

SUBCHAPTER 04A - DIVISION RULES

SECTION .0100 - PURPOSE: DEFINITIONS

13 NCAC 04A .0101 NAME: ADDRESS

The Arbitration, Conciliation and Mediation Division is located in the Raleigh office of the department. The mailing address for the division is as follows:

Arbitration, Conciliation and Mediation Division
North Carolina Department of Labor
4 West Edenton Street
Raleigh, North Carolina 27601.

*History Note: Authority G.S. 95-4; 95-35; 95-36.3;
Eff. February 1, 1976;
Readopted Eff. September 30, 1977;
Amended Eff. July 1, 1988; December 1, 1985;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 22, 2018.*

13 NCAC 04A .0102 PURPOSE: RESPONSIBILITIES

(a) The division works to promote permanent labor-management peace and to protect the interests and rights of labor, management, and the people of the state by the prevention or prompt settlement of labor disputes.

(b) The division offers:

- (1) voluntary arbitration services of labor disputes,
- (2) conciliation and mediation services in labor disputes,
- (3) educational services in labor relations,
- (4) technical services in labor relations.

*History Note: Authority G.S. 95-32; 95-35; 95-36; 95-36.1; 95-36.3;
Eff. February 1, 1976;
Readopted Eff. September 30, 1977;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 22, 2018.*

13 NCAC 04A .0103 DEFINITIONS

The following definitions shall apply throughout this Chapter:

- (1) "division" -- those employees of the department who are responsible for promoting permanent labor-management peace and protecting the rights and interests of the people of this state by the prevention or prompt settlement of labor disputes;
- (2) "director" -- that individual responsible for planning, directing, controlling, and implementing division services;
- (3) "conciliation" -- a process whereby parties in controversy seek to reconcile their differences by using a third party as an intermediary; The conciliator in the conciliation process acts as a catalytic agent, by being available, but does not take an active part in the settlement process;
- (4) "mediation" -- a form of conflict resolution, requested by either or both parties in controversy, which serves as a vehicle for continued negotiations and ultimate settlement; The mediator in the mediation process takes an active part in the settlement process by listening, reviewing, analyzing, suggesting, advising, and reasoning with the parties in controversy;
- (5) "voluntary arbitration" -- a procedure whereby parties, unable to agree on a solution to a problem, indicate their willingness to be bound by the decision of a neutral third party;
- (6) "arbitrator" -- one who intervenes, upon request by the parties, in a labor dispute and renders a binding decision in an unreconcilable controversy;
- (7) "bench decision" -- a decision rendered by an arbitrator immediately upon conclusion of the hearing;

- (8) "collective bargaining agreement" -- a contract or mutual understanding between a union and company or their representatives setting forth the terms and conditions of employment for a specific period of time;
- (9) "party" -- any company, union, or individual employee responsible under the terms of a collective bargaining agreement, or any employer or employee in a non-union employer/employee relationship.

History Note: Authority G.S. 95-36; 95-36.3;
Eff. February 1, 1976;
Readopted Eff. September 30, 1977;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 22, 2018.

SECTION .0200 - ORGANIZATION

13 NCAC 04A .0201 DIVISION: GENERAL

The Director of the Arbitration, Conciliation and Mediation Division, appointed by the commissioner and under the supervision of the chief deputy commissioner, is in charge of the everyday operations of the division. The director and his division staff administers conciliation and mediation, educational, and technical services.

History Note: Authority G.S. 95-35; 95-36.3;
Eff. February 1, 1976;
Readopted Eff. September 30, 1977;
Amended Eff. December 1, 1985;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 22, 2018.

13 NCAC 04A .0202 ARBITRATION PANEL

The North Carolina Voluntary Arbitration Panel consists of a number of private North Carolina citizens qualified in the general field of labor relations. Their function is to intervene, upon request by the parties, in labor disputes, and to render prompt and just decisions and awards concerning the issue or issues in controversy.

History Note: Authority G.S. 95-36.4;
Eff. February 1, 1976;
Readopted Eff. September 30, 1977;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 22, 2018.

SUBCHAPTER 04B - VOLUNTARY ARBITRATION

SECTION .0100 - REQUESTS: AVAILABILITY OF ARBITRATORS: APPOINTMENT

13 NCAC 04B .0101 REQUEST FOR ARBITRATION

Requests for the appointment of an arbitrator shall be made in writing to the commissioner. Each request shall be accompanied by:

- (1) a copy of the collective bargaining agreement, if any, and a copy of any special agreement to arbitrate; and
- (2) either; if the request is made by one party, a signed statement of what that party considers to be the issue(s) or question(s) in dispute, or, if the request is made jointly by the parties;
- (3) a statement signed by both, of what they consider to be the issue(s) or question(s) in dispute; or
- (4) if they fail to agree thereon, separate statements signed by each party of what each considers to be the issue(s) or question(s) in dispute.

