

# OVERVIEW OF THE GRIEVANCE PROCEDURE

## 1. WHAT IS A GRIEVANCE?

Most Labor Agreements include a specialized definition of a grievance, which should be carefully studied. Commonly it is defined broadly as "any complaint by an employee or the Union concerning the application and interpretation of the agreement." In general, though, it can be said that a grievance is a formal complaint usually made by an employee or the employee's union which alleges an adverse effect upon the grievant by an interpretation or application of a term or condition of the collective bargaining agreement (contract). The four question test:

- ❶ Is the action a violation, misinterpretation or misapplication of the contract?
- ❷ Is the action a violation of existing house rules, personnel policies or past practice?
- ❸ Is the action a violation of an employee right or benefit which the union may want to document for future negotiations?
- ❹ Is the action a violation of law? ULP/Prohibited Practice, OSHA, EEO, Wage & Hour, etc.

The best rule for the union steward is: When in doubt, file.

## 2. MANAGEMENT RIGHTS & ORDER OF AUTHORITIES

Disputes often involve questions of what to do when one source is at odds or in conflict with another. What is, for instance, the authority of the employer to make house rules or regulations? The basic order of authority is that Law takes precedence over Contract, and that Contract takes precedence over the employer's rules, regulations or policies. Management has the right to direct the workforce and make work rules only insofar as they do not conflict with Law and Contract.

## 3. HOW DO I KNOW IF A GRIEVANCE HAS MERIT?

The Union has a strict, legal obligation to fairly represent all members of the bargaining unit and to pursue meritorious grievances to the best of its ability. Of course "merit" can often mean one thing to the grievant and another in the eyes of an arbitrator, the labor board, and the courts. When initially deciding to file a grievance, consider the four tests above, but once a grievance has been filed, the union's decision to move the grievance to a higher step or to arbitration must be made by the union based on an assessment of its legal merits. In this regard, a grievance has merit if: 1) it is grounded in a contractual right; 2) there is enough evidence or proof available; and 3) it has been properly filed in a timely manner.

#### **4. WHAT IS A GRIEVANCE PROCEDURE?**

It is a negotiated step-by-step process which the parties agree will be the sole method of settling disputes during the term of a contract. While contracts vary concerning the number of steps in the grievance procedure, there are usually four steps:

A. INFORMAL LEVEL: The worker and the steward discuss the complaint with the immediate supervisor or foreman with a view towards settlement. If there is no settlement, the steward helps the worker put his or her complaint in writing and file it in a timely manner.

B. FORMAL LEVELS: The grievance goes to the next higher level of management such as the superintendent, or general foreman. The steward or the business agent with the grievant try to reach settlement.

C. Some unions (generally in the construction trades) use a "joint board" or panel, made up of an even number of management and union representatives. All grievances are presented to the board, and its majority decision is final and binding. Only if there is no agreement at this level may a grievance proceed to arbitration.

D. The last step, where the grievance is still unresolved, is final and binding arbitration.

#### **5. WHAT IS ARBITRATION?**

It is a proceeding outside of a court of law in which an impartial third party, called an Arbitrator or Umpire, is paid by the union and the employer to hear both sides of a labor dispute and render a decision.

Grievance arbitration, also known as "rights arbitration," is different from "interest arbitration" in which the neutral arbitrator is resolving an impasse in bargaining. The authority in "rights arbitration" is derived only from the "four walls" of the contract. A rights arbitrator, therefore, cannot hear cases on subjects not permitted by the existing Contract. Nor may a rights arbitrator's award change or modify the terms of the Agreement; he or she may only determine if the contract has been violated or misinterpreted, and decide whether or not a reasonable remedy should be granted.

The arbitrator must weigh the evidence presented at the hearing. If significant facts favoring the grievant's (union's) case are not presented because of the union's carelessness, the union will not only lose the case but may also be breaching its duty of fair representation. In deciding a case, an Arbitrator must determine if the party bringing the complaint has been able to present enough proof to show that the contract has been violated. The arbitrator is, therefore, obliged to decide only the most reasonable meaning of the contract, based on the contract language, past practices, and regulations.

