



PART I
PREPARING
THE CASE



ARBITRATION PREPARATION CHECKLIST

- ✓ Review Arbitration Assignment letter to Arbitrator.

(NOTE: Assignment letter does not automatically confer jurisdiction on the Arbitrator).

- ✓ Make sure back-up cases were also sent to you or are available.

- ✓ Send copies of arbitration scheduling letter to local president requesting him/her or designee to set up interviews with grievant and witnesses. Send copy to grievant with instructions to contact you for interview or any other questions you may have at this time. (This assures you the grievant will be available).

- ✓ Review the case file and become completely familiar with the history of the case as it developed during the steps of the grievance procedure. (MAKE NOTES)

- ✓ From here on, the advocate should note all phone calls, contacts, etc. This becomes important in case you have to recreate your handling of the case.

- ✓ Make notes especially on the first reading of the file. Your first impressions may be lost unless noted as you review the file.

- ✓ When possible and practicable, list all events in chronological order. Develop a chronology of events to submit as part of your opening statement. (LAST TO FIRST)

a. Determine if all the steps of grievance procedure were correctly followed.

b. Was the grievance timely filed?

a. Was the grievance timely appealed at each stage of the grievance?

d. If not timely filed, were there extensions or waiver of the time limits?

e. If not timely filed, what was the past practice in regards to time limits? Lax?

f. If late, is there a reasonable explanation?

g. Was either party prejudiced by the delay?

ARBITRATION PREPARATION CHECKLIST

(continued)

- ✓ Develop list of potential witnesses:
 - a. Witnesses who have factual, direct knowledge to the issues. Witnesses must be selected to rebut the USPS's contentions as well as to introduce affirmative APWU evidence. This will require you to prepare questions which you expect to be asked at the hearing. Ask the witnesses those questions prior to the hearing. This will assist the witnesses in knowing what will be asked and how it will be asked in order that they can respond most effectively.
 - b. Additionally, ask questions the USPS representative will probably ask, and ask those questions as you would expect the USPS representative to ask them. This will not only prepare the witnesses as to what to expect, but may expose "**weak spots**" in the case.

- ✓ Define the issue(s):
 - a. What were the positions of the parties during the steps?
 - b. Become familiar with the USPS position and all arguments advanced in the grievance steps.
 - c. Review all correspondence exchanged between the parties.
 - d. Did local file corrections and additions?
 - e. Does the file have a 2608/2609?

- ✓ Where necessary, visit the physical premises to better understand the issues and contentions of the parties.

- ✓ Determine the applicability of the National Agreement and/or manuals, including the LMOU as to the issues. If ambiguous or in question, determine the custom, habit, past practice or bargaining history of issue in question.

ARBITRATION PREPARATION CHECKLIST

(continued)

Other Sources

- a. National Arbitrations (SEARCH).
 - b. Steps 4s (Book on sale from APWU Order Department).
 - c. Regional Arbitrations (SEARCH).
 - d. Step 3s.
 - e. Step 2s.
 - f. Labor-Management minutes.
 - g. Correspondence between parties.
 - h. Safety hazard reports, security violations, etc.
- ✓ Have the past elements been adjudicated? If so, are the decisions in the file? If not adjudicated, why is this case scheduled?
 - ✓ Are there or will there be any settlements that may affect this case? MSPB? EEO? UFLP? Are any of the other forums waiting for this arbitration decision?
 - ✓ Review the information on the grievant contained in Step 2 appeal. You may want to review the OPF, training records and Supervisor's personnel files.
 - ✓ Determine if there is anything in the employee's work history that may be helpful or damaging to the case.
 - ✓ Review the case, narrowing the issue that you want the arbitrator to answer. If any additional information is needed, you may request it under Article 17/31.
 - ✓ Develop theory of your case. **This is a must!!**

IN GENERAL

- Must be fast on feet.
- Must be flexible.
- Must minimize surprises.
- Must allow case to dictate strategy:
 - High Key or low key.
 - Going for head or heart.
(2-knee approach).
 - Being basic or technical.
- Must know management advocate and how to react (Proper reading).
- Must know arbitrator and how to react (Proper reading).
- Will stipulations help or hurt case.
- What about fact sheet?
- Any procedural problems or strengths (Threshold or otherwise).

COMMON ERRORS IN ARBITRATION

On the basis of its extensive experience in administering arbitration proceedings the American Arbitration Association has concluded that a party may harm its case by the following practices:

1. Using arbitration and arbitration costs as a harassing technique.
2. Over-emphasis of the grievance by the union or exaggeration of an employee's fault by management.
3. Reliance on a minimum of facts and a maximum of arguments.
4. Concealing essential facts; distorting the truth.
5. Holding back books, records and other supporting documents.
6. Tying up proceedings with legal technicalities.
7. Introducing witnesses who have not been properly instructed on demeanor and on the place of their testimony in the entire case.
8. Withholding full cooperation from the Arbitrator.
9. Disregarding the ordinary rules of courtesy and decorum.
10. Becoming involved in arguments with the other side. The time to try to convince the other party is before arbitration or during grievance processing. At the arbitration hearing, all efforts should be concentrated on convincing the arbitrator.
11. Putting something into your opening statement which you can not prove.
12. Listening to management's opening and not writing down their arguments and contentions.