History Note: Authority G.S. 95-36.3; 95-36.6;
Eff. February 1, 1976;

*Readopted Eff. September 30, 1977;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 22, 2018.*

13 NCAC 04B .0102 AVAILABILITY OF ARBITRATORS

The Commissioner of Labor will acknowledge the receipt of each request for the appointment of an arbitrator and will submit to each of the parties the list of available arbitrators serving on the North Carolina Arbitration Panel.

*History Note: Authority G.S. 95-36.3; 95-36.6;
Eff. February 1, 1976;
Readopted Eff. September 30, 1977;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 22, 2018.*

13 NCAC 04B .0103 APPOINTMENT OF ARBITRATORS

- (a) The parties may agree upon an arbitrator from the list submitted, or each may strike no more than two names from said list of five unless the commissioner otherwise specifies.
- (b) Upon receipt of notification of the agreement of the parties upon an arbitrator from the list submitted, the commissioner will appoint said arbitrator. In the event that he is unable to accept the appointment, the list of available arbitrators will be re-submitted to the parties.
- (c) Upon return of the lists from the respective parties, the commissioner will appoint an arbitrator from the undeleted names.
- (d) If one of the parties fails to return his copy of the list to the commissioner within two weeks after the lists were forwarded, the commissioner will so inform the other party. On demand by the latter, the commissioner will then appoint an arbitrator from the undeleted names on the returned list.

*History Note: Authority G.S. 95-36.3; 95-36.6;
Eff. February 1, 1976;
Readopted Eff. September 30, 1977;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 22, 2018.*

SECTION .0200 - ARBITRATION HEARING: GENERAL PRINCIPLES: EX-PARTE HEARINGS: TRANSCRIPTS OR RECORDINGS: OATH OF OFFICE

13 NCAC 04B .0201 GENERAL PRINCIPLES

- (a) The arbitrator appointed by the commissioner shall preside at the hearings. The arbitrator shall provide a fair and adequate hearing which assures that both parties have sufficient opportunity to present their respective arguments and evidence and to cross-examine witnesses.
- (b) The arbitrator should conform to the various types of hearing procedures desired by the parties. He may:
 - (1) encourage stipulation of fact;
 - (2) question the parties' representatives or witnesses, when necessary or advisable, to obtain additional pertinent information; and
 - (3) request that the parties submit additional information, either at the hearing or by subsequent filing.
- (c) The arbitrator should not intrude into a party's presentation so as to prevent that party from putting on its case fairly and adequately.

*History Note: Authority G.S. 95-36.3;
Eff. February 1, 1976;
Readopted Eff. September 30, 1977;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 22, 2018.*

13 NCAC 04B .0202 EX-PARTE HEARINGS

- (a) In determining whether to conduct an ex-parte hearing, an arbitrator must consider relevant legal, contractual, and other pertinent circumstances.

(b) An arbitrator must be certain, before proceeding ex-parte, that the party refusing or failing to attend the hearing has been given ample notice of the time, place, and purpose of the hearing and adequate opportunity to register objections.

History Note: Authority G.S. 95-36.3;
Eff. February 1, 1976;
Readopted Eff. September 30, 1977;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 22, 2018.

13 NCAC 04B .0203 TRANSCRIPTS OR RECORDINGS

- (a) Mutual agreement of the parties as to use or non-use of a transcript must be respected by the arbitrator.
- (b) If the parties do not agree on a transcript, an arbitrator may permit one party to have a transcript for its own purposes at its own cost. The arbitrator may also make appropriate arrangements under which the other party may have access to a copy if a copy is provided to the arbitrator.

History Note: Authority G.S. 95-36.3;
Eff. February 1, 1976;
Readopted Eff. September 30, 1977;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 22, 2018.

13 NCAC 04B .0204 OATH OF OFFICE

When an oath of office is taken, it should serve as a guide for the arbitrator. When an oath is not required or is waived by the parties, the arbitrator shall nevertheless observe the standards which the oath imposes.

History Note: Authority G.S. 95-36.3;
Eff. February 1, 1976;
Readopted Eff. September 30, 1977;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 22, 2018.

SECTION .0300 - AWARD: PAYMENT: CODE OF RESPONSIBILITY

13 NCAC 04B .0301 AWARD

- (a) The arbitrator will render the arbitration award promptly in writing. The arbitrator will forward copies of the award to each of the parties and to the commissioner, together with the arbitrator's bill for fees and expenses.
- (b) When an arbitrator understands, prior to acceptance of appointment, that a bench decision is expected at the conclusion of the hearing or that a concise written award is expected shortly after the hearing, the arbitrator must comply with the understanding unless both parties agree otherwise, or unless:
- (1) Notice of the parties' desire for a bench decision is not given prior to the arbitrator's acceptance of the case, thus making the issuance of such a bench decision discretionary;
 - (2) Only one party makes the request and the other objects, in which case the arbitrator should not render a bench decision.

History Note: Authority G.S. 95-36.3;
Eff. February 1, 1976;
Readopted Eff. September 30, 1977;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 22, 2018.

13 NCAC 04B .0302 PAYMENT

The parties shall make prompt payment of the arbitrator's bill directly to the arbitrator.

History Note: Authority G.S. 95-36.5;
Eff. February 1, 1976;

Readopted Eff. September 30, 1977;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 22, 2018.