## **6. WHAT IS THE ARBITRATION HEARING?**

The arbitration "Hearing" is an informal meeting which the Arbitrator chairs and organizes as he and the parties determine. Parties are expected to be courteous and respectful. Displays of anger and rudeness will usually have a negative influence on the arbitrator. Though not a "court" proceeding, commonly it is conducted as follows:

- I. Arbitrator receives jointly presented or agreed upon issues and exhibits.
- II. Opening statements of the parties.
- III. Case Presentation of Moving Party
- IV. Case Presentation of Respondent.
- V. Closing Statements of Parties

Case presentation normally involves presentation by a single advocate of exhibits (documents) and witnesses. Each Witness called will first be questioned by the party's advocate who called him/her (direct examination) and then questioned by the opposing party's advocate (cross examination). After cross examination of a witness, the advocate who called the witness may question again (re-direct), and after re-direct, the opposing party may again ask questions (re-cross), and so on till the advocates are satisfied there is nothing more to ask.

## **7. WHAT IS THE "AWARD"?**

After the record is closed, either at the hearing or after post-hearing briefs have been submitted to the arbitrator, the arbitrator must issue a decision, usually within 30 days. The Award is the remedy or corrective action that the arbitrator decides is appropriate. Awards in arbitration are based on compensatory damages which seek to "make the grievant whole," in other words, restore to the grievant the rights and benefits that should have and would have been enjoyed if the contract had not been violated in the first place. The remedy may be negotiated during the grievance procedure, but it is the responsibility of the moving party to compose the initial wording.

## **8. CAN MANAGEMENT REFUSE TO ACCEPT THE ARBITRATOR'S DECISION?**

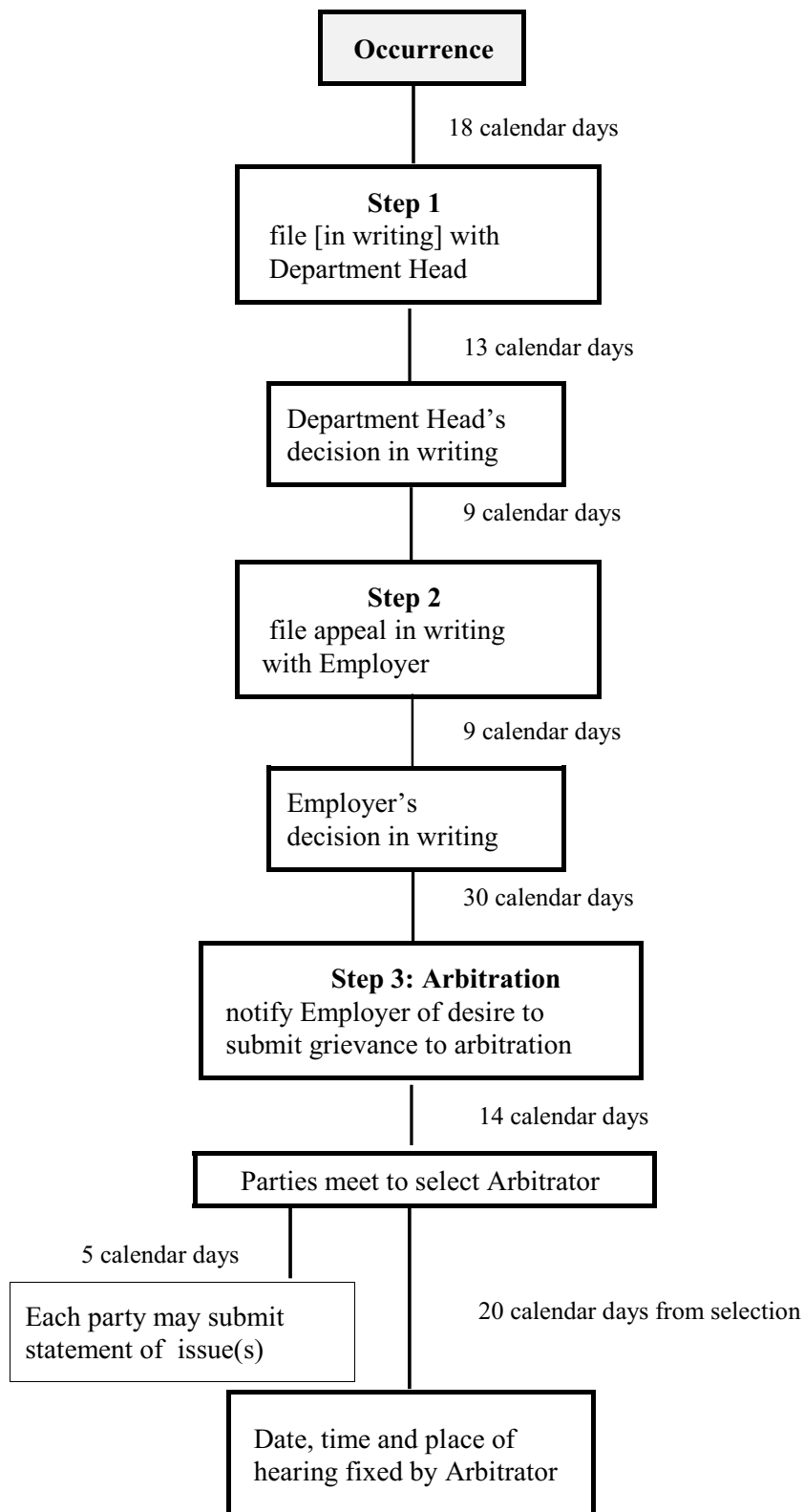
The arbitrator's award is final and binding on labor and management. The union can apply to the courts for enforcement of the award.

