

行政院及所屬各機關出國報告（出國類別：  
考察）

## 112 年赴美考察不當勞動行為裁決機制

服務機關：勞動部

姓名職稱：蔡裁決委員志揚、王秘書旻瑜

派赴國家/地區：美國/華盛頓特區

出國期間：112 年 10 月 14 日至 10 月 23 日

報告日期：113 年 1 月 22 日

## 摘要

臺美間自民國(下同)104 年起即簽訂有「勞資關係法律與程序合作計畫瞭解備忘錄」，過去本部與美國國家勞動關係委員會(National Labor Relations Board)及美國聯邦調解調停署(Federal Mediation and Conciliation Service)間，長期持續保有人員相互往來交流，或由美方人員擔任訓練講師就調解協商技巧、不當勞動行為之判斷等節開授專業課程，或將 NLRB 所為之裁決決定案例翻譯為中文，除提供予本部不當勞動行為裁決委員會(下稱裁決委員會)參考外，亦同時反饋提供予 NLRB 典藏。縱前因疫情而無法進行實地參訪，惟仍以視訊會議之型態保持與美方之聯繫，本次考察與美國勞動領域重要官員及實務工作之專家進行意見交換，瞭解並分享實務運作現況，以提供裁決委員會審理及調查案件之參考，並建立我國及美國集體勞動關係制度溝通平台，增進未來雙方之交流合作機會。

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## 壹、 本次考察目的

查我國不當勞動行為裁決制度自 100 年創立以來，已經累積超過 10 年的經驗及案例，因此許多爭議問題也隨之——產生，而臺美間自民國(下同)104 年起即簽訂有「勞資關係法律與程序合作計畫瞭解備忘錄」，過去本部與美國國家勞動關係委員會(National Labor Relations Board；以下簡稱 NLRB)間，長期持續保有人員相互往來交流，或將 NLRB 所為之裁決決定案例翻譯為中文，除提供予本部不當勞動行為裁決委員會(下稱裁決委員會)參考外，亦同時反饋提供予 NLRB 典藏。縱前因疫情而無法進行實地參訪，惟仍以視訊會議之型態保持與美方之聯繫，本次為汲取不當勞動行為法理所可能涵攝之各種樣態及實務見解，爰規劃本次考察望能與美國勞動領域重要官員及實務工作之專家進行意見交換，瞭解並分享實務運作現況，以提供裁決委員會審理及調查案件之參考，並建立我國及美國集體勞動關係制度溝通平台，增進未來雙方之交流合作機會。

- 一、 本次考察希能實地旁聽觀察 NLRB 審理不當勞動行為裁決案件之過程，並就事證調查等技巧部分，與調查官等進行意見交換，瞭解並分享實務運作現況，以提供我國裁決委員會未來審理及調查案件之參考，並期與 NLRB 間能依據雙邊簽署備忘錄為基礎，持續擴大交流與合作。
- 二、 由於美國聯邦調解調停署(Federal Mediation and Conciliation Service；以下簡稱 FMCS)對於促成勞資協商具有豐富之經驗，裁決委員會一直以來亦不斷努力勸諭勞資雙方達成

和解，期藉本次交流，與該機關相關人員進行研討，針對實務處理經驗深入了解，以蒐集相關資料供裁決委員會未來實務操作參考。

三、 本次規劃希能與美國勞工部就臺美勞動議題進行交流，以了解美方最新勞動政策規劃及其未來發展趨勢，並期雙方未來能有更多交流合作機會。

四、 另規劃與雇主團體、工會團體及華府地區之勞動法領域專家學者，就團體協商、集體勞動關係等議題進行交流會談，以了解最新實務發展現況。

## 貳、 交流過程紀要

由於本次出國考察計畫於 7 月底開始規劃，相關行程內容歷經幾番波折，且美國境內無論是政府機關或是民營企業，多仍維持以(部分)視訊提供勞務之方式，因而前期在接洽須至機關(單位)內參訪，並由專人接待一節，其實相當不易，最終才在駐美國代表處經濟組(Taipei Economic and Cultural Representative Office in the United States；以下簡稱 TECRO)一等勞工秘書廖秘書貴燕的協助下，協調 FMCS 代為洽排全部行程，在一切安排妥當後，甚至一度遇上美國政府有關閉之可能性<sup>1</sup>，廖秘書貴燕甚至是做好

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<sup>1</sup> 政府停擺或稱政府關閉 (government shutdown) 指的是當國會未能在 10 月 1 日新財會年度開始日期到來前批准並由總統簽署成為法律的撥款法案時，就會導致政府停擺，在此情形下，美國政府關閉一些政府機構，暫時停止提供「非必要服務」，相關的政府雇員停發工資以減少開支。通常在政府停擺後仍然維持運轉的聯邦機構與服務包括：氣象、醫療、郵政、軍事、航空管制以及刑罰系統等。  
<https://www.voacantonese.com/a/us-congress-government-shutdown-explainer-20230929/7291287.html>；美國之音粵語網；2023 年 9 月 30 日，作者：李逸華。

隨時變更行程之準備，幸而就在 112 年 9 月 30 日午夜期限截止的幾個小時前，美國聯邦政府可能關門的警報終於解除，美國國會批准了一份臨時支出法案，並將這項措施提交給美國總統拜登 (Joe Biden) 簽署成為法律，讓政府機構維持營運，本次行程也才能順利推進。

本次實際拜訪行程如下表：

|                 |  |
|-----------------|--|
| 112 年 10 月 14 日 | 臺灣桃園機場出發   |
| 112 年 10 月 15 日 | 飛抵美國(華盛頓特區)進行工作簡報、行前會議   |
| 112 年 10 月 16 日 | 上午拜會 FMCS<br>下午拜會全國調解委員會(National Mediation Board；以下簡稱 NMB)  |
| 112 年 10 月 17 日 | 上午拜會全國勞動關係委員會(National Labor Relations Board；以下簡稱 NLRB)<br>下午 FMCS 衝突管理課程說明；美國仲裁協會(American Arbitration Association；以下簡稱 AAA)派員至 FMCS 洽談   |
| 112 年 10 月 18 日 | 上午拜會公平就業機會委員會(Equal Employment Opportunity Commission；以下簡稱 EEOC)<br>中午拜會日本大使館參與當地勞資關係協會<br>下午拜會美國勞工聯合會和產業工會聯合會(The American Federation of Labor and Congress of Industrial Organizations；以下簡稱 AFL-CIO) |

|            |   |
|------------|---|
| 112年10月19日 | 拜會國際卡車司機兄弟會(卡車司機聯盟)(International Brotherhood of Teamsters ; 以下簡稱 IBT) , 與 IBT 接待人員、美國聯邦勞動關係局(the Federal Labor Relations Authority ; 以下簡稱 FLRA)官員共同用餐, 後參訪美國 FLRA 大樓 |
| 112年10月20日 | 拜會駐美國臺北經濟文化代表處(Taipei Economic and Cultural Representative Office in the United States ; 以下簡稱 TECRO)經濟組、拜訪雙橡園   |
| 112年10月21日 | 拜訪 TECRO<br>下午搭機返臺  |
| 112年10月22日 | 飛行時間  |
| 112年10月23日 | 抵臺  |

一、 美國聯邦調解調停署(Federal Mediation and Conciliation Service ; FMCS)



首日首要行程自然是拜會本次大力協助的 FMCS，如前所述，美國無論是政府或是民間機關都還未恢復全面實體到班，而 FMCS 人員目前上班也是可選擇一星期有 2 日到辦公室



即可，而為了我們的到訪，除了須有協助人員必須到辦公室上班外，署長並率其各地(可能橫跨不同時區)之重要職務部屬以視訊會議方式與我們會面，其中美國在臺協會亦派員出席，席中其並表明這對臺美雙方來說，此趟出訪是健全並富有成效的合作模式，且雙方都可以相互學習到許多。以下就於 FMCS 得到資訊簡要列點說明：

- (一) FMCS 係 1947 年根據 The Labor Management Relations Act 【別稱塔夫特哈特雷法案(Taft Hartley Act)；因該法案以參議員泰夫特和眾議員哈特利的名字命名】法案而成立之獨立的聯邦機構，署長係由美國總統直接任命擔任，直接向總統負責，機構主要任務在對於全美勞資爭議問題，提供調解、調停的管道與機制，在此之前是隸屬勞動部之下，自 1918 年起即負責執行全美的調解，並協助解決勞資爭議。
- (二) NLRB 與 FMCS 之間為各自完全獨立機關，但倘遇有協商爭議之個案(無須一定要是「工會」為單位，只需同一利益人員組成即可)時，NLRB 會向 FMCS 提出示警，甚至 NLRB 會要求雙方是必須透過 FMCS 進行調解；但對 FMCS 來說，是沒有任何時間表或時間限制的，完全取決於爭議何時發生，而在任何的時刻都有可能可以透過協商達成共識、和解或解決方案。
- (三) 不同於臺灣是將勞動事務置於一機關之下統籌處理，在美國是由各自獨立的機關分而治之，因而 FMCS 人員也需

與 NLRB、NMB、AAA 等單位保持聯繫，有時甚至必須相互協調或是共同合作，以確保有更向「極小化爭端」(minimizing disputes)之目標邁進，FMCS 人員也表示因為各單位並非統整於一機關之下，因而有時確實是會遇到一些困難。

(四) FMCS 致力於成為爭端管理之訓練、科技、法律、手段之最前鋒，以確保對 FMCS 的顧客群來說，其具有最佳的服務，其使命是為真正建立更好、更有效的工作場域關係，通過預防性對話和誠實溝通來減輕不可避免的衝突所帶來的損害。實際上 FMCS 在集體談判關係發生之前就已經開始提供協商訓練，一旦真實進入談判之中，只要談判雙方有意願，FMCS 更是會給予大力協助；在該談判過程當中，如遇有任何爭議，FMCS 也會為了雙方關係的促進，而從中介入或進行調解，且在該次談判告一段落後，FMCS 仍會持續提供訓練，並追蹤雙方是如何讓溝通持續進行，而下一輪的談判當中，要如何做才能做得更好，由此亦可見，FMCS 係將整個集體協商的過程視為一動態過程，吸取過去每一次的談判經驗，以利未來每一次協商談判更為順暢。

(五) FMCS 在指派區域調解員的時候，事實上也同時考量他們的文化及專業背景，以符合該地區特性，以當日其中一名線上與我們分享經驗的女性調解員來看，其本身過去曾是職業芭蕾舞運動員而後退任，現在負責的區域是加

州，考量的也是其更能夠深入了解個案的需求。



圖 1：本部出訪人員與 FMCS 主辦人員合影留念。



圖 2：FMCS 國際事務處長利用視訊方式說明目前 FMCS 正在推行的訓練計劃，並表示如果臺灣有需要，亦可尋求合作。

二、 美國全國勞動關係委員會(National Labor Relations Board; NLRB)



我國不當勞動行為裁決制度係效仿自美、日 2 國，因而拜會 NLRB 並從對談之中汲取更多有關美國法判定原則，或是行政作業、法制上之經驗，是本次至美國考察之重點，事前人員皆盡力先行了解美國制度設計與我國之不同，務必求能

在本次短暫的拜會時間中，盡可能發問並且獲得解答，以下就於 NLRB 得到資訊簡要列點說明：

- (一) NLRB 係根據 1935 年《全國勞資關係法》(National Labor Relations Act; NLRA) 而成立之獨立聯邦機構，負責監督工會代表的選舉，並調查和糾正不當勞動行為，其總部設於華盛頓特區內，另有 48 個外地辦事處(包含 28 個區域辦公室及其他衛星辦公室)，這些辦公室主要負責調查、禁制、控訴，同時也處理有關工人是否要加入工會的請願案件；1947 年時 NLRA 曾進行一次修正後即未再有過任何修訂。
- (二) NLRB 係由委員會(Board)與事務總長(General Counsel) 兩個系統所組成，渠等均由總統提名經參議院同意後任命，委員會由 5 名委員組成，委員的任期為 5 年，每年會汰換 1 位成員，但委員會至少必須維持有 3 位在任，原則上為

