LABOR ARBITRATION – PROCEDURE & TECHNIQUES

GLOSSARY OF TERMS

ARBITRATION - Arbitration is the reference of a dispute by voluntary agreement of the parties to an impartial person for determination on the basis of evidence and arguments presented by such parties, who agree in advance to accept the decision of the arbitrator as final and binding. Arbitration, therefore, is a judicial proceeding and different in nature from mediation, conciliation, negotiation and fact-finding.

ARBITRATION CLAUSE - An arbitration clause is a provision in a contract requiring that disputes arising out of or relating to the collective bargaining agreement be finally determined by arbitration.

GRIEVANCE PROCEDURE - Grievance procedure of a union contract is an orderly way to resolve disputes by successive steps, usually beginning with negotiations between union stewards and foremen and ending with meetings between top union and company officials.

SUBMISSION AGREEMENT - A submission agreement is a jointly signed document stating the nature of the dispute and affirming the parties' intention to arbitrate and to abide by the award.

DEMAND FOR ARBITRATION - A demand for arbitration is a formal request made by one party to the other for arbitration of a particular dispute under the arbitration clause of a contract.

ANSWERING STATEMENT - An answering statement is the respondent's reply to a demand for arbitration.

ARBITRATION HEARING - The formal meeting at which each party presents its exhibits, witnesses and arguments to the arbitrator.

TRIPARTITE BOARD - A board consisting of a representative of each party and an impartial arbitrator.

AWARD - An award is the decision which the arbitrator renders after taking testimony and hearing arguments from both sides. The award is usually accompanied by an opinion in which the arbitrator explains how he came to his conclusions.

INTRODUCTION

Voluntary arbitration of controversies arising out of or relating to the terms of collective bargaining agreements is accepted almost unanimously by labor and management. But despite widespread use of this procedure, and, possibly due to the rapidity of its growth, it often happens that parties mistake arbitration for other methods of dispute settlement, such as mediation and compromise. It is also confused with fact-finding and a variation called advisory arbitration.

Arbitration is a tool of industrial relations. Like other tools, it has limitations as well as uses. In the hands of an expert, it produces good results, but when abused, or made to do things for which it was never intended, the outcome may be disappointing. That is why all participants in the process - union officials, employers, personnel executives, attorneys, and the arbitrators themselves have an equal stake
in orderly, efficient and constructive arbitration procedure.

**Arbitration – A Judicial Proceeding**

Arbitration is the reference of a dispute, by voluntary agreement of the parties, to an impartial person for determination on the basis of evidence and arguments presented by such parties, who agree in advance to accept the decision of the arbitrator as final and binding.

Thus, the arbitration process begins where other methods of dispute settlement leave off; in referring a matter to arbitration parties are presumed to have explored every avenue of negotiation and compromise. As a last resort, they call upon an impartial person for a *judicial* decision and agree to abide by the result.

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**TWO FIELDS OF ARBITRATION**

In general, labor-management arbitration is divided into two fields: contract-negotiation disputes, sometimes called arbitration of *interests*; and contract-interpretation disputes, sometimes called arbitration of *rights*. The latter is much more prevalent.

**Contract-Negotiation Disputes**

All authorities agree that it is best for unions and companies to establish terms and conditions of employment by direct negotiation and bargaining. This is the way the overwhelming majority of the 140,000 collective bargaining agreements in the United States are concluded. There are occasions, however, when parties are unable to agree on contract terms. In such cases, rather than risk a deadlock which might interfere with production, they sometimes refer disputed items to arbitration, putting the agreed-upon matters into effect immediately. Such situations come about not only when new contracts must be negotiated but at wage reopening dates. Some contracts provide in advance for arbitration of such wage-reopening disputes. But in any case, parties who want to arbitrate differences over contract terms may avail themselves of arbitration machinery by executing a *submission agreement* (see Glossary). In recent years the number of disputes arbitrated over new or renewed contracts has diminished.