13 NCAC 04B .0303 CODE OF RESPONSIBILITY

The commissioner has adopted the "Code of Professional Responsibility for Arbitrators of Labor-Management Disputes" (1975) of the American Arbitration Association. Copies of the code may be obtained from the American Arbitration Association, 140 West 51st Street, New York 10020, and are available for inspection at the division office.

History Note: Authority G.S. 95-36.3;
Eff. February 1, 1976;
Readopted Eff. September 30, 1977;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 22, 2018.

SUBCHAPTER 04C – MEDIATION

SECTION .0100 - MEDIATION

13 NCAC 04C .0101 REQUESTS FOR MEDIATION

A request for mediation services may be made solely by one party or jointly by both parties involved in a labor dispute. The request should be made to the Director of the Arbitration, Conciliation and Mediation Division.

History Note: Authority G.S. 95-34; 95-36;
Eff. February 1, 1976;
Readopted Eff. September 30, 1977;
Amended Eff. December 1, 1985;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 22, 2018.

13 NCAC 04C .0102 FEES

Mediation services are offered free of charge to the parties requesting the service.

History Note: Authority G.S. 95-34;
Eff. February 1, 1976;
Readopted Eff. September 30, 1977;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 22, 2018.

13 NCAC 04C .0103 INTERVENTION BY COMMISSIONER

History Note: Authority G.S. 95-36;
Eff. February 1, 1976;
Readopted Eff. September 30, 1977;
Repealed Eff. July 1, 1988.

SUBCHAPTER 04D - TECHNICAL AND EDUCATIONAL SERVICES

**SECTION .0100 - TECHNICAL SERVICES: REPRESENTATION ELECTIONS:
CARD-CHECKS/CERTIFICATIONS**

13 NCAC 04D .0101 REPRESENTATION ELECTIONS

(a) Upon mutual consent and joint request of the parties, a representation election will be conducted, by the division, to determine whether or not a union possesses majority status in a defined bargaining unit. The appropriate unit, names on the ballots, payroll period for voter eligibility, and the date, hours, and location of election will be defined and agreed upon by the parties prior to the election. Election will be conducted by a secret ballot procedure to protect employee free-choice expression.

(b) The forms used in this procedure are those of the department. The following stipulations are shown on these forms:

- (1) appropriate bargaining unit,
- (2) method of determination of union majority status,
- (3) employer responsibility in the event that it is ascertained that union possesses majority status,
- (4) union responsibility in the event that it is ascertained that the union does not possess majority status,
- (5) employer and union agreement to use representation election to determine whether or not union possesses majority status.

(c) The tally of ballots form shows the following:

- (1) number of eligible voters,
- (2) votes cast for union,
- (3) votes cast against union,
- (4) void ballots,
- (5) valid votes counted,
- (6) certification (either for or against union majority status).

*History Note: Authority G.S. 95-36; 29 U.S.C. sec. 159;
Eff. February 1, 1976;
Readopted Eff. September 30, 1977;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 22, 2018.*

13 NCAC 04D .0102 CARD-CHECKS/CERTIFICATIONS

(a) Upon mutual consent and request of the parties, a card-check/certification will be conducted, by the division, to determine whether or not a union possesses majority status in a defined bargaining unit. Prior to the card-check/certification, the appropriate bargaining unit, payroll period ending dates to be used in determining employee members of the appropriate bargaining unit, and the date, time, and location of the card-check/certification must be agreed upon by the parties. A check is made of the signed cards submitted by the union against the list of employees submitted by the employer and thereby, certification made either for or against union majority status.

(b) The forms used in this procedure are those of the department. The following stipulations are shown on these forms:

- (1) agreement by the parties to use card-check/certification procedure to clarify or dismiss union's alleged majority status,
- (2) appropriate bargaining unit and payroll period ending dates to be used in determining employees comprising the appropriate unit,
- (3) employer responsibility in the event that it is ascertained that union possesses majority status,
- (4) union responsibility and agreement in the event that it is ascertained that union does not possess majority status,
- (5) certification (either for or against union majority status).

*History Note: Authority G.S. 95-36; 29 U.S.C. sec. 159;
Eff. February 1, 1976;
Readopted Eff. September 30, 1977;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 22, 2018.*

SECTION .0200 - EDUCATIONAL SERVICES: AVAILABILITY: REQUESTS

13 NCAC 04D .0201 AVAILABILITY OF SERVICES

The division is available and is often called upon to plan, develop, and present programs, lectures, workshops, and seminars in the area of labor relations pertaining to conflict resolution of labor disputes through arbitration, conciliation, and/or mediation efforts.

History Note: *Authority G.S. 95-32;*
 Eff. February 1, 1976;
 Readopted Eff. September 30, 1977;
 Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 22,
 2018.

13 NCAC 04D .0202 REQUESTS FOR SERVICES

Requests for these services can be made by telephone or through mail to the division office.

History Note: *Authority G.S. 95-32;*
 Eff. February 1, 1976;
 Readopted Eff. September 30, 1977;
 Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 22,
 2018.