

Labor Arbitration



**TEAMSTERS
JOINT
COUNCIL**

What Is Arbitration?



- It is a process of dispute resolution in which a third party neutral (arbitrator) renders a decision after both parties have an opportunity to be heard.

Forms of Arbitration



- Labor Arbitration
- International Arbitration
- Commercial Arbitration

Two Types of Labor Arbitration:

Interest Arbitration

Resolves disputes over the terms and conditions of employment to be
be

included in a collective bargaining agreement.

Grievance Arbitration

Historical Background of Labor Arbitration

-19th Century-



Prior to the evolution of organized labor, employers would keep wages low, change working conditions or mistreat workers with no redress. When there was a dispute the only action available to employees was to strike.

These strikes often were violent and proved to be an economical and social problem to the country as massive strikes meant a lack of workers in crucial industries.

The 1902 the anthracite coal strike was the starting point of the implementation of an arbitration system that continues, in modified form today.

The 1902 Coal Strike

Turning point of U.S. Policy



On May 12, 1902, the coal miners struck. Firemen, engineers and pumpmen crews quickly followed. Both sides were in for a long and bitter fight. Although President Theodore Roosevelt had no legal right to intervene, he did, in an attempt to end the strike.

Roosevelt's efforts to end the strike were successful. Both sides finally agreed to the findings of the Anthracite Coal Strike Commission and the strike ended. More importantly in the long run, a new role was established for the Federal Government to intervene in labor disputes as a "representative of the public interest".

History Of U.S. Labor Laws



Several federal laws pertaining to labor disputes have been enacted in the U.S.

- Railroads Arbitration Act of 1888; passed after rail strikes in early 1800's. Provided for voluntary submission to arbitration and Presidential investigation. First invoked in 1894 during the rail car manufacturing strike.

History In The U.S.



➤ Erdman Act of 1898

Superseded the Railroad Act of 1888. From 1898-1905, it did not work because employers refused to abide by the awards that were being issued.

Critically, it did not provide for compulsory arbitration. Instead it established mediation procedures which often culminated in voluntary arbitration.

History Of U.S. Labor Laws (continued)



➤ Newlands Act of 1913

It only worked until 1918 because unions refused to submit the issue of whether there should be an 8 hour work day to voluntary arbitration.

➤ Federal Arbitration Act (FAA)

In 1925, Congress passed the Federal Arbitration Act (FAA) which supported the legitimacy of arbitrations in the U.S.

History Of U.S. Labor Laws (continued)



➤ Railroad Labor Act (1926).

It established the National Railroad Adjustment Board arbitration provisions to resolve grievances. Created the National Mediation Board to address disputes over the terms and conditions in a collective bargaining agreement.

➤ The Wagner Act (1935).

Created the NLRB and the modern U.S. collective

History Of U.S. Labor Laws (continued)



- During WWII President Franklin Delano Roosevelt's War Labor Board insisted labor and management insert grievance and arbitration clauses in collective bargaining agreements as a final and binding step of the grievance procedure to meet wartime production needs of the country.

History Of U.S. Labor Laws (continued)



- Taft-Hartley Act (1947)
- Although generally considered an anti-union law (it was vetoed by President Truman) Section 203 (d) of the Act established the independent Federal Mediation and Conciliation Service which provided the statutory basis for making arbitration the central enforcement mechanism for collective bargaining agreements.

The Role of the Courts in Reviewing An Arbitration Award



- *Steelworkers Trilogy* (1960), U.S. Supreme Court decided that courts could not go beyond deciding the “arbitrability” of a grievance and could not decide the grievance on its merits.
- The Court stated the arbitrator’s award must be enforced if the arbitrator’s award “*draws its essence from the collective bargaining agreement*”.

The Role of the Courts in Reviewing An Arbitration Award (Continued)



- *Paperworkers v. Misco*, (1987) The U.S. Supreme Court reinforced the principle that federal courts are not authorized to reconsider the merits of an arbitration award.

Arbitration Today



- Today, approximately 98% of all collective bargaining agreements in the United States contain arbitration clauses.
- Over 70,000 grievances and interest arbitration cases are decided by arbitrators each year in the U.S. Because of the Supreme Court's rulings, less than 1.5% of all cases decided ever end up in court.

AAA vs FMCS



- American Arbitration Association (AAA): \$275 filing fee for each party. Strict time limits to process the hearing. *Arbitration will proceed even if one party refuses to appear.*
- Federal Mediation & Conciliation Service (FMCS): Must be *jointly requested*. \$25 filing fee. The arbitrator is responsible for all administrative functions once he/she is appointed.

Preparation for An Arbitration Hearing



How To Prepare for An Arbitration



Most important factors:

1. Read the Grievance

Read the Contract

Identify the Issue

**In discipline cases the company has the burden to
“prove” its case**

If possible choose the “right” arbitrator

How To Prepare for An Arbitration



Evaluate The Matter

- Know the facts of the grievance and keep in mind the basic principles of the arbitration process (hearsay evidence allowed, relaxed interpretation of rules of evidence, etc).
- Anticipate who the witnesses will be and communicate with the other side's witnesses, if possible.
- Evaluate the arguments and decide which key elements of the grievance to focus.
- Determine the best "Issue" to frame the question to the arbitrator

How To Prepare for An Arbitration



Build The Case

- Research and build a theory for the case
- Gather and organize the evidence to support the theory
- Demand that the Company provide the Union with all the evidence and witnesses they intend to use.
- Look to negotiating history

How To Prepare for An Arbitration



Choose Your Witnesses Carefully

- If relying on “past practice”, use a witness who can testify to the history of the underlying issue.
- Answer only the questions asked; never volunteer information during testimony; never try to argue the case in providing an answer.
- Keep it short; let the person who is presenting the case do the talking.

How To Prepare for An Arbitration



Settlement Considerations

- Know what the grievant wants to achieve.
- Consider the probability of success in arbitration.
- Make strong settlement offers.

How to Prepare for an Arbitration



- Opening Statement
- Disclose Only What is Necessary to Provide the Arbitrator with the Theory of the Case from the Union's Viewpoint
- Do Not Disclose Who are Your Witnesses or What Your Witnesses Intend to Say
- Listen Carefully to the Employer's Opening Statement
- Adjust Your Presentation of the Evidence if Necessary

How to Prepare for an Arbitration



- Closing Statement or Written Brief?
- Remember that the Grievant Needs to Feel that he/she Received the Best Representation
- If the Company Submits a Written Brief Consider Doing the Same to Show the Grievant How Serious the Union Considers his/her Grievance
- Whether You Submit a Written Brief or Argue Orally Make Certain Your Argument is Clear and Points Out the Company's Weakest Point and Emphasizes the Union's Strongest Point

Guiding Principles



- The goal is to avoid arbitration if possible; the result is never certain; the ultimate goal is to use arbitration as a mechanism for resolving the dispute.
- But if settlement is not realistic, make sure you have a case you can win because arbitration awards have precedential value in later cases.
- In other words, in contract interpretation cases. an arbitrator's award against the union could have negative implications for years.

Questions?