**Contract-Interpretation Disputes**

Contract-interpretation disputes, usually called *grievances*, constitute the overwhelming majority of matters brought to arbitration. Before reference to arbitration, such controversies usually go through several steps of *grievance procedure* set forth in contracts, during which each side tries to convince the other that his interpretation and application of the contract to the given situation is the correct one. It is also during grievance procedure that compromises are attempted. Failing settlement during these negotiation steps, well over 90 percent of all collective bargaining contracts provide for impartial arbitration. When time is critical; parties sometimes mutually agree to by-pass earlier steps and bring a controversy directly to arbitration.

The following pages will deal primarily with procedures for arbitrating grievances, since this constitutes the bulk of arbitration practice, although many of the principles and standards developed may also be applied to arbitration of contract terms.
THE AGREEMENT TO ARBITRATE

Labor-management disputes are brought to arbitration in one of two ways, either by a submission agreement which describes an existing controversy which both parties want settled by an impartial person, or by a demand for arbitration filed by either party to a contract, provided that contract has an arbitration clause.

Of the two forms which the agreement to arbitrate may take the arbitration clause is by far the most common. Surveys indicate that approximately 95 percent of the collective bargaining contracts in effect contain future dispute clauses. The specific forms these clauses take, however, are varied. Often, companies and unions have found their history of bargaining and their collective bargaining relationship to be such as to justify a general agreement to arbitrate, with few limitations or restrictions. (See page 4 for an example of such a clause.) On the other hand, there may be situations in which parties prefer to limit arbitration to specified types of grievances. In either case, the construction of the arbitration clause is of utmost importance to both parties, for it represents a voluntary and binding agreement to settle differences in impartial arbitration rather than in any other way.

Advantages of the Arbitration Clause

The advantage of a future dispute arbitration clause is that it leaves nothing to chance. When a controversy arises, the parties may be in no mood to agree and it is sometimes difficult to get both parties to submit to the procedures of arbitration. But when they are subject to a clause, arbitration may be initiated without delay by either party.

The agreement to arbitrate, if it does not refer to established rules and procedures, may not by itself answer all questions. Among the problems that remain are:

• How shall arbitrators be appointed?

• When and where shall hearings take place? And who will make these decisions if the parties cannot agree?

• Shall the arbitration board consist of one or of three neutral arbitrators?

• If a tripartite board is preferred, what shall the remedy be if the two party-appointed arbitrators cannot agree upon an impartial member of the board?

• Who may represent the parties? Shall witnesses be sworn?

• How shall requests for adjournments be handled? May briefs be filed?

• How are hearings closed and under what conditions may they be reopened?

• When will the award be rendered? To whom delivered?

• How much should the arbitrator be paid?

All these, and many other procedural questions, are important for prompt and effective
arbitration. It would obviously be impossible for parties to anticipate them all and spell out the answers in the collective bargaining agreement. An effective, though simple, solution is found in an arbitration clause which, by referring to established rules such as those of the American Arbitration Association, at once answers the basic WHAT, HOW, WHEN, WHERE, and WHO of arbitration listed on the facing page.

Other Questions to be Answered

Parties may also want other questions answered. They may want to be sure that certain steps precede arbitration or they may want to spell out which types of issues are arbitrable, and which are to be excluded from the arbitration process. In that case, they may vary the language of the arbitration clause to suit their needs.

But in any case, reference to the Voluntary Labor Arbitration Rules of the American Arbitration Association provides a quick answer to most questions and a remedy for the failure of either party to perform certain acts, called "conditions precedent," without which arbitration might be frustrated.

A GOOD ARBITRATION CLAUSE IN FIFTY WORDS

Any dispute, claim or grievance arising out of or relating to the interpretation or the application of this agreement shall be submitted to arbitration under the Voluntary Labor Arbitration Rules of the American Arbitration Association. The parties further agree to accept the arbitrators award as final and binding upon them.

This clause, or any other clause referring to established rules of the American Arbitration Association, answers the questions below:

WHAT –
- Is to be arbitrated?
- Are the duties and obligations of each party?

