

Grievance Mediation PROCEDURES (Including Mediation and Arbitration Rules) Amended and Effective April 1, 1991

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Introduction

Parties to collective bargaining agreements routinely provide for grievance steps and arbitration to resolve disputes arising under the contract. At the pre-arbitration step, labor and management have sometimes used mediation as a means of resolving grievances short of arbitration.

Mediation is a process in which a neutral assists the parties in reaching their own settlement, but does not have the authority to force the parties to accept a particular decision.

Mediation is completely voluntary and provides assurance to the parties that the settlement will be acceptable. It offers the advantage of informality, with reduced time and expense in resolving grievances. Several grievances may be resolved at a single mediation. In mediation, the neutral may meet with the parties jointly or separately in what is called a caucus, in order to help them reach a settlement.

Parties may agree to use mediation on an informal basis for selected grievances or they may include mediation in their collective bargaining agreement as a step prior to arbitration.

The AAA offers grievance mediation services to parties to collective bargaining agreements

wishing to use that method of dispute resolution.

The benefits of successfully mediating a dispute to settlement vary, depending on the needs and interests of the parties.

The most common advantages are:

- Parties are directly engaged in negotiating the settlement.
- The mediator, as a neutral third party, can view the dispute objectively and assist the parties in exploring alternatives that they might not have considered on their own.
- Because mediation can be scheduled early in the dispute, a settlement can be reached much more quickly than in litigation
- Parties generally save money through reduced legal costs and less staff time.
- Parties enhance their relationship under the collective bargaining agreement.
- Creative solutions or accommodations to special needs of the parties may become a part of the settlement.

Parties might also require assistance in establishing a grievance mediation procedure to suit their particular needs. The AAA can assist the parties by tailoring a system to fit their needs and provide staff training in how to prepare and present a grievance in mediation.

1. Agreement of Parties

These procedures shall apply when parties agree to mediate under them, in the form obtaining at the time the mediation is initiated.

2. Initiation of Mediation

Cases may be initiated by joint submission in writing or in accordance with a collective bargaining agreement. A submission to mediation shall contain a brief statement of the nature of the dispute and the names, addresses, and telephone numbers of all parties to the dispute and those who will represent them, if any, in the mediation. The initiating party(s) shall simultaneously file two copies of the submission, together with the appropriate administrative fee contained in the Fee Schedule, with the AAA and one copy with every other party to the dispute.

Where there is no submission to mediation or the collective bargaining agreement does not provide for grievance mediation, a party may request the AAA to invite another party to join in a submission to mediation. Upon receipt of such a request, the AAA will contact the other parties involved in the dispute and attempt to obtain a submission to mediation.

The AAA and the parties may also use facsimile transmission, telex, telegram, or other written forms of electronic communication to give notices under these procedures.

3. Appointment of Mediator

The AAA shall appoint a mediator who has agreed to serve under these procedures from its

National Panel of Mediators. The parties may also, by mutual agreement, receive a list of mediators from which to select. In this instance, the AAA shall submit simultaneously to each party an identical list of five proposed mediators. Each party may strike two names from the list peremptorily. The list is returnable to the AAA within seven days of the date of mailing. If, for any reason, the appointment of a mediator cannot be made from the list, the AAA may make the appointment from among other members of the panel without the submission of additional lists.

4. Qualifications of Mediator

No person shall serve as a mediator in any mediation in which that person has any financial or personal interest in the result of the mediation. Prior to accepting an appointment, the prospective mediator shall disclose any circumstance likely to create a presumption of bias or to prevent a prompt meeting with the parties. Upon receipt of such information, the AAA shall either replace the mediator or immediately communicate the information to the parties for their comments. In the event that the parties disagree as to whether the mediator shall serve, the AAA will appoint another mediator. The AAA is authorized to appoint another mediator if the appointed mediator is unable to serve promptly.

5. Vacancies

If any mediator is unwilling or unable to serve, the AAA will appoint another mediator, unless the parties agree otherwise.