PRE-HEARING OR PRELIMINARIES

Meet with management advocate: *NO LATER THAN THE NIGHT BEFORE*

- ☐ On possible joint exhibits.
- ☐ To jointly frame the issue(s).
- ☐ On any other housekeeping chores.

Materials

- ☐ Be sure you have plenty of paper and pens.
- ☐ Be sure you have support items:

- Stick-ums.
- Paper clips
- Extra folders.
- Stapler.

- 5 copies of possible exhibits.
- Paper & pen for grievant
- 4 copies of appropriate CBA.
- Tabs.

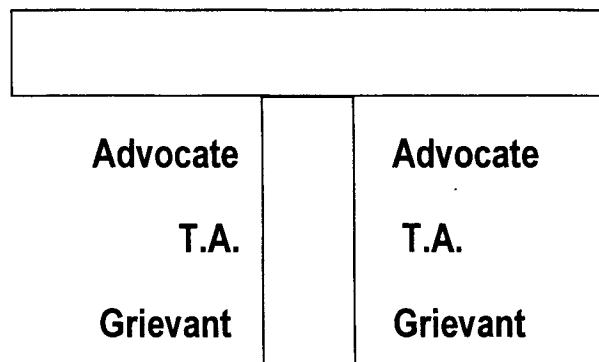
Seating

- ☐ Try to meet early with management advocate to take care of preliminaries.
- ☐ Be sure you are sitting closest to the Arbitrator.

THE ONE IN EFFECT AT THE TIME GRIEVANCE WAS FILED.

NORMAL SEATING

Witness Chair Arbitrator Witness Chair



PAGE 14

HEARING

- ☐ Appearance Sheet.

Beginning

- ☐ Framing the Issue.

Exhibits

- Moving Party (*DISCIPLINE - MANAGEMENT, CONTRACT - UUIOW*)
- ☐ Establish Collective Bargaining Agreement (CBA) as Joint Exhibit #1 (JE #1) (have a copy for Arbitrator).
- ☐ Have extra copy of exhibits for court reporter.
- ☐ Have extra copy as back-up (total of 5 copies per exhibit).
- ☐ Be sure exhibits are clean and readable.
- ☐ Exhibits should be readily available and easily identified (consider folder for each (tie to witness or order of presentation)).
- ☐ Be sure to identify each exhibit (normally in the upper right hand corner).
- ☐ Use ladder approach or folders with identifying cover sheet for easy accessibility.
- ☐ If technical advisor available, assign those duties to them.

Jurisdiction

- ☐ Arbitrator will normally ask if case is properly before him/her.

Threshold

- If either side has an issue of Substantive Arbitrability, this should be the place to raise it.
- Identify the issue as threshold.
- The normal framing is: Is this case arbitrable?
- Consider bifurcation (splitting the hearing).
- If you raise the issue, be prepared to argue it with evidence and case law at this time.
- If other party raises the issue, be prepared to defend against it.
- Issue raiser will normally ask for decision on threshold before addressing merits.

Procedural

- May raise as a threshold issue. If so, follow those procedures.
- May allow Arbitrator to decide after hearing merits, but addressing procedure first in award.
- May allow Arbitrator to decide as part of over-all dispute.

Merits

- If discipline normal framing would be: Was there just cause? If not, what is the proper remedy?
- If contractual normal framing would decide, if broad or narrow issue, and give Arbitrator right to remedy.
- If unable to frame issue, give Arbitrator authority to do so.

Opening

- Sometimes Arbitrator will want to hear before addressing issue.
- Who goes first is established by regional practice, normally moving party goes first.
- If possible have written or typed opening, copy for Arbitrator and management advocate. Give to Arbitrator and read out loud unless Arbitrator says otherwise.
- Be prepared to answer questions by Arbitrator.
- Pay attention to management's opening. This is not the time to give a final brush to your opening or prepare for the next part of the case. Good note-taking at this point will benefit you during the hearing and at the closing.
- On rare occasion may wish to reserve until or before your case in chief.
- If you have exhibits which require introduction without witness, bring forward now (be prepared to demonstrate relevancy).

Examples

- Precedent setting documents (should attempt to move in during joint exhibit exploration).
- Handbook and/or Manual cites (again should attempt to move in during joint exhibit exploration).
- Company records or Instructions (again should attempt to move in during joint exhibit exploration).
- Remember, persuasive cites are normally saved for closing.

