
**IN THE MATTER OF THE ARBITRATION
BETWEEN
UNIVERSITY FACULTY & STAFF
UNITED, AFL-CIO,

UNION,
-AND-
UNIVERSITY OF PLACE,

EMPLOYER.**

RE:

**ARBITRATOR'S FILE NO.:
210322-OMDA

HOMER C. LA RUE
ARBITRATOR

PRE-HEARING ORDER NO. 1

SCHEDULING
and
CASE MANAGEMENT ORDER**

**SAMPLE
ORDER**

APPEARANCES

FOR the UNION

FOR the EMPLOYER

DATE FOR VIDEOCONFERENCE HEARING

The parties and the Arbitrator have agreed that the hearings in the above-noted matter will take place on **2021**. The hearing will begin at **10:00 am (ET)** on both days.

CANCELLATION/POSTPONEMENT FEE

Once the hearing date is established by the Arbitrator, pursuant to the agreement of the parties, the Arbitrator's cancellation/postponement policy shall apply. The cancellation/postponement fee is \$_____ per day of scheduled hearing. If applicable, the fee is split evenly between the parties, unless the parties agree otherwise or unless the Arbitrator rules otherwise.

To avoid the cancellation/postponement fee, the Arbitrator must receive notice of the agreed-upon cancellation or postponement thirty (30) calendar days before the first scheduled day of hearing on or before 5:00 pm (EDT). Notice shall be sent via email with copies to all parties.

If the requested cancellation or postponement is not agreed to, the advocate requesting the cancellation or postponement shall notify the Arbitrator via email, with copies to all parties, of the request for the cancellation or postponement, and the advocate shall request a conference call with the Arbitrator. The matter remains scheduled as established by the Arbitrator until there is an agreement on the cancellation or postponement with notice to the Arbitrator, or the Arbitrator has ruled on the request.

The last date to postpone or to cancel the scheduled hearing without a cancellation/postponement fee is **2021**.

VIDEOCONFERENCE HEARING OPTIONS

Option #1:

The parties will select a videoconference platform that is their agreed-upon choice. The parties will notify the Arbitrator as to the selected platform. The one proviso is that the Arbitrator must be in control of the direction of all functions of the videoconference platform (e.g., ability to mute and unmute, the ability to move hearing participants in and out breakout rooms, control of screen-sharing, etc.). If a technical support person is provided, that person shall be under the direction of the Arbitrator.

Option #2:

The video conference hearing will be conducted via Zoom's web-based software that will be provided by the Arbitrator. The parties will need to have a desktop or laptop computer with a webcam. All parties and witnesses may be in the same location or separate locations. The Arbitrator will be able to see all attendees at the hearing, and the parties will be able to see the Arbitrator. The protocol set forth in this Notice of Hearing is to ensure that the videoconference hearing is fair and efficient.

The link to the Zoom hearing room will be provided only to advocate. It will be the responsibility of advocate to provide the link to their respective clients and witnesses. The Arbitrator will not do so.

It is recommended that the parties, their respective clients, and first two witnesses access the Zoom site 30-60 minutes before the hearing start time to ensure that there are no impediments to access.

If there are any problems, do not hesitate to contact my office. The Arbitrator's cell number is: **000-000-0000**.

The parties are to elect an option on or before the close of business on **2021**. The Arbitrator is to be notified of the choice on or by **2021**.

ACCESS TO THE VIRTUAL HEARING SPACE

To ensure the veracity of the online process, by participating parties, advocate, their clients, and their witnesses are asked to agree to the following protocol:

- Entry to the virtual hearing space will be granted only upon approval by the Arbitrator.
 - Each advocate must provide a complete Appearance List, including all persons and their email address, whom each advocate intends to have present at the hearing, whether that person is a witness or not.
 - The Appearance List must be provided to the Arbitrator at least 48 hours before the start of the hearing.
 - The hearing space will be locked at the beginning of the hearing, and access will be available only with permission of the Arbitrator.

PRE-HEARING MATTERS

DOCUMENTS

1. Documents are to be marked as set forth in the Arbitrator's *Statement of Proceeding* (attached hereto as Appendix A), and in addition, documents are to be digitally copied, formatted, and numbered as follows:
 - a. Documents are to be Bates numbered. For example, Joint exhibits are to be named and numbered as "Jt. Ex. [No.], and each page of each exhibit is to Bates numbered sequentially (no repeating page number)
 - b. Documents are to be in pdf format.
 - c. Each individual exhibit is to be bookmarked if the documents are submitted as a single pdf file.
 - d. Documents must be deposited in the Drop Box provided by the Arbitrator prior to the hearing.

