SEXUAL HARASSMENT
IN THE UNION VS. NON-UNION WORLDS

Part I: Introduction to the Basic Differences Between Labor and Employment Arbitration

I. Introduction.

A. 14 Penn Plaza v. Pyett, U.S. Supreme Court No. 07-581, cert. granted Feb. 19, 2008, on which the United States Supreme Court heard argument December 1, 2008, could overrule Alexander v. Gardner-Denver, 415 U.S. 36 (1974). That case preserved the right of an employee an employee covered by a collective bargaining agreement to commence court litigation of his racial discrimination claim after he had lost a labor arbitration that addressed the same issue. If the Supreme Court reverses the Second Circuit and enforces the collective bargaining agreement’s arbitration provision to enjoin Pyett’s claim, plaintiffs’ lawyers may find themselves in the unfamiliar territory of labor arbitration.

1. This program will explore the differences between labor and employment arbitration.

   a. Parties will have to educate labor arbitrators in how to handle statutory claims as employment arbitrators must do in a process that must mirror court litigation.

B. The essence of the difference has to do with the purpose of each process. Employment arbitration is a substitute for court litigation. Labor arbitration is a substitute for industrial strife.
C. Similarities.

1. All arbitration is contractual. Both employment arbitration and labor-management arbitration start with an agreement to submit existing or future disputes to binding arbitration by a third party. That is the agreement courts will enforce as the exclusive process for resolving the issues so submitted. In both cases, labor-management and employment, the court will enforce such agreements to stay lawsuits involving arbitrable issues and compel arbitration of those claims.

D. Differences.


II. Employment Arbitration.

A. The complaint will arise as the result of alleged hostile environment or quid pro quo sexual harassment. The claimant will most likely be the victim, who will be alleging violations of federal and State statutory and common law duties.

B. The claimant will bear the burden of proving the essential elements of each of her (or his) claims for relief.

C. The parties’ procedural and substantive rights will be essentially identical to what they would have enjoyed in court litigation of the same issues.

1. See *Gilmer v. Interstate Johnson Lane*, 500 U.S. 20 (1991) and *Circuit City Stores v. Adams*, 532 U.S. 105 (2001), holding that employees who agree to arbitrate statutory claims are just substituting forums, not substantive rights to relief. In this context, arbitration substitutes for litigation in court.
2. Employer-imposed arbitration programs that do not provide for reasonable discovery or full rights to relief have been denied enforcement as unconscionable contracts of adhesion. See, e.g., *Hooters of America, Inc. v. Phillips*, 173 F.3d 933 (3 Cir. 1999)


III. Labor-Management Arbitration.

A. Unlike commercial and employment arbitration, which substitute for court litigation, labor arbitration substitutes for industrial strife; and the relevant jurisprudence—the U.S. Supreme Court’s *Steelworkers Trilogy*, 363 U.S. 564 et seq. (1960) and their progeny—focuses on that difference and Congress’s policy declaration of arbitration as the preferred method for resolving labor-management disputes.

B. Labor arbitrators sit to enforce the terms of collective bargaining agreements between employers and unions setting terms and conditions of employment for bargaining unit employees whom the union represents. A typical labor contract’s grievance procedure defines a grievance as “a claimed misinterpretation, misapplication, or violation of the express terms of this Agreement” and submits all “unresolved grievances” to arbitration. Sexual harassment claims must accordingly arise as claimed violations of that agreement’s terms, not from a general agreement to arbitrate all disputes arising out of or concerning the employment relationship.

1. You cannot know whether or how sexual harassment issues will arise in a labor-management arbitration without knowing the specific terms of the collective bargaining agreement relevant to the parties’ dispute.

   a. For example, a typical substantive provision of a collective bargaining agreement is “The employer shall
not discipline or discharge an employee without just cause.” Grievances under that provision arise as challenges to discipline that the employer has imposed “without just cause.”

(1) A sexual harassment issue would typically arise if, after investigating one employee’s sexual harassment complaint, the employer fires the accused for misconduct (or, for that matter, the complainant for falsely raising a sexual harassment accusation).

(2) In such cases, the employer must justify its disciplinary action by establishing “just cause” for the discharge. The employer accordingly has the burden of proof of the essential elements of just cause. If it fails to bear that burden, the likely remedy will be grievant’s reinstatement with back pay and benefits.

b. Another example with a different twist: the collective bargaining agreement contains a “no-discrimination clause” like “Neither the employer nor the union shall discriminate against any bargaining unit employee on grounds of race, color, religion, sex, or national origin.”

(1) In this case, the likely sexual harassment grievant would be the complainant, who would be arguing that the employer’s failure to address her complaint violated the no-discrimination clause. The contract would be deemed to incorporate anti-discrimination law, but the arbitrator would be limited to traditional labor-management remedies.

(2) According to Wright v. Universal Maritime Service Corp., 525 U.S. 70 (1998), a collective bargaining agreement’s arbitration provision
cannot oust a bargaining unit employees’ right to sue in court unless the union’s waiver is “clear and unmistakable.” The claimant is more likely to pursue her remedies at law than in a collective bargaining agreement’s arbitration procedure.

c. A third example: the collective bargaining agreement provides that seniority governs promotions among candidates who are able to do the job. Grievant claims she was denied a promotion because she refused to accede to a manager’s sexual proposition.

(1) Here too grievant would have the burden of proof as to the essential elements of her contract claim: (a) her seniority, (b) her ability to do the job, and, although not strictly necessary to prevail, (c) the manager’s proposition.

(2) Again, the likely remedy would be limited to retroactive awarding of the promotion with back pay for the difference in compensation.

C. Rules of evidence.

1. Labor arbitrators are less likely to apply strict rules of evidence than are employment arbitrators. “I’ll take it for what it’s worth” is a mantra of some labor arbitrators who believe that, as an extension of the grievance procedure, arbitration must serve a cathartic purpose. Others impose fairly strict standards of relevance and probative value in order to focus the process on the issues the specific grievance before them raise.

a. The outer limit of evidentiary exclusions is arbitrable misconduct in the legal sense: refusing to consider material and competent evidence that will impel a reviewing court to vacate an award and remand the case back to the arbitrator for reconsideration.
D. Scope of Review.