6. Representation

Any party may be represented at the mediation session by counsel or other authorized representative. The names and addresses of such persons shall be communicated in writing to all parties and to the AAA.

7. Date, Time, and Place of Mediation

The initial mediation session will be scheduled on an expedited basis as soon as possible after appointment of the mediator. The mediator shall fix the date, time, and place of the mediation session, notice of which must be given at least 24 hours in advance.

8. Authority of Mediator

The mediator does not have the authority to impose a settlement on the parties but will attempt to help them reach a satisfactory resolution of their dispute. The mediator is authorized to conduct joint and separate meetings with the parties and to make oral and written recommendations for settlement. Whenever necessary, the mediator may also obtain expert advice concerning technical aspects of the dispute, provided that the parties agree to assume the expenses of obtaining such advice. Arrangements for obtaining such advice shall be made by the mediator or the parties, as the mediator shall determine.

9. Privacy

Mediation sessions are private. The parties and their representatives may attend mediation

session. Other persons may attend only with the permission of the parties and with the consent of the mediator.

10. Confidentiality

Confidential information disclosed to a mediator by the parties or by witnesses in the course of the mediation shall not be divulged by the mediator. All records, reports, or other documents received by a mediator while serving in that capacity shall be confidential. The mediator shall not be compelled to divulge such records or to testify in regard to the mediation in any adversary proceeding or judicial forum. The parties shall maintain the confidentiality of the mediation and shall not rely on or introduce as evidence in arbitral, judicial, or other proceeding:

- a. views expressed or suggestions made by another party with respect to a possible settlement of the dispute;
- b. admissions made by another party in the course of the mediation proceedings;
- c. proposals made or views expressed by the mediator; or
- d. the fact that another party had or had not indicated a willingness to accept a proposal for settlement made by the mediator.

11. Termination of Mediation

The mediation shall be terminated:

- a. by the execution of a settlement agreement by the parties;
- b. by a written declaration of the mediator to the effect that further efforts at mediation are no longer worthwhile; or
- c. by a written declaration of a party or parties to the effect that the mediation proceedings are terminated.

12. Exclusion of Liability

Neither the AAA nor the mediator is a necessary party in judicial proceedings relating to the mediation. Neither the AAA nor any mediator shall be liable to any party for any act or omission in connection with any mediation conducted under these procedures.

13. Interpretation and Application of Procedures

The mediator shall interpret and apply these procedures insofar as they relate to the mediator's duties and responsibilities. All other procedures shall be interpreted and applied by the AAA. 14. Expenses

The expenses of witnesses for either side shall be paid by the party producing such witnesses. All other expenses of the mediation, including required traveling and other expenses of the mediator and representatives of the AAA, and the expenses of any witness and the cost of any

proofs or expert advice produced at the direct request of the mediator, shall be borne equally by the parties unless they agree otherwise.

Fee Schedule

Administrative Fees

The administrative fee is \$75 per party for the appointment of a mediator and \$100 per party where lists are requested. Same is due and payable at the time of filing. The parties may agree to a different allocation of administrative fees. Mediator's Fee

The mediator will be compensated at a reasonable rate, agreeable to the parties, to be arranged by the AAA. The mediator's fee shall be borne equally by the parties unless they agree otherwise. Deposits

Before the commencement of mediation, the parties shall each deposit such portion of the fee covering the cost of mediation as the AAA shall direct and all appropriate additional sums that the AAA deems necessary to defray the expenses of the proceeding. When the mediation has terminated, the AAA shall render an accounting and return any unexpended balance to the parties. Refunds

Once the parties agree to mediate, no refund of the administrative fee will be made. Requests for Arbitration

Should mediation fail and the parties choose to proceed to arbitration, they will be credited the administrative fee paid and each will be charged only an additional \$50. Upon agreement of the parties, the individual who served as mediator may also serve as arbitrator.

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