2. All documents intended to be used in a party's case-in-chief or its case-in-chief-in its defense must be deposited in that party's Drop Box at least **forty-eight (48) hours** before the start of the hearing.
 - a. The deposit of documents in the Drop Box does not mean that the documents have been accepted into the record as evidence.
 - b. The parties may stipulate, and are strongly encouraged, to stipulate to the pre-hearing admission of as many documents from each side as they can.
 - c. Such pre-hearing-admission stipulation shall waive any objection as to the authenticity of the document(s), and the document(s) shall become part of the record hearing for all purposes.
 - d. Such stipulation of pre-hearing admission, however, shall not waive a party's objection to the truth or weight of the content of the document as evidence in the matter.

3. Advocates are directed to exchange exhibits expected to be used in their respective cases-in-chief at least **forty-eight (48) hours** before the start of the hearing. Documents expected to be used purely for impeachment or rehabilitation need not be exchanged forty-eight (48) hours before the start of the hearing.

WITNESSES

4. Witnesses will be sequestered upon request subject to the provisions set forth in the Arbitrator's *Statement of Proceeding*.

5. When witnesses are testifying, they should only communicate with the Arbitrator and the advocate posing a direct question.

- a. Witnesses (and all others) are to be instructed by their respective advocates to turn off their cell phones unless instructed otherwise by the Arbitrator.
 - b. Witnesses (and all others) are to be instructed by their respective s to refrain from taking photos during the hearing unless instructed otherwise by the Arbitrator.
6. Requests to sequester witnesses in their own breakout (caucus) room, during any discussion between the advocates and the Arbitrator related to an objection will be freely granted.
 - a. The microphone in the witness caucus room in Zoom will be muted during any caucus.
 - b. The “chat” function in the witness caucus room in Zoom will be muted.
7. Advocates are to have their cell phones on during the hearing, unless instructed otherwise by the Arbitrator, and may use their cell phone to communicate with the Arbitrator provided that the other advocate is conferenced in.
8. Counsel shall provide the Arbitrator and counsel of the other party with their witness list at least **twenty-four (24)** hours before the first day of hearing. The witness list should include only those witnesses to be called or expected to be called as part of the party’s case-in-chief or that party’s case-in-chief-in defense. Witnesses expected to be called on rebuttal only or for rehabilitation only need not be included.
9. The following information should be provided for each person on the witness list:
 - a. Name
 - b. Title or Position
 - c. Email
 - d. Cell phone

STATEMENT OF THE ISSUE

10. Before the date and time for the pre-hearing conference, the parties are to agree on a Statement of the Issue and provide that to the Arbitrator in writing.
 - a. In the absence of an agreement on the Issue, each advocate is to provide their statement of the issue.

- b. Each advocate should be prepared to state briefly and succinctly that advocate's disagreement with the other advocate's statement of the issue.
- c. If no agreement is reached by the parties on the Statement of the Issue, the advocates agree that the Arbitrator will frame the Issue before the end of the pre-hearing conference or after opening statements at the hearing.
- d. The Statement of the Issue or each parties' version of the Statement shall be presented to the Arbitrator no later than date of the pre-hearing conference.

DEADLINES, FILING AND SERVING

- 11. Deadlines are to be met by the parties by filing documents electronically (i.e., via email) on or before any specified date directly to the Arbitrator.
- 12. Exchanges between the parties are to be handled by serving documents electronically unless the parties agree otherwise.
- 13. Case authorities and exhibits related to any arguments in support of or in opposition to matters raised in the filing with the Arbitrator are to be transmitted in *hard copy* via overnight delivery or hand delivery to the Arbitrator.
- 14. At the time that the filing is made to the Arbitrator, such case authorities and exhibits also are to be served on the other party via overnight delivery or via hand delivery unless the parties agree otherwise.

FINAL PRE-HEARING CONFERENCE

- 15. There shall be a final pre-hearing conference on **2021** at **11:00 a.m. (ET)**. The Arbitrator and counsel shall discuss any matters set forth in this Case Management Order ("CMO") or any other matters necessary for a fair and efficient hearing.