平衡朝野勢力，通常委員會成員會是 3 位執政黨、2 位在野黨的組合，但實際上則有可能會遇到總統故意不提名的情形，因為如提出不利於己方的委員人選，不如維持可運作人數即可。

- (三) 事務總長轄下之法務官與行政法法官 (Administrative Law Judge) 間相互不能往來，資料亦未有相互流通，完全保持雙方對於案件判斷之獨立性，本次聯繫接待本團的檢察方 2 人及行政法官 1 人，該 3 人雖在同一機關、在同一棟大樓內辦公，但雙方因業務屬性緣故，於公、於私皆未曾往來過，因著本次參訪才首次於同空間內碰面。
- (四) 事件發生後 6 個月內，當事人【無須一定是工會或是工會成員，只要對於該議題有 2 人以上受影響或是預告將成立一個集體(unit)】必須提出對於該項不當勞動行為之申訴 (charge)(亦即「非」控方主動有權調查)，申訴人必須確認相關文件並且宣誓，如不進行前項動作，則不會成案。
- (五) 控方內部對於案件結案有期望目標時間，但未如我國於法規上設有調查時間之期限；就目前來說，NLRB 內部仍有 1 萬 9,000 件左右案件正在審理中，較去年增加 10%，原則上當事人不須另聘有律師，控方會進行調查，並在聽證程序與他造進行辯論。
- (六) 在任何階段皆可以也可能達成和解，即便是在行政法法官已依據心證作成裁決之後，只要裁決最終結果還未公布，雙方都還有達成和解之機會；本次接待的行政法法官即與

我們分享，他也有同事是先將對於該案件的判斷寫好並彌封於信封之中，明示予雙方無論是否願意進行和解都無礙於法官對於該案的心證，以此方式讓雙方卸下心防而進行調解；且在 NLRB 如案件經雙方同意進入調解，則會另有一位法官負責該案調解之過程，不會由原法官為之。

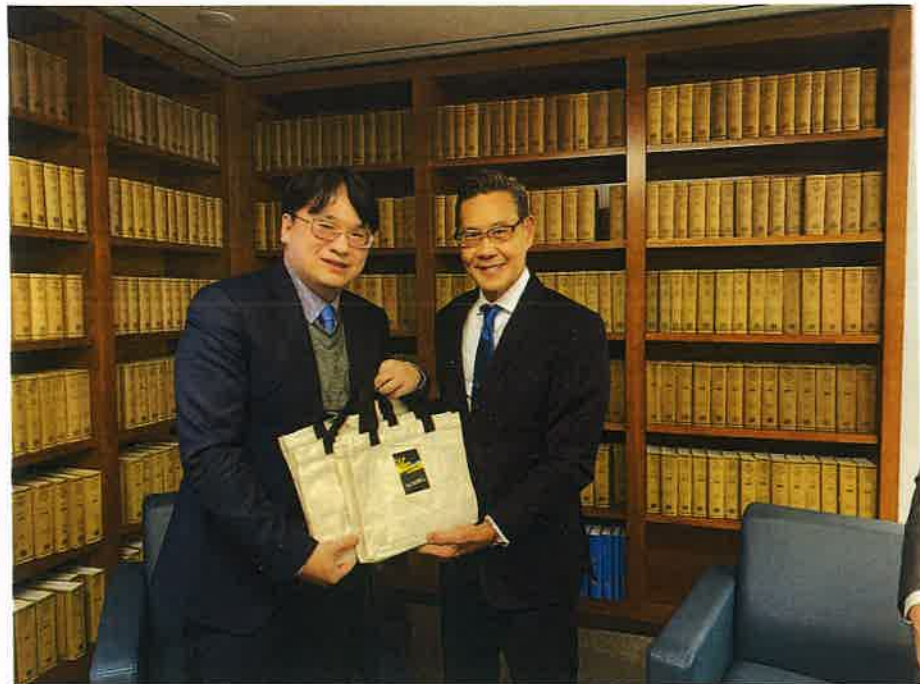


圖 3：蔡裁決委員致贈本部文宣品予 NLRB(由行政法官代表受贈)。



圖 5：本次出訪人員與 NLRB 人員於 NLRB 內部管制入口處合影。

### 三、 全國調解委員會(National Mediation Board/NMB)



近年來由於我國交通運輸產業勞資關係多有爭端，且也因該種產業特殊性，一旦發動罷工，影響民生甚鉅，而美國全國調解委員會係專職處理美國國境內鐵路及航空業的勞資爭

議，因此本次安排前往拜會，盼能吸取國外勞資爭議處理經驗，以因應未來國內類似勞資爭議產生時，本部應如何著手協助。本次係由 NMB 主席率其各部門高階主管親自接待，並向我們說明 NMB 成立背景、執掌業務等節，以下就於 NMB 得到資訊簡要列點說明：

- (一) NMB 係因著 1926 年《鐵路勞工法》(Railway Labor Act) 的修正案，於 1934 年成立的獨立聯邦機構，委員會由 3 名委員組成，均由總統提名經參議院同意後任命，同一政黨不得任命超過 2 人，因而通常都是屬執政黨之委員 2 名，在野黨 1 名，任期 3 年，其主要任務在於調解鐵路、航空等交通運輸部門，與所屬勞工間之各項勞資糾紛，從而避免或大幅度地減少因此類勞資糾紛而對經濟、商業活動所造成的影響；其中確定工會的合法代表權、促進雙方調解及仲裁，為其最三大重要角色，但實際上能夠進到仲裁流程中的案件極少，因為當發生爭議後，如事前雙方沒有仲裁協議，其中一方通常會拒絕進入仲裁機制。
- (二) 勞工會透過秘密投票而授與合法代表權予工會，工會一旦獲得代表權即會馬上提出協商方案，當勞資雙方協商未果時，NMB 會介入調解，倘若調解未成，則可以申請進入仲裁程序(Proffer of Arbitration)，如雙方在此階段達成合意，則會成立仲裁拘束(Binding Arbitration)，如若不成，則雙方繼續協商調解，直到其中一方拒絕繼續進行調解或仲裁，接下來就會進入 30 日的冷卻期【cooling-off(status-quo)】，而在此段期間內，各方都會盡力促進在此期間達成調解合意，而後有可能雙方真的達成協議，或有一方預備啟動罷工或鎖廠，或進入總統緊急委員會的階段。
- (三) 當 NMB 認定該次勞資糾紛將「嚴重威脅、中斷州際貿易，



以致剝奪美國部分或任一地區的基本運輸服務」時，NMB 就會建議總統，而總統可以行使自由裁量權，決定是否成立緊急委員會(Presidential Emergency Boards; PEB)。緊急委員會有 30 日可以去了解這個案件，在此期間，緊急委員會透過與有關當局的會面、書面簡報、聽證會、調解等各種方式，對案件進行深入探討。在這 30 日結束時，總統緊急委員會將提出建議方案予勞資雙方參考，在此建議方案提出後的 30 日內，雙方可以思考建議方案中的哪些部分可以成為協約的一部或全部，或是可以再思考哪些事項必須被置入協約之內，於此同時，NMB 的任務即告完成，即會退出此程序；倘若雙方還是未能達成協議，則會由美國國會強制擬定一份合約予雙方，通常國會會強制實施緊急委員會所擬定的建議方案，除了這種模式外，也曾經有過國會成立一些委員會或協商會議，讓兩造再去相互協調，或是要求兩造必須同意交付仲裁(就在場人士表示他們認為國會其實也並沒有這麼想涉入這些爭議之中)。去年 6 月時，就曾因貨運鐵路工會聯盟集結起來共同訴求，在經歷前開所述部分程序後，7 月時 PEB 發布了「PEB-250」<sup>2</sup>，而後有些工會透過內部程序(比如投票)而通過了同意該份文件，有些工會則持續堅持並且打算進行罷工，此時，國會就強制介入要求該些工會必須執行其他工會已

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<sup>2</sup> [https://nmb.gov/NMB\\_Application/wp-content/uploads/2022/08/PEB-250-Report-and-Recommendations.pdf](https://nmb.gov/NMB_Application/wp-content/uploads/2022/08/PEB-250-Report-and-Recommendations.pdf)。

經通過的那份合約，而去年度經歷的這些，以規模來說，是自 1991 年後的首次，且就 NMB 主席記憶所及，自 1926 年以來，這種情況並非每次都發生，但卻也不是相當罕見的。

(四) 就 NMB 進行調解的部分而論，最主要在於三個層面：(1) 改變團體協約之條款、(2) 對於團體協約條款之解釋、及 (3) 有關協商程序的爭議。NMB 協助仲裁程序的進行，但本身並不成為仲裁人。期間我們也好奇有關美國勞資雙方對於仲裁的信服程度，因而詢問 NMB 處理過的案子是否有曾在 Proffer of Arbitration 期間，雙方才接受仲裁方案的情形？NMB 官員也老實地表示，印象中並未有此情形發生過，雙方務必是要窮盡一切手段、不走到最後一刻不會罷休的情形。

(五) 就 NMB 觀察美國國內情形，鐵路業的爭議案件為多是違反紀律的案件，因而通常程序費時較短，通常不傳喚證人、調查證物，一日 NMB 可以處理十多件案，但案件總量很多，就 2023 財會年度來看，目前已有 3232 件；而航空業的案件數量遠少於鐵路業，但因內部有高度規範密度的工作規則、內部規則，因此多是有關工時、工資或職業安全衛生的爭議案件，通常需要傳喚證人、調查證物，程序費時較長，一個案件可能就需要開很多次庭。而 NMB 也特別提到規範密度、產業財力也會影響使用仲裁的情形，以美國來說，仲裁人的費用所費不貲，但航空業就願意負擔該筆費

用。



圖 5：NMB 主席率其各部門主管迎接本部訪問團。



圖 6：蔡裁決委員致贈「臺灣水」(金門高粱酒)予 NMB。

#### 四、公平就業機會委員會 (Equal Employment Opportunity Commission, ; EEOC)



我國裁決委員除多有集體勞動法專業外，在其他領域亦多有研究，本次囿於經費而只能由 1 位裁決委員出訪，但非常難得有機會能與美國各機關交流，恰好候裁決委員岳宏、傳裁決委員柏翔正在研究有關「聘僱過程對於 AI 使用

與就業歧視之關聯性」，因而我們在到訪 EEOC 前緊急地聯繫，詢問是否有可能以視訊連線方式讓 2 位委員也一同加入討論，所幸得 EEOC 同意，以下就於 EEOC 得到資訊簡要列點說明：

- (一) EEOC 是基於 Title VII of the Civil Rights Act 而設，成立於 1965 年 7 月 2 日，為一獨立的聯邦執法機構，由總統提名後經參議院同意後任命，由 5 位委員組成，負責執行所有有關平等就業機會法律，並負責監督、協調所有聯邦政府有關平等就業機會之規定、措施和政策。EEOC 調查有關受到種族、膚色、宗教、性別、年齡、殘疾的歧視申訴，以及對反歧視進行打擊報復之行為。除委員會外，總統另任命一位事務總長來協助委員會，並對 EEOC 的訴訟計劃提供指導、協調和監督。
- (二) EEOC 負責執行禁止因種族、膚色、宗教、性別（包括懷孕及相關狀況、性別認同和性取向）、國籍、年齡（40 歲以

上)、殘疾或基因資訊而對求職者或員工進行歧視的聯邦法律；包含民權法案第 7 條(Title VII of the Civil Rights Act;)、就業年齡歧視法(Age discrimination in Employment Act;ADEA)、平等薪資法(Equal Pay Act;EPA)、美國殘疾人權法(The Americans with Disabilities Act ; ADA)及基因資訊平等法(The Americans with Disabilities Act ;GINA)。

