

Tips for New(er) Advocates in Labor Arbitrations

Contributed by members of the National Academy of Arbitrators, Southwest / Rockies Region. The suggestions below reflect the current individual views of the respective contributors and not necessarily those of the NAA, the Region, other contributors or NAA members, or any organization with which a contributor or other member is affiliated.

1. To the greatest extent possible, discuss and agree to exhibits in advance. Don't waste time at the hearing in viewing proposed exhibits for the first time. Try to agree with opposing advocate on the issue for the arbitrator to decide.
2. Be on time for the hearing. Have your evidence with you and your witnesses readily available.
3. If you intend to introduce exhibits, bring copies for yourself, the opposing advocate, the arbitrator, the witness and the court reporter, if there is one.
4. If you have voluminous exhibits, Bates stamp them and consider putting the exhibits in notebooks for the arbitrator, opposing advocate, etc.
5. Prepare a written opening statement or written bullet points, and bring copies for the arbitrator and the opposing advocate. This will help ensure that the points you wish to make are not lost. This need not be lengthy!
6. Prepare a detailed written timeline of your facts, and bring copies for the arbitrator and the opposing advocate. Consider exchanging factual timelines with the opposing advocate to see which facts, if any, can be stipulated. This will help orient the arbitrator to the case and prevent flipping through documents during the hearing.
7. Make an opening statement. Do not defer it! The arbitrator may have a more challenging time evaluating the evidence during the hearing without the benefit of an introduction by both parties. Having the arbitrator understand the big picture overshadows the strategic benefit of deferral. If you are unsure of the opposing parties' position, ask if you can modify your opening when it comes to your case in chief.
8. Prepare your witnesses for the hearing and stress that they must tell the truth. Witness credibility is very important and a lack of credibility can undermine your case. Go over his/her testimony. Review the documents/evidence with the witness who will introduce them. Review the hearing protocols with the witness (e.g., be responsive to the questions, wait before giving an answer when there is an objection).
9. When alleging a contract violation, explain exactly why the conduct in question violates specific sections or articles of the CBA.
10. Be judicious in making objections. Pick your battles and save objections for the big violations.
11. In cross-examination, usually "less is more." Hit the key points — and stay professional; if you get mad at an adverse witness you may lose your focus.
12. If you have asked a witness the same question multiple times and still have not gotten the answer you were seeking, move on.
13. Overzealous advocacy can backfire. An arbitrator may conclude that the advocate is attempting to cover up a weakness in the case or impress his/her clients. Keep the arbitrator focused on the evidence.
14. If you are going to close orally, remember that this is your last opportunity to persuade the arbitrator of the validity of your case. If you need time to organize your thoughts, ask for it. Tell the arbitrator what you believe you have proved and cite the evidence that proves each point.
15. The grievant's advocate should specify the remedy sought.
16. Be clear about how your requested remedy either (i) will make the grievant whole, or (ii) will return the parties to the status quo ante. Be careful about overreaching when requesting a particular remedy.
17. Be the "bringer of truth" in the arbitration hearing. Your credibility as an advocate is extremely important to your case.
18. If you agree to write a post-hearing brief, discuss the due date and mechanism for filing before the hearing is adjourned (e.g., mutual exchange with a copy to the arbitrator by USPS, FedEx, UPS; electronically as an attachment; arbitrator receives briefs and exchanges). If you are not clear about when or how post-hearing briefs should be submitted, get clarification from the arbitrator, copying opposing counsel, well in advance.
19. Do not include new evidence in a post-hearing brief. Briefs should combine the arguments you made with the evidence that was admitted at the hearing to support them.
20. Good manners should be a priority; attacks on the opposing party and/or witness can significantly damage the parties' relationship. Remember, the parties have to go back to work together.

National Academy of Arbitrators Membership Requirements

Members of the National Academy of Arbitrators have been evaluated on the basis of their experience and their proven acceptance by labor and management. Acceptance is assessed in part through references from labor and management advocates as well as a track record of cases heard and decided over a period of time. The specific requirements for admission are:

1. The applicant should be of good moral character, as demonstrated by adherence to sound ethical standards in professional activities.
2. The applicant should have substantial and current experience as an impartial arbitrator of labor-management disputes, so as to reflect general acceptability by the parties. “Substantial and current experience as an impartial arbitrator” means that, as a threshold requirement, the applicant should have • at least five years of arbitration experience and • a minimum of 60 written decisions in a time period not to exceed six years, at least 40 of which must be “countable labor-management arbitration awards.”
3. As an alternative to (2), an applicant with limited but current experience in arbitration should have attained general recognition through scholarly publication or other activities as an important authority on labor-management relations.

For more details, and information about how to obtain a membership application, please see the Academy website at www.naarb.org.

About the National Academy of Arbitrators

The National Academy of Arbitrators (NAA) is a professional organization of more than 600 neutral labor and employment arbitrators in the U.S. and Canada.

Founded in 1947, the Academy fosters standards of integrity and competence among those engaged in the resolution of labor-management and other workplace disputes.

The Academy is organized into geographic regions. This brochure is published by the Southwest / Rockies Region of the NAA.

Books and other resources: The NAA, in cooperation with BNA Books, publishes the proceedings of each annual meeting.

The Proceedings, consisting of the papers and presentations on various labor-management topics, are available **free** in a searchable database online at www.naarb.org.

Also published by BNA is *The Common Law of the Workplace: The Views of Arbitrators*, 2d Edition, National Academy of Arbitrators, Theodore St. Antoine, Editor (2005).

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