CASE IN CHIEF

Direct Examination

- Moving party will normally go forward first. Arbitrator will normally swear or affirm witnesses.
- Direct Examination is a two (2) part process:
 1. Background information.
 2. Establishment of facts:
 - Testimony.
 - Documentation.
 - Physical evidence.
- Done through non-leading questions which:
 1. Establish relevancy (foundation).
 2. Competency of witness.
- Time line normally followed on knowledge of witness to relevant facts.
- Be prepared for interruptions such as objections and questions from Arbitrator. Be sure to remember your place.
- Be sure Arbitrator has time to write down each answer. Look to see if Arbitrator is still writing.

Cross Examination

- Follows direct.
- Developed from:
 - Evidence.
 - Argument.
 - Direct Examination.
- Done through leading questions.
- Only done** if need to:
 - Discredit witness.
 - Discredit testimony.
 - Affirm testimony.
 - Obtain evidence (only if your own witness is not available).
- Right to be vigorous but not to badger.

Re-Direct Examination

- Done after cross examination.
- Only done if you need to:
 - Clarify or correct your witness' testimony.
 - Damage control.
 - Allow witness to complete or finish answer cut off or limited in cross examination.
 - Cover missed points or missed evidence.

Re-Cross

- Done after re-direct.
- Done for same reasons as cross.

Arbitrator Involvement

- May ask their own questions at any time but normally after direct and cross of witness.
- Will normally allow advocates to go back and forth until all questions are answered.
- Will rule upon objections raised by either advocate during examination of a witness.
- May interject own instructions on perceived objectionable questions, comments, or conduct of witness, advocate, technical advisor or observer.
- Grant necessary breaks or caucuses. Normally not done during cross-examination.

Rebuttal

- Follows completion of cases in chief.
- Moving party may call witness to rebut testimony or other evidence.

Closing

- Done after parties rest, completion of case in chief and rebuttal.
- Arbitrator will allow reasonable time to prepare.
- May go to post-hearing brief rather than close at hearing.
- Done orally or in writing. May be combination of both.

- Should summarize what you set out to do and the successful completion of it.
- Submission of case law. Normally done as last part of your closing.
- Be prepared to answer questions by Arbitrator.
- Arbitrator may allow additional response to opposing advocate.
- However, may limit to one bite of the apple.
- Regional practice will decide who goes first.

Hearing Over

- When possible, polite good-byes.
- If grievant involved, exit interview. Be sure no unanswered questions or comments remain. Explain normal time for receipt of award and procedure for sending copy to local and grievant.

APPEARANCE SHEET

for
American Postal Workers
Union, AFL-CIO

** 5 COPIES*

Mail Copy of Award to:

Advocate Name _____

Address _____

City _____ State _____ Zip Code _____

Mail Copy of Award and Bill to:

Name of Regional Coordinator _____

Address _____

City _____ State _____ Zip Code _____

Case # _____ Date of Hearing _____

City & State of Hearing _____

Witnesses for the Union: _____

UNION ADVOCATE INVESTIGATION WORKSHEET

Issue _____ Scheduled Date _____

Region Case # _____ Local Case # _____

Local Name _____

Local President _____ Local Phone # _____

Local Address _____

City _____ State _____ Zip Code _____

Shop Steward _____ Steward's Phone # _____

Advocates: Union _____ Management _____

Arbitration Date _____ Time _____ Place: _____

Arbitrator _____

Grievant _____ Phone # _____

Address _____

City _____ State _____ Zip Code _____

DISCIPLINE DATE _____ **ISSUED BY** _____

STEP 1 DATED _____ Signed By _____

STEP 2 DATED _____ Signed By _____

STEP 3 DATED _____ Signed By _____

GRIEVANT'S STATEMENT: YES / NO _____ WITNESS(S) STATEMENTS/S: YES / NO _____

WHAT HAPPENED? _____

WHERE DID IT HAPPEN? _____

WHEN DID IT HAPPEN? _____

EXHIBITS _____

WITNESSES NAMES _____

MISSING ITEMS _____

RESOLUTION _____

FRAMING THE ISSUE _____

* THEORY OF CASE

**MOST IMPORTANT PART!*

- Your approach/battle plan to case.
- Develop early but be flexible.
- Comprised of arguments and evidence.

To develop a theory of the case, answer these five questions:

1. What part of the CBA has been violated? *Art 7 & 19*
2. What do I need to prove to the arbitrator in order to win the case?
3. What are the best facts I have to prove it?
4. How can I best present those facts?
5. What is the proper contractual remedy?

- Evidence comes from (3) facts.
 - Background.
 - Essential.
 - Rebuttal.
- Facts are presented through witness or document.
- Develop chronology of events.