

Instructions To Witnesses in Arbitration Hearings

Reason for Hearing

The Union has claimed that the Employer has violated the collective bargaining agreement. The grievance has not been resolved to the Union's satisfaction at the lower steps of the grievance procedure and is now being appealed to the final step of the grievance procedure — arbitration. The case will be heard by an impartial arbitrator whose decision will be final and binding. The Employer believes that it has not violated the contract and will try to prove this to the Arbitrator. You may be called as a witness for the Union and have a very important job to do. At the hearing, it will be your job to answer questions asked by the Union, the Employer, and the Arbitrator regarding the facts which are relevant to the dispute.

Nature of Proceeding

The Arbitrator acts as both the judge and the jury of the case. It is the Union's job to prove that the facts supporting the Union's position are presented to the Arbitrator and that he fully understands them.

The hearing usually begins with an opening statement and the testimony of witnesses called by the Union. In disciplinary cases, the procedure is reversed and the Employer proceeds first.

As a witness you will first be asked questions (direct examination) by the Union representative. Then the Employer representative will ask you questions (cross-examination) to test the strength of your testimony.

The Union representative will then be given the chance to ask further questions (re-direct examination) as will the Employer representative (recross-examination). During your testimony, you may also be questioned by the Arbitrator. The hearing usually ends with a closing statement by the Union and Employer representatives.

Preparation for the Hearing

Shortly before the hearing date you will be interviewed by the Union representative who will be in charge of presenting the case. He or she will review with you the record of the case, statements made by you and other persons, and any knowledge you have pertinent to the case. He will discuss with you the contentions of both parties and the matters to be covered in your testimony. These will be matters in which you have personal knowledge. He will tell you how your testimony fits in with the Union's case and what you can expect in the way of questions or tactics from the Employer. He will not tell you what to say. It will be up to you to review your knowledge of the facts so that you can answer without hesitation and accurately.

You may ask the Union representative any questions you may have concerning your testimony or on any other matter concerning the arbitration.

Appearance and Manner as a Witness

- a. DRESS SENSIBLY. Don't try to be impressive in this respect.
- b. SPEAK DISTINCTLY and loud enough so that the Arbitrator and the court reporter, if present, can hear you.
- c. Direct: your testimony to the Arbitrator. He is the one who must be convinced.
- d. DO NOT MEMORIZE ANSWERS. It never sounds convincing. Just be natural and sincere.

- e. BE SERIOUS. Normal pleasantries are expected, but decorum must be observed in the hearing room and during recesses.
- f. AVOID DISPLAYS OF ANGER, SARCASM, DISCOURTESY, EVASIVENESS. You are at the hearing to give the arbitrator the facts, not emotions.
- g. BE PROMPT in arriving at the place of hearing at the beginning and after each recess.
- h. WHEN YOU ARE THROUGH TESTIFYING, WEAR A CONFIDENT EXPRESSION, return to your seat and remain until excused by the Union representative.
- i. Arrangements will be made for you to be present for the entire proceeding. This will permit you to hear the testimony of all of the witnesses and the Employer's arguments and assure your availability in the event it is necessary to recall, you as a witness.

In Answering Questions

- a. TELL THE TRUTH and tell it as briefly and clearly as you can.
DO NOT EXAGGERATE or be dramatic. Simple answers to the point are much more persuasive.
Avoid, if possible, the use of technical shop terms.
If you must use such terms to clarify a certain point, be sure to briefly define what you mean.
- b. DON'T ANSWER UNLESS YOU THOROUGHLY UNDERSTAND THE QUESTION.
Ask to have the question rephrased or clarified.
- c. THINK before answering, especially on cross-examination and when answering an arbitrator's questions. Take your time. Don't be rushed into answering hastily.
- d. DON'T VOLUNTEER INFORMATION. Answer only what is asked then stop. If an explanation is needed, you will be asked to explain.
- e. If you don't know the answer to a question when you are sure you understand the question, say, "I don't know." No other answer will do as well. Too many witnesses try to guess answers they don't know. They involve themselves in rambling speculations and sometimes lose a good case for their organization.
- f. If you don't remember the facts well enough, don't hesitate to say, "I do not remember," if that is the truth. You may refer to your notes to refresh your memory if necessary. In many cases, the party questioning you will have records and other memorandum which may be used to supplement or revive your memory.

If you are sure of a fact, do not say, "I think..." or "I believe..." say, "I remember..."

Don't say, "That's all of the conversation" or "That's all that happened" unless you are positive there was nothing else. You may have forgotten some detail. If not positive, say "That's all I can remember." After further questioning or more thought you may recall something important.

- g. If you give a wrong or misleading answer by mistake, say so and correct your answer.
- h. STOP TALKING IMMEDIATELY if the Employer's representative starts to interrupt your testimony.

Special Notes for Cross-Examination

The purpose of cross-examination is to test your honesty and your ability to observe, recall, and report facts accurately. In addition, the Employer hopes to draw out additional dates to support its position. Therefore, the Employer, during cross-examination, will try to shake your testimony—this is his/her job— but if your answers have been accurate and truthful, it will not be possible to discredit your testimony. Therefore:

- a. DO NOT LOSE YOUR TEMPER OR BECOME UPSET, even if the cross-examiner becomes obnoxious and is baiting you. Testifying for a long time is tiring and some cross-examiners will try to wear you down so that you will give careless answers or lose your temper. You will do your side the best service by remaining cool, clear, and in control.
- b. DON'T ARGUE with the cross-examiner. Remember that your job is to testify only to facts. Any arguments to be made will be made by the Union representative.
- c. In answering a question, you are mostly on your own. Therefore, think, understand, and then answer the question deliberately, if the question is improper or the cross-examiner is harassing you, the Union representative will object but he cannot coach you.
- d. IF THE UNION REPRESENTATIVE OBJECTS, stop talking immediately and remain silent until the Union representative tells you to continue.
- e. DO NOT BE MISLED. Don't let a cross-examiner get you to make a "Yes" or "No" answer unless it is correct. If you are sure the answer must be qualified, give your reply accordingly and firmly state that you do not believe that the "Yes" or "No" will be a truthful statement.

If you are asked, "Didn't you say..." or "You testified that..." do not answer "Yes" or agree that this was your testimony unless the question contains your exact words. Your usual answer should be, "What I said was..."

- f. If you are asked whether you have talked over your testimony with the Union representative, answer truthfully. You are expected to do this. Otherwise, you would not be offered as a witness.
- g. If you are asked whether you are being paid for the time you are acting as a witness, tell the truth. Such conduct is proper, but it can be made to seem reprehensible if falsely denied.
- h. Don't talk to opposing parties before the hearing about, your intended testimony. This forewarns them and may, with or without justification, open you to a charge that as a witness you have contradicted the statements you made in the careless pre-hearing conversations.