HOW –
- Is arbitration initiated?
- Are arbitrators appointed and vacancies filled?
- Are time and place for hearings fixed?
- Are hearings opened? Closed? Reopened?
- Are costs controlled?

WHEN –
- Are arbitrators appointed?
- Must hearings begin?
- Must the award be rendered?
WHERE –

- Are notice, documents and correspondence to be sent?
- Shall hearings be held?
- Is the award to be delivered?

WHO –

- Administers the arbitration?
- Keeps the records and makes technical preparations?
- Gives notice of hearings and other matters?
- Appoints the arbitrators if the parties cannot agree?
- Fills vacancies on arbitration boards when necessary?
- Grants adjournments?

THE ARBITRATION PROCESS BEGINS

By Submission Agreement

Either party to the controversy may file a submission agreement with an office of the Association, provided it is signed by both parties. A submission agreement must include a brief statement of the matter in dispute and of the relief sought. A typical submission agreement, containing adequate phrasing, is shown on page 7. If the parties have named an arbitrator, the Association will communicate with him and with the parties, arranging a suitable time and place for hearings. If an arbitrator has not been named in the submission agreement, he will be selected in accordance with AAA Rules, described on page 9.

By Demand for Arbitration

Where parties have an arbitration clause in a contract, the procedures of the contract should be followed. Either party may initiate arbitration by serving notice on the other party, with a copy of the Demand forwarded to the Association. Special care should be taken to make certain that notice of intention to arbitrate is given in a manner and within the time limits described in the collective bargaining agreement. It is usual for contracts to require that notice of arbitration be given within a certain period of time after the final step of grievance procedure. Failure to observe these time limits may result in loss of the right to arbitrate that controversy.

The Demand for Arbitration should include a brief statement of the issue to be arbitrated and the relief sought, and it should be signed by the complaining party. Since the arbitrator's authority will be limited to resolving only such disputes as are authorized by the arbitration clause and to answer, within the framework of the contract, only those questions put before him, care should be exercised to avoid introduction of "new" issues which have not gone through grievance procedure and which have not been considered before. The statement of the issue and of the relief sought in the Demand for Arbitration is usually the one set forth in the written statement of the grievance, on the basis of which grievance machinery was invoked. A typical Demand for Arbitration form, properly executed, is shown on page 8.

The American Arbitration Association will supply Demand and Submission forms on request. In the absence of forms, parties may initiate arbitration through ordinary letters. In any case, whether the parties use forms or correspondence, the following information is essential:
Check-list for Initiating Arbitration

1. Names and addresses of both parties involved in the Submission or the Demand for Arbitration.
2. Date of the collective bargaining agreement and the full text of the arbitration clause.
3. The issue to be arbitrated, specifically and concisely stated, with an indication of the relief sought.
4. Dates involved in the grievance, where appropriate.
5. Names of employees involved, if any, together with their positions or job classifications, where necessary.
6. The signature of the union or company official authorized to file a Demand for Arbitration or Submission.

On receiving the Demand for Arbitration, the Association, in accordance with its Rules, will invite the "responding" party to file an answering statement within seven days. If no answer is filed within this time, it is assumed that the claim is denied.

The Demand and the reply are read by the arbitrator at the beginning of the hearing. These two documents guide him in receiving and giving weight to testimony, and they form the framework within which he will make his award. The statement of claim and the reply should therefore indicate precisely what the arbitrator is asked to decide. Parties should not argue their claims in the Demand or Answering Statement, but merely state the controversy as clearly as possible.
AMERICAN ARBITRATION ASSOCIATION

SUBMISSION TO ARBITRATION

Date:

The named Parties hereby submit the following dispute to arbitration under the VOLUNTARY LABOR ARBITRATION RULES of the American Arbitration Association:

Did the company violate Article IV, Section 9 of the contract assigning a general helper to clean and replace electrical fixtures at a time when maintenance employees were on layoff? If so, what compensation is due the senior maintenance employee?

