



# Oregon

Kate Brown, Governor

## Employment Relations Board

Old Garfield School Building

528 Cottage St. NE, Ste 400

Salem, OR 97301-3807

Phone: 503-378-3807

Fax: 503-373-0021

[EmpRel.Board@ERB.oregon.gov](mailto:EmpRel.Board@ERB.oregon.gov)

<http://www.oregon.gov/ERB>

## EMPLOYMENT RELATIONS BOARD Notice of Public Meeting

The Employment Relations Board will hold a public meeting to deliberate and potentially vote on taking action regarding the September 24, 2021 Report of the Rules Advisory Committee for the Implementation of HB 2930. The report and proposed rule are attached and posted to the website at <https://www.oregon.gov/erb/Pages/News.aspx>.

### DATE AND TIME

**OCTOBER 27, 2021**

**10:00 A.M.**

### LOCATION:

**TO BE HELD VIA TELECONFERENCE OR VIDEO CONFERENCE**

\*For information on how to attend the public meeting, please email [Emprel.Board@ERB.oregon.gov](mailto:Emprel.Board@ERB.oregon.gov) or [April.Bathurst@ERB.oregon.gov](mailto:April.Bathurst@ERB.oregon.gov).

*This meeting is accessible to persons with disabilities. A request for an interpreter for the hearing impaired or for other accommodations for persons with disabilities should be made at least 48 hours before the meeting to April Bathurst, 503-378-3807.*



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**TO:** The Board

**FROM:** ALJ Jennifer Kaufman

**DATE:** September 24, 2021

**SUBJECT:** Report of the Rules Advisory Committee for the Implementation of HB 2930

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On August 28, 2021, the Board appointed the Rules Advisory Committee (the Committee) to provide recommendations to the Board regarding the adoption of a permanent rule, pursuant to HB 2930, concerning the appointment of arbitrators under ORS 243.706(3). The Committee is composed of two arbitrators (Howell Lankford and James Lundberg); four labor representatives (Traci Anderson, Daryl Garrettson, Anil Karia, and Dan Thenell); and four management representatives (Kyle Abraham, Heidi Brown, Ashley Driscoll, and Sylvia Van Dyke). The Committee is chaired by ALJ Jennifer Kaufman and administrative support is provided by Rules Coordinator April Bathurst.

The Committee held four meetings, on August 27, September 10, September 13, and September 20, 2021. The main issues that were deliberated by the Committee are: 1) ensuring that parties have enough information about selected arbitrators to be able to intelligently determine whether to exercise their sole objection; 2) controlling the costs of arbitration under the rule; and 3) addressing these concerns without unduly narrowing the pool of arbitrators available to hear cases under ORS 243.706(3). On September 20, 2021, the Committee reached a tentative agreement on a proposed final rule for submission to the Board. The Committee unanimously cast their final votes in favor of the proposed rule, via email, with the final vote cast on September 24, 2021.<sup>1</sup>

The Committee used temporary rule OAR 115-040-0034 as the starting point for its deliberations. The Committee considered the suitability of the Board's existing panel of arbitrators under OAR 115-040-0030 for appointments under the new rule, and ultimately concluded that it is satisfied with the Board's use of the existing panel to make its selections. The Committee is concerned, however, that practitioners lack sufficient information about arbitrators on the existing panel to be able to intelligently determine whether to exercise their strike. Therefore, the proposed rule requires that arbitrators provide certain information to the parties when they are selected by the Board. The Committee requests that the Board make its panel of arbitrators aware of this

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<sup>1</sup>Committee Member Garrettson supports using an opt-in model rather than an opt-out model and would ask that selected arbitrators must provide five previous awards, preferably involving public sector discipline. Nonetheless, Mr. Garrettson joins the majority in voting for the proposed final rule.

requirement under the proposed rule, if adopted, so that arbitrators will be prepared to furnish the requested information. The Committee also strongly urges the Board to avoid any preference for new arbitrators when selecting arbitrators under the new rule.

In discussing possible cost containment measures, the Committee considered incorporating language, like that in OAR 115-040-0032(1), that would give the parties the ability to request restrictions to the list of arbitrators. The Committee concluded, however, that its primary concern was that arbitrators hearing cases under the rule must charge from the Oregon border, and the Committee included this requirement in the proposed rule.

The Committee also modified the timelines in the Board's temporary rule. Finally, to comply with the Board's directive that the Committee seek input from other affected individuals and entities, as well as members of the public, the Committee posted a notice on the Board's website soliciting comments at its September 20, 2021, meeting. No members of the public attended that meeting to provide input to the Committee. The Committee understands, however, that there will be other opportunities for the Board to solicit public input before a final rule is adopted.

The Committee's proposed final rule is attached to this report. The proposed rule would have no fiscal impact.



Jennifer Kaufman  
Administrative Law Judge  
Hearings Division

**OAR 115-040-0034**

**Appoint Arbitrator for Arbitration proceedings under ORS 243.706(3)**

1. When a party submits a request for the Board to appoint an arbitrator under ORS 243.706(3), the Board shall randomly appoint an arbitrator from the panel described in OAR 115-040-0030 and as follows:
  - a. The Board shall randomly select an arbitrator from the panel described in OAR 115-040-0030. An arbitrator may opt out of being included on the random appointment list under this rule by notifying the Board.
  - b. An arbitrator selected from this list must agree to bill only for travel costs and travel time incurred within the borders of Oregon.
  - c. Within five (5) business days of selection, the randomly selected arbitrator will either:
    - i. Submit to the Board up to five (5) but no fewer than one (1) of their awards or decisions in public sector discipline or discharge cases, preferably involving cases between law enforcement employers and unions; and submit an updated resume, and current fees and expenses, or
    - ii. Opt out, in which case the Board will randomly select another arbitrator.
  - d. If the randomly selected arbitrator fails to provide the information in Section (c)(i), the Board will randomly select another arbitrator.
  - e. With the selected arbitrator's consent to the appointment, the Board will notify the parties of the appointed arbitrator and provide the parties with the arbitrator's submitted prior awards or decisions, updated resume, and current fees and expenses.
  - f. Within seven (7) business days of the appointment, either party may object to the appointed arbitrator. If a party objects to the appointed arbitrator, the Board will randomly appoint a second arbitrator from the panel described in OAR 115-040-0030 and this rule. The party that did not previously object to the first-appointed arbitrator has seven (7) business days to object to the second-appointed arbitrator. If such an objection is filed, the Board will randomly appoint a third arbitrator, who shall serve as the arbitrator in the matter.
2. Once a final appointment is made, the Board shall notify the appointed arbitrator and the parties.