



# Defending Grievances in the Arbitration Process

Practical Steps  
and  
Legal Considerations

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- Principal – Vincent F. Ragosta, Jr. Attorney at Law, Providence, RI
- 1976 B.A. - Boston College; 1979 Juris Doctor - Gonzaga University School of Law
- 40 years of practice representing municipalities and private sector employers ... AV rating, highest obtainable with Martindale Hubbell
- Seasoned in all phases of collective bargaining, grievance and interest arbitration, mediation and employment litigation
- Prosecutes LEOBOR police misconduct cases and all other municipal disciplinary cases
- Appointed to American Arbitration Association's prestigious National Labor/Management Council, a cadre of the nation's best labor attorneys and arbitrators, which addresses trends and improvements in labor arbitration in the United States.

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- 40 years in Rhode Island law enforcement:
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- Masters in Criminal Justice, Anna Maria College;
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- Executive Leadership Certificate, John F. Kennedy School of Government, Harvard University
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- Johnson and Wales University:
  - Business Administration and Financial Services
- Bryant University Executive Development: Human Resources Certificate
- Director of Human Resources, Town of Barrington
- Citizens Bank: Vice President of Staffing, Training and Development
- HR Manager for Composite Modules, Inc. (Florida and Massachusetts)

## What is a Grievance?

- Should be defined in CBA
- Good example: *“A grievance is a dispute between the employee (or the Union) and the Employer which involves the application, meaning or interpretation of the provisions of this agreement; provided however that an employee shall not have the right to grieve or arbitrate the imposition of discipline or his dismissal from employment during his probationary period. The procedures set forth in this article shall comprise the sole and exclusive dispute resolution process for a grievance”*
- To the employer: a problem arising out of the CBA

# What is a Grievance?

To the grievant/union:

- a situation in which an employee or union allegedly treated improperly by the employer, which should be recognized and corrected in some way



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## How to Assess a Grievance?

- Has the CBA been violated?
- Has there been a violation of federal or state law?
- Has established past practice been violated?
- Has there been a violation of employer policies, rules or regulations?

“Yes” answer to any of these questions indicates probable merit to the grievance.

## The CBA

- The CBA or adjuncts (MOAs, MOUs, stipulated awards, all subject to MEAA 3/5 year limit) contain most of the rules governing the relationship
- Clear-cut violations usually easy to locate and remedy
- CBA interpretation more challenging because many municipal agreements poorly written, drafted in “union speak”, ambiguous or unintelligible

# Federal and State Law



- Law: part of every CBA, notwithstanding contrary provisions or parties ignorance of it
- CBA must be compliant with law. Examples--
- Fair Labor Standards Act (FLSA) – schedules, hours, overtime -- may not contravene wage and hour rules
- Civil Rights Act and FEPA forbid discrimination based on various protected classes
- Occupational Safety and Health Act (OSHA) –employer responsible to furnish safe and healthful workplace



## Past Practice

- Violation of past practice may be the basis of a grievance
- Such grievances involve circumstances in which CBA is either silent or unclear
- R.I.G.L. § 28-9-27 – set forth elements – may not contravene express language or law

## Policies, Rules and Regulations

- Management right to promulgate, but ought not conflict with CBA
- Grievances often grounded on implementation of conflicting policy, rule or regulation
- Failure to enforce policy, rule or regulation, or administering in an inconsistent or discriminatory fashion, gives rise to a grievance or serves as defenses to imposed discipline

# Legal Considerations: Substantive Non-Arbitrability



- "...there are certain matters that may not be bargained away by a public employer. *Vose v. Rhode Island Brotherhood of Correctional Officers*, 587 A.2d 913, 915 (R.I. 1991). A public employer may not bargain away its statutory duties. ... It is " a basic rule of law that [public employers] ... not at liberty to bargain away their powers and responsibilities with respect to the essence of the[ir] \* \* \* mission."

## Legal Considerations: Procedural Non-Arbitrability

- Timeliness defenses critical – good CBA language valuable.
- Example: *“The time limitations set for in this article are the essence of this Agreement and the failure by an employee (or the Union) to comply with the time limits shall be deemed to constitute a waiver of the grievance “*



# Basic Checklist in Managing Grievances

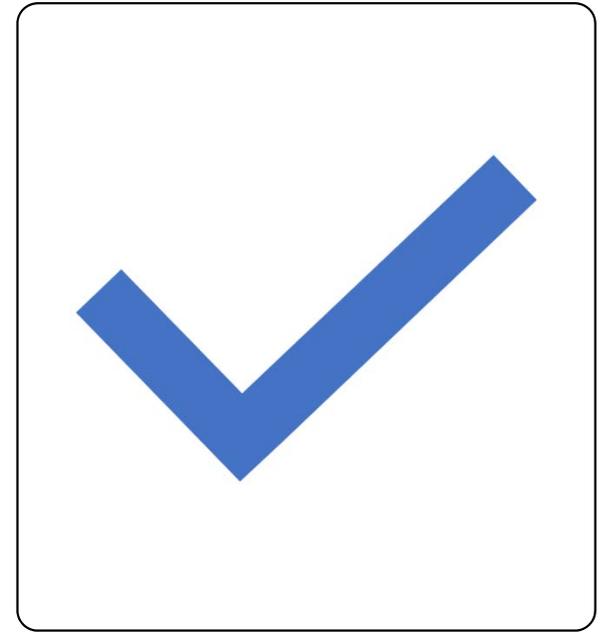
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- Put employee/union representative at ease – be calm
- Encourage discussion of problem
- Let employee/union tell their story...open ended questions
- Listen attentively; don't interrupt – maintain objectivity
- Give full attention, creating positive atmosphere...take notes, but not too early or too quickly