1. In labor arbitration, the court’s scope of review is limited to determining whether the award “draws its essence” from the parties’ collective bargaining agreement. Because the Supreme Court has recognized that collective bargaining agreements are a system of “industrial self-government,” and that parties cannot anticipate “in five or even fifty pages” the multiplicity of issues that a complex workplace can generate, arbitrators are essential to fill in the gaps, to flesh out the skeleton of labor contracts’ words, and so to enable the parties to continue a productive relationship avoiding the disruptions of commerce that strikes cause.

2. In employment arbitration of statutory claims, “manifest disregard of the law” is the scope of judicial review. An arbitrator can be wrong on the law, but he or she cannot be aware of the law and then ignore it. An example would be where an arbitrator acknowledges that the ADA provides for attorney’s fees to the prevailing party but fails to award them.

IV. Conclusion.

A. Today’s program will illustrate the differences with a series of scenarios based on identical fact situations involving two employers, one non-union whose employees are subject to mandatory arbitration of statutory claims, and the other subject to a collective bargaining agreement that clearly and unambiguously subjects statutory claims to a grievance procedure that culminates in labor arbitration.

1. The scenarios will alternate between an employment arbitration and labor arbitration to illustrate how differently employment and labor arbitrators operate.
Part II: Illustrative Scenarios.

As noted, this exercise assumes two different employers, the first, a non-union company whose employees are subject to individual employment agreements that require submission of future disputes to arbitration. The second is a union company with a collective bargaining agreement that includes a grievance procedure culminating in arbitration of contract disputes. It also assumes identical employees at each employer and an identical incident at each employer. There ensues four scenarios illustrating the differences between arbitrations of an employment law claims and of labor-management disputes arising out of the same incident. From time to time the moderator will ring a bell to “stop action,” comment on what’s going on, and invite comments from the panel and questions from the audience.

Here are the basic facts:

I. The Two Employers:


MUTS’ employees are not represented by a union. All candidates for employment employees signed an application form that included the following term:

I understand that the only employment offered by MUTS and that for which I am applying is ‘employment-at-will’ as that term is defined by State law. In consideration for MUTS’ processing this application for employment-at-will, I agree that, if I should become an employee of MUTS, any disputes between us arising out of or concerning my employment by MUTS or its termination shall be submitted to arbitration pursuant to the National Rules for the Resolution of Employment Disputes of the American Arbitration Association. I also understand that, if I should become an employee of MUTS, by having signed and submitted this application, I am waiving my right to a jury trial in any future litigation between me and MUTS, including but not limited to claims for violation of federal and State laws against discrimination. I understand and acknowledge that I have the right and
opportunity to discuss this agreement with my attorney before signing it and that MUTS will give me time to do so.

B. Employer No. 2: Grand Union Technical Services.

GUTS’ non-supervisory employees are represented by a union, Local 15 of the United Computer Service Workers. The parties’ collective bargaining agreement provides the following relevant clauses:

1. Discipline.

No employee shall be disciplined or discharged without just cause. For purposes of this section, just cause shall include, without limitation, theft, falsification of records, intentional destruction of property, and fighting on the employer’s premises.

2. Non-Discrimination.

Neither the employer nor the union shall discriminate against any bargaining unit member with respect to terms and conditions of employment on the basis of race, religion, sex, age, national origin, disability, sexual orientation, or union activity. Claimed violations of this clause and of relevant applicable State and federal law enforcing these obligations shall be subject to the grievance and arbitration procedures of this Agreement.


(A) A “grievance” is defined as any dispute between the parties concerning the interpretation, application, or alleged violation of any term of this Agreement. The following procedure shall be the exclusive method for dealing with grievances and enforcing the obligations of this Agreement.

(B) Grievances will be discussed at the first step by representatives of management and the union in an effort to determine the relevant facts and reach a voluntary resolution.
(C) Any grievance not voluntarily resolved by the parties shall be submitted to arbitration pursuant to the Labor Arbitration Rules of the American Arbitration Association.

4. Promotions.

Seniority measured from the date of first employment by GUTS shall govern entitlement to promotions where candidates have equal qualifications to perform the duties of the vacant promotional position.

II. The Identical Employees at Each Employer:

A. Amy Attractive.

Amy has 10 years’ employment with the employer and has compiled a record of excellent performance evaluations. She has risen through a series of promotional titles in the employer’s Information Technology Department, each with progressively higher responsibilities and compensation. She is now a Team Leader, the second highest non-supervisory position in the IT Department.

B. Larry Lateral.

Larry was hired in 2007 as a Team Leader, a position in which he had eight years’ excellent service at a similar company. During his two years’ service within this employer, he has compiled a record of excellent performance evaluations doing work identical to Amy’s.

C. Victor Vindictive.

Victor has been the employer’s Vice President of IT for the last five years, having been hired away from another company where he had supervised Larry Lateral. From his first day at this company, Victor has been infatuated with Amy and has continually tried to establish a personal relationship with her. Amy has made clear that his attentions are unwelcome and that all she wants is to do an excellent job and some day reach a management position. On the most recent such occasion, Victor told Amy, “You’re making a big mistake; I can be very helpful to
your career.” Amy has not, however, filed a complaint pursuant to the firm’s detailed sexual harassment policy, which has been one of the subjects covered in an annual training session on company policies.

III. The Identical Incident at Each Employer.

The employer’s long-time Lead Technician retires. That position is the highest non-supervisory title in the company and the one next up in promotion line from the Team Leader title that Amy and Larry occupy. The employer posts that vacancy in accordance with its long-established practice, and both Amy and Larry apply. Victor calls Amy to his office and shows her a memo he proposes to send awarding the promotion to Larry.

