

parties may wish to consider any jointly determined or one of the following methods for selection of an arbitrator from a panel:

(1) Each party alternately strikes a name from the submitted panel until one remains, or

(2) Each party advises the OAS of its order of preference by numbering each name on the panel and submitting the numbered lists in writing to the OAS. The name that has the lowest combined number will be appointed.

(3) In those situations where the parties separately notify the OAS of their preferred selections, once the OAS receives the preferred selection from one party, it will notify the other party that it has fourteen (14) days in which to submit its selections. If that party fails to respond within the deadline, the first party's choice will be honored. If, within 14 days, a second panel is requested and is allowed by the collective bargaining agreement, the requesting party must pay a fee for the second panel.

(d) The OAS will make a direct appointment of an arbitrator only upon joint request unless authorized by the applicable collective bargaining agreement.

(e) The issuance of a panel of names or a direct appointment in no way signifies a determination on arbitrability or an interpretation of the terms and conditions of the collective bargaining agreement. The resolution of such disputes rests solely with the parties.

[62 FR 34171, June 25, 1997, as amended at 70 FR 76399, Dec. 27, 2005]

§ 1404.13 Conduct of hearings.

All proceedings conducted by the arbitrators shall be in conformity with the contractual obligations of the parties. The arbitrator shall comply with § 1404.4(b). The conduct of the arbitration proceeding is under the arbitrator's jurisdiction and control, and the arbitrator's decision shall be based upon the evidence and testimony presented at the hearing or otherwise incorporated in the record of the proceeding. The arbitrator may, unless prohibited by law, proceed in the absence of any party who, after due notice, fails to be present or to obtain a postponement. An award rendered in

an *ex parte* proceeding of this nature must be based upon evidence presented to the arbitrator.

§ 1404.14 Decision and award.

(a) Arbitrators shall make awards no later than 60 days from the date of the closing of the record as determined by the arbitrator, unless otherwise agreed upon by the parties or specified by the collective bargaining agreement or law. However, failure to meet the 60 day deadline will not invalidate the process or award. A failure to render timely awards reflects upon the performance of an arbitrator and may lead to removal from the FMCS Roster.

(b) The parties should inform the OAS whenever a decision is unduly delayed. The arbitrator shall notify the OAS if and when the arbitrator:

(1) Cannot schedule, hear, and render decisions promptly, or

(2) Learns a dispute has been settled by the parties prior to the decision.

(c) Within 15 days after an award has been submitted to the parties, the arbitrator shall submit an Arbitrator's Report and Fee Statement (Form R-19) to OAS showing a breakdown of the fee and expense charges for use in the event the OAS decides to review conformance with the basis for the arbitrator's fees and expenses as stated in the biographical sketch.

(d) While FMCS encourages the publication of arbitration awards, arbitrators should not publicize awards if objected to by one of the parties.

[62 FR 34171, June 25, 1997, as amended at 70 FR 76399, Dec. 27, 2005]

§ 1404.15 Fees and charges of arbitrators.

(a) Fees to Parties. Prior to appointment, the parties should be aware of all significant aspects of the bases for an arbitrator's fees and expenses. Each arbitrator's biographical sketch shall include a statement of the bases for the arbitrator's fees and expenses, which shall conform to this part and the Code. The parties and the arbitrator shall be bound by the arbitrator's statement of the bases for fees and expenses in the biographical sketch unless they mutually agree otherwise in writing. Arbitrators listed on the Roster may change the bases for their fees