ARBITRATOR CONTACT INFORMATION

Homer C. La Rue

La Rue Dispute Resolution Services
5305 Village Center Drive, Suite 339
Columbia, MD 21044
(301) 332-9227 (Voice and Cell)
Email: homer@laruredisputeresolution.com

Date: , 2021

SO ORDERED,

Homer C. La Rue
Arbitrator

APPENDIX

Contents

1. COURT REPORTER	9
2. NOTE-TAKING AND RECORDING	9
3. OFFICIAL RECORD/ARBITRATOR'S NOTES.....	9
4. MARKING AND INTRODUCING EXHIBITS	10
5. USE OF DIGITALLY-RECORDED EVIDENCE.....	10
6. REPRESENTATION AT THE HEARING	11
7. SUBPOENAS.....	11
8. EXCHANGE OF LISTS OF WITNESSES	11
9. WITNESS TESTIMONY NOT IN-PERSON AT THE HEARING.....	12
10. OATHS AND AFFIRMATIONS.....	13
11. DISABILITY ACCOMMODATIONS.....	13
12. FOREIGN LANGUAGE INTERPRETERS.....	14
13. BREAKS.....	14
14. FILING AND SERVING THE POST-HEARING BRIEF	15

1. COURT REPORTER

If the parties intend to use a court reporter, they are responsible for making those arrangements. If there is any dispute about the use of a court reporter, the parties are directed to attempt to resolve the matter between themselves. Should there be no resolution, the parties are directed to set up a conference call—early enough not to delay the arbitration hearing—with the Arbitrator to resolve the matter.

2. NOTE-TAKING AND RECORDING

Whether there is a court reporter or not, the Arbitrator uses a laptop computer to record notes of the hearing. If there is no court reporter, the Arbitrator also may use a recording device as a back-up to his note taking. Neither the notes on the computer or on the recording are made available to the parties or to anyone else. Both are for the exclusive use of the Arbitrator for the Arbitrator's recollection of the hearing. Once the decision and award are issued, the notes are erased from the Arbitrator's computer, hard copies are discarded, and the recording is erased.

3. OFFICIAL RECORD/ARBITRATOR'S NOTES

Unless some other procedure is agreed to by the parties (for example, the use of a transcript), the official record of the case will consist of the recollections of the Arbitrator, the exhibits introduced at the hearing and whatever recording the Arbitrator may have made of the hearing. While the Arbitrator may make use of notes to supplement his recollection, the Arbitrator's notes do not constitute the official record and will not be available to the parties under any circumstances.

Further, the Arbitrator will not voluntarily appear as a witness in any litigation associated with enforcement of, or a challenge to, any award, mediated settlement, or other resolution of a case.

If a court reporter is present at the hearing, the parties should advise the Arbitrator at the outset if they do not intend to have a transcript made available, so that the Arbitrator may factor that in as he listens to the evidence.

Unless otherwise mutually requested by the parties, the Arbitrator will destroy his file of the case **two** weeks after the issuance of the Award or the expiration of retained jurisdiction, as the case may be.

4. MARKING AND INTRODUCING EXHIBITS

The Arbitrator has found that the hearing can be expedited if documents can be marked and moved into evidence at the beginning of the hearing. At the start of the hearing, therefore, the Arbitrator will ask the parties to offer into evidence any joint exhibits which they have agreed upon. The Arbitrator also will ask for offerings of employer and union exhibits for which there will be no objection.

If there is an objection to the proffered document, it will be marked for identification *only* at that time, and the party wishing to use the document will offer it into evidence during the presentation of her/his case. Any objections and arguments about admissibility will be dealt with at the time that the document is offered into evidence during the presentation of the sponsoring party's case.

Once documents are received into evidence at the outset of the hearing, they are in the record, and there is no need to lay a foundation before using the document during direct-examination or cross-examination. An agreement that a document may be received into the record at the outset of the hearing, as an employer or as a union exhibit, does not constitute a concession to the truth of what is stated therein.

The Arbitrator will use numbers to mark **joint exhibits** as well as **union exhibits**. The Arbitrator will use letters to mark **employer exhibits**. Whether the parties agree to move employer and union exhibits into the record at the outset of the hearing, it is strongly recommended that each party have their respective exhibits marked as indicated. Each party should have sufficient copies of each exhibit which the party intends to use: one (1) for the Arbitrator; one (1) for the opposing party; and one (1) for use by the witness.

5. USE OF DIGITALLY RECORDED EVIDENCE

A party may offer digital evidence, whether from a closed-circuit TV system, a video or audio recording, a photograph, a smart phone photo, computer records, a website, or other electronic methods (listing not intended to be exhaustive). **Such proffered evidence must be authenticated to be admitted into evidence at the hearing.** Parties are strongly encouraged to seek agreement on the method for authentication of such evidence prior to the hearing. If no agreement can be reached on the method for authentication prior to the hearing, the party seeking to offer the digital evidence shall arrange a conference call with the Arbitrator and the representative of the opposing party at least three (3) business days prior to the scheduled hearing.