We agree that we will abide by and perform any Award rendered hereunder and that a judgment may be entered upon the Award.

Employer__________________________________________________________

Signed by_________________________________ Title______________________

Address___________________________________________________________

Union_________________________________ Local________________________

Signed by_________________________________ Title______________________

Address___________________________________________________________

PLEASE FILE TWO COPIES
To:   (Name) __________________________________________________________
(Address) ___________________________________________________________________
(City and State) _______________________________________________________

The undersigned, a party to an arbitration agreement contained in a written contract, dated ______________, providing for arbitration, hereby demands arbitration thereunder.

(attach arbitration clause or quote hereunder)

Any dispute, claim or grievance arising out of or relating to the interpretation or application of this agreement shall be submitted to arbitration under the Voluntary Labor Arbitration Rules of the American Arbitration Association. The parties further agree that there shall be no suspension of work when such dispute arises and while it is in process of adjustment or arbitration.

NATURE OF DISPUTE:

The union claims that John Smith was unjustly discharged.

REMEDY SOUGHT:

Reinstatement with full back pay and all seniority rights to the date of discharge.

HEARING LOCALE REQUESTED:______________________________________________

You are hereby notified that copies of our arbitration agreement and of this demand are being filed with the American Arbitration Association at its ____________________________ Regional Office, with the request that it commence the administration of the arbitration.

Signed _________________________________________________
Title ___________________________________________________
Address ______________________________________________________
City and State ________________________________________________
Telephone ____________________________________________________

To institute proceedings, please send three copies of this Demand with the administrative fee, as provided in Section 43 of the Rules.
HOW THE ARBITRATOR IS SELECTED

The American Arbitration Association maintains a National Panel of Arbitrators whose members, after having been nominated (usually by prominent citizens of their communities), have been selected for their experience, competence and impartiality. The candidate for enrollment in the Panel is asked to submit a statement of his professional qualifications and references as to his acceptability by both labor and management. This data is verified by a special AAA Committee on Panels which makes the decision on the prospective arbitrator's eligibility. Once accepted as a member of the National Panel of Arbitrators, his name is sent out on lists from which parties may select arbitrators in particular cases; it is also from this Panel that the Association makes administrative appointments.

In their agreement to arbitrate, parties may provide for any method of selecting an arbitrator. Methods currently in use vary widely; unions and companies are advised to consider the system they adopt carefully, as the speed and efficiency of arbitration may be affected.

AAA's System for Selecting the Arbitrator

Unless parties have indicated another method, the American Arbitration Association invokes the following simple and effective system.

1. On receiving the Demand for Arbitration or Submission Agreement, the Tribunal Administrator (a staff member of the Association) acknowledges receipt thereof and sends each party a copy of a specially prepared list of proposed arbitrators. In drawing up this list, he is guided by the statement of the nature of the dispute. Basic information about each arbitrator is appended to the list. (A facsimile of a list of arbitrators is shown on page 11.)

2. Parties are allowed seven days to study the list, cross off any names objected to, and number the remaining names in the order of preference. Where parties want more information about a proposed arbitrator, such information is gladly given on request.

3. Where parties are unable to find a mutual choice on a list, the Association will submit additional lists, at the request of both parties.

4. If, despite all efforts to arrive at a mutual choice, parties cannot agree upon an arbitrator, the Association will make an administrative appointment, but in no case will an arbitrator whose name was crossed out by either party be so appointed.

Collective bargaining agreements sometimes provide for tripartite boards of arbitration (see Glossary) without setting time limits for appointment of the party-appointed arbitrators. In that case, the American Arbitration Association system, as indicated in the four steps above, will be applied so as to give force and effect to the wishes of the parties. Thus, unless parties have indicated otherwise, each side is given seven days within which to name his arbitrator.

Wishes of Parties Observed

By the same token, where the collective bargaining agreement provides for selection of the impartial member of the board of arbitration "by the American Arbitration Association," the lists will be
sent to the parties, in accordance with steps 1 through 4, above. On the other hand, where parties prefer the two party-appointed arbitrators to choose the third, lists will be sent to the arbitrators directly, with the same time limits in effect.

