

How to be Effective as a Grievant, Witness or Advocate



Katrina E. Joseph, Esq.
Hughes & Costello



Martin J. Costello, Esq.
Counsel to the IBT General Secretary-Treasurer

Teamsters Women's Conference
March 31 – April 3, 2005 ❖ Niagara Falls, Ontario

The Basics of the Grievance and Arbitration Process



Grievances: Investigation

- What type of violation is being claimed?

- ❖ Contract (CBA)

- ❖ Unfair labor practice (ULP)

- ❖ Statutory (EEO, FMLA, ADA)

- ❖ Private matters

- Harassment

- Assault

- Discrimination



Grievances: Investigation

- Witnesses
 - ❖ Who heard, saw or knows?
 - ❖ Documents (postings, memos, letters)
 - ❖ Past practices, policies, or procedures
 - ❖ Prior grievances and resolutions
 - ❖ Photos or videos
 - ❖ Diagrams of the area
 - ❖ Physical evidence



Grievances: Investigation



- Any corrective or remedial action?
 - ❖ By the Employer
 - Policy changes
 - Procedure changes
 - Physical Changes
 - ❖ By the Union
 - Rehabilitation
 - Treatment
 - Apology

Grievances: Drafting

- Ask yourself, "Who is the Grievant?"
 - ❖ Union
 - ❖ Individual
 - ❖ Group, e.g., shift, drivers, or mechanics, etc.
 - ❖ Class, e.g., bargaining unit

- Affects the remedy
 - ❖ Payment vs. change



Grievances: Drafting

- State the Violation

1. Clear statement

- "The company is violating the contract (or statute, etc.) by..."
- List all violated provisions
- "... And any other applicable provisions"

2. Union recognition clause

3. Maintenance of standards clause

4. Non-discrimination clause



Grievances: Drafting

- Description of event
 - ❖ Who, what, when, where, why, & how it occurred
- Remedy
 - ❖ Reinstatement, seniority, back pay, benefits, and all other contract rights
 - ❖ Cease and desist and pay all affected members for all losses

Selecting an Arbitrator



1. Get Arbitrators' Biographies
2. Research Arbitrators' Histories and Cases
 - ❖ Who does the Arbitrator generally favor in discharge cases?
 - ❖ Has the Arbitrator ruled on similar issues or cases?
3. Decide How Arbitrators Will Be Struck
 - ❖ Who goes first?
 - ❖ Who or what decides?
 - ❖ Strategies

Developing A Strategy



- Develop a "Theory of the case"
- What is the rationale?
- What are the issues?
- What approach or version will you present?

Pre-Hearing Preparation

- Know the history of the case, the contract language, and its intent
- Review the scope of the Arbitrator's authority
- Gain different viewpoints
- Interview witnesses
- Compile a guide with records and documents



Pre-Hearing Preparation



- Dress, demeanor, behavior
- REMEMBER: First impressions are lasting impressions
- "Don't say anything, don't do anything" — Assume the Arbitrator is watching everything you do
- Enhance the union's presentation in all ways

Arbitration Procedures

- In discharge cases, Employer presents first; Union second
- In other cases, Union presents first; Employer second
- Resolve procedural issues
- Statement of the issue
- Protecting the record



Opening Statement



- Employer's opening statement
 - ❖ Listen carefully to what the employer claims it can prove
 - ❖ Hold the employer to its burden of proof

- Union's opening statement
 - ❖ When to **make** the union's opening statement?
 - ❖ When to **reserve** the union's opening statement?

Employer's Case-In-Chief



- The employer has the burden of proof in discharge and discipline cases
 - ❖ In those cases, make sure the employer has established every element of its theory for discharge or discipline.
- Cross examination of employer's witnesses
 - ❖ Ask leading questions requiring yes or no answers
 - ❖ Sometimes less is more
 - ❖ BEWARE: Asking one question too many
 - ❖ Sometimes the **best** cross-examination is **no** cross-examination

Union's Case-in-Chief



1. Contract Language

2. Union witnesses

- ❖ Union officials
(steward, business agent, officer)
- ❖ Grievant
- ❖ Expert witnesses

3. Evidence & Exhibits

Contract Language

- Read through all articles to see if others apply
- Read Grievance and Arbitration Language for "arbitrability" Question



Union Witnesses

- Selection
- Preparation before hearing
- Try to alleviate apprehension
- Mental markers
- Sample cross examination



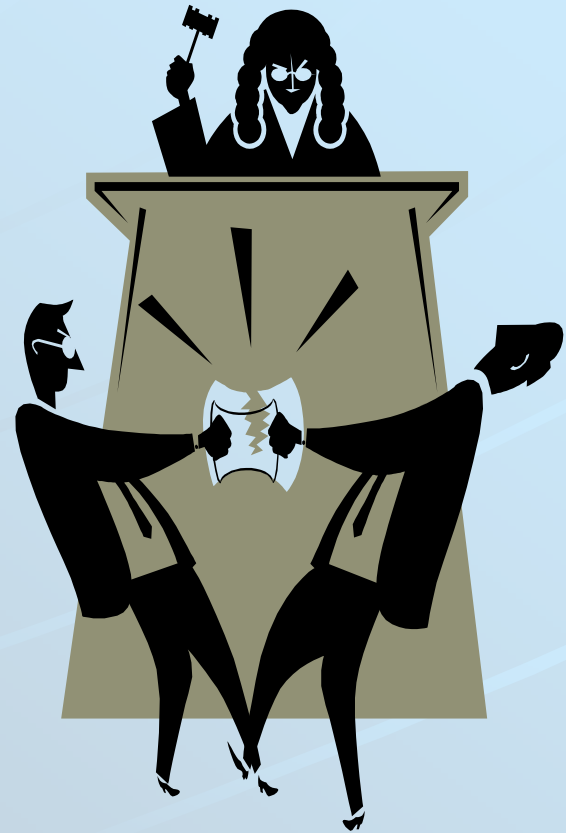
Union Evidence & Exhibits



- Best
 - ❖ Originals
 - ❖ Witnesses
 - ❖ Photos
- Secondary
 - ❖ Affidavits
 - ❖ Copies
- Circumstantial