If the party seeking to use the digital evidence intends to play or to show the evidence at the hearing, it is that party's responsibility to have the appropriate play-back equipment at the hearing. The play-back at the hearing must be of

sufficient quality that the Arbitrator, the other party, and the witness (if necessary) can see and/or hear the play-back. The method of play-back must permit the ***simultaneous viewing and/or hearing*** of the evidence by the Arbitrator, the other party, and any witnesses, where necessary, without the necessity of anyone having to move unreasonably from her/his respective position in the hearing room.

6. REPRESENTATION AT THE HEARING

Each party is entitled to have **one** person in the hearing room at all times who is the representative of the employer and of the union, respectively. That person, representing the employer and the union, will not be subject to any order of sequestration of witnesses. The grievant(s) will be entitled to be in the hearing room at all times.

Either party may have one or more observers in the hearing room if the person declared to be an observer is not a witness in the proceeding. A person designated as an observer, and who has been in the hearing room during **any** part of the proceeding after witnesses have been excused pursuant to an order of sequestration, shall not be permitted to testify at the hearing.

7. SUBPOENAS

Subpoenas will be signed by the Arbitrator, upon request by a party and/or advocate for the party. Notice of the request for the Arbitrator to sign subpoenas is to be made to the other party at the time that the request is made to the Arbitrator.

A Subpoena requiring a witness to give testimony is to be made returnable on the day of the scheduled hearing unless the parties have otherwise agreed. A Subpoenas Duces Tecum is to be made returnable on the day of the hearing unless the parties have otherwise agreed.

Any motion to quash a Subpoena requiring witness testimony or a Subpoena Duces Tecum is to be heard before a court of competent jurisdiction. The Arbitrator will not entertain motions to quash a subpoena.

8. EXCHANGE OF LISTS OF WITNESSES

At least three (3) **WORKING DAYS** before the hearing or at such other time as may be ordered by the Arbitrator, the parties shall exchange their respective

lists of witnesses that each will call as a part of their case-in-chief, and copies of prior **STATEMENTS** of proposed witnesses, if not previously produced during the processing of the grievance to arbitration. A witness expected to be called only as a rebuttal witness (i.e., called to rebut testimony already presented) need not be included in a party's list of witnesses.

When the above lists are exchanged, any party that intends to rely on the affidavit, statement, transcript or deposition testimony of a proposed witness in lieu of live testimony at the hearing, if permitted by the **ARBITRATOR**, shall provide each party with a copy of the specific pages of the document the party intends to offer for introduction into evidence. Nothing herein shall be interpreted as creating a presumption that the Arbitrator will permit the use of such documents in lieu of live testimony as admissible evidence.

If a party objects, the Arbitrator may not admit into evidence the testimony of any witness whose name does not appear on the witness list as provided above unless the Arbitrator finds good cause for the failure, or that there is no prejudice to the objecting party.

9. WITNESS TESTIMONY NOT IN-PERSON AT THE HEARING

(Section 9 is applicable to an in-person hearing)

If advocate finds it necessary to have a witness testify by a method other than in-person at the hearing, the advocate seeking to do so must contact opposing advocate as soon as the necessity is known to advocate and soon enough so as not to delay the hearing.

If there is agreement between advocate that a witness will testify by a method other than in-person at the hearing, advocate seeking the other-than-in-person testimony must follow the procedures set forth below. Counsel seeking the other-than-in-person testimony shall be responsible for the set-up and any costs involved. If both advocates will have a witness testify by a method other-than-in-person, both advocates shall bear equally the responsibility for the set-up and any costs involved.

If there is not an agreement between advocate that a witness may testify by a method other than in-person at the hearing, advocate and opposing advocate shall contact the Arbitrator for a conference call. Counsel and opposing advocate shall agree on three (3) alternate dates for a conference call, and the Arbitrator shall select from among the dates offered if there is one acceptable to the Arbitrator.

If there is an agreement that a witness shall testify by a method other-than-in-person, or if the Arbitrator has ordered that a witness may testify by a

method other-than-in-person, the following procedures shall be followed for the other-than-in-person testimony:

- a. The method selected for the other-than-in-person testimony shall be via videoconference.
- b. An audio-only conference (i.e., via telephone only without video) may be done only with permission of the Arbitrator and for good cause shown why a videoconference is not feasible.
- c. On the day of the testimony, the witness shall be in a place that is private, that is:
 - i. There shall be no one present in the space with the witness during the testimony given by the witness.
 - ii. There shall be no one capable of overhearing the testimony of the witness.

