

Policy M-7: Dispute Resolution
Attachment A – Arbitration Process

I. Initiation of Dispute Resolution

- A. If efforts to resolve a Dispute by negotiation and/or meditation between a member and the Cooperative are not successful, arbitration may be commenced by either party in the following manner:
1. A party initiating arbitration (the “Claimant”) shall file a written Demand for Arbitration (“Demand”) with the Committee at the following address: 1001 State Road 35, Centuria, WI 54824 (the “Committee Office”). The Demand shall consist of a statement setting forth in reasonable detail the nature of the Dispute; the amount involved, if any; the remedy sought; and a return address and other contact information for the receipt of all papers relating to the arbitration. A filing fee as prescribed in these Procedures shall accompany any Demand filed by a member.
 2. Within thirty (30) days of receipt of a Demand, the Committee shall give written notice of the filing of such a Demand to the responding party (the “Respondent”), along with a full and complete copy of the Demand. For a member, the Committee may use the member’s most recent address in the billing records of the Cooperative.
 3. The Respondent may file an Answering Statement, and if so filed, it must be filed with the Committee at the Committee Office within forty-five (45) days after the postmark. The Respondent shall at the same time send a copy of the Answering Statement to the Claimant at the address set forth in the Demand. The Answering Statement shall include any admissions, denials or comments on the claims made in the Demand and a statement of the general nature of the Respondent’s defense(s).
 4. If the Respondent believes it has a counterclaim against the Claimant, it may set forth that counterclaim in a Statement of Counterclaim, setting forth the nature of the counterclaim; the amount involved, if any; and the remedy sought. The Statement of Counterclaim shall be filed with the Committee and delivered to the Claimant with the Answering Statement (and may be included as a section of that Answering Statement). If a counterclaim is made by a member, that member shall forward to the Committee along with the Answering Statement the fee prescribed in these Procedures.
 5. If no Answering Statement is filed within the time allowed under this policy, the claim set forth in the Demand shall be treated as denied. Failure to file an Answering Statement shall not deny a Respondent the right to appear at the arbitration hearing and fully defend the claim. Failure to timely file a

Statement of Counterclaim as authorized hereunder shall deny the Respondent the right to present evidence on and request any relief.

6. The Committee shall use reasonable efforts to keep all such records confidential, but they will be shared with the Cooperative's General Manager.

II. Appointment of Arbitrator(s)

- A. All claims, including counterclaims, shall be heard by a single arbitrator unless a party objects to a single arbitrator. In the event of such objection, all claims shall be heard by a panel of three (3) arbitrators, to be selected as prescribed herein.
- B. Arbitrators shall be impartial as to all parties and qualified by experience or education in the subject matter(s) of the dispute. The Committee shall determine the qualifications and impartiality of any arbitrators, and the Committee's decisions on arbitrators' fitness to serve shall be binding.
- C. Prior to the appointment of any arbitrators, the Committee shall contact prospective arbitrators to determine their impartiality and availability to arbitrate the Dispute. In the event any party to the Dispute objects to the qualifications of an arbitrator, the Committee shall also inquire and make the final determination of whether the prospective arbitrator is qualified. In determining the qualifications, impartiality, and availability of prospective arbitrators, the Committee shall adhere to the following guidelines:
 1. The Committee shall ask prospective arbitrators whether each one will be available during the time period agreed to by the parties or otherwise determined by the Committee, will agree to serve if selected, and will agree to render a decision within a period of time to be specified by the Committee.
 2. The Committee shall inquire whether prospective arbitrators have any past or current relationship with any of the parties to the Dispute, and whether any conflict of interest exists.
 3. In assessing the prospective arbitrator's qualifications, the Committee shall request and review a current resume or similar document attesting to the prospective arbitrator's experience and qualifications. Such document shall be made part of the record. In the event such resume or similar document is not available or does not sufficiently describe the prospective arbitrator's qualifications, or if the Committee otherwise deems it necessary or desirable, the Committee shall interview the prospective arbitrator and inquire about his/her experience and expertise in: (a) industries relevant to the subject matter of the Dispute; (b) the relevant law to be applied in the Dispute; and (c) arbitrating or litigating similar disputes.

