

456 CMR: DEPARTMENT OF LABOR RELATIONS

456 CMR 23.00: CONDUCT OF GRIEVANCE ARBITRATION PROCEEDINGS

Section

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23.01: Scope

456 CMR 23.00 governs the procedure for the arbitration of grievances which arise during the life of a collective bargaining agreement wherein the parties have agreed upon the Department as the arbitration tribunal. 456 CMR 23.00 applies to the arbitration of grievances arising in either the private sector pursuant to M.G.L. c. 150 or the public sector pursuant to M.G.L. c. 150E, § 8.

23.02: Petition to Initiate Grievance Arbitration before the Department

(1) An employer or an employee organization, or both, may petition the Department to initiate grievance arbitration as provided for in any collective bargaining agreement or other agreement between them. Pursuant to 456 CMR 22.03 through 22.06, at any time prior to the arbitration hearing, the parties may also jointly request the Department to appoint a mediator to aid them in resolving the grievance in advance of the arbitration proceeding.

(2) If the petition is being brought unilaterally, the petitioning party shall serve a copy of the petition on the principal representative of the other party in accordance with the provisions of 456 CMR 12.02: *Service: When Required*. The petition must state in the appropriate place that a copy of the petition has been served on the other party in accordance with 456 CMR 12.02. Failure to so state shall suspend the processing of the petition.

(3) The party or parties requesting grievance arbitration shall file the petition, signed and dated by the petitioning party or parties, and a copy of the pertinent collective bargaining agreement with the Department pursuant to 456 CMR 12.12: *Filing with the Department*.

(4) Fee for Grievance Arbitration. The filing fee for arbitration before the Department is the amount established by 801 CMR 4.02: *Fees of Licenses, Permits, and Services to Be Charged by State Agencies*. The cost of the filing fee shall be equally divided between the parties.

23.03: Appointment and Qualifications of the Arbitrator

(1) Appointment of a Single Neutral Arbitrator. The Director may appoint a single neutral arbitrator from within the Department, who shall hear and determine the case.

(2) Appointment of a Tripartite Board. The Director may appoint a tripartite board to hear and determine grievance arbitration cases. The Director or a designee shall be the neutral member of this board. The other members shall include a representative of labor and a representative of employers of labor. Prior to appointing these representatives, the Director shall consult with the employee organization and employer involved in the case to determine whether they want a representative to sit on the case and, if so, who they recommend.

(3) Disqualification or Withdrawal of the Arbitrator. Prior to accepting an appointment, the neutral arbitrator is required to disclose to the Department any circumstances likely to create a presumption of bias, or which the arbitrator believes might disqualify the arbitrator from being impartial. If the arbitrator is disqualified or withdraws, the Department shall appoint another arbitrator in accordance with the provisions of 456 CMR 23.03(1) and (2).

23.04: Scheduling of Arbitration Hearing by the Department; Continuances

(1) Scheduling. Upon receipt of the petition, the Department shall serve upon each of the parties a written notice of the date and time of the hearing to be held at the offices of the Department. The notice shall be given reasonably in advance of the hearing. The Department shall make every effort to hold the hearing promptly after it receives the petition.

(2) Continuances. Where both parties request a continuance of the hearing to another time and date, the Department shall generally accept such requests. If one party requests a continuance of the hearing, the Department may for good cause shown and, where possible, after consultation with the other party, continue the hearing to another time and date, set at the discretion of the arbitrator or, if an arbitrator has not been appointed, the Director. Notice of a new hearing date and time shall be given in accordance with the provisions of 456 CMR 23.04(1).

23.05: Issuance of Subpoenas

(1) Any party may request the arbitrator to issue a subpoena to compel the attendance of witnesses or the production of documents. A request for a subpoena shall be allowed unless it is overbroad, oppressive, or otherwise legally defective, or is submitted to the arbitrator less than five days before the hearing date. The party requesting the subpoena shall be responsible for service of the subpoena.

(2) (a) At or prior to the time at which the subpoena compels attendance, but not later than five days after service of the subpoena, any witness under subpoena may file a motion for revocation or modification of any subpoena by submitting a written motion to the arbitrator, or, if no arbitrator has been assigned, to the Director. The motion shall include a statement of the grounds for revocation or modification of the subpoena.

(b) Upon receipt of a motion for revocation or modification of a subpoena, the arbitrator or the Director, if no arbitrator has been assigned, shall rule upon the motion. Prior to such ruling, an investigation may be conducted. The Director may defer ruling on the motion pending designation of an arbitrator.

(3) In the event of the failure of a witness to comply with a subpoena, the Department may initiate proceedings in Superior Court to compel compliance, or may decline to initiate such proceedings. If the Department declines both to quash the subpoena and to initiate proceedings in court, nothing in 456 CMR 23.00 shall prohibit the party at whose request the subpoena was issued from seeking enforcement of the subpoena in court.

23.06: Withdrawal of Petition

A petition to initiate grievance arbitration may be withdrawn at any time prior to the holding of the arbitration hearing by the petitioning party in the case of a unilateral filing, or by agreement of both parties in the case of a joint filing. Upon or after the holding of the arbitration hearing, the petition may be withdrawn only by joint agreement of the parties.