Documents necessary for direct and cross-examination shall be deposited in the Drop Box provided by the Arbitrator before the hearing. The witness shall review document(s) only as directed by advocate who is examining the witness.

10. OATHS AND AFFIRMATIONS

Each witness will be asked to take an oath or to give an affirmation prior to testifying. Any witness preferring to give an affirmation should so-indicate at the time that he/she is called to testify. The Arbitrator will deliver the oath or affirmation.

11. DISABILITY ACCOMMODATIONS

In accordance with the **American with Disabilities Act (“ADA”)** and other applicable federal laws, state and local laws, anyone who requires an auxiliary aid or service for effective communication or a modification of policies or procedures to participate in the arbitration hearing should contact the party responsible for coordinating the appearance of that person at the hearing. If there are any issues pertaining to reasonable accommodation, the party for whom that issue arises is directed to contact the other party to resolve the issue. If the issue cannot be resolved between the parties, either party—early enough not to delay the arbitration hearing—may convene a conference call with the opposing party and the Arbitrator to resolve the matter.

12. FOREIGN LANGUAGE INTERPRETERS

Persons, who do not speak or understand the English language or for whom English is not her or his first language, may be called to testify. If such a person is called to testify, that person, whether a party or a witness, may be assisted by a foreign language interpreter. Such assistance shall be given by a qualified foreign language interpreter. To qualify as a foreign interpreter, a person must possess sufficient experience and education, or a combination of experience and education, speaking and understanding English and the foreign language to be interpreted, to qualify as an expert witness pursuant to any state or federal law applicable to the jurisdiction in which the arbitration hearing takes place. A person qualified as an interpreter in any arbitration hearing shall not be interested in the claim and must make a declaration under oath or affirmation to interpret accurately, truthfully and without any additions or deletions, all questions propounded to the witness and all responses thereto.

Any party who is unable to speak or understand English, or who intends to call as a witness a person who is unable to speak or understand English, shall so notify the opposing party, in writing, not fewer than 21 days prior to the date of the hearing. The notice shall state with specificity the language(s) that must be interpreted for the Arbitrator.

Upon receiving or giving the notice required in the above-paragraph, the employer or union shall retain a qualified, disinterested interpreter, either agreed upon by the parties or approved by the state or federal court in the geographical jurisdiction in which the arbitration is to take place, to appear at the hearing and interpret the testimony of all persons for whom the notice in the above-paragraph has been given or received.

A qualified interpreter, who interprets testimony for the Arbitrator, shall be entitled to payment of the fee agreed upon by the interpreter and the party that retained the interpreter. The party retaining the interpreter shall be responsible for the fee. This requirement as to the payment of the interpreter's fee shall not override any provision in the collective bargaining agreement. Any conflict in interpretation shall be resolved in favor of the collective bargaining agreement.

13. BREAKS

If the hearing is expected to proceed past Noon, there will be a lunch break. The Arbitrator, together with the parties, will decide on the most appropriate time for the break and the length of the break. The Arbitrator also will call recesses in the proceedings to accommodate restroom needs.

14. FILING AND SERVING THE POST-HEARING BRIEF

Filing of the post-hearing brief with the Arbitrator shall be completed by the parties filing electronically (i.e., via email) on or before the date agreed upon by the parties or set by the Arbitrator. **Service** of the post-hearing brief on the other party shall be completed by each party serving electronically (i.e., via email) on the other party on or before the date agreed upon by the parties or set by the Arbitrator.

The filing of the post-hearing brief with the Arbitrator shall not include cases or other authorities related to any arguments in support of or in opposition. Hard copies of any cases or other authorities shall be made available to the Arbitrator. Such cases or other authorities shall be filed and served as set forth below.

Cases or other authorities related to any arguments in support of or in opposition shall be transmitted to the Arbitrator as hard copy via overnight delivery (e.g., USPS, UPS, or FedEx) or hand delivery. At the time that the filing is made with the Arbitrator, such cases or other authorities also shall be served on the other party via overnight delivery or via hand delivery, unless the parties agree otherwise.

The Arbitrator's contact information is as follows:

Homer C. La Rue
Arbitrator
5305 Village Center Drive, Suite 339
Columbia, MD 21044-2302

(301) 332-9227 (Voice and Cell)
Email: homer@laruedisputeresolution.com