The Arbitration-Ready Grievance

Or

HOW TO MAKE YOUR BUSINESS AGENT HAPPY

Dispute Resolution

There Are Several Methods of Resolving Disputes

- Ignore the Dispute
  - Simply do nothing about a controversy
  - Hope the problem goes away
- In the workplace
  - This might be appropriate to insignificant rules changes
    - For example, when management says employees are taking too long on breaks and issues an order that breaks must be no more than 10 minutes
  - This type of rules change is usually short-lived
  - The less said, the better

Dispute Resolution

There Are Several Methods of Resolving Disputes

- Acquiesce or "Give In"
  - This allows the other party in the dispute to prevail
- In the workplace
  - We all know that sometimes management takes action that gives rise to complaints
  - Some of management's actions, however, are fully within management's rights
    - For example, management decides to change supervisor assignments

Dispute Resolution

There Are Several Methods of Resolving Disputes

- Overwhelm the Opposition
  - The worst possible method here would be violence
  - Also may occur in employment disputes as a lock-out or a strike
  - Generally, this is any method that brings about forced submission of the other party

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Dispute Resolution

There Are Several Methods of Resolving Disputes

- Change the Rules
  - Whether a dispute exists depends upon governing principles of one sort or another
  - Changing those principles or the underlying base effectively eliminates the dispute
    - For example, a labor strike has on some occasions been settled by an "act of Congress" -- literally

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Dispute Resolution

There Are Several Methods of Resolving Disputes

- Negotiation, Diplomacy, Persuasion
  - Methods of reasoning through dispute to a mutually acceptable resolution
  - Such a method was devised by the ancient Greeks to resolve land ownership disputes
    - It has been practiced and refined over centuries of use in Western cultures
    - This is commonly known as Argumentation

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Dispute Resolution

Argumentation

- Argumentation has formed the basis for resolving disputes in what is known as common law
- It is also the structure for most judicial proceedings
- It is the model on which our grievance procedure is structured

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Argumentation and the Grievance Procedure

Characteristics of Argumentation

- These characteristics give argumentation a structure that facilitates dispute resolution
  - The interested parties must
    - Agree to the method for resolving a dispute
    - Accept the possibility of being right or being wrong
    - Desire to reach resolution; and
    - Agree to cooperate in the development of the argument
  - Ultimately, the dispute may have to be decided by an outside party
    - This too must be agreed upon

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Argumentation and the Grievance Procedure

Characteristics of Argumentation

- Article 15 of the National Agreement
  - This is our agreed upon method of dispute resolution
  - The parties have committed to live by settlements
  - Section 4 clearly expresses the parties desire that grievances be resolved -- at the lowest step
  - Section 2 spells out in detail the agreement to cooperate in the development of each grievance at the various steps of the procedure
  - The parties have committed to "final and binding" arbitration for unresolved grievances

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Argumentation and the Grievance Procedure

Our Article 15 Commitment

- Article 15 places obligations on the parties
  - It is unequivocal in the parties' mutual commitment to cooperate in ***this*** process of dispute resolution
- The Service must fulfill its side of the obligations
- The Union must fulfill its side of the obligations
- The Union *must also* aggressively point to failures on the Service's part to live up to its obligations

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Argumentation and the Grievance Procedure

Our Article 15 Commitment

- It is not just a matter of obligation to follow the procedure
- Argumentation works well to resolve disputes
- Because the Article 15 Grievance Procedure is modeled after classic argumentation
  - Knowing how argumentation works enables the steward to make a better case
- Article 15 is about obligation, but it is also about skill in presenting the case

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Argumentation and the Grievance Procedure

Our Article 15 Commitment

- Understanding how this method of dispute resolution works is important to improving the stewards skills
- It is also important to improving the final content of the grievance package
- First, there are what we might call "rules of engagement"

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The Grievance Procedure

This Is Dispute Resolution

- Applying the "rules of engagement" in the grievance procedure
  - Not knowing the rules places a party at a disadvantage
  - Not following the rules can result in failure to carry the argument
  - Understanding the rules better equips the steward to *"do what we need to do"* with the case.

