

# **Impartial Umpire Rules for Arbitration of Impasses Between Trustees of Joint Employee Benefit Trust Funds**

As Amended and Effective January 1, 1988

Fees Effective February 1, 2013

Sponsored by the International Foundation of Employee Benefit Plans

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## Introduction

Section 302(c)(5)(B) of the Labor-Management Relations Act of 1947 (29 U.S.C. Section 186(c)(5)(B)) authorizes jointly managed pension funds to be established and maintained subject to certain requirements.

One such requirement is that the employees and employers must be equally represented in the administration of the fund, and that "in the event the employer and employee groups deadlock on the administration of such fund and there are no neutral persons empowered to break such deadlock, [the written agreement with the employer] provides that the two groups shall agree on an impartial umpire to decide such dispute, or in the event of their failure to agree within a reasonable length of time, an impartial umpire to decide such dispute shall, on petition of either group, be appointed by the district court...."

The American Arbitration Association administers a National Panel of Arbitrators which includes individuals competent to serve as the statutory "umpire" in such disputes, and has prepared this set of rules for such cases to provide a speedy, efficient and just procedure for resolution of such disputes.

Trustees may validly adopt such rules in advance to govern in the event of trustee deadlock, and they may wish to do so before a particular dispute or impasse arises in order to avoid delay and uncertainty over procedures at that time.

Such delay and uncertainty can be avoided by incorporating into the agreement and declaration of trust, or other joint trust agreement to which employers and labor representatives subscribe, a provision such as the following clause:

In the event that the employer and employee groups of trustees deadlock on any question of the administration of the fund, the trustees shall, upon written application of the employer trustees or the labor trustees, submit such dispute to an impartial umpire in accordance with the American Arbitration Association's Impartial Umpire Rules for Arbitration of Impasses Between Trustees of Joint Employee Benefit Trust Funds. The decision of said umpire shall be final, binding and conclusive upon the trustees and all persons concerned.

The fee of the impartial umpire and the American Arbitration Association, together with such other costs and expenses as may be authorized by the trustees, shall be proper charges against the fund, which the trustees are authorized to pay.

Indeed, the parties may wish to go further and adopt the above rules not only for a deadlock on a "question of administration," which must be arbitrated, but for resolution of deadlocks or disputes on any matter coming before them for decision.

## **International Foundation of Employee Benefit Plans**

The International Foundation of Employee Benefit Plans is the largest educational association serving the employee benefits and compensation industry. For almost 50 years, The International Foundation has served as the premier source of education and information to the industry. The International Foundation is a nonprofit, nonlobbying organization. Total membership includes 35,000 individuals representing 8,400 multiemployer trust funds, corporations, public employee groups and professional advisory firms throughout the United States and Canada.

Jointly administered multiemployer labor-management employee-benefit trust funds grew from the Taft-Hartley Act of 1947 and exist to provide employees and their families and dependents with pensions upon retirement. They are administered by boards of trustees on which labor and management are equally represented. The boards receive contributions and distribute funds to employees in the form of benefits, in accordance with provisions of collective-bargaining and trust agreements and law. As such, the operation of employee-benefit trust funds is an area of legal complexity.

## **Impartial Umpire Rules for Arbitration of Impasses Between Trustees of Joint Employee Benefit Trust Funds**

### **1. When Applicable**

These Rules shall apply when any jointly administered trust agreement provides for submission of a dispute to an impartial umpire or arbitrator (hereinafter, "the arbitrator") by or in accordance with the Impartial Umpire Rules of the American Arbitration Association (hereinafter, the "AAA"), or when trustees otherwise duly submit a dispute in accordance with such rules, or to the extent adopted by an arbitrator appointed under 29 U.S.C. '186(c)(5)(B).

### **2. Name of Tribunal**

Any Tribunal constituted by the parties for the settlement of their dispute under these Rules shall be called the Joint Trustee Deadlock Arbitration Tribunal.

### 3. Administrator

When an arbitration is initiated under these rules, the AAA is thereby constituted administrator of the arbitration. The authority and obligations of the administrator are prescribed in these rules, in plan documents and any relevant written agreement of the parties.

