

Preparation for Arbitration

By Katherine Sciacchitano,
Courtesy of the George Meany Center–National Labor College

I. Affecting the Arbitrator's Viewpoint

- A. The arbitrator
 - 1. Must be able to *see* the place.
 - 2. Must be able to *know* the job.
 - 3. Must be able to *feel* the emotions.
 - 4. Must understand the sources of authority.
 - 5. Must know the past practices.
 - 6. Must know the intent of the parties.
 - 7. Must know the *expectations*.
- B. The arbitrator may be affected by “non-logical” influences:
 - 1. Consciousness of what will help labor relations
 - 2. Consciousness of bargaining strength of parties
 - 3. Consciousness of kind of relationship (e.g. armed truce, cooperative)
 - 4. General “market” conditions (e.g. unemployment)

II. Establishing the Source of Authority

- A. Explicit contract clause
 - 1. Interpretation
 - 2. Application
 - 3. Silence or ambiguity but nevertheless applicable
- B. Equity
 - 1. Fairness
 - 2. Justice (e.g. “unjustly dealt with”)
 - 3. Reasonable expectation
 - 4. Past customs

III. Organizing the Presentation

- A. Outline the attack on paper:
 - 1. The problem
 - 2. The issue
 - 3. Facts which are conceded and which the other side is likely to concede
 - 4. What happened?
 - a. Cast of Characters
 - b. Scene
 - c. Props
 - d. Description of job or jobs
 - 5. Source of authority (contract, workplace/agency rules, etc.)
 - 6. What the other side is likely to say
 - a. Identify, examine, and evaluate the opposition's arguments.
 - b. Establish effective responses:
 - (1) How they may hurt relations
 - (2) How they may hurt employer, union
 - (3) Why they are inaccurate or improper
 - 7. Develop a "theory of the case." Arbitrators say that each case has a "theory" and what you need to do after you have reviewed all the evidence is develop a "theory of the case". To do this you answer these questions:
 - a. What do I need to prove to the arbitrator in order to win this case?
 - b. What are the best facts I have to prove it?
 - c. How can I best present those facts?
 - 8. Preparation of witnesses
 - a. It is proper and necessary to interview witnesses in advance.
 - b. It is proper to inform witnesses in advance what questions will be asked.
 - c. Tell them to be brief, nontechnical, not to argue the case, and to interrupt their answers when there are objections.
 - d. Plan your questions according to what they have to offer.
 - e. Anticipate possible cross-examination by preparing re-direct questions or anticipating the employer's questions.
 - f. Tell the witness to admit having the advance conference if asked.

9. Prepare visual material.
 - a. Prepare charts, graphs, models, or mock-ups large enough to be exhibited and seen by everybody.
 - b. Arrange an for an easel or blackboard.

IV. Planning a Dry Run, As Time Permits

- A. Pick good people to act as employer spokespersons (for cross examination) and arbitrator to see witnesses in the case.
- B. This will help your witnesses get used to testifying and also help you perfect your case.

V. Preparing for Intragroup Communications at Hearing

- A. Choose a single spokesperson (or divide the presentation among single spokespersons).
- B. Arrange to sit together for easy communication.
- C. Use the method of passing notes to spokesperson, *but don't overdo it*.
- D. Feel free to ask for a recess for consultation, but not frequently.
- E. Assign one person to take full notes.
- F. If hearing lasts more than one day, take time for evaluation and planning at end of each day.