(三) 具有 15 名員工的大多數雇主皆受到 EEOC 法律的規範(在年齡歧視案例中則為 20 名員工)，包含州政府、地方政府、教育機構、工會組織和就業、訓練機構也在適用範圍內，此外，聯邦政府機關雖也適用，但有不同的流程；而這些法律適用於所有類型的工作情境，包括招聘、解僱、升遷、騷擾、培訓、薪水和福利。以 2022 會計年度而論，受理案件中最多比例的是有關身障歧視，高達 34%，共受理 2 萬 5,004 件，其次為種族歧視，共受理 2 萬 992 件，佔所有案件比例 28.6%；而後分別則是性別歧視、宗教歧視及年齡歧視等案件。

(四) 此外，另提及 2023 年 6 月 27 日通過的懷孕工作者公平法，該部法律要求雇主向符合資格的懷孕工作者提供合理的調整，以應對因懷孕、分娩或相關醫療狀況而受到之影響或由此引起的已知限制，除非該調整會給雇主帶來過大的困擾，而 EEOC 需要配合做的即是為解釋並幫助該部法律執行而制定細部條文。

(五) 另就越洋視訊訪談部分，整理如下：

- 1、 「有關《美國殘疾人權法》與使用軟體、演算法及人工智慧評估求職者與員工指南」前開文件是否代表 EEOC 對於在美國使用人工智慧的立場？前開文件是否也被判例法或州法所接受？而不遵守該份文件後果為何？此是否會成為 EEOC 代表投訴者提出歧視投訴的依據？

回復如下：

EEOC 負責處理各種歧視和騷擾投訴，其中包括涉及使用人工智慧工具而可能引起歧視之情形。EEOC 並不打算修改法律以應對人工智慧的問題，但會發布指導文件和備忘錄，提醒雇主應踐行他們的義務，同時也是提醒受僱者他們權利。而前開所提文件是為了應對殘疾歧視，保護他們獲得合理調整的權利，在現今的局勢下，使用人工智慧確實有可能會引起差別對待，EEOC 則將使用相關理論來處理相關投訴，我們將會審查統計數據和間接證據，來檢視是否有因使用人工智慧而落入現行歧視類別之情形。

- 2、 「關於年齡歧視的問題，倘若公司表示他們希望給與年輕受僱者於特定職位上接受培訓的機會，因此拒絕了一名資深受僱者的申請，這是否屬於年齡歧視？但雇主表示這是一個具有合法商業因素的政策，因為年輕受僱者需要經驗以進行進一步的晉升，而資深受僱者則不需要。」

回復如下：

對 EEOC 來說，這仍然屬於是年齡歧視的一種型態，無論

雇主提出何種說法或是看似合法的商業因素，但很明顯地本件的決定因素就是年齡，而這就違反了 ADEA；即使雇主聲稱做這個決定不是因為年齡，或是除年齡以外的因素，但 EEOC 仍然會查明事實並找出真相。我們將檢查除年齡因素以外，顯示於外的合法因素是否是年齡因素的替代或掩飾，如果是，則仍會被認定是年齡歧視。



圖 7：以視訊連線方式與侯裁決委員岳宏、傳裁決委員柏翔交流。



圖 8：EEOC 與現場參訪團交流情形。





圖 9：本次參訪團與 EEOC 人員合影。

#### 五、美國仲裁協會(American Arbitration Association/A.A.A.)



由於 AAA 總部係位於紐約，本次係透過 FMCS 的接洽安排，邀請 AAA 副總裁等 3 人親至 FMCS 總部會議室，利用約莫 2 小時左右進行簡單的業務交流。以下就於 AAA 得到資訊簡要列點說明：

- (一) AAA 係 1926 年的聯邦仲裁法(Federal Arbitration Act, FAA)施行後始成立之非營利組織，主要目標在於協助個案得以透過訴訟外紛爭解決機制消弭爭議、解決雙方爭端。
- (二) 另我方詢問是否因應疫情而採用視訊仲裁、調解一節，AAA 表示由於美國幅員廣闊，以視訊方式進行仲裁、調解，將

會使得時間及金錢成本都大幅下降，但確實在商業類型案件，顧客們仍舊比較傾向面對面溝通，即便聘用 1 位仲裁人所費不貲，且仲裁人的計價也非以 1 人 1 時段計，有可能聘用 3 人費用卻跳升至 5 倍。

(三) 就美國現行狀況來看，幾乎所有的契約都有針對雙方如遇爭端時之解決方式、程序落有相關條款，而雙方多半願意按仲裁程序解決紛爭的原因在於，一是訴訟耗時費力、成本又高，二是因為即便進了訴訟程序，法官也不一定具有專業背景來作判斷，因而對於雙方來說風險都過高，所以願意選用仲裁的方式，仲裁的費用通常都是由兩造共同負擔，當然也有部分會約定由輸的一方支付。

(四) 通常雙方會將「仲裁人人數、資格、適用區域(範圍)、適用法律、仲裁程序期間、支付費用、保密措施及是否得以續行上訴程序」等節，依雙方之需求落入仲裁條款之中；就目前多數契約觀之，有 75%以上都是選擇 1 位仲裁人。進行的方式為由 AAA 提供 1 份 15 人(擇 3 名仲裁人)或 10 人(擇 1 名仲裁人)名單，而兩方會根據所需，刪除掉己方不要的人選，因仲裁人的資格、人數都會牽涉到雙方自己的策略運用(亦即雙方各自會想辦法選擇讓有利於自己的仲裁人擔任)，經過 2 輪刪除後倘若雙方仍未能達成共識，則由 AAA 來指定。



圖 10：本次參訪團與 AAA 人員合影。

六、美國勞工聯合會和產業工會聯合會(American Federation of Labor and Congress of Industrial Organizations; AFL-CIO)、美國國際運輸業工會(國際卡車司機兄弟會；International Brotherhood of Teamsters；IBT)



過往 AFL-CIO 屬性上向來較為偏美國民主黨，因而在臺灣與中國的關係上顯得更為親中，本次赴美考察本來也對能夠到訪並不抱有希望，幸得 FMCS 人員居中協調始得拜訪。進入 AFL-CIO 大

樓及 IBT 大樓不禁對於美國工會勢力的強大感到咋舌，從工會大樓所處地段(一為白宮正前方大道上；另一則在國會山莊前)即可知工會的財力相當驚人，再加上而後簡要介紹工會內部分工，具有專職人員(法律人員、公關人員等)各司不同面向的工作，可想見對於立法政策的形成極具影響力，過去在政治學上所學關於美國兩黨政治、遊說團體等教科書上說法，今日得以親眼聞見。以下就於 AFL-CIO 及 IBT 得到資訊簡要列點說明：

- (一) 針對案件如未能經 NLRB 認定構成不當勞動行為，則此時工會內部自己會就時間、財力、物力來做評估是否上訴，並不會無限度地耗費在個案上。
- (二) 認為 NLRB 的罰鍰過低、處罰不夠重，對於雇主或雇主團體不足以造成恫嚇或影響；而就回復原狀的處理也不夠具影響力，不足以保護工會，以代表性一節而論，現行的做法是倘若工會控訴的是雇主介入代表性投票，則一旦經 NLRB 確認，會命進行重新選舉，但工會認為該次選舉已無公正投票之可能性，因而此時 NLRB 實應逕認該次選舉該工會已具有代表性，若採重新投票等其他作法，對於工會來說皆無法彌平該次受雇主之影響而未能取得代表性之傷害；或是至少 NLRB 應該強力監督新一次的投票過程，否則根本無法讓工會獲得公平的對待。
- (三) 此外，工會雖可提議有關於回復原狀的救濟方式，但仍不能脫出現行 NLRA 的規範，然而 NLRA 自 1947 年進行修正 1 次後就未能再次進行修正，例如雇主對於勞工企圖組建

工會發表威嚇性的言論，在 NLRB 的認定上卻是不成立的。就修法部分，AFL-CIO 也已經向國會提案希望進行修正，惟美國利益遊說團體眾多，黨派也各有立場，因而對於修法一節，其實抱持低度希望。

#### 七、美國勞動部(U.S. DEPARTMENT OF LABOR; U.S. DOL)



廖駐美秘書與 USDOL 人員相約至 IBT 內部員工餐廳，以共同餐敘方式進行本次拜會，雖就多數議題其並不方便直接表示意見，但從該名人員也是首次進入 IBT 大樓，可見美國各機關、單位的獨立性及利益迴避原則，在共同參訪 IBT 大樓部分樓層後，轉而一同步行至 USDOL 大樓，並由該名人員帶領進入大樓一樓大廳，為我們簡要說明歷史緣由及展示物件。



圖 11：AFL-CIO 獨棟大樓，位於白宮正前方大道上。



圖 12：蔡裁決委員志揚與 AFL-CIO 人員合影。



圖 12：蔡裁決委員志揚與 IBT 人員合影。

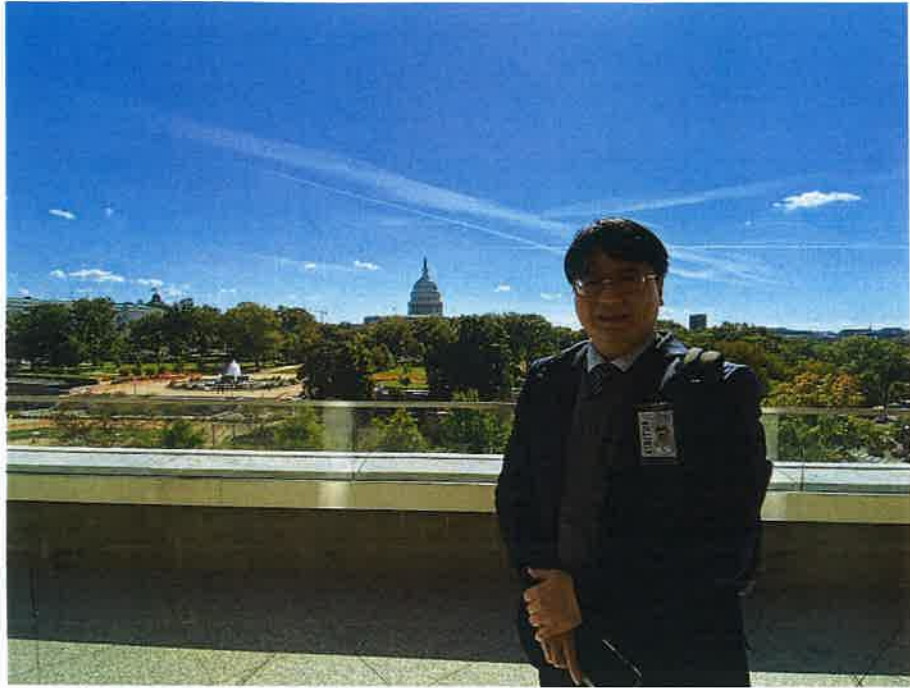


圖 12：由 IBT 法務專員簡要導覽 IBT 可參訪樓層，位處 IBT 大樓可直視國會山莊。



圖 13：蔡裁決委員志揚與 U.S DOL 國際亞太事務關係資深專員於 U.S DOL 大樓前合影。



圖 14： U.S DOL 大樓內部榮譽牆。



圖 15： U.S DOL 大樓內部工會組織標誌牆。



## 參、心得及建議

### 一、有關法制、制度建議部分：

(一) FMCS 與 NLRB 的關係，主要是在為強化訴訟外紛爭解決機制(Alternative Dispute Resolution；ADR)，FMCS 提供調解員，期能在進入不當勞動行為裁決的正式程序前，就能解決紛爭；相較我國制度，我國雖於各地方政府設有勞資爭議調解制度，但較少處理有關工會法「不當勞動行為」之爭議。然而，實際上有些類型的案件，雖然涉及不當勞動行為之主張，卻可能只導因於單純勞資之間溝通上的不良或誤會，透過第三人(不必要非得是裁決委員會)即有可能化解或澄清。惟雇主方一旦收到裁決委員會要求說明等書函，因為伴隨後續認定及罰則的壓力，反而造成勞資關係惡化，難以於第一時間獲得緩解。因此，建議未來可以強化勞資爭議調解機制關於不當勞動行為部分之功能。另，為確保作成裁決者心證不受調解程序過程的影響，美國主持聽證及作成裁決的行政法官，通常不親自進行調解，即便是雙方依仲裁協議進行仲裁程序所選任的仲裁人，通常也不親自調解雙方。因此，或許建議我國可考慮建構有別於不當勞動行為裁決委員會之「外部」調解不當勞動行為的機制，此或可考慮建構在既有裁決委員會之內部機制內，設有專司調解之組別(委員)，抑或由各組分別依照「調解案」/「調查案」輪值。