### 4. Delegation of Duties

The duties of the AAA under these rules may be carried out through Tribunal Administrators, or such other officers or committees as the AAA may direct.

### 5. National Panel of Arbitrators

The AAA National Panel of Arbitrators shall include individuals competent to hear and resolve trustee disputes and deadlocks under jointly administered trust fund plans.

### 6. Office of Tribunal

The general office of a Tribunal is the headquarters of the AAA, which may, however, assign the administration of an arbitration to any of its Regional Offices.

### 7. Request for Appointment

A written request to appoint a neutral arbitrator(s) under these procedures may be made to any office of the AAA and should contain a statement of the matter in dispute or deadlock and the names and addresses of the trustees who shall be designated to receive notices hereunder. It should be accompanied by a copy of the trust agreement and the appropriate fee as provided in the Administrative Fee Schedule.

### 8. Number of Arbitrators

The dispute shall be heard and determined by one arbitrator, unless the parties agree otherwise. Whenever there is more than one arbitrator, all decisions and awards of the arbitrators must be by at least a majority.

### 9. Appointment From Panel

If the trustees have not provided any other method of appointment, after the filing of the request for the appointment of a neutral arbitrator, the AAA will submit simultaneously to each group of employer and union trustees an identical list of names of not less

than five persons chosen from the panel, with a brief biographical profile and fee policy of each. Each group of trustees shall have 14 days from the mailing date within which to cross off any names of arbitrators that are unacceptable, number the remaining names in order of preference, and return the list to the AAA. If a list is not returned within the time specified, all persons named thereon shall be deemed acceptable. From among the persons who have been approved on both lists and in accordance with the designated order of mutual preference, the AAA shall invite a neutral arbitrator to serve.

If there is no agreement upon any of the persons named, if acceptable arbitrators are unable to serve, or if for any other reason the appointment cannot be made from the submitted lists, the AAA shall have the power to make the appointment from among other members of the Panel without the submission of any additional lists.

## 10. Notice to Arbitrator of Appointment

Notice of the appointment of the neutral arbitrator, whether appointed by the parties or by the AAA, shall be mailed to the arbitrator by the AAA, together with a copy of these Rules. The signed acceptance of the arbitrator shall be filed prior to the opening of the first hearing.

## 11. Place of Hearing

If mutual agreement cannot be reached as to the place of hearing, the hearings shall be held in the city where the trust fund has its principal office.

## 12. Impartiality

The neutral arbitrator selected to serve under these rules shall be impartial. A person appointed as neutral arbitrator shall disclose to the AAA any circumstances likely to affect impartiality, including any bias or any financial or personal interest in the result of the arbitration or any past or present relationship with the parties or their counsel. Upon receipt of such information from such arbitrator or other source, the AAA shall communicate such information to the parties, and, if it deems it appropriate to do so, to the arbitrator and others. Thereafter, the AAA shall determine whether the arbitrator should be disqualified and shall inform the parties of its decision, which shall be conclusive.

## 13. Vacancies

If any arbitrator should resign, die, withdraw, refuse, be disqualified, or be unable to perform the duties of the office, the AAA shall, on proof satisfactory to it, declare the office vacant. Vacancies shall be filled in a manner consistent with the original

appointment and the matter shall be reheard unless it has been mutually agreed otherwise.

#### **14. Administrative Conferences**

At the request of the parties or at the request of the AAA or the arbitrator, administrative conferences will be held among the Administrator and the parties and/or their counsel and, with the consent of both parties, the arbitrator to discuss matters which will expedite the arbitration including, but not limited to venue, clarification of issues, marking documentary exhibits, stipulations to uncontested facts, resolution of preliminary evidentiary questions, and preparation of prehearing memoranda, if any.

#### **15. Time and Place**

Subject to Section 11 of these rules, the neutral arbitrator shall fix the time and place for each hearing. The AAA shall mail to each group of trustees notice thereof at least 14 days in advance, unless such notice is waived or modified by mutual agreement.