Many states require that arbitrators take an oath to faithfully hear and examine the matters in controversy and render a just award to the best of their understanding. In the absence of such laws, AAA Rules provide for the oath, unless waived by the parties.

At all times, arbitrators are expected to observe the standards which that oath and the Code of Ethics for Arbitrators impose. In signing an AAA Acceptance of Appointment form, they are required to certify that they have no interest, personal or otherwise, in the outcome.
LIST FOR SELECTION OF ARBITRATOR

You may indicate your preference by number. Otherwise, we will try to appoint an arbitrator who can hear your case promptly. Leave as many names as possible.

____________________________________
____________________________________
____________________________________
____________________________________
____________________________________
____________________________________
____________________________________
____________________________________
____________________________________
____________________________________
____________________________________
____________________________________
____________________________________

Party _____________________________________

By _____________________Title______________

NOTE: Biographical information about the above-listed arbitrators is attached. Unless your list is received by the Association by__________________________, all names submitted may be deemed acceptable. If an appointment cannot be made from this list, and the parties do not both request a further list, the Association may appoint an arbitrator.
PREPARING FOR THE ARBITRATION HEARING

By the time a case reaches arbitration, parties have generally spent many weeks, if not months, in discussing the grievance. In these discussions, they have become familiar with all the complications of the matter. The problem then remains of communicating this understanding of the facts to the arbitrator who, as a rule, knows very little detail about the dispute until the hearing begins. Effective presentation of these facts and arguments should begin with thorough preparation for arbitration. The following steps are suggested:

1. Study the original statement of the grievance and review its history through every step of the grievance machinery.

2. Examine carefully the initiating paper (Submission or Demand) to help determine the arbitrator's role. It might be found, for instance, that while the original grievance contains many elements, the arbitrator, under the contract, is restricted to resolving only certain aspects.

3. Review the collective bargaining agreement from beginning to end. Often, clauses which at first glance seem to be unrelated to the grievance will be found to have some bearing on it.

4. Assemble all documents and papers you will need at the hearing. Where feasible, make photostatic copies for the arbitrator and the other party. If some of the documents you need are in the possession of the other party, ask in advance that they be brought to the arbitration. Under some arbitration laws, the arbitrator has authority to subpoena documents and witnesses if they cannot be made available in any other way.

5. If you think it will be necessary for the arbitrator to visit the plant or job site for on-the-spot investigation, make plans in advance. The arbitrator should be accompanied by representatives of both parties, and it may be helpful for the Tribunal Administrator to be present.

6. Interview all witnesses. Make certain they understand the whole case and particularly the importance of their own testimony within it.

7. Make a written summary of what each witness will testify to. This will be useful as a check-list at the hearing, to make certain nothing is overlooked.

8. Study the case from the other side's point of view. Be prepared to answer the opposing evidence and arguments.

9. Discuss your outline of the case with others in your organization. A fresh viewpoint will often disclose weak spots or previously overlooked details.

10. Read as many articles and published awards as you can on the general subject matter in dispute. While awards by other arbitrators for other parties have no binding precedent value, they may help clarify the thinking of parties and arbitrators alike. The American Arbitration Association reports labor arbitration awards released by parties in three monthly publications, Summary of Labor Arbitration Awards, Arbitration in the Schools, and Labor Arbitration in Government.
THE ARBITRATION HEARING:

The date for the hearing is fixed by the arbitrator after discussion with the Tribunal Administrator who has consulted the parties on this question. As on all other administrative matters, the function of the Tribunal Administrator is to handle details and arrangements in advance when either party wants a stenographic record of hearings.

After introduction of the arbitrator and swearing-in ceremonies, the customary order of proceedings is as follows:

1. Opening statement by the initiating party, followed by a similar statement by the other side.
2. Presentation of evidence, witnesses and arguments by the initiating party.
3. Cross-examination by the other party.
4. Presentation of evidence, witnesses and arguments by the defending party.
5. Cross-examination by the initiating party.
6. Summation by both parties, usually following the same order as in the opening statements.

