



**PART III**  
**THRESHOLD**  
**STRATEGIES**



## **THRESHOLD ISSUES**

- ▲ Usually raised by management. **Is the Grievance Arbitrable?**
- ▲ Denies hearing on merits.
- ▲ Bifurcation generally opposed by the Union:
  - Added costs
  - Justice delayed.
- ▲ Mini-hearing vs. hearing threshold issue simultaneously with merits.

### **Substantive Arbitrability**

- ▲ Can the parties be bound by the decision?
- ▲ Although usually decided by the Arbitrator, the courts could ultimately decide the issue.
- ▲ May be raised for first time at the hearing.

### **Examples**

- Probationary discharge.
- Promotion to management.
- Discussions.
- Grievance on behalf of casual.
- Certain OWCP issues.
- Grievance on behalf of prospective employee or retiree.

## **Procedural Arbitrability**

- ▲ Properly decided by the Arbitrator.
- ▲ Employer alleges Union failed to comply with Agreement.

### **Examples**

- Timeliness.
- Steward not properly certified.
- Premature appeal.



## **Supreme Court Authority “1960 Steelworkers Trilogy”**

### **United Steelworkers v. American Manufacturing**

“... whether the moving party is right or wrong is a question of contract interpretation for the arbitrator... the moving party should not be deprived of the arbitrator’s judgement...”

### **United Steelworkers v. Warrior Gulf**

“..... doubts should be resolved in favor of coverage..”

## THRESHOLD EXERCISE

1. A supervisor has continually given the new steward discussion after discussion over very trivial things, sometimes as many as two or three in a single night. These discussions were given both in the supervisor's office and on the workroom floor in the presence of other employees. The union files a grievance because of this obvious harassment.

Might management raise an arbitrability argument? \_\_\_\_\_

Would it be substantive or procedural arbitrability? \_\_\_\_\_

What is management's argument?

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What is the union's response?

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2. A grievance is filed over a \$3,000.00 letter of demand issued to an employee who did not come to the union until the 16<sup>th</sup> day after she received the letter. Management denied the grievance as untimely at both Step 1 and Step 2 of the grievance procedure. You notice the Step 3 decision does not mention the timeliness argument.

Might management make an arbitrability argument? \_\_\_\_\_

Would it be procedural or substantive arbitrability? \_\_\_\_\_

What is management's argument?

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What is the union's response?

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3.

An employee with an extremely bad record, who has been a thorn in management's side for years, is issued a removal. The union is not timely from Step 1 to Step 2, and the steward has neither requested nor received a written agreement to extend time limits. In the past, management has never called the time limits on grievances which were untimely from Step 1 to Step 2, and many of them were, in fact, untimely. Management now has a new labor representative.

Might management raise an arbitrability argument? YES

Would it be substantive or procedural arbitrability? PROCEDURAL ARBITRABILITY

What is management's argument?

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\_\_\_\_\_  
\_\_\_\_\_

What is the union's response?

PAST PRACTICE      2 - DISCRIMINATION      3 - MANAGEMENT RIGHTS  
ART 3, 15, 2, 3      5 - UNILATERAL ACTION  
15 - GRIEVANCE PROCEDURE  
16 - DISCIPLINE PROCEDURE

4. A small local decides to file a grievance protesting the fact that carriers are used to box mail daily in the office and have been doing so for years. They ask that clerks in the office be paid at the overtime rate for the hours of work performed by the carriers.

Might management make an arbitrability argument? \_\_\_\_\_

Would it be substantive or procedural? \_\_\_\_\_

What is management's argument?

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What is the union's response?

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\_\_\_\_\_  
\_\_\_\_\_

5. A local president learns of another local's arbitration win on re-ranking registry clerks at a seminar and files a grievance over the proper ranking of duty assignments in the registry section. She asks that a duty assignment on each tour be re-ranked to level 6 and that affected employees be made whole. She held one of these duty assignments herself for six years prior to the filing of the grievance.

Might management raise a threshold issue of arbitrability? \_\_\_\_\_

Would it be substantive or procedural? \_\_\_\_\_

What might management's argument be?

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What is the union's response?

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