## **9. CAN AN ARBITRATOR'S AWARD BE APPEALED?**

Either party can appeal to the courts to overturn an award on the grounds that the Arbitrator grossly abused the trust of the parties. The courts, however, are unlikely to disturb an arbitrator's decision unless it can be shown that the award did not draw its essence from the contract; the arbitrator exceeded the scope of the issues submitted; or the award runs counter to public policy. Awards are rarely overturned just because another conclusion might have been reached.

## UPW, Unit 1 Grievance Procedure

### Flow Chart of Steps:



## **CLEAR RULES OF THUMB FOR HANDLING GRIEVANCES**

Grievance investigation is the search for the provable facts that can add up to reveal the truth of the grievant's story to an arbitrator who isn't a party to the grievance.

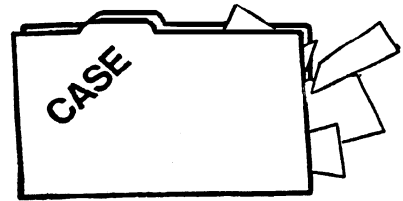
1. Beware of "self-help remedies." Don't add a charge of insubordination onto your grievance. If you think management is wrong and is violating your contract:  
a) Inform him/her of the contract violation; b) Request union representation immediately; c) Request the order be provided in writing or in front of reliable witnesses; d) But, unless your health and safety are being clearly endangered, **DO IT AND GRIEVE LATER**. Otherwise you may be charged with insubordination. The arbitrator may agree that your contract was violated but rule against you because you refused the order and were, therefore, insubordinate.
2. Don't delay. If you wait or put off your investigation, the trail of facts will get colder and may even be lost in people's memories or old filing cabinets. The best time to get evidence is the soonest time. The labor contract sets time limits for filing at each step. *Know your contract's time limits!* Good investigation takes time; get started right away.
3. Listen carefully to the people you are interviewing. Be careful not to put your own facts into their story. As you are taking notes, occasionally stop and repeat key portions of the story back to check that you're getting the story straight. If the person you are talking to is highly emotional or under stress, get back to them again and check the details over with them when they are less agitated.
4. Because no one lives forever and memories naturally tend to fade or color with age, write everything out. Open a file on each grievance right at the start, and keep thorough notes that someone else can read (no shorthand). Ask each witness and your grievant to write out their versions of the story even after you have heard them tell it all to you orally. Keep track in your record of the date, time and place of all your interviews, meetings, and phone calls.
5. Work together; stick together! Keep your grievant(s) and other affected members informed of your actions and progress. While on the one hand, it is important in some cases to respect the privacy of an aggrieved member, there will often be times when the grievance is a group or class action case that affects many if not all of your workforce. Educate, inform & involve your members as appropriate. Avoid even the appearance of backroom deals.
6. Look for the facts! Everyone will have an opinion, so don't confuse opinion with fact. Ask the 5 W's: Who? What? When? Where? and Why? You'll find it a lot easier to get different opinions of "Why" from people than the Who, What, When, and Where. If you ask a question and don't get the information you are looking for, ask again; for example if you get, "John is always late." That is

