

Effective Grievance Handling and Arbitration Strategies

February 26, 2016

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Grievance Handling --

Negotiated Grievance Procedure

1. Limited vs Broad Definition of "Grievance"
2. Grievance "Levels"
 - Board Level of appeal
3. Arbitration Parameters



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Grievance Handling --

Negotiated Grievance Procedure

1. Arbitrator Selection
2. Arbitrator's Authority
3. Cost Shifting



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Grievance Handling --

Grievance Response


1. Good Factfinding
2. Follow All Procedural Levels of the Grievance Process
3. Explain All Procedural and Substantive Flaws in the Grievance Response

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Grievance Handling --

Procedural Considerations

1. Prohibited Subjects – ULP?
2. Hiatus Period Grievances
3. Standing



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Grievance Handling --

Substantive Considerations

1. Appropriate Level of Discipline
2. Express Language of Master Agreement



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Pre-Arbitration --

Selection of Arbitrator

1. Review Qualification From Biographical Sketches
2. Research Past Decisions



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Pre-Arbitration --

Prepare Records

1. Grievance Trail
2. Relevant Master Agreement
3. Notes and Statements



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Pre-Arbitration --

Prepare Witnesses

1. Gather All Witness Information
2. Prepare Examination Topics
3. Prepare Witnesses for Setting and Substance
4. Review Records with Witnesses
5. Explain Rules of Engagement



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Pre-Arbitration --

Prepare for Cross

1. Identify Records for Cross
2. Prepare Cross Topics
3. Review All Emails and Correspondence by Adverse Witness



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Pre-Arbitration --

1. Motion to Dismiss?
2. ULP's?
3. Factual Stipulations?



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Arbitration Hearing --

Joint Exhibits

- Parties Agree on Authentication and Foundation
- CBA, Grievance Chain, Policies, Discipline Issued



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Arbitration Hearing --

Opening

- A. First Impression of Case
- B. Burden of Proof
- C. Give the Arbitrator Orientation to:
 - Employment Context
 - Labor Relations History
 - Basic Facts and Theory
 - Relevant Portions of CBA

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Arbitration Hearing --

Opening

- A. Opening Should Frame Issues
- B. Opening Should Not Promise More Than You Can Prove
- C. Opening Should NOT Concede "Facts" That Might Not Be Established
- D. Opening Should NOT Focus Heavily on Rebutting Proof From the Other Side You Anticipate



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Arbitration Hearing --

Conduct

- A. Don't Fight With Arbitrator
- B. Don't Fight With Opposing Counsel
- C. You Are There To Persuade the Arbitrator, Not the Union
- D. May Settle At Any Time



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Arbitration Hearing --

Witnesses

- A. Must Be Qualified, Credible and Straightforward
- B. Must Be Good Listeners
- C. Answer The Questions Asked
- D. Don't Volunteer Information Unless a "Green Light" Topic
- E. Avoid Leading Questions

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Arbitration Hearing --

Documents

- A. Read the Entire Document Before Presenting
- B. Provide to the Other Side?
- C. Anticipate Cross-Examination

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Arbitration Hearing --

Objections

- A. You May Object to Questions and Answers From the Other Side
 - Hearsay
 - Irrelevant
 - New Evidence Never Presented Before
- B. Only Make "Good" Objections

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Arbitration Hearing --

Common Errors

- A. Ask Too Much Cross
- B. Rely on Minimum Facts, Maximum Argument
- C. Conceal or Distort Facts
- D. Fail to Cooperate, Argumentative
- E. No Good Notes of Record



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Arbitration Hearing --

Post Hearing Briefs

- A. Briefs v Oral Summations



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Arbitration Hearing --

Post Hearing Briefs

- A. Introduction
- B. Statement of Facts
- C. Statement of Issues
- D. Presentation of Argument
- E. Summary/Remedy

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Arbitration Hearing --

Post Hearing Briefs

The Arbitrator Should Know the Following When Finished Reading Your Brief:

1. Your view of the record
2. How the records support your theory
3. How the evidence intersects with relevant contract language
4. How the Contract Language Should be Interpreted
5. How the Contract Language Applies to your Case
6. What You Want the Arbitrator to Do (or Not Do)

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Arbitration Hearing --

Post Hearing Briefs

1. Do Not Make Weak Arguments
2. They Often Mask Strong Arguments



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Uniform Arbitration Act

Effective July 1, 2013, the legislature enacted the Uniform Arbitration Act, effectively repealing the portion of the Revised Judicature Act which established judicial rules for arbitrations excluding labor arbitrations. The Uniform Arbitration Act now controls labor arbitrations and includes:

- Methods for providing notice of the initiation of arbitration if provision of notice is not already agreed upon by the parties
- Request for judicial review and relief

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Uniform Arbitration Act (cont.)

A Party May:

- Seek an order compelling or staying arbitration
- Seek an order appointing a neutral arbitrator if the parties do not have an agreement in place for choosing an arbitrator
- Seek an order consolidating separate arbitrations
- Seek an order determining whether an agreement to arbitrate exists, or whether certain subjects fall within the agreement (formerly this was the role of the arbitrator, now it is the role of the court)
- Seek an order enforcing an arbitration award
- Seek an order confirming an arbitration award
- Seek an order vacating an arbitration award
- Seek reimbursement of costs and attorney fees for the litigation necessary to obtain any of the orders or judgments noted above
- Seek an appeal of certain orders affecting arbitration

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Uniform Arbitration Act (cont.)

Also included are delineations of an arbitrator's powers, including:

- The ability to decide whether a condition precedent to arbitrability was met, and whether the underlying contract containing the agreement to arbitrate is enforceable
- Providing provisional remedies (such as Summary Disposition or other awards controlling arbitration)
- Mandating disclosure by the arbitrator of facts which would likely affect the arbitrator's impartiality
- Requiring a majority ruling if more than one arbitrator is involved
- Banning an arbitrator from testifying in court, and granting the arbitrator immunity from liability
- Allowing an arbitrator to conduct arbitration in a manner that is fair and expeditious
- Issuing subpoenas for witness attendance, the production of records, discovery or depositions, as well as protective orders and other necessary orders
- Issuing Awards
- Modifying or correcting an award
- Awarding punitive or other exemplary damages in certain limited situations, including the award of attorney fees and costs, and the arbitrator's expense and fees

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