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The Grievance Procedure

Rules of Engagement

- Some rules are procedural –
  - Grievance procedure time limits
  - Use of standard, agreed upon forms for making appeals
  - Engagement in the process by properly identified participants
  - Methods of acquiring information
  - Federal laws on Union entitlements

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The Grievance Procedure

Rules of Engagement

- A violation of procedural rules
  - May lead to a pre-emptive resolution that does not involve the merits of the dispute
  - Such procedural violations of the process are generally referred to as *due process* violations
    - For example, the Service's failure to provide information requested by the Union may be fatal to its case
    - Or, the Union's failure to meet at Step 1 of the procedure may cause a forfeiture of the grievance

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The Grievance Procedure

Rules of Engagement

- Some rules are substantive –
- Ultimately, the sum total of a party's claims and evidence must lead to the *desired* resolution of the dispute
  - Relevant claims must support the *desired* resolution
  - Those claims must be supported by evidence
  - Evidence, sometimes, must be supported by proofs

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The Grievance Procedure

Rules of Engagement

- Substantive Rules
  - Every claim made must be defended if challenged by the other party
  - Every challenge to a claim (or to evidence) must be relevant to the original claim
    - For example, you cannot challenge the timeliness of a Maintenance Craft reversion by referring to Article 37
  - Neither party may advance a false premise nor deny a premise that would be an accepted starting point
    - Do not claim contract meaning it simply does not have
    - Do not dispute the obvious

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The Grievance Procedure

Rules of Engagement

- Substantive Rules
  - A failed defense of a claim must result in the party who advanced it retracting it; and a conclusive defense of a claim must result in retraction of the challenge
  - Neither party may deliberately make unclear, confusing, or ambiguous claims; and
  - Each party must interpret the other's assertions as carefully and as accurately as possible
  - This is what is meant by "bargaining in good faith"

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The Grievance Procedure

Rules of Engagement

- Violation of the substantive rules
  - Effects the quality of the argument of the case
  - Diminishes the likelihood of being successful in arguing and developing the case, especially if it ends up in arbitration
    - For example, if the Service fails to produce evidence to support claims of employee misconduct, the lack of evidence may prevent it from making proof
    - Or, the Union's failure to specify the appropriate part of a manual or handbook and to connect its provisions to the case could make it impossible to prove a violation

The Grievance Procedure

Bargaining in Good Faith

- Permeating every contract in the United States is the common law doctrine of good faith. As Restatement (second) Section 205 instructs, "Every contract imposes on each party a duty of good faith and fair dealing in its performance and its enforcement." By contrast, one scholar has maintained that behavior by a party that is "contrary to the other party's understanding of their contract, but not necessarily contrary to the agreement's explicit terms," is characterized as opportunism and not acting in good faith. (See, Muris, 65 Minnesota Law Review, 521 (1981)).

The Grievance Procedure

Bargaining in Good Faith

- The concept of good faith incorporates values of fairness and not only limits undesirable conduct but also may require affirmative action as well. In other words, the doctrine of good faith teaches that a party may be under a contractual duty not only to refrain from engaging in undesirable conduct such as subterfuge but also may be required to act affirmatively in an effort of cooperation to achieve the mutual goals of the parties' agreement.

The Grievance Procedure

Bargaining in Good Faith

- As the Court has stated in one example, "The promisee . . . must not only not hinder this promissor's performance; he must do whatever is necessary to enable him to perform." (See, Kehm Corporation, 93 F. Supp. 620 (1950)).
- [Carlton J. Snow, H7C-NA-C 96 and H0C-NA-C 6, May 20, 1993]

The Grievance Procedure

Competing Roles

- Also involved in the *rules of engagement* in this process is the assignment of the respective roles of the parties
- This may be viewed as a rule both procedural and substantive
- Its importance to how the dispute is developed cannot be overstated

The Grievance Procedure

Competing Roles

- One party has the *benefit of presumption* while the other party has the *burden of proof*
- The ability or inability to *make the case* is connected with and affected by the competing roles of the two participants in the process
  - In any given dispute neither of these roles will shift between the parties