(二) 本次出訪考察美國各機關(構)，發現無論是個人勞僱契約

或是團體協約內，都會加入「後續爭議機制、程序」，比如將調解甚至是仲裁協議(arbitration agreement)置入，且此觀念係深植於一般社會通念的原則之中；相比我國，除商務、工程契約外，罕於勞僱契約、團體協約中見到，美方知悉我國情形，除表示訝異外，也認為倘若不在一開始即將後續爭議處理程序置入，當發生爭議時將不太容易成立仲裁協議。因此，建議我國大力推廣於團體協約、個人勞僱契約中加入爭議處理程序，尤其是仲裁協議條款，此亦將使我國勞資爭議處理程序中仲裁制度的使用率大幅提升。本部為了協助勞資雙方進行團體協約的協商與簽訂，特別有編撰「簽訂團體協約參考手冊」。或許未來於改版時，可在其中加入仲裁協議條款，使勞資雙方能多加接受這個解決爭議的機制，讓大多數的團體協約中能存有仲裁條款。

- (三) 本次與 FMCS 交流，發現 FMCS 並無制式課程、無整套特定訓練程序，所有的課程都是客制化，以確保符合每次調解人需要的技巧與服務，且 FMCS 認為最重要的是持續的溝通與彼此互信，本次參訪過程中，國際處處長特別提及目前正在推動「調解衝突管理專業訓練課程」(Conflict Management Professional (CMP) Trainings)，旨在啟發意見領導人的溝通技巧，讓意見領導人能夠相互對談，且各自有能力、技巧去說服自己內部團體的聲音(重點在於必須要讓聲勢較小的一群人認為自己的意見有被包容)。

由於本次考察行程後，隨即廖駐美秘書貴燕邀請多位美國勞工行政主管機關之重要人士到訪我國，原本並未安排參訪業務司及裁決庭，但成員團中 FMCS 候任署長及 NLRB 助理事務總長即反應，希望能就其所轄業務部分與承辦單位交流，尤其是希望能與本次赴美成員交流參訪心得及意見。於安排該 2 人參訪並進行業務交流後，恰逢當日有裁決案件正在調查，並有可能進行調解，裁決委員也邀請 2 位貴賓一同旁聽，旁聽後 FMCS 候任署長很訝異協商的氛圍，也因此委員們後也於裁決委員會上提出討論，並建議如有可能，希望引進 FMCS 的課程，以助未來裁決案件之調解。

(四) 本次行程中有考察 2 大工會，其工會地址皆位於極佳地段(白宮或國會山莊前)，其擁有完整大樓、行政部門、專職人員，可見其實力、財力之強大，雖其皆表示美國境內受僱者加入工會的意願持續降低中，但相較我國可見明顯差異，也可見國情之不同亦會造成制度有不同的發展結果。席間我們曾提到國內工會會址多半寄於公司下，且享有會務假等節，對在美專職之工會人員來說，誠屬非常難以想像，也會覺得或有不妥之處。基此，關於未來要如何強化受僱者團結意識或我國特有制度(會務假)之紛爭，或許皆有再討論的空間。

## 二、有關行程、人員等行政庶務心得及建議部分：

本次赴美由於駐美廖秘書貴燕的努力，積極地透過 FMCS 協調拜會各機關，各機關接待規格明顯高於往常。以與裁決制度最相關

的 NLRB 為例，本次係由控方 2 人及行政法官 1 人同為接待，該 3 人雖在同一單位、在同一棟大樓辦公，但雙方因業務屬性緣故，於公、於私皆未曾往來，因本次參訪才首次碰面。而居中負責聯繫的 FMCS 人員也是首次進入 NLRB 大樓、首次聽到官方陳述內部運作情形，於此同可見美國各機關的各自獨立性。另參訪 NMB 時，NMB 更是派出各處之最高主管處長與會，詳細說明其職掌及業務範圍。而本次參訪因著經費緣故，只能有 1 位業務科同仁偕同 1 位裁決委員出訪，所幸因著業務司另一赴美參與研討會之人員，業務司於行前強力整併，使得整個參訪團人數增多，但一與美國各機關本次接待人員相比，規格及人數皆有不足之處，且如能讓更多裁決委員或業務科同仁赴國外吸收經驗，對於未來業務之發展幫助甚多，也有助於促進臺美關係深化。同樣地，囿於經費有限，本次出國人員皆以最低成本出訪(甚有部分自費補貼情形)，而到訪他機關難免需贈禮以示對於協助接待感激之意，本次業務司縱已盡力協助提供，惟於致贈之時難免仍覺得非極具本國或本部代表性物件，或有物件不夠大器以顯來往誠意之感。

肆、 附錄<sup>3</sup>

- 一、 FMCS 提供參考文件
- 二、 NMB 提供參考文件
- 三、 AAA 提供參考文件

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<sup>3</sup> NLRB 以提供整個案例所有文件方式與參訪團深入討論，惟其中涉及個案資訊，不便公開；該份文件已存入本部不當勞動行為裁決委員會圖書內作為委員參考資訊。





**FMCS**

FEDERAL MEDIATION &  
CONCILIATION SERVICE

## **Labor Arbitration in the United States: A Primer**

### What is Arbitration in General?

- A process to make a final and binding determination about a dispute
- An arbitrator is like a private judge: holds a hearing, hears arguments, reviews evidence, listens to testimony, etc.
- Arbitration is based on a contract between the opposing parties

### What is the Status of Arbitration in the U.S.?

- Federal and State statutes provide a broad legal context
- Supreme Court says our law reflects a strong preference for arbitration when the parties have agreed by contract
- It is very difficult to successfully appeal an arbitration decision to the courts (actually more difficult to appeal than a court decision)
- Parties give up rights to trial in court in exchange for a faster, cheaper process that puts the decision in the hands of an impartial subject matter expert

### How is Arbitration Viewed in Labor-Management Relations?

- Most collective bargaining agreements provide for arbitration of disputes about application or interpretation of the agreement
- Labor law in the U.S. reflects a preference for arbitration as the last step in resolving a dispute
- Usually, the dispute is handled through a grievance process that starts out very informally and step by step eventually goes to arbitration if the parties cannot reach agreement

### What is the Basic Role of FMCS in Labor Arbitration?

- We are one of the two largest labor arbitration administering agencies
- Unlike our mediation service, we do not hire arbitrators—not as employees, not even as contractors
- Arbitrators join a "roster" or list of arbitrators that FMCS maintains; the parties can select arbitrators from our roster
- The arbitrators are private, independent contractors who are paid by the parties, not by the FMCS





# **Overview Office of Arbitration Services**



**Terri D Brown  
Director**

# Arbitration

- In Section 3 of the RLA Congress appropriated the funds and outlined the process used to resolve grievances growing out of the interpretation of the CBA
- Only applies to railroads
- Arbitrators are independent contractors and do not work for the NMB
- Annual Work Order - issued each fiscal year 10/1
- Paid per case \$630 (low in comparison to a daily rate)
- Airlines pay for arbitration
- NMB administers that process through the Office of Arbitration Services

## Office of Arbitration Services

- Administers arbitration under the RLA
- Docket cases
- Assigns cases
- Create PLBs, SBAs
- Generate Strike Lists
- Fund cases - annual budget 1.2 M (approximately 1900 cases)
- Approves requests to hear cases and write cases and compensate for writing the decision (awards)

# NRAB

- Separate from the NMB:
  - Four divisions
  - 34 members
- Created in 1936 by Amendment to RLA
- NMB staff in Chicago provides administrative support to NRAB
- Division is dictated by the type of work
- Possible to create standing tribunal for airlines but hasn't been done yet

42

## Public Law Boards (PLBs) and Special Boards of Adjustment (SBA)

- RLA amended in 1966 to include PLBs and SBAs
- Parties enter into an agreement to establish a board, the NMB creates the Board and assigns a number
- Parties select the arbitrator and adds cases

# Railroad Arbitration vs. Airline Arbitration

- Rail arbitration is appellate review and the record is created on the property
- Airline arbitration is fact-finding and paid for by the airlines
- Railroad arbitration generated 3232 grievances in FY 23
- Railroads have staff dedicated to arbitration
- Collateral or ad hoc duty at airlines
- Airlines have far fewer arbitration cases per year
- Rail arbitration - multiple cases in one day
- Airline arbitration - multiple days for one case

## Timeline for Rail Arbitration (60-90-120 Rule)

- 210 day window to schedule, hear and write awards
- 60 days to schedule
- 90 days to hear
- 120 days to write
- Maximum of 210 days (7 months)