Amy complains that what Victor proposes to do is wrong. Victor says, “It’s your own fault, but it’s not too late.” Victor tries to embrace Amy, and in the ensuing struggle to free herself, Amy’s elbow knocks off Victor’s glasses, and she accidentally steps on them, crushing one of the lenses. Amy says, “You’re impossible; I’m out of here.” Victor replies, “That’s good, because you’re fired.” He then issues the memo and promotes Larry.

IV. The Scenarios.

A. GUTS (The unionized employer).

Amy has filed a grievance with Local 15 citing violations of the Discipline, Non-Discrimination, and Promotion provisions of the parties’ collective bargaining agreement and seeking reinstatement with back pay, retroactive promotion to Lead Technician, damages for pain and suffering, and punitive damages. The union seeks reimbursement for its attorneys’ fees with respect to the Discrimination claim. The parties are unable to reach a voluntary settlement of her claims, and the union has timely demanded arbitration pursuant to the American Arbitration Association’s Labor Arbitration Rules (Attachment A). Pursuant to those Rules, the American Arbitration Association has designated Jacqueline Justice to arbitrate the claim.
B. MUTE (The non-union employer).

Amy has retained counsel and sued MUTE and Victor in Superior Court for violation of the New Jersey Law Against Discrimination, wrongful discharge, intentional infliction of emotional distress, assault and battery, punitive damages, and attorneys’ fees. MUTE has successfully moved to dismiss her complaint and compel arbitration. The parties have chosen John Justice to arbitrate her claims pursuant to the American Arbitration Association’s National Rules for the Resolution of Employment Disputes (Attachment B). They have also signed Arbitrator Justice’s Agreement for Arbitration Services (Attachment C).

C. The Action,

1. Pre-Hearing Issues
   a. Procedure.
   b. Discovery.
   c. Parties.
   d. Motion Practice.
   e. Pre-hearing Submissions.

2. Hearing Issues
   a. Burdens of proof.
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Part III: Questions and Answers.
ATTACHMENT A
American Arbitration Association

Labor Arbitration Rules
Amended and Effective August 1, 2007

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 thereof shall apply in the form obtaining when the arbitration is initiated. The parties, by written agreement, may vary the procedures set forth in these rules.

2. Name of Tribunal
Any tribunal constituted by the parties under these rules shall be called the Labor Arbitration Tribunal.

3. Administrator
When parties agree to arbitrate under these rules and an arbitration is instituted thereunder, they thereby authorize the AAA to administer the arbitration. The authority and obligations of the administrator are as provided in the agreement of the parties and in these rules.

4. Delegation of Duties
The duties of the AAA may be carried out through such representatives or committees as the AAA may direct.

5. Panel of Neutral Labor Arbitrators
The AAA shall establish and maintain a Panel of Neutral Labor Arbitrators and shall appoint arbitrators therefrom as hereinafter provided.

Attachment A
6. Office of Tribunal
The general office of the Labor Arbitration Tribunal is the headquarters of the AAA, which may, however, assign the administration of an arbitration to any of its regional offices.

7. 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 and the remedy sought, and
b. by filing at any regional office of the AAA three copies of the notice, together with a copy of the collective bargaining agreement or such parts thereof as relate to the dispute, including the arbitration provisions. After the arbitrator is appointed, no new or different claim may be submitted except with the consent of the arbitrator and all other parties.

8. Answer
The party upon whom the demand for arbitration is made may file an answering statement with the AAA within ten 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.

9. 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 two copies of a written agreement to arbitrate under these rules (submission), signed by the parties and setting forth the nature of the dispute and the remedy sought.
10. 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 there is a dispute as to the appropriate locale, the AAA shall have the power to determine the locale and its decision shall be binding.

11. Qualifications of Arbitrator
Any neutral arbitrator appointed pursuant to Section 12, 13, or 14 or selected by mutual choice of the parties or their appointees, shall be subject to disqualification for the reasons specified in Section 17. If the parties specifically so 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 17.

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.

12. Appointment from Panel
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 Panel of Labor Arbitrators. Each party shall have ten days from the mailing date in which to strike any name to which it objects, 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, if those named decline or are unable to act, or if for any other
reason the appointment cannot be made from the submitted lists, the administrator shall have the power to make the appointment from among other members of the panel without the submission of any additional list.

13. 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 panel 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 ten days thereafter such arbitrator has not been so appointed, the AAA shall make the appointment.

If the parties have appointed their arbitrators or if either or both of them have been appointed as provided in Section 13, 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 ten 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 panel, the AAA shall furnish to the party-appointed arbitrators, in the manner prescribed in Section 12, a list selected from the panel, and the appointment of the neutral arbitrator shall be made as prescribed in that section.
15. 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 otherwise agree.

16. 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.

17. Disclosure and Challenge Procedure
No person shall serve as a neutral arbitrator in any arbitration under these rules in which that person has any financial or personal interest in the result of the arbitration. Any prospective or designated neutral arbitrator shall immediately disclose any circumstance likely to affect impartiality, including any bias or financial or personal interest in the result of 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.

18. Vacancies
If any arbitrator should resign, die, or otherwise 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 the same manner as that governing the making of the original appointment, and the matter shall be reheard by the new arbitrator unless the parties agree upon an alternative arrangement.

19. 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.

20. Representation
Any party may be represented by counsel or other authorized representative.

21. Stenographic Record and Interpreters
Any party wishing 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.

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

22. Attendance at Hearings
Persons having a direct interest in the arbitration are entitled to attend hearings. The arbitrator shall have the power to require the retirement of any witness or witnesses during the testimony of other witnesses. It shall be discretionary with the arbitrator to determine the propriety of the attendance of any other person.

23. Postponements

Attachment A

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The arbitrator for good cause shown may postpone the hearing upon the request of a party or upon his or her own initiative and shall postpone when all of the parties agree thereto.

24. 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.

25. Majority Decision
Whenever there is more than one arbitrator, all decisions of the arbitrators shall be by majority vote. The award shall also be made by majority vote unless the concurrence of all is expressly required.

26. 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 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.

27. 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.