Presumption and Burden of Proof

- *Presumption* benefits just one of the parties and is held by just one
  - Absent a controversy, *presumption* answers the question, "Who prevails?" or "Who's in charge?"
  - The party "in charge" is *presumed* to operate within the terms of the contract
  - The party with *presumption* controls the ground
  - The other party initiates the dispute
  - *Presumption* never shifts
  - *Presumption* must not be confused with being "right"

Presumption and Burden of Proof

- *Presumption* in the grievance-arbitration procedure
  - In "contract" cases, the Postal Service has the *benefit of presumption*
    - This means it is presumed the Postal Service acts within the limits of the contract
  - In discipline cases, the employee – and, thereby, the Union – has the *benefit of presumption*
    - This means the employee is presumed to fulfill his or her employee obligations – equivalent to *"presumed innocent until proven guilty"*

Presumption and Burden of Proof

- *Burden of Proof*
  - It is the opposite of the *benefit of presumption*
  - The *burden of proof* adheres to the initiator of the dispute – the *moving party*
    - That is, the party who starts the argument has the burden of proof -- the burden to overcome *presumption*
  - The ultimate *burden of proof* does not shift
  - It establishes the responsibility of the moving party to prevail in the argument of the case, in order to achieve its desired resolution
    - For the Union, sustaining of the grievance
    - For the Service, sustaining of the discipline

Presumption and Burden of Proof

- *Burden of Proof* in the grievance-arbitration procedure
  - Directly opposite *benefit of presumption* –
  - In "contract" cases, the Union has the burden of proof
    - This means the Union must, by appropriate claims and evidence, prove that the Service violated the contract
  - In discipline cases, the Postal Service has the burden of proof
    - This means the Service must, by appropriate charges and evidence, prove that it had *just cause* for the discipline

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Presumption and Burden of Proof

- *Burden of Proof* – mixed terms
  - The ultimate burden of proof is also known as the *burden of persuasion*
    - Probably because you are going to have to persuade **someone** -- either management or an arbitrator
  - Sometimes the term "burden of proof" is used to refer to the *burden of going forward*
    - This is not the ultimate burden of proof; however,
    - It is absolutely essential to understand its importance to the process

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Presumption and Burden of Proof

Advancing the Case

- The *Burden of Going Forward*
  - This is where the substantive rules of engagement come into play
  - Satisfy this burden at each point, your argument should prevail
  - Fail to carry this burden, you fail to advance the case
  - And the point you cede may be sufficiently important that you lose the whole case

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Presumption and Burden of Proof

Advancing the Case

- The *Burden of Going Forward*
- The first burden -- the *prima facie* case
  - Begins at Step 1
  - Step 2 Appeal formalizes the grievance
    - It must restate the *prima facie* case and make necessary proofs -- state all appropriate claims and offer evidence
    - For example, in a subcontracting grievance the Union's *prima facie* case is made upon proof that a contract was let and the work at issue was bargaining unit work
    - Or, in discipline the Service's *prima facie* case is made upon proof that charges reflect misconduct

Presumption and Burden of Proof

Advancing the Case

- The *Burden of Going Forward*
  - Requires proof of each claim made
  - Applies to each party as it advances its case (it "shifts")
  - Except as it pertains to making the *prima facie* case, it is also known as a burden of *rejoinder*
- Remember, it is each party's obligation to advance the argument
  - This is the obligation to address the other party's claims or risk failing to refute something that may decide the case

Presumption and Burden of Proof

Advancing the Case

- *Rejoinder* – a mutual obligation
  - The party holding *presumption* has the first burden of rejoinder, because the moving party initiates the dispute
  - The burden then shifts to the moving party to make appropriate rejoinder
  - Each such response creates a new focus on the claims, and dictates how the other party proceeds
    - That is, the response becomes more important in directing the argument than the original claims

Presumption and Burden of Proof

Advancing the Case

- *Rejoinder*
  - This burden shifts back and forth as the grievance advances
    - It is intended to keep the argument going forward to resolution
  - Simple repetition of a previously stated position is a failure
  - Each *rejoinder* is a claim or a collection of claims that require evidence in support