This is the customary order. The arbitrator may vary this order, either on his own initiative or at the request of a party. In any case, the order in which the facts are presented does not imply that the "burden of proof" is more on one side than the other, for both parties must try to convince the arbitrator of the justice of their positions.

HOW TO PRESENT A CASE IN ARBITRATION

1. The Opening Statement. The opening statement should be prepared with utmost care, because it lays the groundwork for the testimony of witnesses and helps the arbitrator understand the relevance of oral and written evidence. The statement, although brief, should clearly identify the issue, indicate what is to be proved, and specify the relief sought.

The question of the appropriate remedy, if the arbitrator should find that a violation of the agreement did in fact take place, deserves careful attention at the outset. A request for relief should be specific. This does not necessarily mean that if back pay is demanded, for instance, it is essential for the complaining party to have computed an exact dollars-and-cents amount. But it does mean that the arbitrator's authority to grant appropriate relief under the contract should not be in doubt.

Because of the importance of the opening statement, some parties prefer to present it to the arbitrator in writing, with a copy given to the other side. They believe that it may be advantageous to make the initial statement a matter of permanent record. It is recommended, however, that the opening statement be made orally even when it is prepared in written form, for an oral presentation adds emphasis and gives persuasive force to one's position.

While opening statements are being made, parties are frequently able to stipulate facts about the contract and the circumstances which gave rise to the grievance. Giving the arbitrator all the uncontested
facts early in the hearing saves time throughout, thereby reducing costs.

2. Presenting Documents. Documentary evidence is often an essential part of a labor arbitration case. Most important is the collective bargaining agreement itself, or the sections that have some bearing on the grievance. Documentary evidence may also include such material as records of settled grievances, jointly signed memoranda of understanding, correspondence, official minutes of contract negotiation meetings, personnel records, medical reports and wage data. Every piece of documentary evidence should be properly identified, with its authenticity established. This material should be physically presented to the arbitrator (with a copy made available to the other side), but an oral explanation of the significance of each document should not be omitted. In many instances, key words, phrases and sections of written documents may be underlined or otherwise marked to focus the arbitrator's attention on the essential features of the case. Properly presented, documentary evidence can be most persuasive; it merits more than casual handling.

3. Examining Witnesses. Each party should depend on the direct examination of his own witnesses for presentation of facts. After a witness is identified and qualified as an authority on the facts to which he will testify, he should be permitted to tell his story largely without interruption. Although leading questions may be permitted in arbitration, testimony is more effective when the witness relates facts in his own language and from his own knowledge. This does not mean, however, that questions from counsel may not be useful in emphasizing points already made or in returning a witness to the main line of his testimony.

4. Cross-Examining Witnesses. Every witness is subject to cross-examination. Among the purposes of such cross-examination are: disclosure of facts the witnesses may not have related in direct testimony; correction of misstatements; placing of facts in their true perspective; reconciling apparent contradictions; and attacking the reliability and credibility of witnesses. In planning cross-examination, the objective to be achieved should be kept in mind. Each witness may therefore be approached in a different manner, and there may be occasions when cross-examination will be waived.

5. Maintaining the Right Tone. The atmosphere of the hearing often reflects the relationship between the parties. While the chief purpose of the arbitration hearing is the determination of the particular grievance, a collateral purpose of improving that relationship may also be achieved by skillful and friendly conduct of the parties. Thus, a better general understanding between the parties may be a by-product of the arbitration. To this end, the parties should enter the hearing room with the intention of conducting themselves in an objective and dignified manner. The arbitration hearing should be informal enough for effective communication, but without loss of that basic sense of order that is essential in every forum of adjudication.