28. Evidence and Filing of Documents
The parties may offer such evidence as is relevant and material to the dispute, and shall produce such additional evidence as the arbitrator may deem necessary to an understanding and determination of the dispute. An arbitrator authorized by law to subpoena witnesses and documents may do so independently or upon the request of any party. The arbitrator shall be the judge of the relevance and materiality of the evidence offered and conformity to legal rules of evidence shall not be necessary. 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.

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

30. 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.
31. Closing of Hearings
The arbitrator shall inquire of all parties whether they have any further proof to offer or witness to be heard. Upon receiving negative replies or if satisfied that the record is complete, the arbitrator shall declare the hearings closed and a minute thereof shall be recorded. If briefs or other documents are to be filed, the hearings shall be declared closed as of the final date set by the arbitrator for filing with the AAA. If documents are to be filed as provided in Section 28 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.

32. Reopening of Hearings
The hearings may for good cause shown be reopened by the arbitrator at will or on the motion of either party at any time before the award is made but, if the reopening of the hearings would prevent the making of the award within the specific time agreed upon by the parties in the contract out of which the controversy has arisen, the matter may not be reopened unless both parties agree to extend the 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 hearings within which to make an award.

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

34. 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.
35. 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 of time and its reason therefor.

36. Serving of Notice
Each party to a submission or other agreement that provides for arbitration under these rules shall be deemed to have consented and shall consent that any papers, notices, or process necessary or proper for the initiation or continuation of an arbitration under these rules; for any court action in connection therewith; or for the entry of judgment on an award made there under may be served upon the 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. The AAA and the parties may also use facsimile transmission, telex, telegram, or other written forms of electronic communication to give the notices required by these rules.

37. 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 hearings as provided in Section 31, with five additional days for mailing if briefs are to be filed or other documents are to be transmitted pursuant to Section 28.

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. The award shall be deemed to be "rendered" on the date it is postmarked or otherwise transmitted to the AAA by the arbitrator, whether by regular mail, electronically, or by telephone facsimile.

If an award is transmitted electronically or by facsimile, the arbitrator shall promptly deliver an original copy to the AAA.
38. Form of Award
The award shall be in writing and shall be signed 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.

39. Award upon Settlement
If the parties settle their dispute during the course of the arbitration, the arbitrator may, upon their request, set forth the terms of the agreed settlement in an award.

40. 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 by the AAA, addressed to the party at its last known address or to its representative; personal service of the award; or the filing of the award in any other manner that is permitted by law.

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 facsimiles of any papers 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 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.

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.

Attachment A
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. 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 case manager is unavailable.

46. 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 unobtainable, 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.
American Arbitration Association
Employment Arbitration Rules
Amended and Effective July 1, 2006

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48. Interpretation and Application of Rules

1. Applicable Rules of Arbitration

The parties shall be deemed to have made these rules a part of their arbitration agreement whenever they have provided for arbitration by the American Arbitration Association (hereinafter "AAA") or under its Employment Arbitration Rules and Mediation Procedures or for arbitration by the AAA of an employment dispute without specifying particular rules*. If a party establishes that an adverse material inconsistency exists between the arbitration agreement and these rules, the arbitrator shall apply these rules.

If, within 30 days after the AAA's commencement of administration, a party seeks judicial intervention with respect to a pending arbitration and provides the AAA with documentation that judicial intervention has been sought, the AAA will suspend administration for 60 days to permit the party to obtain a stay of arbitration from the court. These rules, and any amendment of them, shall apply in the form in effect at the time the demand for arbitration or submission is received by the AAA.

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2. Notification
An employer intending to incorporate these rules or to refer to the dispute resolution services of the AAA in an employment ADR plan, shall, at least 30 days prior to the planned effective date of the program:

i. notify the Association of its intention to do so and,

ii. provide the Association with a copy of the employment dispute resolution plan.

Compliance with this requirement shall not preclude an arbitrator from entertaining challenges as provided in Section 1. If an employer does not comply with this requirement, the Association reserves the right to decline its administrative services.

3. AAA as Administrator of the Arbitration
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 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.

4. Initiation of Arbitration
Arbitration shall be initiated in the following manner.

a. The parties may submit a joint request for arbitration.

b. In the absence of a joint request for arbitration:

. The initiating party (hereinafter "Claimant[s]") shall:

a. File a written notice (hereinafter "Demand") of its intention to arbitrate at any office of the AAA, within the time limit established by the applicable statute of limitations. Any dispute over the timeliness of the demand shall be referred to the arbitrator. The filing shall be made in duplicate, and each copy shall include the applicable arbitration agreement. The Demand shall set forth the names, addresses, and telephone numbers of
the parties; a brief statement of the nature of the dispute; the amount in controversy, if any; the remedy sought; and requested hearing location.

b. Simultaneously provide a copy of the Demand to the other party (hereinafter "Respondent[s]").

c. Include with its Demand the applicable filing fee, unless the parties agree to some other method of fee advancement.

The Respondent(s) may file an Answer with the AAA within 15 days after the date of the letter from the AAA acknowledging receipt of the Demand. The Answer shall provide the Respondent's brief response to the claim and the issues presented. The Respondent(s) shall make its filing in duplicate with the AAA, and simultaneously shall send a copy of the Answer to the Claimant. If no answering statement is filed within the stated time, Respondent will be deemed to deny the claim. Failure to file an answering statement shall not operate to delay the arbitration.

The Respondent(s):

f. May file a counterclaim with the AAA within 15 days after the date of the letter from the AAA acknowledging receipt of the Demand. The filing shall be made in duplicate. The counterclaim shall set forth the nature of the claim, the amount in controversy, if any, and the remedy sought.

g. Simultaneously shall send a copy of any counterclaim to the Claimant.

h. Shall include with its filing the applicable filing fee provided for by these rules.

The Claimant may file an Answer to the counterclaim with the AAA within 15 days after the date of the letter from the AAA acknowledging receipt of the counterclaim. The Answer shall provide Claimant's brief response to the counterclaim and the issues presented. The Claimant shall make its filing in duplicate with the AAA, and simultaneously shall send a copy of the Answer to the Respondent(s). If no answering statement is filed within the stated time, Claimant will be deemed to deny the counterclaim. Failure to file an answering statement shall not operate to delay the arbitration.
time, Claimant will be deemed to deny the counterclaim. Failure to file an answering statement shall not operate to delay the arbitration.

j. The form of any filing in these rules shall not be subject to technical pleading requirements.