#### **16. Stenographer and Interpreter**

When a stenographer or interpreter is requested, the requesting party shall make the necessary arrangements for the taking of a stenographic record or for the services of an interpreter. The costs of such services shall be paid as provided in Section 42 of these procedures.

#### **17. Representation by Counsel**

Each group of trustees may be represented by counsel or other authorized representative.

#### **18. Attendance at Hearings**

All trustees are entitled to attend hearings. It shall be discretionary with the neutral arbitrator to determine the propriety of the attendance of any other person at any time during the hearings.

#### **19. Oaths**

Before proceeding with the first hearing or with the examination of the file, each arbitrator shall take an oath of office. Witnesses shall testify under oath administered by any duly qualified person if required by law or demanded by either party.

#### **20. Adjournments**

The arbitrator may grant adjournments upon the request of a party or

upon the arbitrator's own initiative and shall do so when all of the parties agree.

## **21. Order of Proceedings**

The neutral arbitrator shall have discretion to determine all matters relating to the hearings, including the order of proceedings.

## **22. Evidence**

The parties may offer such evidence as they desire and shall produce such additional evidence as the arbitrator may deem necessary to understanding and determination of the dispute. The arbitrator may subpoena witnesses or documents upon the arbitrator's own initiative or upon the request of any party. The arbitrator shall be the judge of the relevancy, materiality and competency of the evidence offered, and conformity to legal rules of evidence shall not be necessary. All evidence shall be taken in the presence of all the arbitrators and of all the parties, except where any of the parties is absent by reason of default or has waived the right to be present. Each group of trustees shall be afforded full and equal opportunity for presentation of relevant proofs.

## **23. Evidence by Affidavit**

The arbitrator may receive the evidence of witnesses by affidavit, and give it only such weight as the arbitrator deems appropriate after consideration of any objections made to its admission.

## **24. Filing of Documents**

All documents not filed with the arbitrator at the hearing, but arranged for at the hearing or subsequently by agreement of the parties, shall be filed with the AAA for transmission to the arbitrator. All parties shall be afforded opportunity to examine such documents.

## **25. 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. An award shall not be made solely on the default of a party, but the arbitrator shall require the party who is present to submit such evidence as the arbitrator may require for the making of an award.

## **26. Closing of Hearings**

When the arbitrator is satisfied that neither party has further evidence to offer, the arbitrator shall declare the hearings closed.

If briefs are to be filed, the hearings shall be declared closed as of the final date set by the arbitrator for the receipt of briefs. If documents are to be filed as provided for herein and the date set for their receipt is later than that set for the receipt of briefs, the later date shall be the date of closing the hearings. The time limit within which the arbitrator is required to make the award shall commence to run, in the absence of other agreements by the parties, upon the closing of the hearings.

## **27. Reopening of Hearings**

The hearings may be reopened on the motion of the arbitrator or upon application of a party at any time before the award is made. If the reopening of the hearing would prevent the making of the award within the specific time agreed upon by the parties in the document out of which the controversy has arisen, the matter may not be reopened, unless the parties agree upon the extension of such time limit. When no specific date is fixed in the document, the arbitrator may reopen the hearings, and the arbitrator shall have thirty days from the closing of the reopened hearings within which to make an award.

## **28. Hearing on Documents Only**

The parties may agree in writing to waive an arbitration hearing. A hearing on documents only shall be conducted pursuant to these procedures, and the administrative filing fee shall apply.

## **29. Time of Decision**

The decision of the neutral arbitrator shall be made promptly and, unless otherwise mutually agreed by each group of trustees, no later than thirty days from the date of closing the hearings.

## **30. Form of Decision**

The decision shall be in writing and shall be signed either by the sole arbitrator or by at least a majority if there be more than one. Unless otherwise mutually agreed, it shall be accompanied by an opinion explaining the basis upon which it was made.

## **31. Scope of Arbitrator's Authority**

The arbitrator's authority to grant any remedy or relief shall be limited to deciding the dispute over which the parties deadlocked.

