

The Grievance/Merits of the Case

Arbitration Program

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Grievance & Merits

- Overview
 - **Role of Arbitration.**
 - **Arbitrability & Scope**
 - **Reviewing the Grievance**
 - **Considering the Merits**

Role of Arbitration

- Dispute resolution
 - **Favored method of resolving disputes between labor and management.**
 - **Final and binding.**



Role of Arbitration

- Final Step of Grievance Procedure
 - **Grievance handling the guts of contract enforcement.**
 - **Don't be afraid, but be prepared.**
 - **Contract enforcement is everyone's responsibility.**

Role of Arbitration

- Part of Collective Bargaining Process
 - **Grievances/arbitration help determine the meaning of the contract.**
 - **Grievance/arbitration records and dispositions vital to negotiation process.**

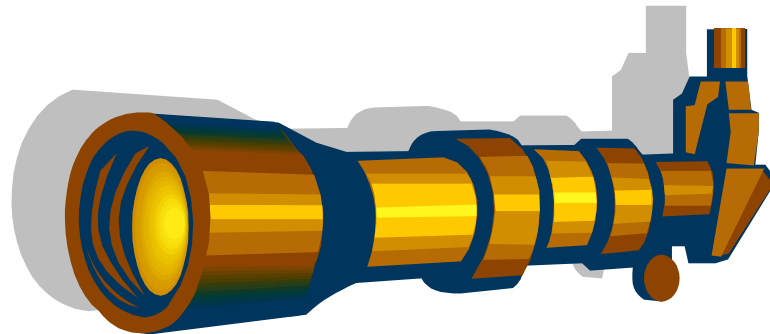


Role of Arbitration

- The Grievance, the Union, and the Member
 - **The grievance belongs to the Union.**
 - **Use the Union grievance where necessary.**
 - **Union determines whether or not to arbitrate.**

Arbitrability & Scope

- The contract determines
 - **What issues the arbitrator can/can't decide**
 - **What the arbitrator can/can't award**



Arbitrability & Scope

- What does the contract say about what can be arbitrated?
 - **“all disputes” or something else?**
- **Are there any specific exclusions?**
 - **e.g. who can grieve, benefit denials, etc.**
- **What about legal issues?**
 - **Specific language**
 - **General language**
 - **No language**

Arbitrability & Scope

- Arbitrability is a decision for the arbitrator.
 - **General presumption in favor of arbitrability.**
 - **Be prepared on arbitrability and merits.**
 - **A winning case on merits is still a loser if you don't have a winning case on arbitrability.**
 - **Common arbitrability issues**
 - **Scope**
 - **Timeliness**

Reviewing the Grievance

- Decision to arbitrate must be made on the merits of the case.
 - **Best to determine merits before deciding to arbitrate.**
- **Obtain the grievance file to review investigation and arguments.**

Reviewing the Grievance

- The 5 Ws
 - **WHO** was involved?
 - **WHEN** did it happen?
 - **WHERE** did it happen?
 - **WHAT** happened?
 - **WHY** is this a grievance?
- And
 - **Adjustment or remedy desired.**

Reviewing the Grievance

- Review the information gathered in the investigation.
- **Accurate Measurement + Clear Meaning = Quality Information**
 - **Do you have the appropriate measurements? Are they accurate? How do they compare?**
 - **What do the measurements mean?**

Reviewing the Grievance

- Identify and fill in any gaps in information.
 - **Sources: grievant, other workers, other witnesses, stewards, officers, representatives, supervisors, records.**
 - **A.S.A.P.**

Reviewing the Grievance

- Checklist on Management's Action
 - **Fact or hearsay?**
 - **Investigate and verify prior to taking action?**
 - **Stack the deck?**
 - **Over-react?**
 - **Punitive, vindictive v. corrective, remedial?**

Reviewing the Grievance

- Checklist on Management's Action
 - **Everyone punished for infractions of few?**
 - **Penalty too severe?**
 - **Story credible?**
 - **Discipline timely?**
 - **Progressive discipline?**

Reviewing the Grievance

- Check the Union's story too!
 - **Be honest in evaluating evidence.**
 - **Story rational or a stretch?**
 - **Credible witnesses?**
 - **Play devil's advocate.**
 - **Check records.**
 - **Know what all the likely witnesses will say.**

Merits Review in Discipline Cases

- **Record Test**
 - **Look at them – don't assume!**
 - **Weigh accuracy**
 - **Source of records**
- **Consistency Test**
 - **History of similar situations?**
 - **Discipline in similar situations?**
 - **Any reason for discrimination?**

Merits Review in Discipline Cases

- Contract, Rules, Etc.
 - **Was there a violation by the grievant?**
 - **Was rule reasonable?**
 - **Was rule known?**
 - **Was rule valid?**

Merits Review in Discipline Cases

- **Grievance Itself**
 - **Charge stay consistent through process?**
 - **Employer piling on?**
 - **Stories stay consistent through process?**

Merits Review in Discipline Cases

- Motives
 - **Situation require you do understand?**
 - **Provocation v. defensive action?**
 - **Motives of management?**

Merits Review in Contract Cases

- Standards of Contract Interpretation
 - **Clear meaning v. ambiguity**
 - **Intent of parties (actual not speculative)**
 - **Law**
 - **Normal and technical usage**
 - **Context of entire contract**
 - **Avoid harsh, absurd results**
 - **Express one thing, exclude the other.**

Merits Review in Contract Cases

- Standards of Contract Interpretation
 - **Same term, same meaning**
 - **Specific beats general**
 - **Avoidance of forfeiture or penalty**
 - **Offers of compromise don't count**
 - **Custom and past practice**
 - **Industry practice**
 - **Prior settlements (grievances, arbitrations)**
 - **Arbitral authority**

Final Considerations

- **Type of case? Who has the burden of proof?**
- **Union principle or value at stake?**
- **Cost justified?**
- **Good or bad precedent?**
- **Consequences of win and loss?**
- **Other options for resolution?**