5. Changes of Claim

Before the appointment of the arbitrator, if either party desires to offer a new or different claim or counterclaim, such party must do so in writing by filing a written statement with the AAA and simultaneously provide a copy to the other party(s), who shall have 15 days from the date of such transmittal within which to file an answer with the AAA. After the appointment of the arbitrator, a party may offer a new or different claim or counterclaim only at the discretion of the arbitrator.

6. 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.

7. Administrative and Mediation Conferences

Before the appointment of the arbitrator, any party may request, or the AAA, in its discretion, may schedule an administrative conference with a representative of the AAA and the parties and/or their representatives. The purpose of the

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administrative conference is to organize and expedite the arbitration, explore its administrative aspects, establish the most efficient means of selecting an arbitrator, and to consider mediation as a dispute resolution option. There is no administrative fee for this service.

At any time after the filing of the Demand, with the consent of the parties, the AAA will arrange a mediation conference under its Mediation Procedures to facilitate settlement. The mediator shall not be any arbitrator appointed to the case, except by mutual written agreement of the parties. There is no administrative fee for initiating a mediation under AAA Mediation Procedures for parties to a pending arbitration.

8. Arbitration Management Conference

As promptly as practicable after the selection of the arbitrator(s), but not later than 60 days thereafter, an arbitration management conference shall be held among the parties and/or their attorneys or other representatives and the arbitrator(s). Unless the parties agree otherwise, the Arbitration Management Conference will be conducted by telephone conference call rather than in person. At the Arbitration Management Conference the matters to be considered shall include, without limitation

i. the issues to be arbitrated;

ii. the date, time, place, and estimated duration of the hearing;

iii. the resolution of outstanding discovery issues and establishment of discovery parameters;

iv. the law, standards, rules of evidence, and burdens of proof that are to apply to the proceeding;

v. the exchange of stipulations and declarations regarding facts, exhibits, witnesses, and other issues;

vi. the names of witnesses (including expert witnesses), the scope of witness testimony, and witness exclusion;

vii. the value of bifurcating the arbitration into a liability phase and damages phase;

viii. the need for a stenographic record;

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ix. whether the parties will summarize their arguments orally or in writing;
x. the form of the award;
xi. any other issues relating to the subject or conduct of the arbitration;
xi. the allocation of attorney's fees and costs;
xi. the specification of undisclosed claims;
xiv. the extent to which documentary evidence may be submitted at the hearing;
 xv. the extent to which testimony may be admitted at the hearing
  telephonically, over the internet, by written or video-taped deposition, by affidavit, or by any other means;
 xvi. any disputes over the AAA's determination regarding whether the dispute arose from an individually-negotiated employment agreement or contract, or from an employer-promulgated plan (see Costs of Arbitration section).

The arbitrator shall issue oral or written orders reflecting his or her decisions on the above matters and may conduct additional conferences when the need arises. There is no AAA administrative fee for an Arbitration Management Conference.

9. Discovery
The arbitrator shall have the authority to order such discovery, by way of deposition, interrogatory, document production, or otherwise, as the arbitrator considers necessary to a full and fair exploration of the issues in dispute, consistent with the expedited nature of arbitration.
The AAA does not require notice of discovery related matters and communications unless a dispute arises. At that time, the parties should notify the AAA of the dispute so that it may be presented to the arbitrator for determination.

10. Fixing of Locale (the city, county, state, territory, and/or country of the arbitration)
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 parties and the circumstances of the arbitration.

11. Date, Time, and Place (the physical site of the hearing within the designated locale) of Hearing

The arbitrator shall set the date, time, and place for each 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 the established hearing schedule. The AAA shall send a notice of hearing to the parties at least 10 days in advance of the hearing date, unless otherwise agreed by the parties.

12. Number, Qualifications, and Appointment of Neutral Arbitrators

   a. If the arbitration agreement does not specify the number of arbitrators or the parties do not agree otherwise, the dispute shall be heard and determined by one arbitrator.

   b. Qualifications

      . Neutral arbitrators serving under these rules shall be experienced in the field of employment law.

      . Neutral arbitrators serving under these rules shall have no personal or financial interest in the results of the proceeding in which they are appointed and shall have no relation to the underlying dispute or to the parties or their counsel that may create an appearance of bias.

      . The roster of available arbitrators will be established on a non-discriminatory basis, diverse by gender, ethnicity, background, and qualifications.

      . The AAA may, upon request of a party within the time set to return their list or upon its own initiative, supplement the list of proposed arbitrators in disputes arising out of individually-negotiated employment contracts with persons from the Commercial Roster, to allow the AAA to respond to the particular need of the dispute. In multi-arbitrator disputes, at least one of the arbitrators shall be experienced in the field of employment law.
e. If the parties have not appointed an arbitrator and have not provided any method of appointment, the arbitrator shall be appointed in the following manner:

. Shortly after it receives the Demand, the AAA shall send simultaneously to each party a letter containing an identical list of names of persons chosen from the Employment Dispute Resolution Roster. 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 to the dispute shall have 15 days from the transmittal date in which to strike names objected to, number the remaining names in 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 on 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 list, the AAA shall have the power to make the appointment from among other members of the panel without the submission of additional lists.

13. Party Appointed Arbitrators

a. If the agreement of the parties names an arbitrator or specifies a method of appointing an arbitrator, that designation or method shall be followed.

b. Where the parties have agreed that each party is to name one arbitrator, the arbitrators so named must meet the standards of Section R-16 with respect to impartiality and independence unless the parties have specifically agreed pursuant to Section R-16(a) that the party-appointed arbitrators are to be non-neutral and need not meet those standards. The notice of appointment, with the name, address, and contact information 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.