# National Mediation Board

The RLA Collective Bargaining  
Process Explained



Settlement

Negotiations

Mediation



Settlement

Mediation

Proffer of Arbitration

Initiated by party request



**Proffer of Arbitration**

Initiated by party request

**Binding Arbitration**

Both parties accept proffer

**Release from Mediation**

At least one party declines proffer



Settlement

Any time

Self Help

Day 31

Presidential

Emergency Board

Days 31-60

Cooling Off

Period

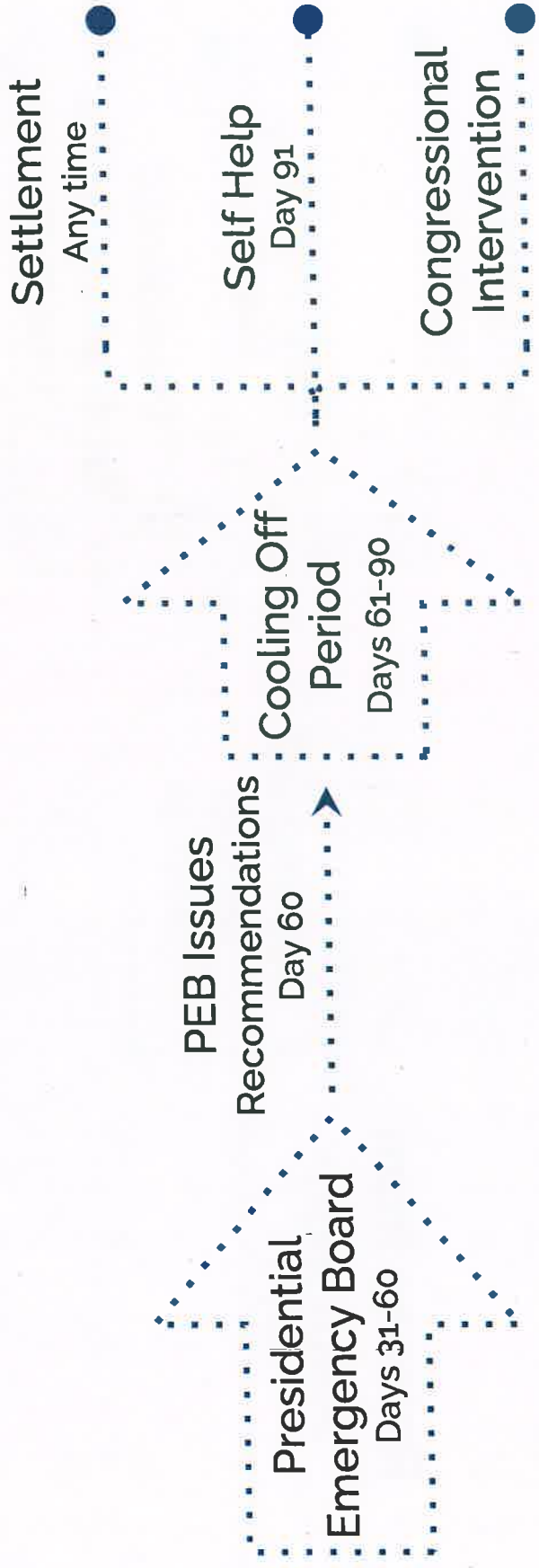
Days 1-30

Release from

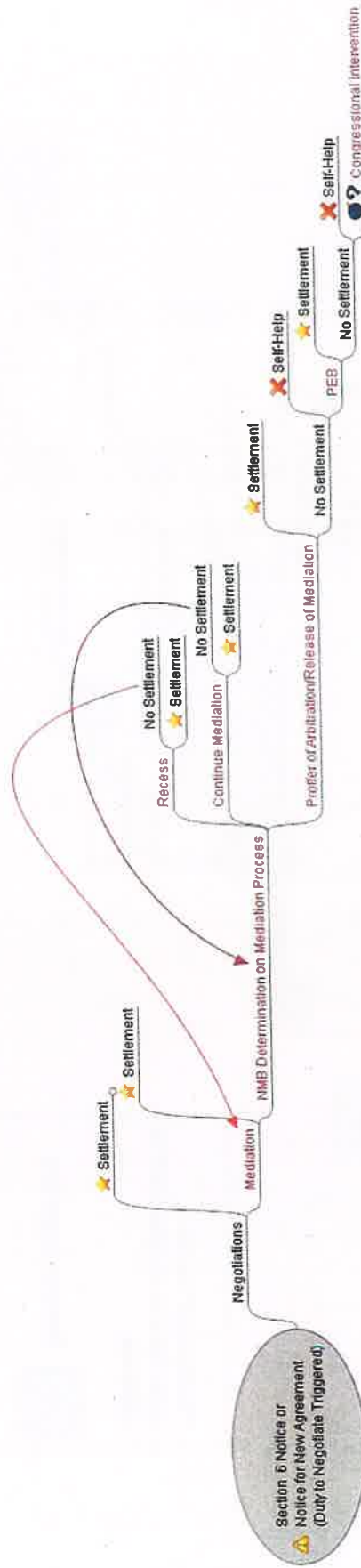
Mediation

Day 0

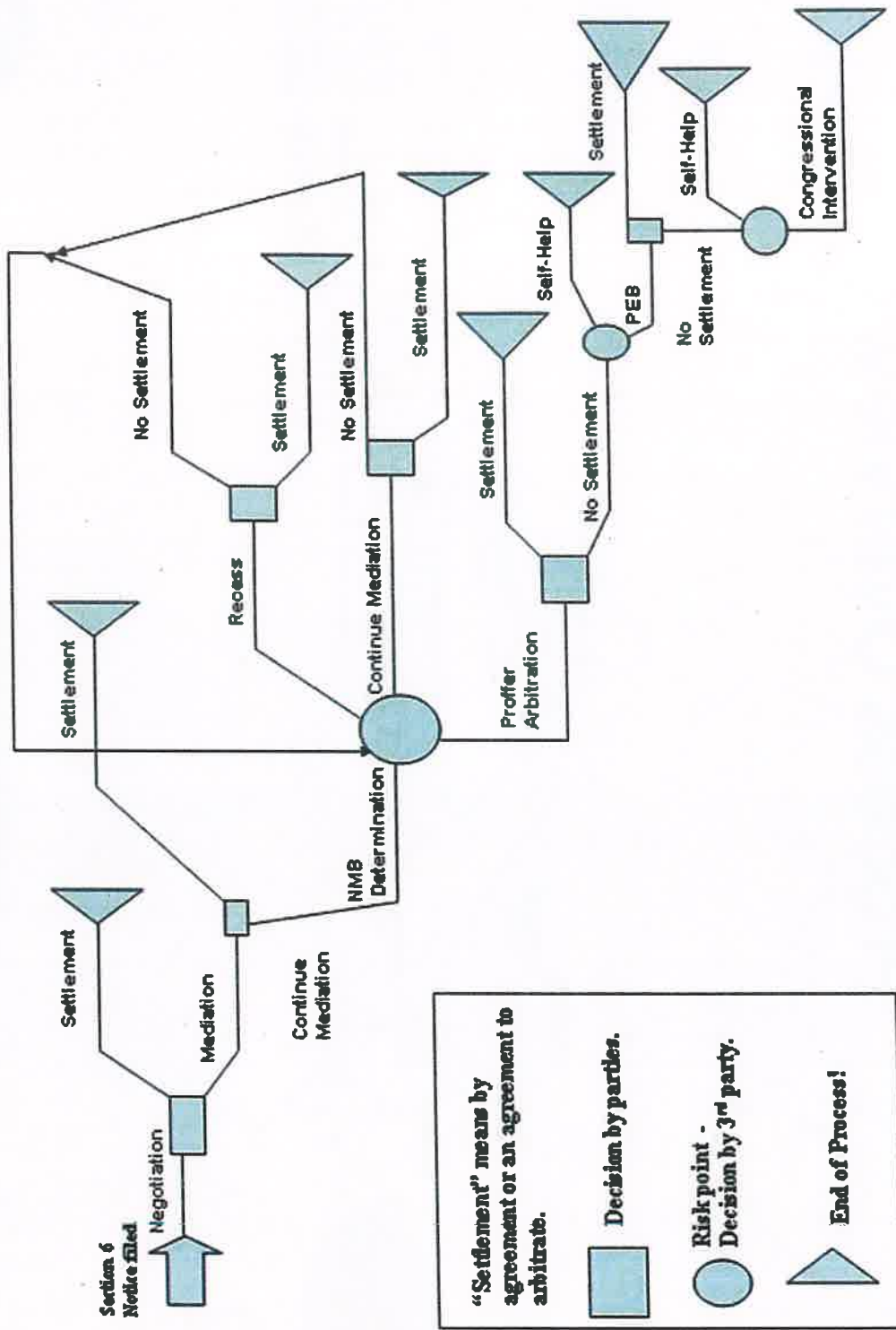




# Process Overview



# Another Visualization



**"Settlement" means by agreement or an agreement to arbitrate.**

**Decision by parties.**

**Risk point - Decision by 3<sup>rd</sup> party.**

**End of Process!**







# 4,682 Labor Cases Filed in 2022

## MOST FREQUENT ISSUES

|                         |     |
|-------------------------|-----|
| Discharge               | 24% |
| Contract Interpretation | 18% |
| Work Assignments        | 9%  |
| Suspension              | 9%  |
| Discipline              | 9%  |
| COVID-19                | 4%  |



## MEDIAN NUMBER OF DAYS

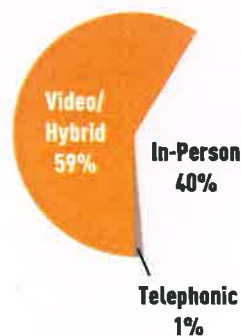
|                       |     |
|-----------------------|-----|
| Filing to Appointment | 21  |
| Filing to Settlement  | 177 |
| Filing to Award       | 261 |



## COMPARISON OF CLOSED CASES



## EVIDENTIARY HEARING METHOD



## THE LABOR PANEL IS COMPOSED OF 576

accomplished arbitrators and mediators including attorneys, labor professionals and educators specialized in labor-management relations. Thirty-nine percent of the panel are active members of the National Academy of Arbitrators.

## TOP TEN STATES BY CASES

|               |       |
|---------------|-------|
| New York      | 1,328 |
| Pennsylvania  | 736   |
| Massachusetts | 640   |
| New Jersey    | 232   |
| Michigan      | 226   |
| Ohio          | 225   |
| Connecticut   | 172   |
| Rhode Island  | 148   |
| Washington    | 143   |
| Texas         | 139   |



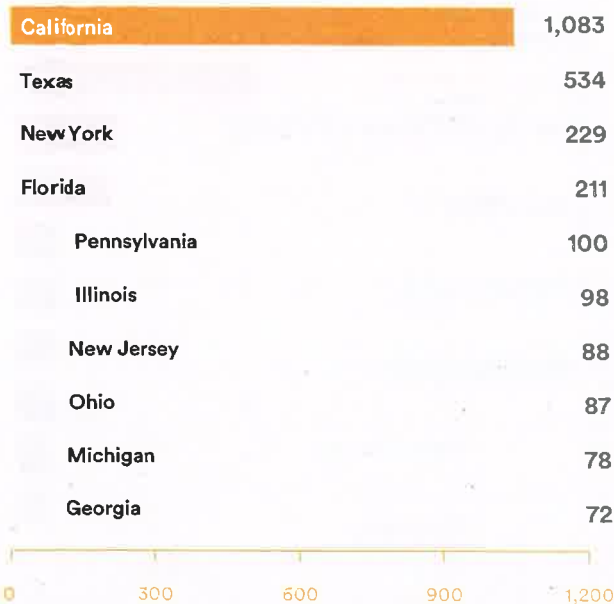
## COMMITMENT TO DIVERSITY

35% diverse roster 35% diverse appointments

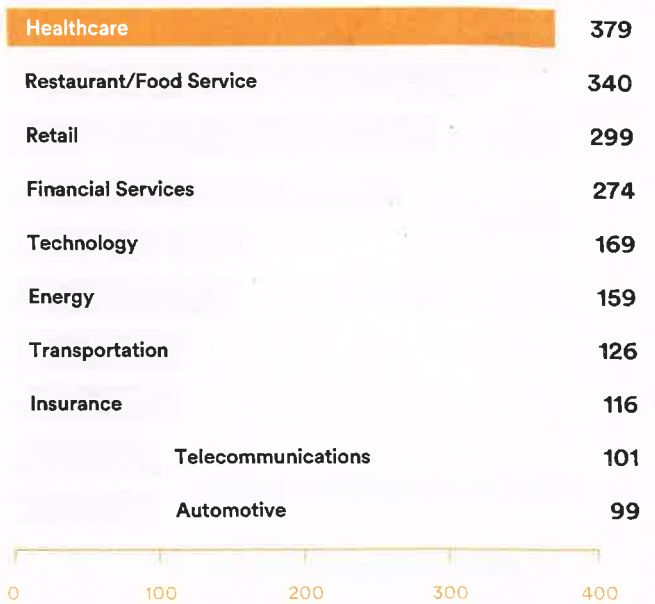


# 3,337 Individual Filings in 2022

## TOP 10 STATES



## TOP 10 INDUSTRIES\*\*



\*\*Excludes N/A and Other Industry

## MEDIAN TIME FROM FILING TO AWARD

For the parties that proceed to award - time resolution is speedy, especially when compared to U.S. District Court





**MOST CASES SETTLE**



**2,438**

CASES SETTLED



**3,108**

# of cases closed in 2022, regardless of filing year

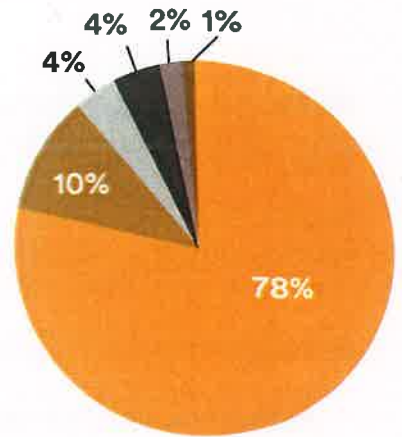


**316**

# of cases awarded in 2022

**Disposition Breakdown**

|                |       |
|----------------|-------|
| Settled        | 2,438 |
| Awarded        | 316   |
| Dismissed      | 136   |
| Withdrawn      | 122   |
| Administrative | 66    |
| Consolidated   | 30    |



**AAA EMPLOYMENT ARBITRATION IS ACCESSIBLE FOR INDIVIDUAL EMPLOYEES**

Employers are required to pay for all arbitrator compensation. The AAA caps employee administrative fees on a case at \$300. In many instances, the fee is much less. In 2022, employees paid no administrative fee in 1,905 cases. AAA also waives fees for employees that cannot afford their share of the fee.

