



How Cases Are Won (or Lost) in the Preparation



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How Cases Are Won (or Lost) in the Preparation

- Review Collective Bargaining Agreement
 - Definition of Grievance
 - Past practice
 - Who can grieve
 - Arbitrability
 - Substantive
 - Management Rights
 - Just Cause
 - Consequences
 - Procedural
 - Requirements in Grievance
 - Timeliness
 - Consequences
 - Grievance Processing
- Witness Preparation
 - Group meeting with witnesses
 - 90/60/30/1
- Theory of the Case
 - Simple
 - Opening Statement
 - Show Why Deserve & How Win
 - Issue Statement
- Witness Examination
 - Direct
 - Cross

Review CBA

- Definition of Grievance

***IT IS NOW TIME
FOR THE AIRING
OF GRIEVANCES***

Review CBA

Grievance Definition

“A grievance shall be defined as a claim by the Employer, Union, or employee(s) that the terms of this Agreement have been violated or that there is a question concerning the proper application or interpretation of this Agreement.”

“A grievance is defined as a dispute between the parties concerning the meaning, violation and/or interpretation of a specific provision of this written Agreement.”

Review CBA

- Grievant



Review CBA

Who May Grieve

“A grievance shall be defined as a claim by the Employer, Union, or employee(s) that the terms of this Agreement have been violated or that there is a question concerning the proper application or interpretation of this Agreement.”

“In the event an employee, group of employees, or the union, has a dispute or complaint regarding the interpretation or application of any provision of this agreement, such matters will be adjusted according to the grievance procedure.”

Review CBA

- Arbitrability
 - Substantive
 - Procedural



Review CBA

Substantive Arbitrability

“Unless otherwise expressly limited by the terms of this Agreement, the exercise of any management prerogative, function, or right is not subject to the Grievance Procedure and Arbitration, and is not within the jurisdiction of any arbitrator.”

Review CBA

Modified Just Cause

“In grievances involving the discipline or discharge of any employee, the arbitrator's jurisdiction and authority shall be limited to deciding whether the employee committed the offense for which the discipline or discharge was imposed and/or whether the Employer followed the steps of discipline set forth in Section 21.2. If the arbitrator decides that the employee did commit the offense and/or that the Employer followed the steps of progressive discipline set forth above, if required, the arbitrator shall deny the grievance and shall have no authority to alter, modify, or rescind the discipline or discharge imposed by the Employer. The arbitrator shall not substitute his own judgment for that of the Employer.”

Review CBA

- Consequences of substantive arbitrability limitation

Review CBA

Procedural Requirements

“Grievances shall be reduced to writing by the Union or the employee involved and shall contain a statement, setting forth the nature of the grievance and the violation claimed.”

“Grievances must be processed within ten (10) workdays from the occurrence, or the employee’s reasonable first knowledge thereof. The grievance shall be reduced to writing and signed by the aggrieved employee and include the following information:

1. A statement of the grievance and the facts upon which it is based;
2. The remedial action requested;
3. The section of this Agreement to which the grievance relates.”

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Review CBA

- Consequences of Procedural Arbitrability Limits
 - If the Union fails to file or process the grievance within the time limits outlined in this Article, the grievance will be deemed withdrawn and forfeit. The grievance may not be processed further.



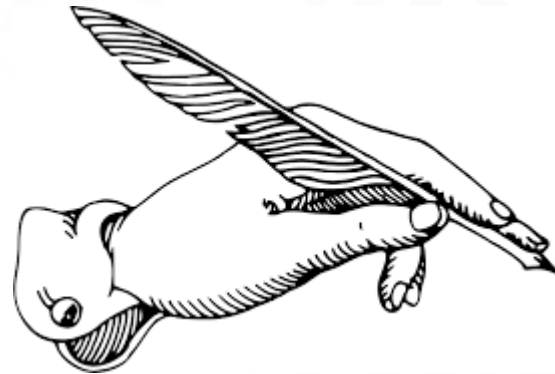
Grievance Processing

Grievance Processing: Grievance Meetings

- Never Ever Skip Steps
- Grievances have a tendency to “morph” at arbitration
 - An arbitrator may only decide issues raised during the grievance process.
 - *Univ. of Chicago Med. Ctr.*, 128 LA 1578, 1586 (Finkin, 2011).
- Have a designated note-taker at the meeting
 - We now have a record of what the parties discussed during the grievance process
- Maintain all notes from grievance meetings and mediations as part of the comprehensive case file

Grievance Processing: Drafting Grievance Responses

- Always send a written grievance response after the meeting.
- Preserve arbitrability arguments:
 - Procedural: untimely filing/processing
 - Substantive: subjects outside the arbitrator's jurisdiction
- Even if making arbitrability arguments, respond to the merits of the grievance



Arbitration Preparation

Arbitration Preparation

- Witness Preparation
 - Group meeting with witnesses
 - 90/60/30/1
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 - Show Why Deserve & How Win
 - Issue Statement
- Witness Examination
 - Direct
 - Listen
 - Arbitrator listen?
 - Cross
 - Just don't

QUESTIONS?



THANKS

For Joining Us



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