



Michael T. Loconto, Esq.

Arbitrator

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January 10, 2023

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Surface Transportation Board
in care of Director Mai T. Dinh
Office of Proceedings
395 E Street, S.W.
Washington, D.C. 20423-0001

Re: Arbitrator Application – Surface Transportation Board – **Docket No. EP 730 (Sub-No. 1)**
Application of Arbitrator Michael T. Loconto, Esq.

Chairman Oberman, Members of the Board, Director Dinh and Board Staff:

Thank you for providing me with the opportunity to seek appointment to the Surface Transportation Board's Roster of Arbitrators. I make this application pursuant to docket number EP 730 (Sub-No. 1), dated December 15, 2022, and in accordance with the provisions of 49 C.F.R. § 1108.6(b).

Briefly, I have two decades of experience as an attorney specializing in labor and employee relations, having worked as in-house counsel in the private sector for two institutions of higher education and in the public sector for a major metropolitan city. My experience includes work with economic regulations in the field of labor law, and additional experience with a number of transportation-related ventures in municipal government, private bus transport and project labor agreements with the building and construction trades. My last in-house role as a general counsel at a small college included a wide variety of regulatory matters ranging from accreditation issues to disability and data privacy.

In 2020, I ended my advocate's practice to pursue a career as a neutral. I have trained as an arbitrator with the Federal Mediation and Conciliation Service (FMCS) Institute and with the American Arbitration Association on remote mediation practices. I have also trained with two members of the National Academy of Arbitrators on labor, employment and pension and benefits matters. I write about and speak on arbitration-related matters at a number of annual conferences that include the Labor and Employment Relations Association (LERA) and the National Center for the Study of Collective Bargaining in Higher Education Professions, and teach bargaining and contracts at The Labor Guild School of Labor-Management Relations in Boston. Notably, I learned about the STB's arbitration process by attending a National Association of Railroad Referees (NARR) conference on railway industry labor relations last fall.

In my third year of arbitration practice, I have joined the FMCS Roster of Arbitrators for labor disputes and also provide arbitration, mediation and factfinding services through more than 20 state and local agencies. I have also been appointed directly by the parties to multiple panels and am a member of several private organization rosters, where I also provide employment and commercial ADR services across industries. For your reference, I intend to apply to the National Mediation Board's roster of

arbitrators for labor disputes in the railway industry shortly. My current rate for arbitration services in the commercial sector is \$350 per hour.

I respectfully request your consideration for appointment to the Board's Roster of Arbitrators. I have enclosed my full resume for your review, along with a copy of my policies on billing, expenses, cancellation, and related practices. I look forward to an opportunity to serve as a Roster member, and invite your questions. Please do not hesitate to contact me if you require any further information.

Respectfully,



Michael T. Loconto, Esq.

Arbitrator

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Attachments (2) - Arbitrator Michael T. Loconto, Esq. – *curriculum vitae*
Loconto ADR 2023 Policies on Hearings, Fees and Other Practices

ARBITRATOR MICHAEL T. LOCONTO, ESQ.

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ARBITRATOR, MEDIATOR AND HEARING OFFICER EXPERIENCE

Labor and Employment Arbitrator/Mediator, Boston, MA

June 2021 – Present

Neutral and independent arbitrator, mediator, facilitator, fact finder and hearing officer in labor and employment disputes between unions, employers and employees. Provides election and certification processes ("card check") services and training on interest-based bargaining techniques. In-person and remote hearing capabilities; satellite offices in Ft. Lauderdale, FL, Lancaster, PA and Minneapolis, MN.

- **Industries and Issues:** Include trades, clerical workers, construction, K-12 and higher education, public safety, dining services, athletics, public sector, financial services, and beverage and technology workers. Also include discipline and discharge; contract interpretation; pay and wage differentials; disability; discrimination and harassment; leaves; benefits; FLSA; USERRA; project labor agreements; and Title IX matters.
- **Training:** "Becoming a Labor Arbitrator" (2021) and "Federal Sector Arbitration" (2022), FMCS Institute. Apprentice to National Academy of Arbitrators members Mark Irvings and David Gaba in labor, employment and MPPAA/Taft-Hartley Trust Funds matters. Member, NAA New England arbitrator salon.
- **Publications:** *Board of Editors* - Will Aitchison, David Gaba & Jonathan Downes, *Interest Arbitration* (Miller, Vannoy and Scott 3d ed., LRIS Books, 2022).
- **Direct Appointment Panels:** APWU and USPS (Expedited Panel-Connecticut); Port Authority of New York / New Jersey (Employee Relations Panel).
- **Rosters:** Labor, employment and commercial services in early neutral evaluation, fact finding, interest and grievance arbitration, or mediation provided through:
 - *Private Panels:* AAAmediation.org, Forum ADR and The Labor Relations Connection
 - California PERB and SMCS
 - FMCS (includes virtual and federal matters)
 - Iowa PERB
 - Los Angeles County (CA) ERC
 - Minnesota Bureau of Mediation Services
 - Montana Board of Personnel Appeals
 - Nebraska Commission on Industrial Relations
 - Nevada Gov't. Empl.-Mgmt. Rel. Bd.
 - New Hampshire PELRB
 - New Jersey Board of Mediation and PERC
 - Oregon ERB
 - Pennsylvania Bureau of Mediation and LRB
 - Phoenix (AZ) ERB
 - U.S. Dist. Ct., Dist. of Western Pennsylvania
 - U.S. Virgin Islands PERB
 - Washington (state) PERC
 - *Resume on file with:* Colorado Dept. of L&E, Kansas Dept. of Labor, and Maine LRB.