Presumption and Burden of Proof

Failing to Advance the Case

- *Rejoinder* – Risk of Failure
  - Ignoring or inadequately responding to a claim risks losing the argument and the case
    - If the claim that is ignored is sufficient, in itself, to lead to the desired resolution, the case may be lost simply on a failure of rejoinder
  - Example –
    - The Service claims a procedural defect of untimeliness
    - The Union ignores the claim
    - ***We lose!*** – irrespective of all other claims

Burdens of Persuasion and Going Forward

What This Means to the Steward

- Understand who has the ultimate burden of proof
- Always seek to shift the burden of going forward
  - ***Challenge*** each claim that you need to refute
  - ***Demand*** the Service ***prove*** each of its claims
  - ***Explain*** deficiencies in the Service's case

Burdens of Persuasion and Going Forward

What This Means to the Steward

- Never neglect the burden of advancing the case
- Not your own; Not your counterpart's
  - *Listen*, *read*, *understand* what management says in its defense
  - Identify management's claims; refute as necessary
  - Identify management's failure to refute claims you have already made

Burdens of Persuasion and Going Forward

What This Means to the Steward

- Support every claim with proof
  - Proof is not assertion; Proof is evidence
- Failure to refute claims is a failure of rejoinder. It is a failure to advance the case.
  - Any failure could be fatal to the case; some certainly are
- ***Challenge*** each claim that you need to refute
- ***Demand*** the Service ***prove*** each of its claims
- ***Explain*** deficiencies in the Service's case

Burdens of Persuasion and Going Forward

What This Means to the Steward

- Both the ultimate *burden of proof* and the shifting *burden of going forward* incorporate the obligation to produce evidence
  - Evidence supports the claims that lead to the *desired* resolution
  - Evidence answers the questions
    - *"How do you know?"*
    - *"What do you have to go on?"*
  - Evidence should be agreed upon by the parties
  - If the evidence is disputed, it becomes a claim and must, itself, be supported by evidence

The Arbitration-Ready Grievance

Making Your Case

- Understanding how argumentation works
  - The steward must make all claims that are relevant to the Union's case
  - The steward must discuss and provide relevant evidence to support each claim made
  - The steward must analyze and challenge each claim (and its supporting evidence) offered by the Service

The Arbitration-Ready Grievance

Making Your Case

- Meeting your Article 15 obligations
  - Proper investigation culminates in Step 1 discussion
  - Step 2 Appeal fully articulates the Union's case and refutes any challenges presented by Step 1 supervisor
  - Step 2 meeting explains the Union's case to the Service's designee and draws out the Service's case
  - Additions and Corrections document fully responds to Service's claims and evidence presented at Step 2
  - Step 3 Appeal gives synopsis of why grievance remains unresolved; or Appeal to Arbitration advances the case

The Arbitration-Ready Grievance

Making Your Case

- Meeting your Article 15 obligations
- Doing what we need to do to succeed in arbitration
  - The properly argued case should be reflected in a thorough but concise case file
  - Fully argued with appropriate claims
  - Fully documented with necessary evidence

The Arbitration-Ready Grievance

Making Your Case

- The properly argued, properly compiled grievance
  - Enables the NBA to easily understand the Union's case and the Postal Service's case
  - Provides full documentation in support of claims made by either party
  - Is fully ready to present in an arbitration hearing for final resolution by the outside, third party

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The Arbitration-Ready Grievance

The Grievance File

- The grievance file cannot be considered complete unless you have proven your case or shown the Service failed to prove its case
- The grievance file will contain –
  - The moving papers and all supportive material
    - All evidence
      - Evidence serves only one purpose – to support a claim that leads to the *desired* resolution of the grievance
      - Every claim must be supported by evidence
      - Every failure of the Service to support a claim must be cited by the Union
    - Other supportive material serves as backup documentation

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By The Time You Appeal

The Grievance File

- Step 2 – The full statement of the case
- Additions & Corrections – Your last opportunity to "perfect the case"
- Material Evidence
  - Full disclosure
  - Exchange of documents and other evidence
  - Documenting all evidence

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The Grievance File

"Moving Papers" of the Grievance

- Standard Grievance Forms
  - Step 1 Grievance Outline Worksheet
  - Step 2 Appeal Form
  - Step 3 Appeal Form
  - Appeal to Arbitration Form
- Correspondence
  - Step 2 Decision Letter
  - Additions and Corrections Letter
  - (And later, the Step 3 Decision Letter)

The "Moving Papers" of the Grievance

Getting Organized

- Reverse Chronological Order
  - Last things first, first things last
  - In other words, the earliest document goes on the bottom, with more and more recent documents successively piled on top.
  - The last document is the last appeal form.