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

d. If no period of time is specified in the agreement, the AAA shall notify the party to make the appointment. If within 15 days after such notice has been sent, an arbitrator has not been appointed by a party, the AAA shall make the appointment.

14. Appointment of Chairperson by Party-Appointed Arbitrators or Parties

a. If, pursuant to Section R-13, either the parties have directly appointed arbitrators, or the arbitrators have been appointed by the AAA, and the parties have authorized them to appoint a chairperson within a specified time and no appointment is made within that time or any agreed extension, the AAA may appoint the chairperson.

b. If no period of time is specified for appointment of the chairperson and the party-appointed arbitrators or the parties do not make the appointment within 15 days from the date of the appointment of the last party-appointed arbitrator, the AAA may appoint the chairperson.

c. If the parties have agreed that their party-appointed arbitrators shall appoint the chairperson from the National Roster, the AAA shall furnish to the party-appointed arbitrators, in the manner provided in Section R-12, a list selected from the National Roster, and the appointment of the chairperson shall be made as provided in that Section.

15. Disclosure

a. 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 or any past or present relationship with the parties or their representatives. Such obligation shall remain in effect throughout the arbitration.

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b. Upon receipt of such 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 and others.

c. In order to encourage disclosure by arbitrators, disclosure of information pursuant to this Section R-15 is not to be construed as an indication that the arbitrator considers that the disclosed circumstance is likely to affect impartiality or independence.

16. Disqualification of Arbitrator

a. Any arbitrator shall be impartial and independent and shall perform his or her duties with diligence and in good faith, and shall be subject to disqualification for:
   
   . partiality or lack of independence,
   
   . inability or refusal to perform his or her duties with diligence and in good faith, and
   
   . any grounds for disqualification provided by applicable law. The parties may agree in writing, however, that arbitrators directly appointed by a party pursuant to Section R-13 shall be nonneutral, in which case such arbitrators need not be impartial or independent and shall not be subject to disqualification for partiality or lack of independence.

d. Upon objection of a party to the continued service of an arbitrator, or on its own initiative, the AAA shall determine whether the arbitrator should be disqualified under the grounds set out above, and shall inform the parties of its decision, which decision shall be conclusive.

17. Communication with Arbitrator

a. No party and no one acting on behalf of any party shall communicate ex parte with an arbitrator or a candidate for arbitrator concerning the arbitration, except that a party, or someone acting on behalf of a party, may communicate ex parte with a candidate for direct appointment pursuant to Section R-13 in order to advise the candidate of the general nature of the controversy and of the anticipated proceedings and to discuss the

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candidate's qualifications, availability, or independence in relation to the parties or to discuss the suitability of candidates for selection as a third arbitrator where the parties or party-designated arbitrators are to participate in that selection.

b. Section R-17(a) does not apply to arbitrators directly appointed by the parties who, pursuant to Section R-16(a), the parties have agreed in writing are non-neutral. Where the parties have so agreed under Section R-16(a), the AAA shall as an administrative practice suggest to the parties that they agree further that Section R-17(a) should nonetheless apply prospectively.

18. Vacancies

a. 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 applicable provisions of these Rules.

b. In the event of a vacancy in a panel of neutral arbitrators after the hearings have commenced, the remaining arbitrator or arbitrators may continue with the hearing and determination of the controversy, unless the parties agree otherwise.

c. In the event of the appointment of a substitute arbitrator, the panel of arbitrators shall determine in its sole discretion whether it is necessary to repeat all or part of any prior hearings.

19. Representation

Any party may be represented by counsel or other authorized representatives. For parties without representation, the AAA will, upon request, provide reference to institutions which might offer assistance. A party who intends to be represented shall notify the other party and the AAA of the name and address of the representative at least 10 days prior to the date set for the hearing or conference at which that person is first to appear. If a representative files a Demand or an Answer, the obligation to give notice of representative status is deemed satisfied.

20. Stenographic Record

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Any party desiring a stenographic record shall make arrangements directly with a stenographer and shall notify the other parties of these arrangements at least three days 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, or determined by the arbitrator to be the official record of the proceeding, it must be provided to the arbitrator and made available to the other parties for inspection, at a date, time, and place determined by the arbitrator.

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

22. Attendance at Hearings
The arbitrator shall have the authority to exclude witnesses, other than a party, from the hearing during the testimony of any other witness. The arbitrator also shall have the authority to decide whether any person who is not a witness may attend the hearing.

23. Confidentiality
The arbitrator shall maintain the confidentiality of the arbitration and shall have the authority to make appropriate rulings to safeguard that confidentiality, unless the parties agree otherwise or the law provides to the contrary.

24. Postponements
The arbitrator: (1) may postpone any hearing upon the request of a party for good cause shown; (2) must postpone any hearing upon the mutual agreement of the parties; and (3) may postpone any hearing on his or her own initiative.

25. Oaths
Before proceeding with the first hearing, each arbitrator shall take an oath of office. The oath shall be provided to the parties prior to the first hearing.

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arbitrator may require witnesses to testify under oath administered by any duly qualified person and, if it is required by law or requested by any party, shall do so.

26. Majority Decision
All decisions and awards of the arbitrators must be by a majority, unless the unanimous decision of all arbitrators is expressly required by the arbitration agreement or by law.

27. Dispositive Motions
The arbitrator may allow the filing of a dispositive motion if the arbitrator determines that the moving party has shown substantial cause that the motion is likely to succeed and dispose of or narrow the issues in the case.

28. Order of Proceedings
A hearing may be opened by: (1) recording the date, time, and place of the hearing; (2) recording the presence of the arbitrator, the parties, and their representatives, if any; and (3) receiving into the record the Demand and the Answer, if any. The arbitrator may, at the beginning of the hearing, ask for statements clarifying the issues involved.

The parties shall bear the same burdens of proof and burdens of producing evidence as would apply if their claims and counterclaims had been brought in court.

Witnesses for each party shall submit to direct and cross examination.