really an opinion. You need to ask for exact days and times and ask about the accuracy of the record, etc. Press and probe. Follow each question with another question till you're sure you really have a clear picture of what happened.

7. Courtroom trials developed rules to protect inexperienced juries from being misled by crafty lawyers, but in grievance and arbitration hearings there are no juries, so the hearing officers and arbitrators will accept a lot of evidence and testimony that a judge would not allow a jury to hear. Don't make the mistake of rejecting evidence or not bothering to document evidence that you think won't be accepted. Collect everything that supports your case; the question of its acceptability can be decided by the arbitrator.

## **DOCUMENTATION**

1. ***Cover Sheet***
2. ***Telephone (Contact) Log***
3. ***Copies of all Forms & Letters  
-sent or received***
4. ***Contents of Official Personnel Files  
-with inspection dates***
5. ***Seniority Lists***
6. ***Statements of Witnesses***
7. ***Photographs, Maps, Diagrams***
8. ***Calendar -chronology***



## THE RIGHT TO INFORMATION

Grievance handling falls generally into the same category as bargaining as far as the law is concerned. Under the equality doctrine, stewards and union representatives are expected to deal with management as equals in grievance processing.

In *NLRB v Acme Industrial Company* (385 U.S. 432, 64 LRRM 2069, 1967) the U.S. Supreme Court ruled that employers must supply information needed by unions to process grievances. It is clearly an Unfair Labor Practice for an employer to deny the union this right. The Hawai'i Labor Relations Board has similarly held that failure of the employer to provide relevant information needed to investigate and process a grievance violates the applicable contract pertaining to the grievance process and constitutes a "prohibited practice" (*United Public Workers*, Order no. 1405, Case No. CE-10-331 and *United Public Workers*, Order No. 1406, Case No. CE-10-332).

As a steward, you have a right to request the following types of information including disclosure of documents, factual information, data: Information necessary to...

- ✓ Monitor compliance with the contract;
- ✓ investigate whether a grievance exists;
- ✓ Prepare for a grievance meeting;
- ✓ Decide whether to drop a grievance or move it forward;
- ✓ Prepare for an arbitration hearing.

Privacy or confidentiality is rarely an acceptable excuse in the eyes of the law. So far only medical records, psychological data, and aptitude tests have been ruled to be too confidential/private for the employer to release. Personnel files, however, are not above the union's right to access if they are relevant to the grievance being investigated. For State & County workers, section 16.5 of HRS §89, specifically provides that the union as exclusive representative "shall be allowed access to an employee's personal records which are relevant to the investigation or processing of a grievance."

Section 16.6 of HRS §89 further requires the employer to disclose upon written request basic pay rates; types and effective dates of personnel actions that effect pay rates, employees' range and step assignment on the salary schedule and other similar data.

Information requests must be made in good faith, ie. for the reasons listed above. And, requests should be submitted in writing.

The NLRB has also ruled that the employer must bear the cost of supplying the union information unless it can show that "substantial" costs are involved [266 NLRB 890, 113 LRRM 1057 (1983)].

*Note:* A good resource and reference for union stewards, especially those covered by the National Labor Relations Act, is the book *The Legal Rights of Union Stewards*, 3rd ed. by Robert M. Schwartz (1999, 199 pages). A Copy of this book may be obtained by sending \$12.95 plus \$3.00 to: Work Rights Press • Box 391066 • Cambridge, MA 02139. (Phone 1-800-576-4552)

## ADVANCE PREPARATION

The arbitrator will hold one, or if necessary, several hearings to get the facts of the case and the positions of the parties. Unless the parties have agreed on special formal rules, procedure at the hearing will be determined by the arbitrator (or chairperson of the arbitration board). Normally it will be quite informal.

