INTRODUCTION TO GRIEVANCE ARBITRATION
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Appendix A
   Sample Arbitrator ................................................................................................................................A-1

Appendix B
   Grievance Arbitration Manual

Handouts

The following handouts will be used during the team activities:

- Panel of Arbitrators (Teams One and Two)
- Panel of Arbitrators (Teams Three and Four)

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Introduction

This manual is a workbook for the International Association of Fire Fighters’ Partnership Education Program Workshop on “Introduction to Grievance Arbitration.” As you participate in this workshop, you will use it to complete activities and take notes. In addition, the appendices will serve as a useful reference after the workshop is complete.

Despite your best efforts to resolve all disputes internally, some grievances cannot be settled at the local level and must be heard by a neutral arbitrator. To succeed at arbitration, a union leader must be well prepared and have a good understanding of the arbitration process. This session will give you an overview of arbitration procedures and protocol, methods for selecting an arbitrator, and strategies for cutting costs. This session is ideal for local union officers and grievance committee members who work in collective bargaining environments and have limited experience with grievances.

Workshop Components
The following symbols are used throughout the workbook to indicate an activity.

- **Individual Activity**
  Indicates an activity to be completed on your own.

- **Class Activity**
  Indicates an activity to be completed as a class.

- **Team Activity**
  Indicates collaborative learning in small groups to encourage you to work and learn as part of a team.

- **Guided Discussion**
  Indicates a discussion between the facilitator and the participants.

- **Report Back**
  Indicates debriefing of individual, class or team activities where you will present your individual or group findings.
Welcome

Goal
In this workshop, you will gain a basic understanding of the grievance arbitration process and learn how to select an arbitrator.

Learning Objectives
After you complete this workshop, you will be able to:

- Explain the purpose of grievance arbitration in the labor environment.
- Describe the differences between grievance arbitration and litigation.
- Describe the grievance arbitration process from beginning to end.
- Evaluate the credentials of several arbitrators and select one who would most likely provide a favorable result.
## Agenda

<table>
<thead>
<tr>
<th>Activity</th>
<th>Time</th>
</tr>
</thead>
<tbody>
<tr>
<td>Welcome and Agenda</td>
<td>5 minutes</td>
</tr>
<tr>
<td>Overview</td>
<td>5 minutes</td>
</tr>
<tr>
<td>Arbitration vs. Litigation</td>
<td>25 minutes</td>
</tr>
<tr>
<td>The Grievance Arbitration Process</td>
<td>10 minutes</td>
</tr>
<tr>
<td>Selecting an Arbitrator</td>
<td>70 minutes</td>
</tr>
<tr>
<td>Summary</td>
<td>5 minutes</td>
</tr>
</tbody>
</table>

**Total Time**  
2 hours
Overview

Guided Discussion

Answer the following questions in the space provided below.

What is arbitration?
____________________________________________________________________________
____________________________________________________________________________

What is the purpose of arbitration?
____________________________________________________________________________
____________________________________________________________________________

What are the two types of labor arbitration? Provide an explanation for each type.
1. __________________________________________________________________________
____________________________________________________________________________
____________________________________________________________________________

2. __________________________________________________________________________
____________________________________________________________________________
____________________________________________________________________________
## Arbitration vs. Litigation

### Team Activity

Arbitration has many similarities and differences to litigation. Some of the similarities are as follows:

<table>
<thead>
<tr>
<th>Similarities Between Arbitration and Litigation</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Both have clients with opposing points of views heard by an outside neutral party.</td>
</tr>
<tr>
<td>• Similar proceedings:</td>
</tr>
<tr>
<td>o Opening Statements by both parties</td>
</tr>
<tr>
<td>o Presentation of witnesses and evidence</td>
</tr>
<tr>
<td>o Cross-examinations by both parties</td>
</tr>
<tr>
<td>o Closing Statements by both parties or post-hearing briefs</td>
</tr>
</tbody>
</table>

### Directions

- Imagine the differences between arbitration and litigation. Think of how an arbitration hearing about a contract violation might be different than a court case involving a murder trial. Consider the process as a whole, pertinent details and the outcome.
- Try to find six differences between the two and write your answers on page 11.
- Complete this exercise in five minutes and be prepared to report your answers to the class.
Arbitration vs. Litigation

Team Activity

In the table below, list six differences between the arbitration and litigation.

<table>
<thead>
<tr>
<th>Grievance Arbitration</th>
<th>Litigation</th>
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</thead>
<tbody>
<tr>
<td>1.</td>
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<tr>
<td>2.</td>
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<td>3.</td>
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<td>4.</td>
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<tr>
<td>5.</td>
<td>5.</td>
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<tr>
<td>6.</td>
<td>6.</td>
</tr>
</tbody>
</table>

NOTES:

_____________________________________________________________________________________
_____________________________________________________________________________________
_____________________________________________________________________________________
_____________________________________________________________________________________
_____________________________________________________________________________________
_____________________________________________________________________________________
The Grievance Arbitration Process

Guided Discussion

In general, the arbitration process follows these steps:

