ATU
NATIONAL CONVENTION
GRIEVANCE ADVOCATE
MINI-SEMINAR

AUGUST 25-26, 2013
SAN DIEGO, CALIFORNIA

E. WILLIAM HOCKENBERRY, ESQUIRE
ARBITRATOR
..and now for step seven in our grievance procedure!“
WHY UNIONS GRIEVE

- MERITS
- PRECEDENT
- POLITICS
- DUTY OF FAIR REPRESENTATION
- ECONOMICS
BASIC STEPS IN GRIEVANCE HANDLING

- Does the grievance concern a violation of the contract or other rules, established practice or unfair treatment of workers?
- Get the facts: Separate fact from opinion.
- Test the facts and get supporting documents.
- Develop your arguments in order.
- Write the grievance with care and remember remedy.
- Have an effective presentation, be a good listener, no bluffing, watch deadlines.
- Keep good records of all cases handled.
FACTS-OPINIONS-ARGUMENTS

- FACTS **NOT** IN DISPUTE MAY PROVE YOUR GRIEVANCE.
- OPINIONS OFFER **CONCLUSIONS** ABOUT THE FACTS BUT NOT PROOF.

**EXAMPLES:** The bus operator was speeding/drove through a red-light/was negligent; the aisle in the bus was wet and the passenger slipped; the employee was insubordinate to me; I am sure the mechanic heard my order; the negotiators intended the word/sentence to mean…. *How do you know this???

- ARGUMENTS ARE HOW YOU **ARRANGE** THE FACTS TO PROVE YOUR GRIEVANCE AND THE REMEDY.

- YOU MUST STILL PROVE IT!
WHICH IS FACT AND WHICH IS ARGUMENT?

THE GRIEVANT HAS A SATISFACTORY 22 YEAR WORK RECORD WITH THE COMPANY AND THAT SHOULD LESSEN THE DISCIPLINE ADMINISTERED. ANY GOOD MANAGER KNOWS THIS.
THE GRIEVANT HAS A SATISFACTORY 22 YEAR WORK RECORD WITH THE COMPANY AND THAT SHOULD LESSEN THE DISCIPLINE ADMINISTERED. ANY GOOD MANGER KNOWS THIS.

- FACT
- ARGUMENT
- OPINION
THREE TYPES OF EVIDENCE

- DIRECT -- PROVES WHAT YOU ARGUE
- CIRCUMSTANTIAL -- PIECES OF THE PUZZLE STANDING ALONE MEAN LITTLE―BUT STRUNG TOGETHER….
- HEARSAY -- I HEARD IT ON THE GRAPEVINE

WHICH ARE THE TWO MOST COMMON IN GRIEVANCE HANDLING?
ROLE OF THE UNION
REP IN HANDLING GRIEVANCES

- Investigate the Case
- Educate the Grievant and Employer
- Communicate Your Argument
- Advocate Your Position
- Persuade Using the Theory of the Case
- Negotiate/Stipulate Evidence
- Articulate a Settlement
- Prepare to Arbitrate
THEORY OF THE CASE

“YOU’VE GOT TO KNOW WHEN TO HOLD THEM, AND KNOW WHEN TO FOLD THEM AND JUST WALK AWAY”

KENNY ROGERS - THE GAMBLER
THEORY OF THE CASE

- ISSUE AND REMEDY
- FACTS
- WITNESSES
- EXHIBITS AND DOCUMENTS
- ARGUMENT
- OTHER SIDE’S THEORY OF THE CASE

- FIGHT and FIX
- HAVE NO FEET!
- (PLUSES/MINUSES)
- NO FEET EITHER!
- OPENING/CLOSING/OBJECTIONS
- WHO/WHAT ARE THEY BRINGING TO THE DANCE / WHY?
REMEMBER!

- FOLLOW YOUR THEORY OF THE CASE.
- SEEK INFORMATION TO TEST THAT THEORY.
- LIST WHAT YOU THINK YOU KNOW, GATHER WHAT YOU DO NOT KNOW.
- INSPIRE CONFIDENCE IN OTHERS AND YOURSELF BY BEING PREPARED.
YOU CAN ALWAYS CHANGE YOUR ARGUMENT...YOU CANNOT CHANGE THE FACTS!!
AN ADVOCATE’S DILEMMA: PROVING THE CASE PRIMARILY THROUGH THE USE OF OTHER PEOPLE!
OTHER PEOPLE
WITNESS CREDIBILITY

THE TELLER
(The Storyteller)

HOW THEY SAY IT

AND THE TALE
(The Story)

WHAT WAS SAID
CREDIBILITY

- RAPPORT/ATTITUDE
- BIAS/ARROGANCE/OPINION
- FLUENCY WITH STORY
- SOURCE OF KNOWLEDGE
- COMFORT LEVEL/DEMEANOR
- ASSUMPTION/CONCLUSION
SUMMARY CHECK LIST:

- Investigate By Gathering Evidence In The Form Of Testimony, Documents And Exhibits.
- Make Demands For Information Necessary To Your Theory Of The Case And Document Requests.
- Seek Facts, Create Arguments.
- Facts Support Arguments, Not Other Way Around.
- Determine Credibility Of ALL Evidence By Testing And Comparing With What You Know.
SUMMARY CHECK LIST CONTINUED:

- SEEK WHAT YOU DO NOT KNOW.
- ARRANGE YOUR ARGUMENTS TO SUPPORT YOUR THEORY OF THE CASE.
- CHALLENGE OTHER SIDE'S EVIDENCE AND THEORY OF THE CASE.
- ANTIMIPATE CHALLENGES TO YOUR EVIDENCE AND ARGUMENTS. PREPARE EFFECTIVE REBUTTAL OR AMEND.
- BE PREPARED TO NEGOTIATE A SETTLEMENT BUT NEVER SETTLE SHORT!
TWO TYPES OF GRIEVANCES

1. DISCIPLINE
2. CONTRACT INTERPRETATION
TESTS FOR DISCIPLINE

1. REASONABLE RULE?
2. NOTICE OF RULE?
3. RULE VIOLATED?
4. PROCEDURES FAIR AND OBJECTIVE?
5. PENALTY APPROPRIATE?
NUTSHELL SUMMARY

- Quantum of Proof
- Awareness of the Rule
- Relevant Reasonable Rule
- Consistency of Discipline
- Proper Escalation
- Corrective Not Punitive
- Adherence to Procedures
- Laxity of Enforcement
- Timeliness of Penalty
CONTRACT INTERPRETATION
THE MEANING OF WORDS

Piece of work, miss, split, pick, extra board, day board, hungry board, mark-up, mark-out, call-out, barn, small transit vehicle, paratransit.

Regular run, straight run, two-piece run, three-piece run, owl run, made-up run, day run, night run, weekday run, vacation run, relief run, five-day run, revenue run, catch a run, the runs.

Pull-out time, pull-in time, platform time, work time, pay time, guarantee time, show-up time, terminal time, travel time, overtime.

Operator, part-time operator, non-operator, heavy repair mechanic, depot clerk, line hostlers, red-circled employees, farebox clerk.
RULES ON CONTRACT INTERPRETATION

- Contract Construed Broadly, Not Narrowly Or Technically.
- Normal vs. Technical Language Usage
- Contract Construed As a Whole Document
- To Express One Thing Is To Exclude Another
- Specific Language Governs Over General Language
INTERPRETATION CONTINUED

- Use of Bargaining History As Oral Evidence
- Use of External Law, Regulations and Policies
- Custom and Past Practice
- Use of Precedent
- Avoid Harsh, Absurd or Nonsensical Results
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QUESTIONS?

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