PROFESSIONAL LEGAL EXPERIENCE

Fenway Law LLC, Boston, MA

December 2020 – Present

Solo specialized counsel focused on commercial contract reviews, data and website privacy, and general compliance issues. My practice specifically excludes advocacy in labor and employment-related disputes.

Curry College, Milton, MA

General Counsel (previous title: College Counsel)

February 2016 – November 2020

Led multiple contract negotiations with faculty (AAUP) and trades. Arbitration work included discipline and discharge, policy implementation and shift differentials. Practical experience with U.S. Department of Education and Massachusetts Attorney General. Key policy work on remote operations, pandemic response, student mental health supports, Title IX, data security, and surveillance cameras.

Harvard University, Office of Labor & Employee Relations, Cambridge, MA

Deputy Director for Policy and Compliance and Youth Protection Officer

August 2006 – January 2016

(Previous title: Associate Director of Labor & Employee Relations). Negotiated Project Labor Agreements with construction trades unions, campus police union CBA, and multiple contracts with 4,500-member clerical-technical union. Med-arb and arbitration work included discipline and discharge, overtime, uniforms, shift differentials and policy implementation. Directed additional policy development and compliance work on whistleblowing, independent contractors, FLSA, leave for new parents and domestic violence victims, nursing mother accommodations, social media use and transgender rights. Oversaw campus-wide child safety standards and assisted on Title IX implementation.

City of Boston, Office of Labor Relations, Boston, MA

November 2002 – August 2006

Labor Relations Counsel: Negotiated collective bargaining agreements, policy implementation and interim issues with more than a dozen large civilian, police and fire employee labor unions. Counseled department heads on management issues and reduced sick leave abuse in a large department. Arbitration work included discipline and discharge; overtime and police details; shift differentials; pay incentives; and work assignments.

RELEVANT TEACHING, RESEARCH, SPEAKING AND COMMUNITY SERVICE

The Labor Guild School of Labor-Management Relations, Boston, MA

2022 - present

Instructor: Courses include *Drafting Contract Language* and *Interest-Based Bargaining*.

Boston School Committee

2014 - 2020

Member and Chairperson: Appointed by Mayor Martin J. Walsh (current U.S. Labor Secretary); liaison to 12 collective bargaining units. Co-Led District Capacity Project with Boston Teachers Union/AFT-Massachusetts Education Partnership (2014 - 2017). Facilitator, City of Boston's Dialogues to Action on Race series (2017).

Northeastern University School of Law, Boston, MA

2008 - 2010

Adjunct Lecturer: Legal writing and research program for first-year law students.

Labor and Employment Relations Association (LERA): Boston chapter President (2022 – present). Member, national organization and Central Pennsylvania, Connecticut, Maine, New Jersey, New York City, Rhode Island, Oregon, Virginia and Virtual chapters. Co-Chair, Higher Education Industry Council (2008-2013). Annual Conference speaking: *Building an Arbitrator's Practice* (2023); Ph.D. Papers on *Organized Voice* (2022) & *Wages* (2021); *Labor-Management Collaboration in K-12* (2016); *Higher Education Labor & Employment* (2013); *Public Sector Labor Issues in Higher Education* (2012); and *Negotiation, Collective Bargaining, and Workplace Dispute Resolution* (2011).

National Center for the Study of Collective Bargaining in Higher Education Professions: Annual NCSCBHEP labor-management conference speaking on: *Discrimination in Religious Institutions* (2023); *Collective Bargaining & Shared Governance* (2022); *Labor & Education under Biden* (2021); *Legal Update* (2019); *Multi-Employer Negotiations in Higher Ed* (2016); *Comparing Public and Private-Sector Bargaining* (2015); *Part-Time Faculty & Graduate Student Organizing* (2013); and *Social Media as Protected Activity in Negotiations & the Workplace* (2011, 2012 & 2014).