<table>
<thead>
<tr>
<th>The Grievance Arbitration Process</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Pre-hearing</strong></td>
</tr>
<tr>
<td>1. The union contacts the appropriate association/board to initiate the arbitration process. In most cases, the union will contact the American Arbitration Association (AAA), the Federal Mediation Conciliation Service (FMCS), or the State or Provincial Labor board.</td>
</tr>
<tr>
<td>2. The appropriate association sends the union and management a list of arbitrators (usually seven arbitrators).</td>
</tr>
<tr>
<td>3. The union contacts the IAFF for background information on the arbitrators listed.</td>
</tr>
<tr>
<td>4. The union and management each strike names from the list until one arbitrator is agreed upon by both parties (or each party sends its preferred list to the FMCS).</td>
</tr>
<tr>
<td>5. One or both parties contact the arbitrator directly to set hearing dates and discuss costs. Hearing dates are agreed upon by both parties. Cost burden is often dictated by the collective bargaining agreement (e.g., split costs evenly, loser pays fees, etc.).</td>
</tr>
<tr>
<td>6. The union and management prepare for the arbitration hearing.</td>
</tr>
<tr>
<td>7. The union and management submit pre-hearing briefs. (Optional)</td>
</tr>
<tr>
<td><strong>Hearing</strong></td>
</tr>
<tr>
<td>8. Both parties stipulate to the facts of the case. (Optional)</td>
</tr>
<tr>
<td>9. The union and management present their opening statements.</td>
</tr>
<tr>
<td>10. The union and management present their witnesses and evidence.</td>
</tr>
<tr>
<td>11. The union and management cross-examine the witnesses.</td>
</tr>
<tr>
<td>12. The union and management present their closing statements or submit post-hearing briefs (i.e., written closing arguments).</td>
</tr>
<tr>
<td><strong>Post-Hearing</strong></td>
</tr>
<tr>
<td>13. The arbitrator typically renders his/her decision within 30 days of the hearing or the receipt of post-hearing briefs.</td>
</tr>
</tbody>
</table>

The arbitration process may vary somewhat according to the language in your collective bargaining agreement and the arbitrator chosen. Most grievance procedures contain clauses that set parameters for the arbitration process.

Examples of arbitration clauses include (please fill in the space below):

____________________________________________________________________________
____________________________________________________________________________
____________________________________________________________________________
____________________________________________________________________________
____________________________________________________________________________

It is important that you read your grievance procedure carefully and follow the steps outlined for arbitration in your contract (if listed).
Selecting an Arbitrator

Guided Discussion

Why is the choice of arbitrator so important? (Write your answer in the space below.)

____________________________________________________________________________
____________________________________________________________________________
____________________________________________________________________________
____________________________________________________________________________

The process for selecting an arbitrator may vary slightly depending upon whether you use the AAA or FMCS. Regardless of which association used, upon initiation of the arbitration process, both will send the union and management a panel of arbitrators to choose from (generally a list of seven arbitrators).

Once you receive your selection of arbitrators, you should contact the IAFF Labor Issues and Collective Bargaining Department to request a background report on each arbitrator. The IAFF reports provide more information than the AAA and FMCS reports.
Selecting an Arbitrator

Guided Discussion

When reviewing the IAFF arbitrator report, you should look for any information that might indicate that the arbitrator has a bias (either union or management). In general, locals should try to find an arbitrator who appears to favor unions and rule out arbitrators who appear to favor management. It is also generally preferable to find an arbitrator who has experience with the fire service, public safety, the government and/or the issue at hand. Pay particular attention to the following, giving more weight to the categories marked with an asterisk (*):

- **Awards History**: The chart provides statistical information on all cases heard by the arbitrator. It is then broken down by discipline and non-discipline cases. More weight should be given to the awards for the type of grievance being arbitrated.

- **Membership on Panels**: It is helpful to choose an arbitrator who is a member of one or more state employment boards as he/she might be more familiar with labor issues.

- **Per diem**: The per diem should be evaluated, along with the Charge Circumstances and Per diem Explanation categories, after all other factors have been considered. It is important to determine how the arbitrator determines his/her per diem. Some compute the per diem in six-hour intervals, while others in eight-hour intervals. It is possible to have two per diem charges in one day.

- **Hearing Procedure**: Is the arbitrator willing to rely on his/her notes or does he/she require a transcript? Transcripts will cost more money for the union and/or management. This is a minor consideration.

- **Arbitrated Issues**: It is generally preferable to work with an arbitrator who has heard cases on the same issue(s) as yours. An arbitrator is more likely to make a sound decision if he/she understands the issue. This will also help save time and money.

- **Arbitrated Industries**: It is generally preferable to work with an arbitrator who has worked with the fire service, public safety and/or the government. These arbitrators will be more familiar with the pay structure, shift scheduling and other issues unique to the industry.

- **Education**: It is potentially helpful to find an arbitrator who graduated from a labor-oriented school. Examples include Cornell, Penn State, Harvard and the National Labor College.

- **Publications**: It is helpful to read any articles published by the arbitrator to gauge his/her opinion on labor in general. More weight should be given to the more recent articles.