**COMMITMENT TO DIVERSITY**

**46%**

DIVERSE ROSTER

**47%**

DIVERSE APPOINTMENTS

*This infographic does not include data related to employment multiple case filings.*



AMERICAN ARBITRATION ASSOCIATION\*

# AAA<sup>®</sup> Labor-Management Dispute Resolution Services

## The Value-Added Benefits



*What do you get from AAA<sup>®</sup> Labor-Management Dispute Resolution Services that no one else can provide? Simply this—**Choices!***

Whether you represent union or management, or you or your client needs full-service or non-administered resolution options—AAA Labor-Management Dispute Resolution Services can accommodate these needs with flexible, customizable solutions at cost-effective rates. ♦

And what sets us apart as an industry leader? **Value-added benefits** that include:

- **Professional staff** dedicated to providing efficient, cost-saving case management services to meet the needs of the parties.
- **Highly qualified arbitrators and mediators** who've met stringent application and neutrality requirements.
- **Customized ADR Solutions** where:
  - arbitrator list selections can be based on specific needs, location and region
  - parties can also select service options such as AAA Documents Only Procedures, AAA Rapid Resolve Procedures, and AAA Expedited Procedures, amongst others
  - parties can opt to use our AAA WebFile<sup>®</sup> services to perform online case management and make payments, access rules and procedures, electronically share documents, and select arbitrators and mediators
  - List Only and Appointment Only Services is available when full AAA case administration is not required; and
  - flexibility for Grievance Mediation
- **State of the art hearing rooms** at a reasonable cost and **business centers** equipped with all the essentials needed to present your case.
- The **world's leading source of web-based and in-person ADR education** for arbitrators, mediators, advocates, counsel and other professionals. Our current program offerings are available at [www.aaau.org](http://www.aaau.org).
- **Timely awards**, under the AAA Labor Arbitration Rules, the award shall be rendered promptly by the arbitrator and, unless otherwise agreed by the parties or specified by law, no later than 30 days from the date of closing the hearing or, if hearings have been waived, no later than 30 days from the date of transmitting the final statements and proofs to the arbitrator.
- **Risk mitigation** to help keep a case moving by handling any complication that may arise.

If you'd like additional information on other cost-effective labor services contact  
Tracy Jusay at (212) 484-3283 or [JusayT@adr.org](mailto:JusayT@adr.org).



## Customized On-site Training for Labor and Management Dispute Resolution



The American Arbitration Association® (AAA®) provides on-site dispute resolution education and training programs for Unions and Employers that are flexible, convenient, and cost-effective. These training programs – facilitated by experienced labor dispute resolution professionals – can be customized to meet your labor or management business needs.

### ***With the customized on-site training programs:***

- There's no need to travel for trainings since these programs are located in the comfort of your workplace
- Program attendees have the opportunity to explore topics and ask questions within the privacy of their work environment
- Scheduling is flexible
- Group interaction is designed to reinforce learning and professional growth
- Participant costs are affordable
- The disruption to the organization's day-to-day operations is reduced

### ***The AAA also has general training courses that cover a wide range of labor topics. Here is a sample of what is offered:***

- **Grievance Processing**

Through lectures, facilitated discussions, interactive exercises and mock role-play, a faculty of seasoned labor arbitrators and advocates will provide practical skills and information on how to constructively use the grievance process to resolve disputes and questions regarding contract interpretation.

- **Introduction to Labor Advocacy & Advanced Labor Advocacy**

With the use of lectures, facilitated discussions and practical exercises, expert labor arbitration professionals will examine how to:

- Develop a theory of the case
- Prepare an opening statement
- Present evidence in an arbitration setting
- Direct and cross examination
- Use of objections
- Remedies
- Closing arguments
- Prepare and work with witnesses
- Choose between oral and written closing arguments

- **Mediation Skills**

In this training, experienced faculty will use lectures, facilitated discussions and practical exercises to explore these items:

- Development of the mediation mindset
- Knowledge of conflict theory
- Skills development process and techniques
- Practice-simulated mediations, feedback, and modification of techniques

For more information on customizable education programs for your organization or the general labor training courses please contact Vice President Ann Lesser by email at [LesserA@adr.org](mailto:LesserA@adr.org) or by phone at 212-484-4084.



## Comparison of Expedited Processes for Labor Arbitration

In addition to our regular grievance arbitration administration, the AAA® has three Expedited Processes for Labor Arbitration

- 1) Expedited Procedures outlined in Labor Arbitration Rules
- 2) AAA Labor Rapid Resolve Procedures
- 3) AAA Emergency Scheduling Procedures for Labor Disputes

|  | EXPEDITED PROCEDURES OF LABOR ARBITRATION RULES  | AAA LABOR RAPID RESOLVE PROCEDURES  | AAA EMERGENCY SCHEDULING PROCEDURES FOR LABOR DISPUTES   |
|--|--|---|--|
| <b>Appointment of Arbitrator</b>                           | AAA appoints a single arbitrator to hear and decide dispute.   | AAA pre-screens five experienced arbitrators who are available on mutual hearing dates provided by parties. Parties have 24 hours to return list with the right to strike two names.        | AAA pre-screens experienced arbitrators who are able to provide hearing dates within a 14-day time period. The list contains arbitrators who are available on date specified by parties. |
| <b>Scheduling of Hearing</b>                               | Arbitrator sets date, time and place of hearing.   | Parties agree in advance to hearing date.   | Hearing scheduled within 24 hours of the demand request on date specified by parties.  |
| <b>Proceedings</b>   | Hearing conducted by the arbitrator in whatever manner will expeditiously permit full presentation of the evidence and arguments of the parties. | If processing three cases, no single case can go beyond two hours; Hearing: Each allowed 45 minutes to present its case plus additional time to sum up (may be adjusted by mutual consent). | Hearing conducted by the arbitrator in whatever manner will expeditiously permit full presentation of the evidence and arguments of the parties.   |
| <b>Stenographic Record</b>                                 | No stenographic record of the proceedings.   | Not contemplated or suggested for these procedures.   | Not restricted—Varies according to the specific and mutual needs of the parties.   |
| <b>Post-Hearing Briefs</b>                                 | No post-hearing briefs.  | Not contemplated or suggested for these procedures.   | Not restricted—Varies according to the specific and mutual needs of the parties.   |
| <b>Number of Grievances</b>                                | Single grievance anticipated.  | For uncomplicated grievances—up to three cases heard in one day.  | Not restricted.  |
| <b>Time and Form of Award</b>                              | Award due seven days from close of hearing. If opinion is necessary, it shall be in summary form.  | Arbitrator issues a one-paragraph decision on each grievance within 48 hours of hearing.  | Award due 30 days from close of hearing or receipt of briefs.  |
| <b>AAA Administrative Fees and Arbitrator Compensation</b> | Administrative Fee: \$150 per party; Arbitrator compensation per fee structure contained in arbitrator's resume submitted to parties.            | AAA Flat Fee: \$500. Arbitrator Compensation on flat fee basis of \$1,000 for the day (includes travel expenses and no study time). Each party will be billed \$750.                        | Administrative Fee: \$275 per party; Arbitrator compensation per fee structure contained in arbitrator's resume submitted to parties.  |

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# Labor Arbitration Rules

(Including Expedited Labor Arbitration Rules)



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# Labor Arbitration Rules

(Including Expedited Labor Arbitration Rules)

## Introduction

Every year, labor and management enter into thousands of collective bargaining agreements. Virtually all of these agreements provide for arbitration of unresolved grievances. For decades, the American Arbitration Association® (AAA) has been a leading administrator of labor-management disputes.

The American Arbitration Association 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.

Arbitration is a tool of industrial relations. Like other tools, it has limitations as well as advantages. In the hands of an expert, it produces useful results. When abused or made to do things for which it was never intended, the outcome can be disappointing. For these reasons, all participants in the process — union officials, employers, personnel executives, attorneys, and the arbitrators themselves — have an equal stake in orderly, efficient, and constructive arbitration procedures. The AAA's Labor Arbitration Rules provide a time-tested method for efficient, fair, and economical resolution of labor-management disputes. By referring to them in a collective bargaining agreement, the parties can take advantage of these benefits.

The parties can provide for arbitration of future disputes by inserting the following clause into their contracts:

*Any dispute, claim, or grievance arising from or relating to the interpretation or application of this agreement shall be submitted to arbitration administered by the American Arbitration Association under its Labor Arbitration Rules. The parties further agree to accept the arbitrator's award as final and binding on them.*

For relatively uncomplicated grievances, parties who use the labor arbitration services of the American Arbitration Association may agree to use expedited procedures that provide a prompt and inexpensive method for resolving disputes. This option responds to a concern about rising costs and delays in processing grievance arbitration cases. The AAA's Expedited Labor Arbitration Procedures, by eliminating or streamlining certain steps, are intended to resolve cases within a month of the appointment of the arbitrator. The procedures are in the following pages.

## Labor Arbitration Rules

### 1. Agreement of Parties

The parties shall be deemed to have made these rules a part of their arbitration agreement whenever, in a collective bargaining agreement or submission, they have provided for arbitration by the American Arbitration Association (hereinafter the AAA) or under its rules. These rules and any amendment of them shall apply in the form in effect at the time the administrative requirements are met for a demand for arbitration or submission agreement received by the AAA. The parties, by written agreement, may vary the procedures set forth in these rules.

### 2. AAA and Delegation of Duties

When parties agree to arbitrate under these rules or when they provide for arbitration by the AAA and an arbitration is initiated under these rules, they thereby authorize the AAA to administer the arbitration. The authority and duties of the AAA are prescribed in the agreement of the parties and in these rules, and may be carried out through such of the AAA's representatives as it may direct. The AAA may, in its discretion, assign the administration of an arbitration to any of its offices.

### 3. Jurisdiction

- a. The arbitrator shall have the power to rule on his or her own jurisdiction, including any objections with respect to the existence, scope, or validity of the arbitration agreement.
- b. The arbitrator shall have the power to determine the existence or validity of a contract of which an arbitration clause forms a part. Such an arbitration clause shall be treated as an agreement independent of the other terms of the contract. A decision by the arbitrator that the contract is null and void shall not for that reason alone render invalid the arbitration clause.
- c. A party must object to the jurisdiction of the arbitrator or to the arbitrability of a claim or counterclaim no later than the filing of the answering statement to the claim or counterclaim that gives rise to the objection. The arbitrator may rule on such objections as a preliminary matter or as part of the final award.

### 4. Panel of Neutral Labor Arbitrators

The AAA shall establish and maintain a National Roster of Labor Arbitrators and shall appoint arbitrators as provided in these rules.

## 5. Initiation under an Arbitration Clause in a Collective Bargaining Agreement

Arbitration under an arbitration clause in a collective bargaining agreement under these rules may be initiated by either party in the following manner:

- a. by giving written notice to the other party of its intention to arbitrate (demand), which notice shall contain a statement setting forth the nature of the dispute, the names and addresses of all other parties, including phone number and email address, the remedy sought, and the hearing locale requested.
- b. by filing at any regional office of the AAA a copy of the notice, together with a copy of the collective bargaining agreement or other relevant documents that relate to the dispute, including the arbitration provisions, together with the appropriate filing fee as provided in the schedule included with the rules. After the arbitrator is appointed, no new or different claim may be submitted except with the consent of the arbitrator and all other parties.