4. Arbitrators may be qualified to serve through any of the following ways:
 - a. A minimum of ten (10) years of senior level business, professional experience, or legal practice pertaining to the subject matter(s) of the Dispute;
 - b. Training and certification by a nationally-recognized dispute resolution certification program or association; or
 - c. An educational degree or professional license pertaining to the subject matter(s) of the Dispute.
5. If the parties agree to have the matter decided by a single arbitrator, they may submit to the Committee up to three (3) agreed-upon candidates to serve, and may indicate the order of preference by which the arbitrator should be selected from these candidates. The name(s) of the arbitrator(s) shall be submitted to the Committee within thirty (30) days after written notice is provided by the Committee to the parties of the Dispute. Thereafter, the Committee shall decide to retain the services of the agreed-upon arbitrator(s) based on the availability of the proposed candidates, in the order of preference indicated by the parties. In the event that no candidate submitted by the parties is available to serve as arbitrator, then a three-arbitrator panel ("Panel") shall be selected as prescribed below.
6. The Committee will notify the parties in the event that no candidate submitted by the parties is available to serve as arbitrator. The parties will then have thirty (30) days from the date of notification in which to nominate an arbitrator of that party's choosing, subject to the approval of the Committee regarding qualifications, as defined in this Policy. If any party fails to nominate its arbitrator within thirty (30) days of receiving notice from the Committee, the Committee shall nominate the arbitrator.
7. If a Panel will preside over the arbitration, after each party has nominated a qualified and impartial arbitrator, then the Committee shall appoint the third arbitrator, who shall serve as Chair. The third arbitrator to be selected by the Committee shall be an attorney licensed in the State of Wisconsin or a retired judge of the state or federal judiciary of Wisconsin, in either case possessing a minimum of ten (10) years' experience in the practice of law.
8. When the arbitrator(s) are selected, the Committee shall send all documents, pleadings, and correspondence to each of the arbitrator(s).
9. Other than resolution of discovery disputes which shall be decided by the Chair as provided in Section V, below, all actions of the Panel shall be by

majority vote. At least two (2) arbitrators shall be required for a quorum to proceed on any matter.

10. If either party has reason to question the impartiality or the qualifications of an arbitrator, the party shall file a written objection with the Committee, and the Committee shall proceed to determine if the arbitrator is impartial. Parties who fail to file their objections with the Committee within thirty (30) days of (1) receiving notification of the designation of the prospective arbitrator, or (2) becoming aware of circumstances that reasonably call into question the arbitrator's impartiality, may be deemed to have waived such objections.
11. If the Committee determines the prospective arbitrator is not qualified or impartial, the Committee shall disqualify that prospective arbitrator from serving and shall notify the parties of the same. An alternative arbitrator shall then be selected as provided by the following:
 - a. If the disqualified arbitrator was designated by a party, then the party who selected the disqualified prospective arbitrator shall have thirty (30) days from receiving notice from the Committee in which to designate an alternative arbitrator.
 - b. If the disqualified arbitrator was designated by the Committee, then the Committee shall designate an alternative arbitrator within thirty (30) days of the disqualification of the initial arbitrator.
 - c. Such alternative arbitrator shall be subject to the same conditions to serving as applicable to an initial arbitrator, including the procedure and time limits for objections to the alternative arbitrator. The process for selecting an alternative arbitrator shall also apply in the event that an arbitrator is no longer able to serve for any reason.

III. Date, Time, and Place of Arbitration

- A. The arbitrator(s) shall set the date and time of the hearing as soon as it is reasonably possible after a meeting and consultation with the parties. Unless otherwise agreed to by the parties and the arbitrator(s), the arbitration hearing shall be held at a reasonably convenient location designated by the Committee.

IV. Representation

- A. Any party to the dispute may be represented by legal counsel or other authorized representatives through the arbitration process.

V. Witnesses, Subpoenas, Discovery, and Applicable Authority

- A. The parties shall have such rights in regard to the taking of discovery as provided for by Chapter 804 of the Wisconsin Statutes, or any successor statutes. The arbitrator(s) shall have such authority to permit discovery and enforce the parties' obligations to provide discovery, as would a Wisconsin circuit court judge. The parties shall also have full authority to compel the attendance of third-party witnesses as provided by law. In cases presided over by a Panel, any disputes over pre-hearing discovery shall be submitted to and resolved by the Chairperson of the Panel.
- B. The arbitrator(s) have full authority to determine whether or not a particular issue raised by any party may be determined by the arbitration.
- C. The arbitrator(s) shall resolve all disputes in accordance with Wisconsin substantive law and shall give full effect to the Wisconsin Rules of Evidence and statutes of limitation under Wisconsin law, including barring of a claim where the applicable statute of limitations would bar such claim in Circuit Court.
- D. Unless otherwise modified herein, the arbitrator(s) shall have such authority as possessed by a Wisconsin circuit court judge to impose time limits on any phase of the proceedings, to hold pre-hearing conferences and hearings to resolve matters that may arise in the arbitration, schedule pre-hearing motions, briefs, and memoranda, and any other matters necessary for the proper administration of the arbitration.
- E. Unless otherwise modified herein, during any part of the proceedings, the arbitrator(s) shall have such authority as possessed by a Wisconsin circuit court judge to impose sanctions, award recovery of fees and costs, and take such other action to maintain the integrity of the proceedings.
- F. During any part of the proceedings, unless otherwise modified herein, the arbitrator(s) shall have such authority as possessed by a Wisconsin circuit court judge to determine all or a portion of the issues in dispute through summary adjudication (e.g. motions to dismiss or for summary judgment) determined upon the submission of documents and other evidence rather than through a live hearing.