Some of the elementary rules of preparation for the hearing are almost self-evident, but they are worth noting as a convenient checklist.

1. Reexamine the fundamental facts of the grievance. Decide which are in dispute, for these must be proven through witnesses, documents or other evidence. Check the contract clauses which may be applicable. Review the discussions and records of the case in the grievance procedure. Gather any material which should be given or shown to the arbitrator.
2. Get all the facts. Do not ignore unfavorable facts in preparing your case. By acknowledging them in advance you will be able to verify their accuracy, recognize their limitations, and evaluate their effect on the case, instead of being "surprised" and unprepared when they are suddenly raised before the arbitrator.
3. Review past practice, what happened in similar situations, what positions were presented. Check for any background information which may provide perspective for the arbitrator.
4. Working conditions -- if the case hinges on the duties of a job or the physical surroundings of a work place, examine them yourself to be personally familiar with them. Consider asking the arbitrator to visit the work place.
5. Arrange for witnesses to verify the facts at the hearing. The arbitrator is not familiar with the case and must be informed of all the details. In most cases, it is advisable to attempt to do so through the witnesses.
6. Review your reasoning -- how the union interprets the facts and their significance. Decide what you will emphasize and how you can present it most effectively to persuade the arbitrator to accept your viewpoint.
7. Prepare an outline of the evidence you will offer and the points you will stress. In addition, put into writing, for your own use, all aspects of the case. This will ensure that no significant point is neglected in the preparation or forgotten during the hearing.
8. Anticipate management's points. Allow for the employer's views so that you will be able to respond to and/or counteract them as necessary before the arbitrator. The discussions during the efforts to settle the grievance will usually indicate what the employer is likely to contend. Judge which are the weaker points in the union's presentation. Plan your reaction to criticism of the union's views, so that you will be ready not only to defend but to substantiate your position as well.

9. Check other arbitration rulings on similar grievance cases. If possible, examine also the decisions which have been made by your arbitrator in other cases. What kind of reasoning or evidence had been most persuasive to him or her in the past?
10. Consult other representatives of the union. Use the written outline noted in Point Seven above as a basis for stimulating their thoughts. Talking the case over with them will usually reveal some valuable viewpoints and recommendations on items which may have been either overlooked or inadequately covered. The cross-exchange in such consultation often provides a helpful preview of the questions which might arise in the arbitration hearing.
11. Brief any witness who is to take a major part in the presentation of the case to the arbitrator on all aspects of the case. Be sure that no one who is participating in the presentation is only half-prepared. Any indications that s/he may be unfamiliar with the basic elements of the dispute can be detrimental to the management's case.

### SELECTING WITNESSES

It is common to establish many of the facts in a case through the testimony of witnesses. Where there is a choice, select your witnesses carefully and attempt to avoid using any whose manner may prejudice your case. Try to choose those who can speak from direct observation or experience so that their testimony stands as more than hearsay.

Should you use only one, a few, or several witnesses on a particular point? While it is true that, a long array of witnesses may reinforce the point, it is also likely that many witnesses may negate the value of each other's testimony. It is usually preferable to select a few, well-qualified witnesses to testify on the point(s) in dispute.

### PREPARING WITNESSES

Interview your witnesses in advance. Let them become familiar with the questions they are liable to be asked. It is a good idea to jot down some summary of what they will say so that you will know just what their testimony will be.

Don't arrange the advance discussions into a formal rehearsal, however, and don't ask witnesses to memorize statements. All you ordinarily need do is review approximately whatever they have to say.

Be sure that your witnesses are not withholding from you any information which they believe may be detrimental - to the case. A sudden disclosure through cross-examination in the hearing may turn a case around. It is best that your representatives are fully prepared with knowledge of all aspects of the case, good and bad, to enable the evaluation necessary for the most advantageous result.

