

# Rules for Impartial Determination of Union Fees

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## Introduction

In *Chicago Teachers Union v Hudson*, the Supreme Court of the United States held that a labor union which charges non-member employees an agency fee to defray the cost of providing service is required to give them "an adequate explanation of the basis for the fee, a reasonably prompt opportunity to challenge the amount of the fee before an impartial decision maker, and an escrow for the amounts reasonably in dispute while challenges are pending."

These Rules for Impartial Determination of Union Fees were developed by the American Arbitration Association to provide "expeditious, fair, and objective" determinations of such challenges.

The American Arbitration Association (AAA) is a public-service not-for-profit organization offering a broad range of dispute resolution services to business executives, attorneys, individuals, trade associations, unions, management, consumers, families, communities, and all levels of government. Services are available through AAA headquarters in New York City and through offices located in major cities throughout the United States. Hearings may be held at locations convenient for the parties and are not limited to cities with AAA offices. In addition, the AAA serves as a center for education and training, issues specialized publications, and conducts research on all forms of out-of-court dispute settlement.

When a union requests administration under these rules, the AAA will appoint an impartial arbitrator, who is experienced in employment relations.

These challenges could involve determinations about local, statewide, or national fees. The burden is upon the union to justify whatever fees are being disputed. Sometimes, such issues can be determined on the basis of documents. If a hearing is necessary, it should be held promptly so that the arbitrator can comply with the time limits contained in the union's internal procedures and with applicable law. Arbitrators must accompany their awards with a written explanation of their determination.

The AAA is also prepared, at the request of the union, to hold a portion of the challenged union fees in escrow during the pendency of the challenge procedure.

## **Rules for Impartial Determination of Union Fees**

### **1. Application of Rules**

A union may obtain administration under these rules by requesting the AAA to appoint an arbitrator to determine the appropriate amount of a union fee in one or more of its bargaining units. These rules shall apply subject to and in accordance with the applicable statutory law and the internal procedures of the union involved.

### **2. Initiation of Arbitration**

To initiate an arbitration under these rules, a union shall notify the AAA that challenges of its fees have been received from one or more individual employees, which are to be determined by an impartial arbitrator. The letter of notification shall identify the unions involved and the names and addresses of the individuals who have challenged the union fee or who, in accordance with applicable law or the organization's internal procedures, should be notified of the proceedings. The union and the challengers are hereinafter referred to collectively as the parties.

The letter of notification should describe the issues involved and notify the AAA of any relevant time limits contained in the applicable law or the union's internal procedures. The initiating letter may suggest an appropriate location for hearing.

### **3. Appointment of Arbitrator**

Upon receiving such an initiating letter, the AAA will appoint an arbitrator from a special panel of arbitrators experienced in employment relations who is willing to hear and decide such issues in accordance with applicable law and the union's internal procedures, and who is prepared to meet the applicable time limits. The AAA will notify the parties of the arbitrator's appointment.

#### **4. Disclosure of Grounds for Disqualification**

Prior to accepting the appointment, a prospective arbitrator shall disclose any circumstance likely to create a presumption of bias. In its discretion, the AAA may disqualify an arbitrator based on such disclosure. After the parties in the procedure are notified of an appointment, they may challenge an arbitrator for cause by notifying the AAA of their objection.

#### **5. Vacancies**

If for any reason an arbitrator should be unable to perform the duties of office, the AAA may, in its discretion, declare the office vacant and appoint a substitute.

#### **6. Notification of Proceedings**

Notice of the time and place of the arbitration hearing, as determined by the arbitrator, will be mailed to the parties by the AAA, at least 14 days in advance of the hearing.

#### **7. Representation**

Any party may be represented by counsel or by another authorized representative.

#### **8. Stenographic Record**

Any party wishing a stenographic record shall make such arrangements directly with the stenographer, notifying the AAA in advance of the hearing. If such a transcript is determined by the arbitrator to be the official record of the proceeding, it must be made available to the arbitrator and to the other parties for inspection, at a time and place determined by the arbitrator.

#### **9. Attendance at Hearings**

The arbitrator shall maintain the confidentiality of the hearings unless the law provides to the contrary. Persons having a direct interest in the arbitration are entitled to attend hearings. The arbitrator shall have the power to require the retirement of any witness during the testimony of other witnesses. It shall be discretionary with the arbitrator to determine the propriety of the attendance of any other person.

#### **10. Adjournment**

The arbitrator may for good cause shown adjourn a hearing upon the request of a party or upon the arbitrator's own initiative, but must observe all applicable time limits.