## **32. Award Upon Settlement**

If the parties settle their dispute during the course of the arbitration, the arbitrator, upon their request, may set forth the

terms of the agreed settlement in an award. Such an award is referred to as a consent award.

### **33. Communication with Arbitrator**

There shall be no communication between the parties and the neutral arbitrator other than at the oral hearings or prehearing conferences. Any other oral or written communications from the parties to such arbitrator shall be directed to the AAA for transmittal, unless the parties expressly agree otherwise.

### **34. Service of Notices**

Each party to an arbitration under these rules shall be deemed to have consented that any papers, notices, or process necessary or proper for the initiation or continuation of an arbitration under these rules and for any court action in connection therewith or for the entry of judgment on any award made thereunder may be served upon such party by mail addressed to such party or its attorney at its last known address or by personal service, within or outside the jurisdiction where the arbitration is to be held (whether such party be within or outside the United States of America), provided that reasonable opportunity to be heard with regard thereto has been granted such party.

### **35. Delivery of Award**

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 such party at its last known address or to its attorney, or personal service of the award, or the filing of the award in any manner which may be prescribed by law.

### **36. Release of Documents for Judicial Proceedings**

The AAA shall, upon the written request of a party or the arbitrator, furnish to such person, at that person's expense, certified facsimiles of any papers in the AAA's possession that may be required in judicial proceedings relating to the arbitration.

### **37. Judicial Proceedings and Exclusion of Liability**

(a) Neither the AAA nor any arbitrator in a proceeding under these rules is a necessary party in judicial proceedings relating to the arbitration.

(b) Neither the AAA nor any arbitrator shall be liable to any party for any act or omission in connection with any arbitration conducted under these rules.

### **38. Extensions of Time**

By mutual agreement, the parties may modify any period of time established by these rules. The AAA 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 and its reason therefor.

### **39. Waiver of Procedures**

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

### **40. Deposits**

The AAA may require the parties to deposit in advance such sums of money as it deems necessary to defray the expense of the arbitration, including the arbitrator's fee, and shall render an accounting to the parties and return any unexpended balance.

### **41. Arbitrator's Fee**

Arbitrators shall charge a rate consistent with the arbitrator's stated rate of compensation. If there is disagreement concerning the terms of compensation, an appropriate rate shall be established with the arbitrator by the AAA and confirmed to the parties.

Any arrangement for the compensation of a neutral arbitrator shall be made through the AAA and not directly between the parties and the arbitrator. Payment of the arbitrator's fees and expenses shall be made by the AAA from the fees and moneys collected by the AAA for this purpose.

Arbitrator compensation shall be borne in accordance with the Costs of Arbitration section.

### **42. Expenses**

(a) The expenses of witnesses for either side (including the cost of an interpreter) shall be paid by the party producing such witnesses (or interpreter).

(b) The cost of the stenographic record, if any, that is made, and all transcripts thereof, shall be prorated equally among all parties ordering copies, unless they otherwise agree, and paid by the responsible parties directly to the reporting agency.

(c) All other expenses of the arbitration, including required traveling and other expenses of the neutral arbitrator and of the AAA representatives, and the expenses of any witnesses and the costs of any proofs produced at the direct request of the neutral arbitrator, shall be borne equally by the parties, unless they have agreed otherwise. Unless the parties have agreed otherwise in writing, the arbitrator shall have no authority to assess fees, costs, expenses and arbitrator compensation against any party, and the parties shall share equally in such fees, costs, expenses and compensation.

### 43. Interpretation and Application of Rules

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

### 44. Administrative Fees

As a not-for-profit organization, the AAA shall prescribe an Administrative Fee Schedule, a Refund Schedule and a Schedule of Other Service Charges to compensate it for the cost of providing administrative services. The schedule in effect at the time of filing, refunding, or service shall be applicable. The administrative fees shall be advanced by the initiating party or parties, subject to final apportionment by the arbitrator in the award. When a matter is withdrawn or settled, the refund shall be made in accordance with the Refund Schedule. The AAA, in the event of extreme hardship on the part of any party, may defer or reduce the administrative fee.