Other Organizations: NWSLPA organizing discussion moderator, UM Sport Industry Conference (2023); NLRB developments under Biden moderator, NUSL Annual Labor & Employment Program (2022); AFT/NEA Contract Negotiations moderator, MASS/MASC conference (2022). Guest lecturer on *arbitration in athletics*, University of Miami (2022). National Association of College & University Attorneys, Committee on Legal Education (2018-20) and CLE speaker on *collective bargaining* (2015). MCLE instructor on *Legislative & Drafting Processes* (2018-19). Boston Bar Association, Traditional Labor Law subcommittee co-chair (2010-11).

EDUCATION

Northeastern University School of Law, Boston, MA

2002

Juris Doctor

The Florida State University, Tallahassee, FL

1999

Bachelor of Arts in History and Political Science, Minor in Economics

BAR ADMISSION: Massachusetts (2002); U.S. Dist. Ct. (MA, 2003); U.S. Ct. of Appeal (1st Cir., 2003).

ARBITRATION AND MEDIATION FEES; CANCELLATION

Fees: \$1,850 *per diem* for labor matters. \$350/hour for employment and commercial matters.

Expenses: writing, research, conferences at fractional *per diem* or hourly rate (as applied). \$200/hour for travel time in excess of two hours per day. Actual travel and out-of-pocket expenses billed as incurred. I do not charge for administrative overhead. Please contact me for full fee schedule and related policies.

Cancellations: less than fourteen (14) calendar days prior to scheduled hearing date will incur one day's fee.



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2023 FEE SCHEDULE, CANCELLATIONS, HEARING PROCEDURES AND BILLING

PER DIEM

Unless superseded by an applicable statute, regulation, appointing authority or agreement, my *per diem* rate is \$1,850 per day, not to exceed 7 hours. The *per diem* rate may include up to 2 hours of travel time. Study, writing, excess conference time, and travel will be charged at \$200 per hour. There is no charge for administrative overhead.

CANCELLATION FEE

I will charge a cancellation fee equal to the *per diem* rate times the number of days reserved for the arbitration for any cancellation made within 14 calendar days of the scheduled start of the arbitration hearing. This calculation does not include the hearing day. Actual expenses incurred (required guaranteed reservations, for example) are also billed. Cancellation fees shall be split between the parties unless another arrangement has been agreed upon and communicated to me at the time of the cancellation (including "loser pay" provisions).

TRAVEL, MILEAGE, AND OTHER EXPENSES

Automobile travel is charged at the Internal Revenue Service rate. Mileage is calculated from Boston, Massachusetts, unless an alternative applicable panel address is used to schedule the hearing. Lodging is charged at cost; meals are not billed. In the event that air or train travel is necessary, I will purchase the lowest cost refundable airline tickets available at the time and on the carrier of my choosing.

PANDEMIC / RELATED HEARING ISSUES

I am available for hearings on an in-person or remote/virtual basis. I will travel for hearings and am fully vaccinated. Any hearing on a remote basis will require a pre-hearing conference to confirm the parties' readiness for the use of video conferencing software (e.g., Zoom). Parties shall endeavor to exchange exhibits and resolve hearing issues at least 1 day in advance of a scheduled hearing.

SUBPOENAS / EXHIBITS / OFFICIAL RECORD

In the absence of governing rules or regulations, any requests for subpoenas shall be directed to me, with copy to the opposing advocate. I encourage agreement on the utilization of joint exhibits between advocates prior to hearing and to the extent those can be agreed upon, I welcome receipt of those prior to the hearing. Should the parties agree to share the costs of a transcript via the use of a court reporter, a copy of the transcript shall be provided to the arbitrator at no cost. Should the parties wish to record a remote hearing via Zoom video conferencing software, the arbitrator shall make and control such recording and make such record available to each party at the conclusion of the hearing (unless otherwise agreed by the parties). Please note that I will not voluntarily appear as a witness in any litigation associated with enforcement of, or a challenge to, any award or in any other litigation associated with a case. As a standard practice, I do not retain case files following the issuance of the Award or the expiration of any retained jurisdiction.

BRIEFS / ISSUANCE AND PUBLICATION OF AWARDS

Post-hearing briefs shall be submitted to the Arbitrator electronically as a PDF *and* as a Word document. Any citations to arbitral precedents or case authorities shall be appended to the brief as a separate attachment. Transmission of the Award shall be via email, and the parties shall acknowledge receipt thereof. It is my practice to occasionally submit Awards for publication by established reporting services. I will inform the parties at the time of the Award if am considering submitting the case for publication, with a request that the parties advise me within 30 days after issuance of the Award if they object to publication.

BILLING

Bills and W-9s are typically issues via email with the Award; however, in complex or prolonged matters I reserve the right to issue bills on a monthly basis for outstanding work or out-of-pocket expenses incurred to date. Please advise me if there is a particular person to whom bills should be directed. Otherwise, the bill and award will be sent to the person entering an appearance on behalf of the party at the hearing. Payment by check, credit card or ACH transfer is accepted.