## 6. Answer

The party upon whom the demand for arbitration is made may file an answering statement with the AAA within 10 days after notice from the AAA, simultaneously sending a copy to the other party. If no answer is filed within the stated time, it will be treated as a denial of the claim. Failure to file an answer shall not operate to delay the arbitration.

## 7. Initiation under a Submission

Parties to any collective bargaining agreement may initiate an arbitration under these rules by filing at any regional office of the AAA a copy of a written agreement to arbitrate under these rules (submission), signed by the parties and setting forth the nature of the dispute, the names and addresses of all other parties, including phone number and email address, the remedy sought and the hearing locale requested.

## 8. Fixing of Locale

The parties may mutually agree on the geographic region (locale) where the arbitration is to be held. If the locale is not designated in the collective bargaining agreement or submission, and if the parties disagree as to the locale, the AAA may initially determine the place of arbitration, subject to the power of the arbitrator(s), after their appointment, to make a final determination on the locale. All such determinations shall be made having regard for the contentions of the

## 9. Qualifications of Arbitrator

Any neutral arbitrator appointed pursuant to Section 10, 11, or 12, or selected by mutual agreement of the parties or their appointees, shall be subject to disqualification for the reasons specified in Section 15. If the parties specifically agree in writing, the arbitrator shall not be subject to disqualification for those reasons. Unless the parties agree otherwise, an arbitrator selected unilaterally by one party is a party-appointed arbitrator and is not subject to disqualification pursuant to Section 15.

The term "arbitrator" in these rules refers to the arbitration panel, whether composed of one or more arbitrators and whether the arbitrators are neutral or party appointed.

## 10. Appointment from National Roster

If the parties have not appointed an arbitrator and have not provided any other method of appointment, the arbitrator shall be appointed in the following manner: immediately after the filing of the demand or submission, the AAA shall submit simultaneously to each party an identical list of names of persons chosen from the National Roster of Labor Arbitrators. The Parties are encouraged to agree to an arbitrator from the submitted list and to advise the AAA of their agreement. If the parties are unable to agree upon an arbitrator, each party shall have 10 days from the transmittal date in which to strike names objected to, number the remaining names to indicate the order of preference, and return the list to the AAA.

If a party does not return the list within the time specified, all persons named therein 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 the acceptance of an arbitrator to serve. If the parties fail to agree upon any of the persons named, or if acceptable arbitrators are unable to act, 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 National Roster without the submission of any additional list.

#### 11. Direct Appointment by Parties

If the agreement of the parties names an arbitrator or specifies a method of appointing an arbitrator, that designation or method shall be followed. The notice of appointment, with the name and address of the arbitrator, shall be filed with the AAA by the appointing party. Upon the request of any appointing party, the AAA shall submit a list of members of the National Roster from which the party may, if it so desires, make the appointment.

If the agreement specifies a period of time within which an arbitrator shall be appointed and any party fails to make an appointment within that period, the AAA may make the appointment.

If no period of time is specified in the agreement, the AAA shall notify the parties to make the appointment and if within 10 days thereafter such arbitrator has not been so appointed, the AAA shall make the appointment.

#### 12. Appointment of Neutral Arbitrator by Party-Appointed Arbitrators

If the parties have appointed their arbitrators or if either or both of them have been appointed as provided in Section 11, and have authorized those arbitrators to appoint a neutral arbitrator within a specified time and no appointment is made within that time or any agreed extension thereof, the AAA may appoint a neutral arbitrator who shall act as chairperson.

If no period of time is specified for appointment of the neutral arbitrator and the parties do not make the appointment within 10 days from the date of the appointment of the last party-appointed arbitrator, the AAA shall appoint a neutral arbitrator who shall act as chairperson.

If the parties have agreed that the arbitrators shall appoint the neutral arbitrator from the National Roster, the AAA shall furnish to the party-appointed arbitrators, in the manner prescribed in Section 10, a list selected from the National Roster, and the appointment of the neutral arbitrator shall be made as prescribed in that section.

#### 13. Number of Arbitrators

If the arbitration agreement does not specify the number of arbitrators, the dispute shall be heard and determined by one arbitrator, unless the parties

#### 14. Notice to Arbitrator of Appointment

Notice of the appointment of the neutral arbitrator shall be sent to the arbitrator by the AAA and the signed acceptance of the arbitrator shall be filed with the AAA prior to the opening of the first hearing.

#### 15. Disclosure and Challenge Procedure

Any person appointed or to be appointed as an arbitrator shall disclose to the AAA any circumstance likely to give rise to justifiable doubt as to the arbitrator's impartiality or independence, including any bias or any financial or personal interest in the result of the arbitration. Such obligation shall remain in effect throughout the arbitration. Upon receipt of this information from the arbitrator or another source, the AAA shall communicate the information to the parties and, if it deems it appropriate to do so, to the arbitrator. Upon objection of a party to the continued service of a neutral arbitrator, the AAA, after consultation with the parties and the arbitrator, shall determine whether the arbitrator should be disqualified and shall inform the parties of its decision, which shall be conclusive.

#### 16. Vacancies

If for any reason an arbitrator is unable to perform the duties of the office, the AAA may, on proof satisfactory to it, declare the office vacant. Vacancies shall be filled in accordance with the applicable provisions of these rules, and the matter shall be reheard by the new arbitrator unless the parties agree upon an alternative arrangement.

#### 17. Date, Time, and Place of Hearing

The parties shall respond to requests for hearing dates in a timely manner, be cooperative in scheduling the earliest practicable date, and adhere to established deadlines and hearing schedules. Upon the request of either party or the AAA, the arbitrator shall have the authority to convene a scheduling conference call and/or issue a Notice of Hearing setting the date, time and place for each hearing.

The parties will receive a formal written Notice of Hearing detailing the arrangements agreed to by the parties or ordered by the arbitrator at least five days in advance of the hearing date, unless otherwise agreed by the parties.

#### 18. Representation

## 19. Stenographic Record

Any party desiring a stenographic record shall make arrangements directly with a stenographer and shall notify the other parties of such arrangements in advance of the hearing. The requesting party or parties shall pay the cost of the record. If the transcript is agreed by the parties to be or, in appropriate cases, determined by the arbitrator to be the official record of the proceeding, it must be made available to the arbitrator and to the other party for inspection, at a time and place determined by the arbitrator even if one party does not agree to pay for the transcript.

## 20. Interpreters

Any party wishing an interpreter shall make all arrangements directly with the interpreter and shall assume the costs of the service.

## 21. Attendance at Hearing

The arbitrator and the AAA shall maintain the privacy of the hearing unless the law provides to the contrary. Any person having a direct interest in the arbitration is entitled to attend hearings. The arbitrator shall otherwise have the power to require the exclusion of any witness, other than a party, during the testimony of other witnesses. It shall be discretionary with the arbitrator to determine the propriety of the attendance of any other person other than a party and its representatives.

## 22. Postponements

The arbitrator may postpone any hearing upon agreement of the parties, upon request of a party for good cause shown, or upon the arbitrator's own initiative.

## 23. Oaths

Before proceeding with the first hearing, each arbitrator may take an oath of office and, if required by law, shall do so. The arbitrator may require witnesses to testify under oath administered by any duly qualified person and, if required by law or requested by either party, shall do so.

## 24. Majority Decision

## 25. Order of Proceedings

A hearing shall be opened by the filing of the oath of the arbitrator, where required; by the recording of the date, time, and place of the hearing and the presence of the arbitrator, the parties, and counsel, if any; and by the receipt by the arbitrator of the demand and answer, if any, or the submission.

Exhibits may, when offered by either party, be received in evidence by the arbitrator. The names and addresses of all witnesses and exhibits in the order received shall be made a part of the record.

The arbitrator may vary the normal procedure under which the initiating party first presents its claim, but in any case shall afford full and equal opportunity to all parties for the presentation of relevant proofs.

The arbitrator, exercising his or her discretion, shall conduct the proceedings with a view to expediting the resolution of the dispute and may direct the order of proof, bifurcate proceedings and direct the parties to focus their presentations on issues the decision on which could dispose of all or part of the case.

## 26. Arbitration in the Absence of a Party or Representative

Unless the law provides to the contrary, the arbitration may proceed in the absence of any party or representative who, after due notice, fails to be present or fails to obtain a postponement. An award shall not be made solely on the default of a party. The arbitrator shall require the other party to submit such evidence as may be required for the making of an award.

## 27. Evidence and Filing of Documents

The parties may offer such evidence as is relevant and material to the dispute, and shall produce such evidence as the arbitrator may deem necessary to an understanding and determination of the dispute. An arbitrator or other person authorized by law to subpoena witnesses and documents may do so independently or upon the request of any party. The arbitrator shall determine the admissibility, the relevance, and materiality of the evidence offered and may exclude evidence deemed by the arbitrator to be cumulative or irrelevant and conformity to legal rules of evidence shall not be necessary. All evidence shall be taken in the presence of all of the arbitrators and all of the parties, except where any of the parties is absent, in default, or has waived the right to be present.

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

Documents may be filed by regular or electronic mail or telephone facsimile, and will be deemed timely if postmarked or otherwise transmitted to the arbitrator or the AAA on or before the due date.

#### 28. Evidence by Affidavit

The arbitrator may receive and consider the evidence of witnesses by affidavit, giving it only such weight as the arbitrator deems proper after consideration of any objection made to its admission.

#### 29. Inspection

Whenever the arbitrator deems it necessary, he or she may make an inspection in connection with the subject matter of the dispute after notice to the parties, who may, if they so desire, be present at the inspection.

#### 30. Closing of Hearing

The arbitrator shall inquire of all parties whether they have any further proof to offer or witnesses to be heard. Upon receiving negative replies or if satisfied that the record is complete, the arbitrator shall declare the hearing closed.

If briefs or other documents are to be filed, the hearing 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 in Section 27 and the date for their receipt is later than the date set for the receipt of briefs, the later date shall be the date of closing the hearing. The time limit within which the arbitrator is required to make an award shall commence to run, in the absence of another agreement by the parties, upon the closing of the hearings.

#### 31. Reopening of Hearing

The hearing may be reopened on the arbitrator's initiative, or upon application of a party, at any time before the award is made. If reopening of the hearing would

parties in the contract out of which the controversy has arisen, the matter may not be reopened unless the parties agree on an extension of time. When no specific date is fixed in the contract, the arbitrator may reopen the hearings and shall have 30 days from the closing of the reopened hearing within which to make an award.

#### 32. Waiver of Oral Hearing

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

#### 33. Waiver of Rules

Any party who proceeds with the arbitration 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.

#### 34. Extensions of Time

The parties may modify any period of time by mutual agreement. The AAA or the arbitrator may for good cause 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.

#### 35. Serving of Notice

Any papers, notices, or process necessary or proper for the initiation or continuation of an arbitration under these rules, for any court action in connection therewith, or for the entry of judgment on any award made under these rules, may be served on a party by mail addressed to the party or its representative at the last known address or by personal service, in or outside the state where the arbitration is to be held, provided that reasonable opportunity to be heard with regard to the dispute is or has been granted to the party. The AAA, the arbitrator and the parties may also use overnight delivery or electronic facsimile transmission, or other written forms of electronic communication to give the notices required by these rules.

Unless otherwise instructed by the AAA or by the arbitrator, any documents submitted by any party to the AAA or to the arbitrator shall simultaneously be provided to the other party or parties to the arbitration.

#### 36. Time of Award

The award shall be rendered promptly by the arbitrator and, unless otherwise agreed by the parties or specified by law, no later than 30 days from the date of closing the hearing or, if oral hearings have been waived, the award shall be rendered no later than 30 days from the date of transmitting the final statements and proofs to the arbitrator.