With the exception of the rules regarding the allocation of the burdens of proof and going forward with the evidence, the arbitrator has the authority to set the rules for the conduct of the proceedings and shall exercise that authority to afford a full and equal opportunity to all parties to present any evidence that the arbitrator deems material and relevant to the resolution of the dispute. When deemed appropriate, the arbitrator may also allow for the presentation of evidence by alternative means including web conferencing, internet communication, telephonic conferences and means other than an in-person presentation of evidence. Such alternative means must still afford a full and equal opportunity to all parties to present any evidence that the arbitrator deems material and relevant to the
resolution of the dispute and when involving witnesses, provide that such witness submit to direct and cross-examination.

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

Documentary and other forms of physical evidence, when offered by either party, may be received in evidence by the arbitrator.

The names and addresses of all witnesses and a description of the exhibits in the order received shall be made a part of the record.

29. 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 based solely on the default of a party. The arbitrator shall require the party who is in attendance to present such evidence as the arbitrator may require for the making of the award.

30. Evidence

The parties may offer such evidence as is relevant and material to the dispute and shall produce such evidence as the arbitrator deems necessary to an understanding and determination of the dispute. All evidence shall be taken in the presence of all of the arbitrators and all of the parties, except where any party or arbitrator is absent, in default, or has waived the right to be present, however "presence" should not be construed to mandate that the parties and arbitrators must be physically present in the same location.

An arbitrator or other person authorized by law to subpoena witnesses or documents may do so upon the request of any party or independently. The arbitrator shall be the judge of the relevance and materiality of the evidence offered, and conformity to legal rules of evidence shall not be necessary. The arbitrator may in his or her discretion direct the order of proof, bifurcate proceedings, exclude cumulative or irrelevant testimony or other evidence, and direct the parties to focus their presentations on issues the decision of which could

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dispose of all or part of the case. All evidence shall be taken in the presence of all of the arbitrators and all of the parties, except where any party is absent, in default, or has waived the right to be present.

If the parties agree or the arbitrator directs that documents or other evidence may be submitted to the arbitrator after the hearing, the documents or other evidence shall be filed with the AAA for transmission to the arbitrator, unless the parties agree to a different method of distribution. All parties shall be afforded an opportunity to examine such documents or other evidence and to lodge appropriate objections, if any.

31. Inspection
Upon the request of a party, the arbitrator may make an inspection in connection with the arbitration. The arbitrator shall set the date and time, and the AAA shall notify the parties. In the event that one or all parties are not present during the inspection, the arbitrator shall make an oral or written report to the parties and afford them an opportunity to comment.

32. Interim Measures
At the request of any party, the arbitrator may grant any remedy or relief that would have been available to the parties had the matter been heard in court, as stated in Rule 39(d), Award.

A request for interim measures addressed by a party to a judicial authority shall not be deemed incompatible with the agreement to arbitrate or a waiver of the right to arbitrate.

33. Closing of Hearing
The arbitrator shall specifically inquire of all parties whether they have any further proofs 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 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 Rule 30 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 hearing. 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 closing of the hearing.

34. Reopening of Hearing
The hearing may be reopened by the arbitrator upon the arbitrator's initiative, or upon application of a party for good cause shown, at any time before the award is made. If reopening the hearing would prevent the making of the award within the specific time agreed on by the parties in the contract(s) 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 hearing and shall have 30 days from the closing of the reopened hearing within which to make an award.

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

36. Waiver of Objection/Lack of Compliance with These 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 objections thereto in writing or in a transcribed record, shall be deemed to have waived the right to object.

37. 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 extension.

38. Serving of Notice
a. 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.

b. The AAA, the arbitrator, and the parties may also use overnight delivery or electronic facsimile transmission (fax), to give the notices required by these rules. Where all parties and the arbitrator agree, notices may be transmitted by electronic mail (e-mail), or other methods of communication.

c. 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.

39. The Award

a. The award shall be made 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 of the hearing or, if oral hearings have been waived, from the date of the AAA's transmittal of the final statements and proofs to the arbitrator. Three additional days are provided if briefs are to be filed or other documents are to be transmitted pursuant to Rule 30.

b. An award issued under these rules shall be publicly available, on a cost basis. The names of the parties and witnesses will not be publicly available, unless a party expressly agrees to have its name made public in the award.

c. The award shall be in writing and shall be signed by a majority of the arbitrators and shall provide the written reasons for the award unless the parties agree otherwise. It shall be executed in the manner required by law.

d. The arbitrator may grant any remedy or relief that would have been available to the parties had the matter been heard in court including awards of attorney's fees and costs, in accordance with applicable law. The arbitrator shall, in the award, assess arbitration fees, expenses, and compensation as
provided in Rules 43, 44, and 45 in favor of any party and, in the event any administrative fees or expenses are due the AAA, in favor of the AAA, subject to the provisions contained in the Costs of Arbitration section.

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

f. The parties shall accept as legal delivery of the award the placing of the award or a true copy thereof in the mail, addressed to a party or its representative at the last known address, personal service of the award, or the filing of the award in any manner that may be required by law.

g. The arbitrator's award shall be final and binding.

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 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 the party, at that party’s expense, certified copies of any papers in the AAA's case file that may be required in judicial proceedings relating to the arbitration.

42. Applications to Court

a. No judicial proceeding by a party relating to the subject matter of the arbitration shall be deemed a waiver of the party's right to arbitrate.
b. Neither the AAA nor any arbitrator in a proceeding under these rules is or shall be considered a necessary or proper party in judicial proceedings relating to the arbitration.

c. Parties to these procedures shall be deemed to have consented that judgment upon the arbitration award may be entered in any federal or state court having jurisdiction.

d. 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 under these rules.

43. Administrative Fees

As a not-for-profit organization, the AAA shall prescribe filing and other administrative fees to compensate it for the cost of providing administrative services. The AAA administrative fee schedule in effect at the time the demand for arbitration or submission agreement is received shall be applicable.

AAA fees shall be paid in accordance with the Costs of Arbitration Section (see pages 45-53).

The AAA may, in the event of extreme hardship on any party, defer or reduce the administrative fees. (To ensure that you have the most current information, see our website at www.adr.org).