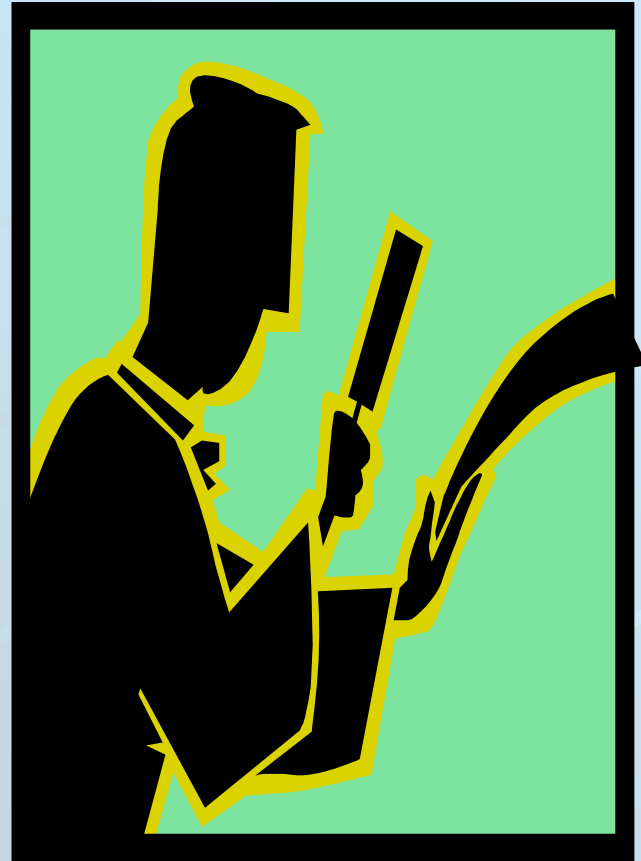
Employer's Rebuttal

- Rebuttal does **not** mean repeat
- Must respond to new matters raised by the Union



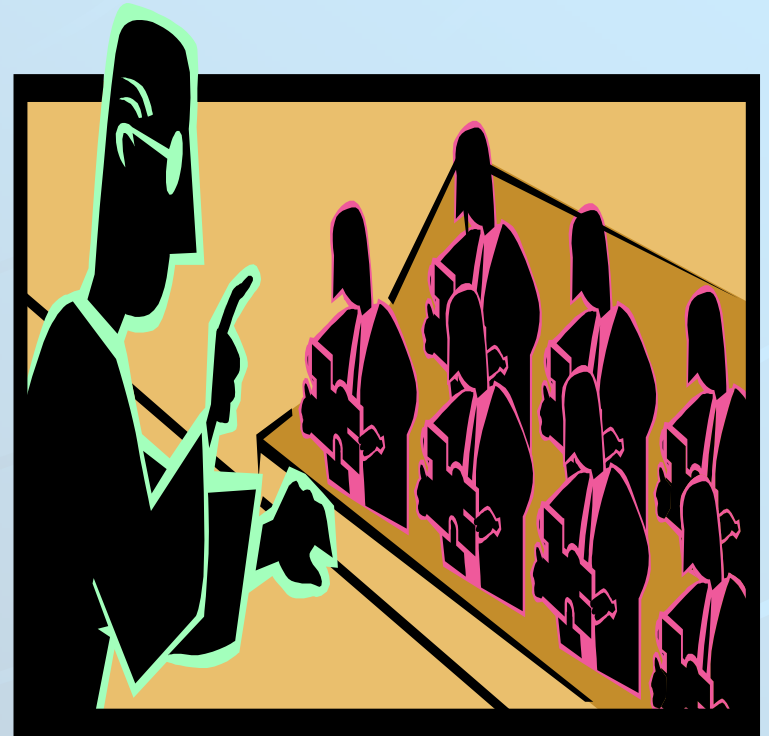
Union's Surrebuttal

- Surrebuttal does **not** mean repeat
- Must respond to new matters raised in employer's rebuttal



Final Arguments

- Employer's final argument
- Union's final argument
- Employer's rebuttal
- Union's surrebuttal



Post-Arbitration Hearing Briefs

- When to file/not file a post-hearing brief
- Simultaneous submission to the arbitrator
- Reply briefs
- Thirty to sixty-day rule



Award



- Interpreting the award
 - ❖ Terms of reinstatement
 - ❖ Calculation of back pay
 - ❖ Deductions for interim earnings, unemployment, etc.

- Enforcing the award
 - ❖ Arbitrator retains jurisdiction
 - ❖ Confirmation of the award in district court
 - ❖ Enforcement proceedings

TEAMSTER
WOMEN

WORKING, HELPING, EDUCATING, ACHIEVING[®]

TOGETHER