23.07: Arbitration Hearing before the Department

(1) Proceeding in the Absence of a Party. Arbitration may proceed in the absence of a party who, after notice is given in accordance with 456 CMR 23.04(1), fails to appear or to obtain a continuance. The Department shall investigate the circumstances surrounding a party's failure to be present and, under extraordinary circumstances, may reopen the record to allow the introduction of additional evidence by the party who had failed to appear, subject to rebuttal by the appearing party.

(2) Representation. A party may be represented by counsel or other person of its choosing. Such counsel or representative has the exclusive authority to present that party's case.

(3) Last Chance Grievance Mediation. Directly preceding the scheduled arbitration hearing and upon agreement of the parties, a mediator may assist the parties in a final attempt to settle the grievance. The conduct of such mediation shall be governed by 456 CMR 22.03 through 22.06.

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(4) Conduct of Proceedings. The arbitrator shall have the authority and responsibility for the conduct of the arbitration proceedings and shall have sole discretion in deciding any issues of procedure. The arbitrator shall:

- (a) Attempt to obtain from the parties a joint statement of the issue(s) in dispute, and shall unilaterally frame the issue if the parties do not agree;
- (b) Determine the order of presentation;
- (c) Record the date, time, and place of each hearing, and the names of the counsel or representatives and of all others present;
- (d) Administer oaths or affirmations;
- (e) Afford each party a full and fair opportunity to present relevant evidence and argument;
- (f) Require the parties to submit additional evidence that the arbitrator deems necessary to an understanding and determination of the dispute;
- (g) Rule on the admissibility of evidence; and
- (h) Rule on all objections.

(5) Transcript or Recording of Proceedings. To obtain a stenographic record of the proceedings a party shall make arrangements directly with a stenographer and shall notify the other party of such arrangements in advance of the arbitration hearing. The requesting party or parties shall pay the cost of such record. The remaining party or parties may purchase a copy from the stenographer. Such transcript shall be the official record of the proceedings, and a copy shall be provided to the arbitrator free of charge. The arbitrator's copy of the transcript shall be made available to the parties for inspection at a time and place determined by the arbitrator. The arbitrator, but not the parties, may make an unofficial recording of the proceedings strictly for the arbitrator's own use.

(6) Closing of Hearings. When the arbitrator determines that all of the evidence has been offered, the hearing shall be closed. The arbitrator may reopen the record for good cause shown. Parties have the right to make oral closing arguments or to submit written briefs. The time limits on submission of briefs shall be established by the arbitrator after consultation with the parties. Should the parties request to make oral argument, the arbitrator shall determine the order of proceeding.

(7) Submission of Briefs. Any briefs submitted in arbitration proceedings before the Department shall be submitted to the Department in accordance with the provisions of 456 CMR 12.12: *Filing with the Department*.

23.08: Clarification, Modification, or Correction of the Award

(1) Standards.

- (a) Clarification. The arbitrator may clarify the award if it is so indefinite or incomplete that it cannot be performed.
- (b) Modification or Correction. The arbitrator may modify or correct the award if there is: an evident miscalculation of figures or an evident mistake in the description of any person, thing, or property referred to in an award; or if the award is imperfect in a matter of form not affecting the merits of the controversy.

(2) Procedure.

- (a) Joint Request. A joint request for clarification, modification, or correction of an award must be submitted to the Department within 14 days after the requesting parties have received the award. The arbitrator may extend the time for submitting such a request upon good cause shown. The arbitrator shall promptly determine whether to grant the request. The arbitrator may call a conference with the parties to consider the request. The arbitrator shall then promptly notify the parties in writing of the disposition of the request.
- (b) Unilateral Request. A unilateral request for clarification, modification, or correction of an award shall be submitted to the Department within 14 days after the requesting party has received the award. The arbitrator may extend the time for submitting such a request upon good cause shown. Such a request shall be served at the same time upon the opposing party's counsel or representative in accordance with 456 CMR 12:02: *Service, When Required*. The arbitrator shall give the opposing party an opportunity to respond or raise objections to the

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request. Any such response or objection shall be received by the arbitrator within seven days after the opposing party has received a copy of the request. The arbitrator shall then determine whether to proceed as set forth in 456 CMR 23.08(1).

23.09: Publication of Award and Opinion

The award and opinion of the arbitrator shall be treated as a public record and after issuance shall be open to public inspection. The Department may have its awards and opinions published unless either party to the proceeding gives written notice to the Department within 30 days of the award that it does not wish to have such award and opinion published.

23.10: Request for Arbitration before Outside Arbitrator

The Department shall appoint an outside arbitrator from its list of qualified individuals if so specified in the collective bargaining agreement. The arbitrator so designated should conduct the arbitration proceedings and render an award in accordance with 456 CMR 23.00. The compensation of an outside arbitrator shall be in accordance with the requirements of 456 CMR 21.17: *Compensation of the Fact Finder*.

REGULATORY AUTHORITY

456 CMR 23.00: M.G.L. c. 23, §§ 9O, 9P, 9T(c), (d); c. 150 and c. 150E, § 8.