators living outside of Washington and the Portland area, most establish a Washington address and charge travel from that address.

Minnesota, which established a similar statute in 2020, set the fee schedule for its Peace Officer Grievance Arbitration Roster as follows:

- Per Diem: \$2,000 – applied to travel to and from hearing location, if overnight stay required before or after hearing; hearing; research, study, and preparation of award.
- Cancellation Fee: \$1,000 – if hearing is cancelled or postponed less than 21 calendar days before scheduled hearing date.
- Expenses: Parking, meals, lodging, copying, postage, and travel from above address [address of arbitrator] to hearing location by automobile at IRS mileage rate.
- No Docketing Fee.

Since the fee schedule must be reviewed annually, we are not recommending that the Commission set the fee schedule in rule. Rather, the fee schedule can be set by the Commission at its regular meetings. The fee schedule should be set in July or as soon as possible thereafter.

Training

We are exploring training opportunities and are targeting to have training options available by December 2021. Our current plan is to have the arbitrators pay the training providers directly. Since the

legislation specifies the minimum training required and the topics to be covered, we do not believe rules are necessary. We can keep the arbitrators, clientele, and public apprised through our website.

Removal

The legislation states that the Commission may remove an arbitrator from the roster by a majority vote. There will need to be some pre-deprivation process involved before an arbitrator is removed from the roster. Given the small number of arbitrators on the roster and the requirement that all law enforcement personnel disciplinary grievances use this roster, the process requirement is different than for members of our current Dispute Resolution Panel. Minnesota's removal process for arbitrators on both its regular roster and Peace Officer Grievance Arbitration Roster is as follows:

5530.1300 DISCIPLINARY OR REMOVAL PROCEDURES.

Subpart 1. General.

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

Subp. 2. Preliminary investigation.

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

Subp. 3. Notice.

When the commissioner finds probable cause to believe that a violation of this chapter has occurred and that removal or disciplinary suspension of a roster member should be considered, the commissioner shall provide written notice to the roster member and the advisory committee. The written notice must contain the nature of the action being considered and the reasons for it. The notice shall provide an opportunity for the roster member to respond in writing and shall fix a date for a hearing on the matter before the commissioner or a designated representative, if the roster member wishes to contest the proposed action.

Subp. 4. Hearing.

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

Subp. 5. Determination.

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

The removal piece does not need to be in place prior to making appointments but should be resolved by January 2022.

Other Rules

The Commission should consider whether it wants to apply to this roster of arbitrators the requirement in WAC 391-55-110(7) that precludes panel members from serving as an advocate for labor or management. The Commission should also consider to what extent, if at all, it wants to apply to this roster of arbitrators the requirement in WAC 391-65-110(2) that the arbitrators follow the "Code of Professional Responsibility for Arbitrators of Labor-Management Disputes" as last amended with approval of the Federal Mediation and Conciliation Service.

We expect that as implementation continues, there may be additional questions and issues that need to be addressed.