**For cases filed on or after February 1, 2013:**

#### Administrative Fee Schedule

##### (i) Standard Fee Schedule

An Initial Filing Fee is payable in full by a filing party when a claim, counterclaim, or additional claim is filed. A Final Fee will be incurred for all cases that proceed to their first hearing. This fee will be payable in advance at the time that the first hearing is scheduled. This fee will be refunded at the conclusion of the case if no hearings have occurred. However, if the Association is not notified at least 24 hours before the time of the scheduled hearing, the Final Fee will remain due and will not be refunded.

These fees will be billed in accordance with the following schedule:

Amount of Claim	Initial Filing Fee	Final Fee
Above \$0 to \$10,000	\$775	\$200

Above \$10,000 to \$75,000	\$975	\$300
Above \$75,000 to \$150,000	\$1,850	\$750
Above \$150,000 to \$300,000	\$2,800	\$1,250
Above \$300,000 to \$500,000	\$4,350	\$1,750
Above \$500,000 to \$1,000,000	\$6,200	\$2,500
Above \$1,000,000 to \$5,000,000	\$8,200	\$3,250
Above \$5,000,000 to \$10,000,000	\$10,200	\$4,000
Above \$10,000,000	Base fee of \$12,800 plus .01% of the amount above \$10,000,000  Fee Capped at \$65,000	\$6,000
Nonmonetary Claims <sup>1</sup>	\$3,350	\$1,250
Deficient Claim Filing Fee <sup>2</sup>	\$350	
Additional Services <sup>3</sup>		

<sup>1</sup>*This fee is applicable when a claim or counterclaim is not for a monetary amount. Where a monetary claim amount is not known, parties will be required to state a range of claims or be subject to a filing fee of \$10,200.*

<sup>2</sup>*The Deficient Claim Filing Fee shall not be charged in cases filed by a consumer in an arbitration governed by the Supplementary Procedures for the Resolution of Consumer-Related Disputes, or in cases filed by an Employee who is submitting their dispute to arbitration pursuant to an employer promulgated plan.*

<sup>3</sup>*The AAA may assess additional fees where procedures or services outside the Rules sections are required under the parties' agreement or by stipulation.*

Fees are subject to increase if the amount of a claim or counterclaim is modified after the initial filing date. Fees are subject to decrease if the amount of a claim or counterclaim is modified before the first hearing.

The minimum fees for any case having three or more arbitrators are \$2,800 for the Initial Filing Fee, plus a \$1,250 Final Fee. Expedited Procedures are applied in any case where no disclosed claim or counterclaim exceeds \$75,000, exclusive of interest and arbitration costs.

Parties on cases filed under either the Flexible Fee Schedule or the

Standard Fee Schedule that are held in abeyance for one year will be assessed an annual abeyance fee of \$300. If a party refuses to pay the assessed fee, the other party or parties may pay the entire fee on behalf of all parties, otherwise the matter will be administratively closed.

For more information, please contact your local AAA office, case management center, or our Customer Service desk at 1-800-778-7879.

## **(ii) Refund Schedule for Standard Fee Schedule**

The AAA offers a refund schedule on filing fees connected with the Standard Fee Schedule. For cases with claims up to \$75,000, a minimum filing fee of \$350 will not be refunded. For all other cases, a minimum fee of \$600 will not be refunded. Subject to the minimum fee requirements, refunds will be calculated as follows:

- > 100% of the filing fee, above the minimum fee, will be refunded if the case is settled or withdrawn within five calendar days of filing.
- > 50% of the filing fee will be refunded if the case is settled or withdrawn between six and 30 calendar days of filing.
- > 25% of the filing fee will be refunded if the case is settled or withdrawn between 31 and 60 calendar days of filing.

No refund will be made once an arbitrator has been appointed (this includes one arbitrator on a three-arbitrator panel). No refunds will be granted on awarded cases.

Note: The date of receipt of the demand for arbitration with the AAA will be used to calculate refunds of filing fees for both claims and counterclaims.