The "Moving Papers" of the Grievance

Getting Organized

- No Documentation
  - No exhibits
  - No copies of Handbooks and Manuals excerpts
  - No Requests for Information
  - No extensions
  - No notes

The "Moving Papers" of the Grievance

Getting Organized

- Standard Package – For Direct Appeal to Arbitration
  - Appeal to Arbitration
  - Additions & Corrections letter
  - Step 2 Decision letter
  - Step 2 Appeal
- Standard Package – For Step 3 Appeal
  - Appeal to Step 3
  - Additions & Corrections letter
  - Step 2 Decision letter
  - Step 2 Appeal

The Rest of the Grievance File

Supportive Material

- Excerpts from the National Agreement
- Excerpts from the LMOU
- Excerpts from Handbooks or Manuals
- The pivotal document, such as
  - The Discipline Letter
  - The offending policy statement
  - The official posting
  - The notice of subcontracting
  - Etc.

The Rest of the Grievance File

Supportive Material

- Material Evidence – Service Created
  - The "pivotal document"
  - OTDL; OT tracking; TKU records; etc.
  - Job postings – bid, withhold, revert
  - Holiday solicitations; Holiday schedules
  - Seniority lists; duty assignment lists
  - Correspondence

The Rest of the Grievance File

Supportive Material

- Material Evidence – Union Created
  - Requests for Information
  - Records of Interviews
  - Written witness (Grievant) statements
  - Work hour (overtime) tracking
  - Analytical summary of Service records
  - Union acquired documents – e.g.:
    - Grievant medical records
    - Federal regulations
    - Subcontracting cost comparison

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The Rest of the Grievance File

Supportive Material

- Not Necessarily Evidence
  - Steward notes
  - Agreements to extend time limit
  - RFI log; exchange of documents log
  - Correspondence log
  - Proof of mailing records
    - Certified receipt and return card, or similar documentation

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File Organization

What to Send as Your Appeal

- NBA copy must be full and complete
  - Steward's summary statement of the case
  - Moving Papers
  - List of Exhibits
  - Supportive Material
    - Evidence
    - Other
- NO STAPLES!!
  - Please, lose the staplers.

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File Organization

What to Send as Your Appeal

- USPS copy must be complete
  - ***No*** steward summary
  - Moving Papers
  - List of Exhibits
  - Supportive Material
    - Evidence

Which Appeal? Arbitration . . ? Step 3 . . . ?

It Has Mattered Since 1998

- It's Not as if You Have a Choice
  - Appeal Directly ***to Arbitration*** from Step 2
    - Three (3) Specific Categories of Grievances
  - Appeal ***to Step 3*** from Step 2
    - All Other Grievances

Which Appeal?

Yes, It Matters

- Appeal Directly ***to Arbitration*** from Step 2
  - Three (3) Specific Categories -- *Category #1*
    - ***All*** Discipline Grievances
      - Removal
      - Emergency Placement in Off-Duty Status
      - Indefinite Suspension
      - Regular Suspension
      - Letter of Warning

Which Appeal?

Yes, It Matters

- Appeal Directly to Arbitration from Step 2
  - Three (3) Specific Categories -- *Category #2*
    - Grievances that will go to "Expedited Arbitration"
      - 2006 National Agreement MOU, page 325
        - Individual Overtime Issues
        - Withholding of Step Increase
        - Individual Leave Requests, Restricted S/L, AWOL
        - Medical Certification
        - Individual Holiday Scheduling Issues
        - Higher Level Assignments
        - (Employee Claims)
        - Letters of Demand of Less than $2000
        - Individual Clerk Seniority Disputes
        - Other Topics Specified at Regional Level

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Which Appeal?