#### **11. Oaths**

The arbitrator may require witnesses to testify under oath.

#### **12. Order of Proceedings**

The arbitrator shall determine how the case can best be presented so that all parties have a fair opportunity to contest the issues. The names and addresses of all witnesses and exhibits in the order received shall be made a part of the record. The arbitrator shall afford full opportunity for presentation of relevant proofs.

### **13. Arbitration in the Absence of a Party**

The arbitration may proceed in the absence of any party who, after due notice, fails to be present or fails to obtain an adjournment. The arbitrator shall require the parties present to submit such evidence as may be necessary for the making of a determination.

### **14. Evidence**

The parties may offer such evidence as they desire and shall produce such additional evidence as the arbitrator may deem necessary to an understanding and determination of the dispute. The arbitrator shall be the judge of the relevance and materiality of the evidence offered and conformity to legal rules of evidence shall not be necessary.

### **15. Evidence by Affidavit and Filing of Documents**

The arbitrator may receive and consider the evidence of witnesses by affidavit, giving it only such weight as seems proper after consideration of any objection made to its admission. Parties shall be afforded an opportunity to examine all documents submitted in the proceedings. Documents not filed with the arbitrator at the hearing, but which are arranged to be submitted later, shall be filed with the AAA for transmission to the arbitrator.

### **16. Closing of Hearings**

The arbitrator shall determine when sufficient evidence has been submitted for an understanding and determination of the dispute. At that point, the arbitrator may declare the hearings closed. If briefs or other documents are to be filed, the hearings may be declared closed as of a later date set by the arbitrator. The time limit within which the arbitrator is required to make an award shall be that contained in the applicable law and the union's internal procedures. If no specific date is fixed, the arbitrator shall have 30 days from the closing of hearings within which to make an award.

### **17. Reopening of Hearings**

The hearings may be reopened by the arbitrator at will or on the motion of any party, for good cause shown, at any time before the award is made, but, if the reopening of the hearings would prevent the making of the award within the time specified in the applicable law and the union's internal procedures, the matter may not be reopened.

### **18. Waiver of Rules**

Any party who proceeds after knowledge that any provision or requirement of these rules has not been complied with, and who fails to state an objection thereto in writing, shall be deemed to have waived the right to object.

### **19. Waiver of Oral Hearings**

The parties may provide, by written agreement, for the waiver of oral hearings. If the parties are unable to agree as to the procedure, the arbitrator shall specify a fair and equitable procedure.

### **20. Extensions of Time**

The arbitrator for good cause may extend any period of time established by these rules, except the time for making the award. The AAA shall notify the parties of any such extension of time.

## **21. Serving of Notice**

Each party shall be deemed to have consented and shall consent that any papers, notices, or process necessary or proper for the initiation or continuation of an arbitration under these rules may be served by mail to the party's last known address or by personal service.

## **22. Communication with Arbitrator**

There shall be no communication between the parties and the arbitrator other than at oral hearings. Written communications from the parties to the arbitrator shall be directed to the AAA for transmittal to the arbitrator.

## **23. Time of Award**

The award shall be rendered promptly by the arbitrator and, unless otherwise specified by the applicable law and the union's internal procedures, not later than 30 days from the date of closing the hearings, or, if oral hearings have been waived, from the date of transmitting the final statements and proofs to the arbitrator.

## **24. Form of Award**

The award of the arbitrator shall be in writing and signed and shall be accompanied by a written explanation of the arbitrator's decision.

## **25. Delivery of Award**

The parties shall accept as legal delivery of the award the placing of the award or a true copy thereof in the mail by the AAA, addressed to each party's last known address or the filing of the award in any other manner that may be prescribed by applicable law and the union's internal procedures.

## **26. Judicial Proceedings**

Neither the AAA nor the arbitrator is an appropriate or necessary party in judicial proceedings relating to this procedure, and neither the AAA nor any arbitrator shall be liable to any party for any act or omission in connection with any procedure conducted under these rules.

## **27. Administrative Fee**

As a not-for-profit organization, the AAA shall charge a fee payable by the union to compensate the AAA for the cost of providing necessary administrative services.

## **28. Expenses**

The expense of witnesses shall be paid by the party producing such witnesses.

## **29. Arbitrator Compensation**

The arbitrator will be compensated by the union, in accordance with the per-diem rate currently on file for that arbitrator with the AAA, and shall be reimbursed for expenses.

## **30. Interpretation and Application of Rules**

The arbitrator shall interpret and apply these rules insofar as they relate to the arbitrator's powers and duties. All other rules shall be interpreted and applied by the AAA.

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