For those witnesses who may be apprehensive about participating in an arbitration/ put them at ease by describing what the hearing will be like. They should understand in advance that they will be subject to questioning by union representatives at the hearing.

There is nothing improper or unlawful about preparing witnesses, as long as you are preparing them to offer accurate and truthful testimony.

## **General Rules, Preparation for Arbitration and Hearing Procedure**

by Dr. Clarence M. Updegraff

The following material by Dr. Clarence Updegraff is adapted from a bulletin published by the Bureau of Labor and Management, State University of Iowa, Iowa City, Iowa.

1. When selecting an impartial arbitrator or chairperson, look for intelligence, honesty, experience and courage. The broader the arbitrator's background of knowledge, the more likely s/he is to understand your case fully and to decide it fairly.
2. Try to get, as early as possible, a complete understanding of the opposite party's evidence and contentions. This will at least tend to prevent your being "surprised" at the hearing and may even lead to a settlement.
3. Avoid being so steeped and stubborn in your own feelings about the dispute that you cannot see the possible merits of your opponent's position. You can't defeat their contentions if you refuse to understand them.
4. Remember that fixing a time and place for a hearing requires commitments from numerous people. Be as considerate of the others as they should be of you in adapting other work to arrange attendance at the hearing. After the date is fixed, do not try to change it.
5. Make a thorough, searching examination of the testimony of your own witnesses well before the hearing. Make a brief, logical summary of their evidence and write a preliminary statement of the contentions you will make at the hearing. This will aid you in planning a complete, well organized, and persuasive presentation of your position.
6. Be sure that all of the people who will be in your group at the hearing know the principal speaker for your side, the witnesses, and the substance of their testimony. This will contribute to making the hearing more orderly and efficient.
7. Try to agree with the opposing party as to wording the exact question(s) to be submitted to the arbitrator and prepare a written memorandum stating the same signed by both parties prior to the date of the hearing. Deliver a copy to the arbitrator as soon as it is ready, or offer it at the beginning of the hearing.
8. If there are several issues to be submitted, try to agree with all other parties in advance on the order in which they will be presented at the hearing.
9. Write a brief pre-hearing summary of your contentions and deliver one copy of it to the arbitrator and one copy to your opponent either before or at the beginning of the hearing. If possible, arrange with the opposition for both parties to do this at the same time.
10. Have copies of all documents which you desire to present as evidence ready for delivery at the hearing. Include at least one copy of each for your opponent unless you know s/he has copies already.

11. If a view of a place, a machine or an operation would seem to be helpful, have a photograph, drawing or blueprint of it ready for introduction in evidence or arrange in advance that it will be available for observation and for the arbitrator to see it during the hearing so that as little time as possible will be required.
12. Be on time, or early if at all possible, in arriving at the place designated for the hearing. Tardiness is not only discourteous, but also wastes the time of others and creates a generally poor impression.
13. Do not shout or speak louder than necessary at the hearing. Never use provocative words or epithets. These actions create poor impressions of those guilty of them, and in fact cloud rather than clarify issues.
14. During the hearing, do not mention or refer to former frictions or acts of misconduct by your opponent which were settled long ago unless these matters are clearly relevant to the issue presently in dispute.
15. Strive for clarity and coherence in your oral presentation, avoid repetition as much as possible; if one of your colleagues has already stated facts or arguments, avoid restating same.
16. Avoid mixing of facts and arguments in your presentation. The effect of this is confusing and may only result in weakening your own case.
17. Do not interrupt statements of the opposing party or the presentation of its evidence. You will be given ample opportunity to cross-examine opposing witnesses. You and your witnesses will be protected from interruption. This is an arbitration hearing, not an informal grievance committee meeting or bargaining conference.
18. If you intend to call witnesses, have them present in the room or in an adjacent room ready for call when the hearing begins. (If they are employed near the hearing room, they may remain at work, but they should be notified in advance that they may be called and should be requested not to leave the area, even though their work shift may end before they are needed as witnesses.)
19. Prove your case by your own witnesses. Do not try to establish it by evidence gleaned from people put on the stand by your opponent. They are there to oppose you, not help you.
20. If you cross-examine the other party's witnesses, make it short. Do not unduly prolong cross-examination in attempts to get damaging admissions. The more questions you ask on cross-examination, the more opportunity you allow a hostile witness to repeat the adverse testimony s/he came to present. Choose most carefully the inquiries you make of such parties and make them as few as possible.
21. Each party has the right to ask leading questions when cross-examining hostile witnesses. Each party should save time by asking its own witnesses leading questions, excepting at points where disputed facts are involved. Testimony on controverted matters should be brought out by questions which do not suggest the answer, if possible.