# Basic Checklist in Managing Grievances

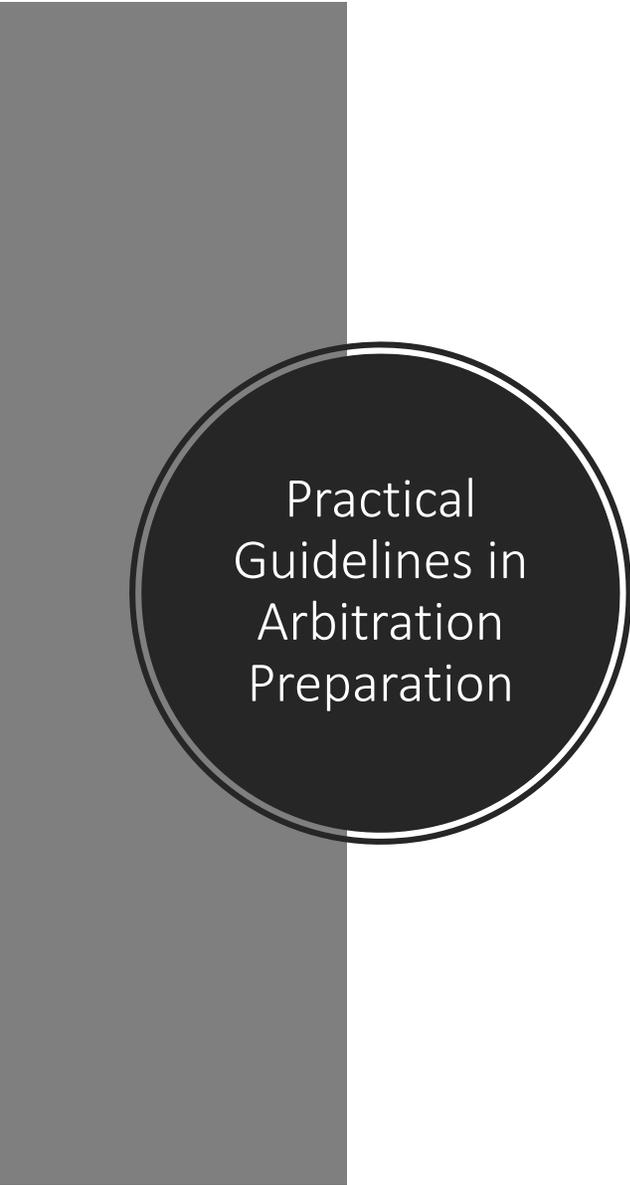
- When the employee has finished, ask questions
- Get names, times and places
- Ask employee to repeat story — be aware of any inconsistencies
- Don't get baited or irritated
- Discuss desired remedy — do not assume you know what employee/union really wants





## Basic Checklist in Managing Grievances

- Recap your understanding about what the grievance is and remedy sought.... ask employee to confirm accuracy of restatement
- Distinguish between facts, opinions, allegations and assumptions, locating and interviewing all witnesses
- Draft straightforward answer to the grievance – always preserve arbitrability and other available defenses at law or in equity



Practical  
Guidelines in  
Arbitration  
Preparation

Get the Facts	Get the facts — Pay attention to the chronological order of all events ... review the history of the case
Study CBA	Study the entire CBA, including sections with direct or indirect bearing, as well as prior CBAs for historical context
Examine and organize	Examine and organize all records and documents
Process	Determine if steps of CBA's grievance process have been followed
Talk	Talk with all persons who can shed light on the case, including those the other party will use

Prepare	Prepare the other side's case in addition to your own... aids you to understand your opponent's strengths and weaknesses
Interview	Interview each of your witnesses, relate their testimony to the case, then give them some practice in being cross-examined
Use	Use only witnesses who have been prepared, and insist on truth
Look	Look at the physical premises
Consider	Consider the use of demonstrative evidence — statistical exhibits, pictures, graphs, etc.

## Practical Guidelines in Arbitration Preparation

## Consider

Consider practice and precedence

## Research

Research and request prior awards for cases with similar facts

## Outline

Make case outline with anticipated proof by testimony/exhibits

## Draft

Draft preliminary opening statement – theme of case

## Open

Be open and don't conceal evidence from the union

## Consider

Always contemplate settlement prospects

# Practical Guidelines in Arbitration Preparation



# Real World Cases