44. Neutral Arbitrator's Compensation

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.

45. Expenses
Unless otherwise agreed by the parties or as provided under applicable law, the expenses of witnesses for either side shall be borne by the party producing such witnesses.

All expenses of the arbitrator, including required travel and other expenses, and any AAA expenses, as well as the costs relating to proof and witnesses produced at the direction of the arbitrator shall be borne in accordance with the Costs of Arbitration section.

46. Deposits
The AAA may require deposits in advance of any hearings such sums of money as it deems necessary to cover the expenses of the arbitration, including the arbitrator's fee, if any, and shall render an accounting and return any unexpended balance at the conclusion of the case.

47. Suspension for Non-Payment
If arbitrator compensation or 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 arbitrator may order the suspension or termination of the proceedings. If no arbitrator has yet been appointed, the AAA may suspend or terminate the proceedings.

48. Interpretation and Application of Rules
The arbitrator shall interpret and apply these rules 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 these Rules, it shall be resolved by a majority vote. If that is not possible, either an arbitrator or a party may refer the question to the AAA for final decision. All other procedures shall be interpreted and applied by the AAA.
AGREEMENT FOR ARBITRATION SERVICES

1. **DATE.** The date of this agreement is March 1, 2009.

2. **PARTIES.** The parties to this agreement are JOHN E. JUSTICE (“JUSTICE”), 200 Executive Drive - Suite 100, West Orange, NJ 07052, and

   (a) Amy Attractive, 222 Main Street, Anytown, NJ 07068. *(Name and address of first party)* and

   (b) Management Unlimited Technical Services, Inc. and Victor Vindictive, 2000 Industrial Drive, Commerce City, NJ 07038. *(Name and address of second party)* (plus any additional parties listed on the last page of this Agreement), all jointly referred to as “Disputing Parties” in this Agreement.

3. **RETAILER.** Disputing Parties hereby retain JUSTICE to arbitrate the issue(s) that they have heretofore agreed to submit to final and binding arbitration and/or the following additional issue(s), if any:

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4. **GOVERNING RULES.** The American Arbitration Association’s Employment Arbitration Rules, as amended and in effect July 1, 2006 (“AAA Rules”), shall govern this arbitration proceeding on all issues except those expressly addressed in this Agreement for Arbitration Services and the Disputing Parties’ submission agreement. No provision of the Disputing Parties’ submission agreement shall be inconsistent with A Due Process Protocol for Mediation and Arbitration of Statutory Disputes Arising out of the Employment Relationship issued by the National Academy of Arbitrators and other members of The Task Force on Alternative Dispute Resolution in Employment.

5. **JUSTICE’ AUTHORITY.** JUSTICE’s authority to conduct the arbitration proceeding shall be exclusive and complete.

6. **STANDARDS OF DECISION.** In deciding any issue, JUSTICE shall apply the express standards of decision provided in the Disputing Parties’ submission agreement or in the AAA Rules. In absence of any express standard JUSTICE shall apply the same standards of decision that a judge would apply if the same case were to have arisen in a court of competent jurisdiction.

7. **REMEDIES.** JUSTICE shall have power to grant such legal and equitable remedies on a provisional or final basis as a trial court of competent jurisdiction could grant in similar cases. For the purpose of judicial enforcement, interim awards granting provisional remedies shall be deemed final.

8. **IMMUNITY AND INDEMNIFICATION.** To enable Justice effectively to serve as arbitrator with complete impartiality and independence of judgment, the parties agree to the following conditions:

   (a) Justice shall have the same common law immunity as a judge does from suits for damages or equitable relief and from compulsory process to testify or produce evidence based on or concerning any action, statement, or communication in or concerning his arbitration services pursuant to this Agreement.
(b) Disputing Parties agree that none of them will call or subpoena Justice in any legal or administrative proceeding of any kind to produce any notes or documents related to his arbitration services or to testify concerning any such notes, documents, thoughts, or impressions. If so called or subpoenaed by anyone, Justice will refuse so to testify or produce. If any Disputing Party attempts to compel such testimony or production, such party shall be liable for and shall indemnify Justice for any liabilities, costs, and expenses, including attorneys' fees and lost professional time, which he may incur in resisting such compulsion.

9. FEES AND EXPENSES. Disputing Parties shall pay the following to Justice:

   (a) $500 per hour for all services provided by Justice pursuant to this Agreement.

   (b) $2,000 cancellation fee for any scheduled hearing date that is canceled on less than two weeks’ written notice.

   (c) Reimbursement of expenses incurred by Justice in providing services pursuant to this Agreement, including, but not limited to, travel, conference facilities, photocopying, postage, delivery, facsimile transmissions, and telephone charges.

Unless Disputing Parties arrange otherwise, Disputing Parties are jointly and severally responsible for Justice’s fees and expenses. Justice may require, and Disputing Parties shall make, advance payments against fees and expenses. Justice will refund such amounts not earned.

10. DISPUTE RESOLUTION. Any dispute of any nature between JUSTICE on the one hand and Disputing Parties or either of them on the other arising out of or concerning this agreement shall be submitted to arbitration by an arbitrator to be chosen by the following procedure. Each party shall designate one selector, and those two shall designate a third person, who shall be an impartial attorney knowledgeable concerning alternative dispute resolution, who shall have no relationship with any of the parties or interest in the dispute, and who shall be the

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sole arbitrator of the dispute. The parties shall share equally the arbitrator’s fees and expenses. In absence of agreement by the parties, hearings shall be held at a neutral location in the New York-New Jersey Metropolitan Area to be designated by the arbitrator. The award shall be in writing and shall be accompanied by a written statement of reasons for the result. The award shall be final and binding, and any party may enter judgment on the award in any court of record. The obligations of this paragraph shall survive termination of this agreement or withdrawal of any party.

JOHN E. JUSTICE:

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Disputing Party (a): Amy Attractive

By: ____________________________

Disputing Party (b): Management Unlimited Technical Services, Inc. and Victor Vindictive

By: ____________________________