22. Do not make captious, whimsical, or unnecessary objections to testimony or arguments of the other party. Such interruptions are likely to waste time and confuse issues. The arbitrator will no doubt realize without having the matter expressly mentioned more than once, when s/he is hearing weak testimony such as hearsay or immaterial and irrelevant statements.
23. If you have extraordinarily lengthy or extremely technical matters to present, or if you wish for any reason to preserve a reliable record of the hearing, make advance provision for the attendance at the hearing of an efficient public court reporter. This involves a moderate expense, which in most cases is equally divided between the parties. It will tend to insure that when the arbitrator is working on the award and reviewing the evidence, s/he will have it all before him or her and will not be hampered by the limitations of the human memory.
24. If one party requests the privilege of filing a post-hearing brief, it must be granted, as part of a "fair hearing." Both parties, however, should be given equal time, which should be limited to a comparatively short period of a week or two after the hearing or after the reporter's transcript is received. If reply briefs are agreed upon, they should follow within three or four days after the delivery of the post-hearing briefs. It is customary in these situations for the parties to mail briefs to the arbitrator and to opponents at the same time. Many arbitrations are closed without post-hearing briefs, but they are desirable if the written statement prepared for the arbitrator prior to the hearing was incomplete, or if, in the light of matters which develop at the hearing, it should be for any reason supplemented.
25. After you receive it, read the entire award, not merely the result. Try to give your constituents and associates an accurate, comprehensive understanding of the arbitrator's reasoning. Only in this way can you get the full value of the decision whether it was in your favor or against you. The logic of the prior decision often indicates clearly whether the next dispute should be taken to arbitration because it is distinguishable, or dropped because it is similar to the previous case.
26. If there is any question in your mind as to the expenses of arbitration, ask the arbitrator about it at the earliest possible time.

### ***Maintaining the Right Tone.***

The atmosphere of the hearing often reflects the relationship between the parties. While the chief purpose of the arbitration hearing is the determination of the particular grievance, a collateral purpose of improving that relationship may also be achieved by skillful and friendly conduct of the parties. Thus, a better general understanding between the parties may be a by-product of the arbitration. To this end, the parties should enter the hearing room with the intention of conducting themselves in an objective and dignified manner. The arbitration hearing should be informal enough for effective communication, but without loss of that basic sense of order that is essential in every forum of adjudication.

The hearing is no place for emotional outbursts, long speeches with only vague relevancy to the issue, for bitter, caustic remarks, or personal invective. Apart from their long-run adverse effect on the basic relationship between the parties, such immoderate tactics are unlikely to impress or persuade an arbitrator. Similarly, over-technical and over-legalistic approaches are not helpful.

A party has every right to object to evidence he considers irrelevant, as the arbitrator should not be burdened with a mass of material that has little or no bearing on the issue. But objections made merely for the sake of objecting often have an adverse effect, and they may give the arbitrator the impression that one simply fears to have the other side heard.

## **SELECTING AN ARBITRATOR**

[adapted From "Arbitration: Last Stop on the Grievance Route" by Tim Bornstein, Associate Prof. Univ of Mass.]

When parties are new to arbitration, they often have excessive fears of the process. If they are careful to choose an experienced, fair-minded arbitrator, they can be secure in the knowledge that his decision will be fair.

How can the qualifications of arbitrators be compared? What criteria are important in making the selection? How can reliable information about arbitrators be secured?

