

PCERA Arbitration Principles

Most arbitration rules confer appropriate discretion upon the arbitrator as to the procedure to be followed in the arbitration. These principles guide the manner in which PCERA arbitrators will exercise those discretions. They are intended to encourage savings in time and cost by focussing upon a practical and commercial approach.

All PCERA appointed arbitrators agree to give effect to these principles.

Statement of Material Facts and Statement of Issues

1. Following appointment of the arbitrator, each party will usually be required to file a certified *statement of material facts*, a *draft statement of issues* expressed as questions and a short *preliminary outline of contentions* stating the party's claim as to how each issue should be resolved and the main reasons supporting that claim. The purpose of these documents is to guide the arbitrator in establishing the procedure for the arbitration. In cases where the claim comprises a number of discrete amounts or heads of claim under a contract then the documents will usually be required to be divided up by reference to each discrete amount or head of claim. The same procedures will apply to any cross-claim.

Procedural Conference

2. At the earliest opportunity thereafter, the arbitrator will convene a procedural conference at which the parties will discuss the directions required for the proper conduct of the arbitration. The arbitrator may adjourn the conference if the parties are not ready to establish the procedure for the arbitration and may make interim directions to clarify the issues in dispute. After the procedural conference, the arbitrator will issue draft directions timetabling all steps in the arbitration and propose final hearing dates. If the parties do not agree the directions then the arbitrator will convene a further procedural conference at which any disputed directions will be resolved.

Case Management Meetings

3. The timetable will usually include provision for the legal representatives of the parties to meet face to face at specified times to discuss any issues of preparation. Notice of issues for discussion shall be given at least 24 hours before each meeting. These meeting times may not be changed without the consent of the arbitrator and must be attended by a senior legal representative with conduct of the matter.

Hearings

4. Save in the most exceptional case, each arbitration will be confined to no more than 12 days of oral hearing. Directions will be made on that basis.
5. Save in the most exceptional case or with the consent of all parties, the oral hearing dates will not be changed once set by the arbitrator.

Statement of Material Facts

6. Usually, the directions will first require the claimant to file a revised statement of material facts and a revised statement of issues and the respondent to file a response to each of those documents which will be followed by a reply by the claimant to each of the respondent's documents. These documents may be amended at any time provided that any amendment may be disallowed on application to the arbitrator. Amendments will usually be disallowed where they expand the issues in a manner that will prejudice the other party having regard to the available time until the oral hearing.
7. In the statement of material facts, so far as possible, each fact must be stated in a separate paragraph to facilitate a response that either agrees or disputes each fact. The response to the statement of material facts shall state, in the same form, all additional facts alleged by the respondent.
8. At any point in the process up to 5 days before the oral hearing a party may propose a fact to be agreed by the other party. The claimant will maintain a document that records the facts that have been agreed which shall be made available to the respondent or the arbitrator upon request and, in any event, 5 days before the oral hearing.

Statement of Contentions

9. The directions will usually provide for the parties to file detailed contentions dealing with the matters raised by the issues as stated by both parties. These contentions may be supplemented by further written and oral submissions as directed by the arbitrator.

Evidence and Discovery

10. The directions will usually provide for the parties to exchange statements of the evidence of each witness. The statements must not be expressed in argumentative terms. The statements will be reviewed by the arbitrator and argumentative material will be struck out. Each party may seek leave to adduce further evidence concerning matters struck out from the statements. The witness statements will be accepted into evidence, subject to submissions as to weight and relevance. Unless objected to on the grounds of authenticity, all documents referred to in the statements shall be evidence in the arbitration.

11. Subject to any direction by the arbitrator as to topics where such an approach will not apply, all disputed factual matters may be established by any means that would inform and guide usual commercial decision making including by hearsay evidence where the source of a statement is given.
12. In the usual case, leave to issue any subpoenas must be sought at about the same time as the filing of witness statements. The arbitrator will carefully review proposed subpoenas to ensure they are necessary and confined to the issues in the arbitration.
13. In the usual case, there will be no order for discovery. Parties will be required to provide copies of documents referred to in statements of material facts and witness statements. After the exchange of witness statements, the claimant will be required to provide to the respondent an electronically indexed and fully searchable electronic copy of the documents upon which the party intends to rely at the oral hearing which must include directly any documents that are inconsistent with the party's statement of material facts or witness statements. The respondent will then be required to provide a similar bundle of any additional documents. Thereafter, each party may make limited requests of the other to provide specific documents that are necessary for the conduct of the party's case. Each party may also seek leave to file additional witness statements confined to matters raised by the discovery of documents. The arbitrator will resolve any dispute concerning requests for specific documents at a directions hearing convened for that purpose.
14. Save in the most exceptional case, all expert evidence in a particular field of expertise will be given by a single expert appointed by the arbitrator. Any party seeking to adduce expert evidence shall propose to the other party a draft brief to the expert and a proposed expert (together with a full disclosure of any matters known to the party or the expert relating to the degree of independence that the expert would bring in considering the matters in dispute). Any party making inquiries as to the availability of a prospective expert shall not communicate with the expert concerning any matter relating to the merits of any issue in the arbitration. The expert will answer questions proposed by each party. If necessary, the arbitrator will determine at a directions hearing convened for that purpose the identity of each expert, the questions to be answered, and the arrangements for briefing, conferences with and payment of the expert.
15. In an appropriate case, the arbitrator may direct that any party may be entitled to file a statement from an expert engaged by that party in response to the single expert. In any event, each party will usually be allowed to cross-examine the expert.

Reasons

16. The arbitrator will deliver written reasons within 6 weeks of the conclusion of the oral hearing.

Costs

17. Within 7 days of the end of each calendar month, each party shall provide to the arbitrator a summary of all costs incurred by the party from commencement up to the end of the calendar month on each of legal fees, counsel fees, arbitrator's fees, expert fees and disbursements.
18. In allocating the percentage of overall costs to be paid by each party the arbitrator will, in addition to other relevant matters, take into account any substantive failure by a party to co-operate in the procedural steps in the conduct of the arbitration.

Miscellaneous

19. These principles will only apply to the extent that they are not inconsistent with the terms of any arbitration agreement.