The hearing is no place for emotional outbursts, long speeches with only vague relevancy to the issue, for bitter, caustic remarks, or personal invective. Apart from their long-run adverse effect on the basic relationship between the parties, such immoderate tactics are unlikely to impress or persuade an arbitrator. Similarly, over-technical and over-legalistic approaches are not helpful.

A party has every right to object to evidence he considers irrelevant, as the arbitrator should not be burdened with a mass of material that has little or no bearing on the issue. But objections made merely for the sake of objecting often have an adverse effect, and they may give the arbitrator the impression that one simply fears to have the other side heard.
6. **The Summary.** Before the arbitrator closes the hearing, he will give both sides equal time for a closing statement. This is the occasion to summarize the factual situation and emphasize again the issue and the decision the arbitrator is asked to make.

As arbitration is a somewhat informal proceeding, arguments may be permitted to some extent during all phases of the hearing. There may be times, however, when the arbitrator will require parties to concentrate on presenting evidence and put off all arguments until the summary. In either event, all arguments should be stated fully.

Finally, as this will be the last chance to convince the arbitrator, the summary is the time to refute all arguments of the other side.

7. **Post-Hearing Procedure.** After both sides have had equal opportunity to present all their evidence, the arbitrator declares the hearing closed. Under AAA Rules, he has 30 days from that time within which to render his award, unless the collective bargaining agreement requires some other time limit. If parties want to file written post-hearing briefs, transcripts of records or other data, time limits are set and hearings remain open until those documents are received. As usual, exchange of post-hearing material takes place through the Tribunal Administrator; *the parties do not communicate directly with the arbitrator except when both sides are present*. The Association will see that both briefs are transmitted to the arbitrator and that an interchange takes place between parties at the same time.

8. **How to Reopen Hearings.** When parties jointly agree to add certain data after a hearing is closed, they may arrange to do so by written stipulation filed with the Association. The arbitrator will then accept the new material and take it under advisement.

In the event new evidence is discovered, or when a situation arises that appears to require explanation, parties should not attempt to communicate directly with the arbitrator; they should request the arbitrator, *through the Association*, to reopen proceedings and conduct an additional hearing or arrange for presentation of evidence through other means. The arbitrator may also reopen hearings on his own initiative when he deems it necessary.

Under the procedure of the American Arbitration Association, all contact between the parties and the arbitrator must be channeled through the Association. This eliminates the possibility of suspicion that one side may have offered arguments or evidence which the other had no opportunity to rebut.

**Common Errors in Arbitration**

1. Using arbitration and arbitration costs as a harassing technique.
2. Over-emphasis of the grievance by the union or exaggeration of an employee's fault by management.
3. Reliance on a minimum of facts and a maximum of arguments.
4. Concealing essential facts; distorting the truth.
5. Holding back books, records and other supporting documents.
6. Tying up proceedings with legal technicalities.
7. Introducing witnesses who have not been properly instructed on demeanor and on the place of their testimony in the entire case.

8. Withholding full cooperation from the arbitrator.

9. Disregarding the ordinary rules of courtesy and decorum.

10. Becoming involved in arguments with the other side. The time to try to convince the other party is before arbitration, during grievance processing. At the arbitration hearing, all efforts should be concentrated on convincing the arbitrator.

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THE AWARD

The award is the decision of the arbitrator upon the matters submitted to him under the arbitration agreement. Its purpose is to dispose of the controversy finally and conclusively.

The award must be made within the limits of the arbitration agreement, must rule on each claim submitted, and must be definite and final. It may be accompanied by an Opinion discussing the evidence and setting forth the reasoning of the arbitrator.

The power of the arbitrator ends with the making of the award. An award may not be changed by the arbitrator, once it is made, unless the parties mutually agree to reopen the proceeding and to restore the power of the arbitrator.

When the parties do agree to request the arbitrator to reopen a proceeding in order to obtain a clarification or interpretation of a disputed ruling, the agreement to reopen must be in writing and must set forth precisely the question submitted. Such agreement is filed with the Association, which then proceeds to make the necessary arrangements with the arbitrator.