### **Referral Agencies**

Most collective agreements provide that an arbitrator will be selected jointly by the parties from a panel of arbitrators submitted by either of the major arbitration referral agencies, the American Arbitration Association, the Federal Mediation and Conciliation Service, or the Hawai'i Labor Relations Board. Under such provisions, the union normally initiates arbitration by writing to one of these referral agencies and requesting that a panel of arbitrators be supplied. The agency will respond by submitting a list of seven arbitrators. Each party is entitled to strike the names of unacceptable arbitrators and to rank the remaining names in the order of preference. Based on the parties' responses, the referral agency will designate one arbitrator who has been identified by both parties as acceptable and who has been ranked highest in preference.

With the panels submitted to the parties, the referral agency will attach a brief biographical sketch of each arbitrator. These sketches usually include only the barest facts about the arbitrator: his age, education, profession, experience, and per diem charges. This information is insufficient as the basis for making a well informed choice. Accordingly, experienced parties will seek out other sources of information about arbitrators: The opinion of parties who have dealt with them in the past; their published works; their published and unpublished arbitration decisions; and evaluations of their work and reputation by firms which specialize in selling such evaluations to employers. At best the selection process is notoriously haphazard and unscientific. For example, when one consults others who have dealt with a particular arbitrator, one should beware of extravagant praise of an arbitrator who has ruled in a party's favor in only one case and extravagant condemnation of an arbitrator who has ruled against a party in a single case.

### **Selection Criteria**

It is usually wise to choose an experienced over an inexperienced arbitrator for significant cases on the assumption trial experience tests, refines and improves an arbitrator's judgement. Moreover, experience in public sector arbitration may help assure that the arbitrator will have realistic grasp of the unique characteristics of public employment issues.

Impartiality is of course an essential qualification in an arbitrator. Impartiality, like virtue, is not to be taken on faith but is earned through one's actions. Thus, the only sensible way to determine an arbitrator's impartiality is to seek out his reputation among those who are familiar with it.

### ***ad hoc* Arbitrator**

Most arbitration cases are decided by an arbitrator whom the parties have chosen to hear only a single Case. This is called *ad hoc* arbitration for the reason that the parties may or may not wish to call upon the same arbitrator in the future. They may decide to select a new arbitrator for each case that arises.

### **Permanent Umpire**

By contrast to the *ad hoc* system, some employers and unions --especially those who are likely to have a number of arbitration cases each year-- prefer to establish an ongoing relationship with a single arbitrator to hear all of their cases. This is called the "permanent umpire" system. The word "permanent" is inaccurate, however, for he normally is permanent only as long as both parties are satisfied with his services. The permanent umpireship system offers advantages to parties who have a number of cases each year: A permanent, arbitrator will inevitably have a better understanding of the parties, their needs and their contract than an *ad hoc* arbitrator. Because he has committed himself to the parties, the permanent arbitrator will always be available to them on short notice, whereas it sometimes is not easy to identify a suitable *ad hoc* arbitrator who can hear a case on short notice. And a permanent arbitrator often can be helpful to the parties in strengthening their relationship and improving their understanding of each other. Sometimes, for example, he can work informally with the parties to help them resolve particularly sensitive, non-arbitration issues.

And a word about arbitrators' fees. According to Federal Mediation and Conciliation Service (FMCS) statistics, the average dollar amounts for each arbitration case during FY 2002 are as follows:

|               |             |
|---------------|-------------|
| Per Diem Rate | \$ 720.75   |
| Fee           | 2,884.46    |
| Expenses      | 318.03      |
| Total Charge  | \$ 3,202.49 |

FMCS statistics show the following as average days based on all awards rendered in FY 2002:

|              |      |
|--------------|------|
| Hearing Time | 1.09 |
| Travel Time  | .45  |
| Study Time   | 2.44 |
| Total Time   | 3.98 |

Because arbitrators set their own fees, it cannot be assumed that the arbitrator who charges the most is necessarily the best. On the contrary, he may simply have an inflated sense of his own importance or he may be especially mercenary.

By long standing custom most labor agreements provide that the arbitrator's fees and expenses will be shared by the parties equally. It is also customary for each party to bear its own expenses for lawyers and witnesses.