#### 37. Form of Award

The award shall be in writing and shall be signed (electronic signature acceptable) either by the neutral arbitrator or by a concurring majority if there is more than one arbitrator. The parties shall advise the AAA whenever they do not require the arbitrator to accompany the award with an opinion.

#### 38. Award Upon Settlement

If the parties settle their dispute during the course of the arbitration and if the parties so request, the arbitrator may set forth the terms of the settlement in a "consent award".

#### 39. Delivery of Award to Parties

Parties shall accept as legal delivery of the award the placing of the award or a true copy thereof in the mail, addressed to the party at its last known address or to its representative; personal or electronic service of the award; or the filing of the award in any other manner that is permitted by law.

#### 40. Modification of Award

Within 20 days after the transmittal of an award, any party, upon notice to the other parties, may request the arbitrator, through the AAA, to correct any clerical, typographical, technical, or computational errors in the award. The arbitrator is not empowered to redetermine the merits of any claim already decided. The other parties shall be given 10 days to respond to the request. The arbitrator shall dispose of the request within 20 days after transmittal by the AAA to the arbitrator of the request and any response thereto. If applicable law requires a different procedural time frame, that procedure shall be followed.

#### 41. Release of Documents for Judicial Proceedings

The AAA shall, upon the written request of a party, furnish to such party, at its expense, certified copies of documents contained in the arbitration case file in the AAA's possession that may be required in judicial proceedings relating to the arbitration.

#### 42. Judicial Proceedings and Exclusion of Liability

- a. Neither the AAA nor any arbitrator in a proceeding under these rules is a necessary or proper party in judicial proceedings relating to the arbitration.
- b. Parties to an arbitration under these rules shall be deemed to have consented that neither the AAA nor any arbitrator shall be liable to any party in any action for damages or injunctive relief for any act or omission in connection with any arbitration conducted under these rules.

#### 43. Administrative Fees

As a not-for-profit organization, the AAA shall prescribe an administrative fee schedule to compensate it for the cost of providing administrative services. The schedule in effect at the time of filing shall be applicable.

#### 44. Expenses

The expenses of witnesses for either side shall be paid by the party producing such witnesses. Expenses of the arbitration, other than the cost of the stenographic record, including required traveling and other expenses of the arbitrator and of AAA representatives and the expenses of any witness or the cost of any proof produced at the direct request of the arbitrator, shall be borne equally by the parties, unless they agree otherwise, or unless the arbitrator, in the award, assesses such expenses or any part thereof against any specified party or parties.

#### 45. Suspension for Non-Payment

If administrative charges have not been paid in full, the AAA may so inform the parties in order that one of them may advance the required payment. If such payments are not made, the AAA may suspend or terminate the proceedings.



#### 46. Communication with Arbitrator

There shall be no direct communication between the parties and a neutral arbitrator on substantive matters relating to the case other than at oral hearings, unless the parties and the arbitrator agree otherwise. Any other oral or written communication from the parties to the arbitrator shall be directed to the AAA for transmittal to the arbitrator.

This rule does not prohibit communications on non-substantive matters such as travel arrangements and driving directions, nor does it prohibit direct communications in special circumstances (such as emergency delays) when the AAA is unavailable.

#### 47. Interpretation and Application of Rules

The arbitrator shall interpret and apply these rules insofar as they relate to the arbitrator's powers and duties. When there is more than one arbitrator and a difference arises among them concerning the meaning or application of any such rule, it shall be decided by a majority vote. If that is not possible, the arbitrator or either party may refer the question to the AAA for final decision. All other rules shall be interpreted and applied by the AAA.

#### Administrative Fees

##### Full Service Administrative Fee

The initial administrative fee is \$250 for each party, due and payable at the time of filing. No refund of the initial fee is made when a matter is withdrawn or settled after the filing of the demand for arbitration or submission.

##### Arbitrator Compensation

Unless mutually agreed otherwise, the arbitrator's compensation shall be borne equally by the parties, in accordance with the fee structure disclosed in the arbitrator's biographical profile submitted to the parties.

##### Hearing Room Rental

Hearing rooms are available on a rental basis at AAA offices. Please check with your Case Management Center or local AAA office for specific availability and rates.

##### Postponement Fees

A fee of \$150 is payable by a party causing a postponement of any scheduled hearing that is subsequently rescheduled by the AAA.

## Expedited Labor Arbitration Procedures

In response to the concern of parties over rising costs and delays in grievance arbitration, the American Arbitration Association has established expedited procedures under which cases are scheduled promptly and awards rendered no later than seven days after the hearings. In return for giving up certain features of traditional labor arbitration, such as transcripts, briefs, and extensive opinions, the parties using these simplified procedures can obtain quick decisions and realize certain cost savings.

Leading labor arbitrators have indicated a willingness to offer their services under these procedures, and the Association makes every effort to assign the best possible arbitrators with early available hearing dates. Since the establishment of these procedures, an ever increasing number of parties have taken advantage of them.

### E1. Agreement of Parties

The Streamlined Labor Arbitration Rules, or the Expedited Labor Arbitration Rules of the American Arbitration Association, in the form obtaining when the arbitration is initiated, shall apply whenever the parties have agreed to arbitrate under them.

These procedures shall be applied as set forth below, in addition to any other portion of the Labor Arbitration Rules not in conflict with these expedited procedures.

### E2. Appointment of Neutral Arbitrator

The AAA shall appoint a single neutral arbitrator from its National Roster of Labor Arbitrators, who shall hear and determine the case promptly.

### E3. Qualifications of Neutral Arbitrator

Any person appointed or to be appointed as an arbitrator shall disclose to the AAA any circumstance likely to give rise to justifiable doubt as to the arbitrator's impartiality or independence, including any bias or any financial or personal interest in the result of the arbitration. The prospective arbitrator shall also disclose any circumstance likely to prevent a prompt hearing. The disclosure obligations in this section shall remain in effect throughout the arbitration. Upon

receipt of such information, the AAA shall determine whether the arbitrator should be disqualified and shall inform the parties of its decision, which shall be conclusive.

### E4. Vacancies

The AAA is authorized to substitute another arbitrator if a vacancy occurs or if an appointed arbitrator is unable to serve promptly.

### E5. Date, Time, and Place of Hearing

The arbitrator shall fix the date, time, and place of the hearing, notice of which must be given at least 24 hours in advance. Such notice may be given orally, electronically or by facsimile.

### E6. No Stenographic Record

There shall be no stenographic record of the proceedings.

### E7. Proceedings

The hearing shall be conducted by the arbitrator in whatever manner will most expeditiously permit full presentation of the evidence and arguments of the parties. The arbitrator shall make an appropriate minute of the proceedings. Normally, the hearing shall be completed within one day. In unusual circumstances and for good cause shown, the arbitrator may schedule an additional hearing to be held within seven days.

### E8. Post-hearing Briefs

There shall be no post-hearing briefs.

### E9. Time of Award

The award shall be rendered promptly by the arbitrator and, unless otherwise agreed by the parties, no later than seven days from the date of the closing of the hearing.

### E10. Form of Award

## Administrative Fees

### Expedited Administrative Fee

The initial administrative fee is \$150 for each party, due and payable at the time of filing. No refund of the initial fee is made when a matter is withdrawn or settled after the filing of the demand for arbitration or submission.

An additional fee of \$25.00 for each party shall apply if a list of arbitrators is requested.

### Arbitrator Compensation

Unless mutually agreed otherwise, the arbitrator's compensation shall be borne equally by the parties, in accordance with the fee structure disclosed in the arbitrator's biographical profile submitted to the parties.

### Hearing Room Rental

Hearing rooms are available on a rental basis at AAA offices. Please check with your Case Management Center or local AAA office for specific availability and rates.

### Postponement Fees

A fee of \$150 is payable by a party causing a postponement of any scheduled hearing that is subsequently rescheduled by the AAA.

## Optional Labor Services

Parties who use the labor arbitration services of the American Arbitration Association may mutually agree to use any of the Optional Labor Services, as opposed to the process being managed under the standard Labor Rules.

These options respond to a concern about rising costs and delays in processing grievance-arbitration cases and were designed to give the parties more economical considerations to resolve their dispute. Any issue not specifically identified under these Optional Labor Services will default to the Labor Rules.

### O1. List Only Service

Parties can contact the AAA and request one list of no more than 15 names. Within 48 hours of receipt of the joint request, the AAA will submit the list of names and then the AAA closes its file. The administrative fee for a list only is \$75 per party.

### O2. List with Appointment

Parties can contact the AAA and request one list of no more than 15 names. Within 48 hours of receipt of the joint request, the AAA will submit a list with a return date of 10 days, for review and appointment of the arbitrator based on the parties' mutual selection. The AAA will notify the parties of the selection of the arbitrator. The administrative fee for list with appointment is \$100 per party.

### O3. Rapid Resolve Procedure

For relatively uncomplicated grievances, this procedure provides a prompt and inexpensive method for resolving labor disputes. Under this procedure, the parties have the option of filing up to three grievances in one demand. The same Arbitrator will hear all grievances within a single day of hearing being set aside. The written award will be rendered within 48 hours and is limited to a one-paragraph decision on each grievance, unless the Arbitrator determines otherwise. The total cost is \$750.00 per party, which includes the AAA's Administrative Fee and the Fee of the Arbitrator.

### O4. Documents Only Procedure

Under this procedure, the parties may agree to waive in-person hearings and

process for the resolution of grievances where a face-to-face hearing is not necessary. The Arbitrator determines the time frame for the submission of written evidence, the record is closed and the award is issued within 14 days. A telephonic conference is optional. The total cost is \$650.00 per party, which includes the AAA's Administrative Fee and the Fee of the Arbitrator.

#### **O5. Emergency Scheduling Procedure**

This procedure allows the parties the opportunity to schedule hearing dates very quickly. Under this procedure, the parties will have the ability to file a demand and receive a limited list of experienced neutrals who have confirmed they are available for a hearing on a specific date within a 14-day time period. By agreement of the parties, a grievance can be scheduled within 24 hours of filing a demand. The procedures can be utilized on existing cases filed with the AAA. There are no additional costs for using these procedures (*regular fees apply*).

#### **O6. Administration of Permanent Panels**

For parties who are engaged in an ad-hoc or non-administered arbitration system, the AAA can assist the parties with the management of their Permanent Panels. The AAA can identify new panel members, assist in rotating the panel members off their roster, or assist in appointing the arbitrator from their roster. The cost varies depending on the services provided.

#### **O7. Grievance Mediation Services**

When negotiations are at an impasse, the AAA's Grievance Mediation Services can provide an informal, effective and confidential means of reaching settlement. These procedures can assist unions and management to define and clarify issues, understand differences, identify interests and explore solutions to reach mutually satisfactory agreements that preserve important relationships. Mediation is very cost-effective when compared to other dispute resolution options. At the AAA, there is no cost to search the AAA's roster of labor neutrals to identify an appropriate mediator for the case at hand. The total cost is \$150.00 per party plus the fee of the Mediator.

#### **O8. Customized Services**

The AAA's role in the dispute resolution process is to administer cases from filing to closing. Additional AAA services include assistance in the design and development of alternative dispute resolution (ADR) systems for corporations, unions, government agencies, law firms and courts. By agreement of the parties, they can customize the administration of their case, which can include limitations, identification of an alternative method for the appointment of the arbitrator, a specific process for the scheduling of the hearing, or to simply define the specific services needed on their case. Ultimately, the AAA aims to move cases through the arbitration process in a fair and impartial manner that is agreed upon by the parties.

For more information about any of these services, please contact **1.888.774.6904**, or send an email to **labormediation@adr.org**.

Rules, forms, procedures, and guides, as well as information about applying for a fee reduction or deferral, are subject to periodic change and updating. To ensure that you have the most current information, see our website at **www.adr.org**.

Notes:

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