Note: Under certain state laws either party is entitled to request clarification or modification of the award within twenty days. In such instances arrangements should be made through the Tribunal Administrator of the Association.

Awards by Tripartite Boards

The occasional use of tripartite boards of arbitration sometimes creates special problems. Under the law, the award must be supported by at least a majority. The difficulty is that the two party-appointed arbitrators may regard themselves as advocates of their sides, rather than impartial adjudicators, which may make it difficult for the impartial arbitrator to get the support of one of the others for a majority award. Parties often resolve this difficulty by empowering the third arbitrator to render a decision without the concurrence of the others. This may be done either in the arbitration clause or, in the event of deadlock, by later stipulation of the parties.

When this is done, the third arbitrator is in a better position to rule on the issues as he sees them without having to compromise his position for the sake of a majority award.
THE COSTS OF ARBITRATION

The following items involving costs should receive consideration in any arbitration proceeding. First, the preparation and presentation of the case; second, the stenographic report of the testimony (if desired); third, the arbitrator's fee; and fourth, the administrative expense.

1. The first expense is clearly within the control of each party. It includes the time and expenses of participants, the investigation of facts, and the preparation of exhibits. Briefs, if desired, constitute another substantial cost. In complex cases parties sometimes require the help of outside experts such as time-study engineers or economists. But this added expense is seldom necessary in the average grievance arbitration.

2. The second item of expense, the stenographic record, is a much debated item. As a general rule, arbitrators take their own notes and do not need stenographic records. In complicated cases, stenographic records are frequently found helpful not only by arbitrators, but also by parties in preparation of written briefs. When a party wants a stenographic record, the Association arranges to have a court reporter present at hearings. The party or parties ordering a record will be billed directly by the stenographer. It is therefore up to them to give him appropriate instructions with regard to copies and billing.

3. The third item of expense is the fee of the arbitrator. The charges made by an arbitrator usually range from $125 up per day of hearing and per day used in the preparation of the award. It is the Association's policy and practice to have the rate of compensation agreed upon or known in advance. Along with the arbitrator's fee there may be his travel, hotel and incidental costs.

4. The fourth item of expense is the fee of $50 which each party pays to the Association. For this sum AAA performs all the administrative work in connection with the selection of the arbitrator and the scheduling of hearings. The basic administrative fee also pays for the first hearing. An additional $25 is charged to each party for every subsequent hearing, if it is clerked by an AAA staff member or if it takes place in a room furnished by the Association.

CONCLUSION

Arbitration is the most practical means ever devised for resolving disputes which unions and companies are unable to settle by direct negotiation. It is the application to industrial relations of the American democratic concept of "due process."

But the Significance of arbitration is not only in its immediate advantages. The atmosphere of dispute settlement may have a profound effect upon the way labor and management get along in their day-to-day relations. That is why arbitration is more than a useful tool for coping with existing problems; it is also a moral force, encouraging a spirit of cooperation which often makes it possible for companies and unions to resolve difficulties without having to go to arbitration at all.

The American Arbitration Association

The American Arbitration Association is a private, non-profit organization founded in 1926 to foster the study of arbitration, to perfect the techniques of this method of dispute settlement under law and to administer arbitration in accordance with the agreement of parties. Membership rolls include
companies, labor unions, trade associations, civic groups, foundations and organizations of all kinds as well as individuals who believe in arbitration.

The Association is today the most important single center of information, education and research on arbitration. To bring about the widest possible understanding, hundreds of educational programs are presented every year at universities and law schools and organizations of every description.

AAA's educational program includes publication of three monthly labor arbitration award reporting services, a quarterly magazine, a quarterly arbitration law reporting service, a monthly news bulletin for members, specialized pamphlets, such as this one, covering every field of arbitration, and outlines for teaching labor-management arbitration and arbitration law courses. Among educational materials produced by the Association are five labor arbitration films, each dealing with a typical grievance, and all illustrating procedures for resolving disputes under the Voluntary Labor Arbitration Rules of the American Arbitration Association.