Yes, It Matters

- Appeal Directly to Arbitration from Step 2
  - Three (3) Specific Categories -- *Category #3*
    - Interpretation, application of or compliance with a Local Memorandum of Understanding (LMOU)
      - Limit these "direct appeals" to cases that PRIMARILY or EXCLUSIVELY involve terms of the LMOU
      - Many grievances involve both LMOU and National Agreement violations
      - Err on the side of caution - and a preference for more, not less, opportunity to perfect and resolve the grievance

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Which Appeal?

Yes, It Matters

- Appeal Directly to Arbitration from Step 2
  - Three (3) Specific Categories of Grievances *Summary*
    - All ***Discipline*** Grievances
    - Individual Grievances in "Expedited Arb" MOU
      - "Individual" means a grievance ***for an individual***
    - ***LMOU*** Disputes

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Which Appeal?

Yes, It Matters

- Appeal to Step 3 from Step 2
  - ***ALL OTHER*** Grievances
    - ***ALL*** Class Action Grievances and ***ALL*** Individual Grievances not involving "Expedited Arbitration" issues
    - ***For example*** –
      - Light Duty
      - Posting and Bidding/Promotion/Reduction/Step Placement
      - Cross Craft Assignment
      - Steward/Union Rights
      - Application of Handbooks or Manuals
      - Subcontracting
      - Supervisor Performing Bargaining Unit Work
      - Casual Employment/Conversion/Maximization
      - etc., etc., etc., etc. . . . . .

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Which Appeal?

It Really, Really Does Matter

- Arbitration . . ? Step 3 . . . ?
  - It Really Is Important to Get It Right
    - The Postal Service may be expected to convince an arbitrator that your grievance is procedurally defective.

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Win By Persuasion When Possible

Beat Them at the Table When Necessary

And, Give 'em Hell Generally

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ARBITRATION HEARING
– THE BASICS

An arbitration hearing is like just about any other type of hearing. Most of us have seen or been involved in a hearing of some sort – even if it is nothing more than having watched old Perry Mason re-runs. The hearing is generally conducted in a conference room (or other suitable space) in the post office where the grievance originated. The participants are usually seated around a table, with the arbitrator at the head of the table, Union participants on one side across from Service participants on the other side.

Arbitrators are, essentially, private contractors. Many come from legal backgrounds, some from other fields. The Union and the Service jointly agree to hire arbitrators by individual contracts that place them on arbitration panels, making them available to hear grievances in specified Postal Service districts. Each arbitrator offers to the parties available dates for each upcoming month. Arbitration cases are then slotted into those available dates, depending on age of case, district, availability of advocates, etc. An arbitrator then receives notice to appear in a particular postal facility on a particular date. He or she receives with this notice a list of cases that have been scheduled; however, the arbitrator really has no idea what case will be heard until the day of the hearing because of the parties' continuing opportunity to resolve the listed cases prior to arbitration. Thus, an arbitrator knows nothing about the case to be heard until the beginning of the presentation of the hearing.

The arbitrator does not receive copies of the grievance files, no pre-hearing position papers, nothing . . . The beginning of the arbitrator's knowledge of the case to be heard starts when the parties begin the hearing.

In a grievance concerning discipline of an employee, the Service is considered to be the *moving party*. It initiated the action that is to be arbitrated. In a grievance in which the Union has challenged the contractual legitimacy of any other action by the Service, the Union stands as the moving party. There are two things that accrue to the moving party. The moving party goes first at each stage of the arbitration hearing, and the moving party has the *burden of proof*. In discipline, the Service has the burden to prove that its action was taken for ***just cause***. In contract disputes, the Union has the burden to prove that the action was a violation of the collective bargaining agreement.