VI. Hearings and Other Proceedings

- A. Unless a Dispute is fully resolved by summary adjudication as provided herein, all issues raised in the Demand, Answering Statement, and any Statement of Counterclaim, if any, and unresolved by summary adjudication, shall be determined through a hearing as provided in this section.
- B. A hearing shall be opened by the recording of the date, time and place of the hearing, and the presence of the arbitrator(s), the parties and their representatives, if any, and by the inclusion into the record of the Demand, Answering Statement, and any statement of counterclaim, if any.

- C. If either party to the arbitration requests it, a stenographer certified to transcribe such a proceeding shall be appointed by the Committee. Each party shall share equally in the cost of such service. The parties may agree on other forms of preservation of the record, including but not limited to tape recording, video recording or other forms of electronic preservation.
- D. The arbitrator(s) may, at the beginning and/or close of the hearing, require or permit statements (orally or in writing), with the intent to clarify the issues involved.
- E. The claimant shall then present evidence to support its claim. The respondent shall then present evidence supporting its defense and/or counterclaim(s). Witnesses for each party shall be sworn under oath by a person qualified to administer an oath and shall thereafter submit to questions or other examination as prescribed by the arbitrator(s).
- F. The arbitrator(s) shall have the discretion to vary the procedure and order of evidence and witnesses, but shall afford all parties a full and equal opportunity for the presentation of any material and relevant evidence, including a reasonable opportunity to cross-examine the other party's witnesses and to rebut the other party's evidence. The arbitrator(s) shall apply burdens of proof in accordance with Wisconsin law.
- G. Unless otherwise modified herein, the arbitrator(s) shall have such authority over the conduct of the hearing as possessed by a Wisconsin circuit court judge presiding over a civil trial, including but not limited to such matters as the applicability of privilege; the admissibility, relevance, materiality, and weight of evidence being offered; and the exclusion of witnesses from the hearing.
- H. Exhibits, when offered by any party, may be received in evidence by the arbitrator(s).
- I. 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.

VII. Communication with the Arbitrator(s)

- A. Copies of all written or electronic communications to or from the arbitrator(s) shall be served upon the arbitrator(s) and all parties and a copy filed with the Committee at the Committee Office. Filing and service of such documents and communications may be accomplished electronically as directed by the arbitrator(s) on a case-by-case determination. In no circumstances shall any party have ex parte communications with any arbitrator.

VIII. Decisions

- A. A decision on the issues to be arbitrated shall be in writing and shall be signed by all arbitrator(s). The decision shall state the legal and factual reasoning upon which the decision rests unless the parties agree otherwise.
- B. All decisions shall be issued by the arbitrator(s) within sixty (60) days of the close of such hearing (or the receipt of post-hearing briefs, if allowed by the Panel). If the arbitrators unanimously agree the complexity of the issues and the record require it, that schedule for issuance of the final decision or award may be extended up to an additional sixty (60) days.
- C. The arbitrator(s) may order any remedy, relief, or award, whether legal or equitable, that a Wisconsin circuit court judge could order.

IX. Additional Provisions

- A. The arbitrator(s) shall dismiss the proceedings at any time upon the joint request of all the parties.
- B. If there is an award of damages, costs or other relief, the unsuccessful party shall pay any amount set by the arbitrator(s) and shall comply with any other remedy or relief awarded by the arbitrator(s) within sixty (60) days of the written decision.
- C. By participating in the arbitration process, all parties understand the successful party may file an action in the appropriate Circuit Court in Wisconsin for the sole purpose of enforcement of any award.
- D. All costs incurred by the enforcing party as allowed by law for the collection of a judgment shall be limited to the statutory costs as if the matter were being heard in a Circuit Court in the State of Wisconsin, and such statutory costs shall be added to such award, remedy or relief so collected by the enforcing party. Interest on any award, judgment, or order where money has been awarded shall run from the date of written award, judgment or order at the same rate as provided for judgments in the State of Wisconsin. Pre-judgment interest shall not be awarded. Attorney fees are not awardable.

X. Fees and Costs

- A. Any member filing a Demand for Arbitration or a counterclaim shall remit to the Committee a filing fee in the amount of \$300 to defray the costs of the Committee's service. The failure to remit the required filing fee shall result in the rejection of the member's Demand or counterclaim.

- B. The Cooperative shall be responsible for covering all other costs of the Committee's service, and therefore shall not be required to pay any fee upon the filing of a Demand or counterclaim.
- C. Each arbitrator shall be paid at a reasonable rate, which may include reimbursement of the arbitrator's reasonable expenses, that is negotiated and agreed to by the Committee. A reasonable fee shall be paid to each arbitrator for each day of hearing and for days reasonably required to deliberate on the record and reach a decision or award. Each party shall pay an equal portion of the arbitrators' fees and expenses.
- D. Subject to the provisions of Section IX.D., above, each party shall be responsible for their own expenses of arbitration, including without limitation, attorneys' fees, expert and other witness fees, and travel and lodging.