## **(iii) Flexible Fee Schedule**

A non-refundable Initial Filing Fee is payable in full by a filing party when a claim, counterclaim, or additional claim is filed. Upon receipt of the Demand for Arbitration, the AAA will promptly initiate the case and notify all parties as well as establish the due date for filing of an Answer, which may include a Counterclaim. In order to proceed with the further administration of the arbitration and appointment of the arbitrator(s), the appropriate, non-refundable Proceed Fee outlined below must be paid.

If a Proceed Fee is not submitted within ninety (90) days of the filing of the Claimant's Demand for Arbitration, the Association will administratively close the file and notify all parties.

No refunds or refund schedule will apply to the Filing or Proceed Fees once received.

The Flexible Fee Schedule below also may be utilized for the filing of counterclaims. However, as with the Claimant's claim, the counterclaim will not be presented to the arbitrator until the Proceed Fee is paid.

A Final Fee will be incurred for all claims and/or counterclaims that proceed to their first hearing. This fee will be payable in advance when the first hearing is scheduled, but will be refunded at the conclusion of the case if no hearings have occurred. However, if the Association is not notified of a cancellation at least 24 hours before the time of the scheduled hearing, the Final Fee will remain due and will not be refunded.

All fees will be billed in accordance with the following schedule:

Amount of Claim	Initial Filing Fee	Proceed Fee	Final Fee
Above \$0 to \$10,000	\$400	\$475	\$200
Above \$10,000 to \$75,000	\$625	\$500	\$300
Above \$75,000 to \$150,000	\$850	\$1250	\$750
Above \$150,000 to \$300,000	\$1,000	\$2125	\$1,250
Above \$300,000 to \$500,000	\$1,500	\$3,400	\$1,750
Above \$500,000 to \$1,000,000	\$2,500	\$4,500	\$2,500
Above \$1,000,000 to \$5,000,000	\$2,500	\$6,700	\$3,250
Above \$5,000,000 to \$10,000,000	\$3,500	\$8,200	\$4,000
Above \$10,000,000	\$4,500	\$10,300 plus .01% of claim amount over \$10,000,000 up to \$65,000	\$6,000
Nonmonetary <sup>1</sup>	\$2,000	\$2,000	\$1,250
Deficient Claim Filing Fee	\$350		
Additional Services <sup>2</sup>			

<sup>1</sup>This fee is applicable when a claim or counterclaim is not for a monetary amount. Where a monetary claim amount is not known, parties will be required to state a range of claims or be subject to a filing fee of \$3,500 and a proceed fee of \$8,200.

*<sup>2</sup>The AAA reserves the right to assess additional administrative fees for services performed by the AAA beyond those provided for in these Rules and which may be required by the parties' agreement or stipulation.*

*For more information, please contact your local AAA office, case management center, or our Customer Service desk at 1-800-778-7879. All fees are subject to increase if the amount of a claim or counterclaim is modified after the initial filing date. Fees are subject to decrease if the amount of a claim or counterclaim is modified before the first hearing.*

The minimum fees for any case having three or more arbitrators are \$1,000 for the Initial Filing Fee; \$2,125 for the Proceed Fee; and \$1,250 for the Final Fee.

Under the Flexible Fee Schedule, a party's obligation to pay the Proceed Fee shall remain in effect regardless of any agreement of the parties to stay, postpone, or otherwise modify the arbitration proceedings. Parties that, through mutual agreement, have held their case in abeyance for one year will be assessed an annual abeyance fee of \$300. If a party refuses to pay the assessed fee, the other party or parties may pay the entire fee on behalf of all parties, otherwise the matter will be closed.

Note: The date of receipt by the AAA of the demand for arbitration will be used to calculate the ninety (90) day time limit for payment of the Proceed Fee.

There is no Refund Schedule in the Flexible Fee Schedule.

If the AAA is notified that a case has been settled or withdrawn before a list of arbitrators has been sent out, all of the fee in excess of \$300 will be refunded.

If the AAA is notified that a case has been settled or withdrawn before the original due date for the return of the first list, two-thirds of the fee in excess of \$300 will be refunded.

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