The arbitration hearing has several stages. It begins with entering into the record those documents that either party believes should be viewed by the arbitrator as part of the evidence of the case, offered first by the moving party. These documents are usually referred to as exhibits and are categorized as joint exhibits, Union exhibits and Employer exhibits. Most arbitrators accept the identification of all three types of exhibits at the beginning of the hearing, though some will require the party who wants an exhibit considered to introduce it later so that a witness can describe what the document is. And ultimately the arbitrator must decide what weight, if any, to give each piece of evidence offered by either party. The National Agreement is generally entered into the record as joint-exhibit number one. Most advocates and arbitrators expect that the *moving papers* of the grievance are then joint-exhibit number two. The parties then enter appropriate portions of handbooks and manuals, other policy statements, discipline letter(s), timekeeping records, other official documents, etc.

Once the exhibits have been entered into the record, the hearing then moves to opening statements in which each party has the opportunity to frame for the arbitrator the issue to be decided and to briefly state the position of the Union or the Service, giving the arbitrator an idea of what to expect out of the hearing. And again the moving party goes first. Sometimes the other party will choose to defer an opening statement until later in the hearing.

This then has set the stage for the arbitrator to hear witness testimony, with presentation of witnesses by each party, again, with the moving party first to present its witnesses. In fact, the moving party will present all its witnesses, one at a time, and then will rest its case, having

fully presented what it believes to be its entire *case-in-chief*. Only after all witnesses from one side have been heard does the other side present its witnesses to testify. At the conclusion of the other side's case-in-chief, the moving party may elect to present some rebuttal witness testimony; however, most hearings do not become overly complicated with additional rebuttal stages. Generally, once both parties have presented a case-in-chief, the arbitrator may expect closing arguments to be presented by both parties.

Witness testimony, it might be said, seems to each witness to occur in a vacuum, each witness having the opportunity only to see a snap-shot of the hearing. In most arbitrations, the parties will not allow witnesses to sit through the hearing. The idea is that each side does not want witnesses of the opposing side to school themselves on other parts of the presentation. And the credibility of witness testimony is frequently critical to an arbitration hearing, making the spontaneity of testimony important to the arbitrator's perception of the witness. The exceptions to this are that the grievant – the individual whose rights have been violated – is entitled to witness the hearing from start to finish and each side is generally entitled to have a local *technical assistant* to the advocate who may also be a witness.

Each witness is questioned first by the advocate who has called the witness, that is, the party who believes the witness has something positive to contribute to its theory of the case. The advocate then asks the witness the *direct examination* questions that he or she prepared with that witness shortly prior to the hearing. Once these questions are asked and answered, the opposing advocate may then *cross-examine* the witness for the purpose of discrediting some or all of the direct examination testimony and, perhaps, for the purpose of making other points that conform to the opposing theory of the case. With each witness the advocate who called the witness has the opportunity to ask re-direct examination questions, the other advocate may ask re-cross and the arbitrator may – at any point – choose to ask some questions. This back-and-forth questioning may proceed until both sides and the arbitrator are satisfied all questions have been asked and answered. And, of course, the grievant may be called upon to testify as a witness on his or her own behalf – and generally is.

Upon conclusion of witness testimony, the parties are then supposed to offer the arbitrator a summation of the case in closing argument. This is most often presented orally by each side – again with the moving party going first. But sometimes the parties will decide to close the arguments of the case with written presentation. If this happens, the record of the case is not closed until such time as the arbitrator has received the parties' closing briefs on an agreed-upon date.

Regardless how the parties close the case, the arbitrator is entitled, by his or her contract, to deliberate over the case and render a decision later. For removal cases and most contract disputes the time allowed the arbitrator is thirty days from the close of the record of the case. It is only upon the arbitrator's issuance of his written award that the parties learn of the outcome.

People are frequently tempted to try their hands at predicting the future, and those who witness an arbitration hearing are not immune to this exercise in futility. However, the simple fact is that there is no point in attempting to guess how a particular arbitrator will rule on a particular case just on the basis of what happens during the hearing. We sometimes can develop reasonable expectations of the outcome of an arbitration based on how the arbitrator has previously ruled on similar cases. But, once the hearing is completed, it is simply a matter of having to wait for the result and hope for the best.

I hope this brief explanation has provided some insight to the arbitration process. There is certainly a great deal more to know about it (ask any advocate) but it is also important that each member of the Union has, at least, some idea what occurs in the *final court of appeal* provided by our grievance-arbitration procedure.