Review pages A-1 – A-4 and answer the following questions:

According to the Awards History chart, would you say that this arbitrator favors unions or management?

____________________________________________________________________________

____________________________________________________________________________

What does this report tell us about Carl Barren?

____________________________________________________________________________

____________________________________________________________________________

____________________________________________________________________________
Selecting an Arbitrator

Team Activity (35 minutes)

Now that you know how to interpret the IAFF arbitrator reports, you will now review a panel of arbitrators and select the ones who appear to favor your position.

Directions

- **Team assignments:**
  - Team One – Union
  - Team Two – Management
  - Team Three – Union
  - Team Four – Management

  Teams One and Two are opposing parties in a discipline case.
  Teams Three and Four are opposing parties in a non-discipline case.

- **Read your assigned scenarios below, review your corresponding arbitrator reports, and complete the assignment on pages 21-23.**

- **Select the arbitrators who would most likely favor your position (either union or management as assigned) and rule out the arbitrators who appear unfavorable.**

- **Complete the assignment within 35 minutes.**

---

**Scenario – Groups One and Two:**

A lieutenant was demoted to Fire Fighter II / Paramedic for continuing poor performance. The triggering incident occurred when the lieutenant failed to report that a fire fighter failed to respond to a call because the fire fighter overslept. Both sides acknowledge that the fire fighter missed the call and that the lieutenant failed to report the incident. The union filed a grievance alleging that the employer failed to follow due process procedures and that the demotion should be overturned. Management believed that the demotion was justified and would not change its position. The union has exhausted the internal grievance procedure and plans to take it to arbitration.

---

**Scenario – Groups Three and Four:**

Inferno City Fire Department guarantees fire fighters a minimum of three hours of premium pay (i.e., time and a half) when called in to work overtime regardless of the number of hours worked. The contract is silent on how and when the minimum hours are applied (i.e., the contract does not address pyramiding overtime payments).

On April 5th, the department called in an entire platoon (20 off-duty fire fighters) to work overtime to help the on-duty platoon put out a fire in the nearby grocery store. The fire was extinguished within an hour and the platoon was sent home. An hour later, the fire rekindled, and the platoon was called back in to work an additional hour. The platoon worked a total of two hours and was paid three hours of overtime pay.

The union filed a grievance alleging that the platoon should have been paid a total of six hours since it was called twice that day to work overtime (i.e., two, three-hour minimum overtime shifts). Management asserted that the fire fighters should only be paid for three hours since the overtime call backs were within a three-hour period and the fire fighters only worked two hours. The union has exhausted the internal grievance procedure and plans to take it to arbitration.
**Selecting an Arbitrator**

**Team Activity, continued**

Review your panel of arbitrators and decide which one would most likely lean in your favor (either union or management, as assigned). Complete the grid below to help you with your decision-making process. For each arbitrator listed, write a + if the category appears positive for your position, a – if it appears negative, or an N if it appears neutral.

<table>
<thead>
<tr>
<th>Teams One and Two</th>
<th>Bruce Banner</th>
<th>Arthur Curry</th>
<th>Eel O’Brien</th>
<th>Peter Parker</th>
<th>Diana Prince</th>
<th>Reed Richards</th>
<th>Bruce Wayne</th>
</tr>
</thead>
<tbody>
<tr>
<td>Panels</td>
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<tr>
<td>Per Diem</td>
<td>$800</td>
<td>$1,300</td>
<td>$1,000</td>
<td>$1,000</td>
<td>$900</td>
<td>$2,400</td>
<td>$900</td>
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<tr>
<td>Hearing Procedures</td>
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<td>Arbitrated Issues</td>
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<td>Arbitrated Industries</td>
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<tr>
<td>Education</td>
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<td>Publications</td>
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<td></td>
</tr>
<tr>
<td>Award History – Percentage of All Cases</td>
<td>66% Mgmt 33% Union 0% Split Total = 3</td>
<td>36% Mgmt 18% Union 44% Split Total = 38</td>
<td>45% Mgmt 35% Union 18% Split Total = 59</td>
<td>47% Mgmt 34% Union 19% Split Total = 74</td>
<td>0% Mgmt 100% Union 0% Split Total = 1</td>
<td>52% Mgmt 33% Union 15% Split Total = 69</td>
<td>42% Mgmt 42% Union 17% Split Total = 36</td>
</tr>
<tr>
<td>Award History – Percentage of Discipline Cases</td>
<td>0% Mgmt 100% Union 0% Split Total = 1 (33%)</td>
<td>33% Mgmt 11% Union 55% Split Total = 18 (47%)</td>
<td>40% Mgmt 25% Union 35% Split Total = 20 (34%)</td>
<td>19% Mgmt 42% Union 39% Split Total = 26 (35%)</td>
<td>0% Mgmt 0% Union 0% Split Total = 0 (0%)</td>
<td>45% Mgmt 31% Union 22% Split Total = 22 (32%)</td>
<td>25% Mgmt 50% Union 25% Split Total = 8 (22%)</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Teams Three and Four</th>
<th>Frank Castle</th>
<th>Laura Croft</th>
<th>Barbara Gordon</th>
<th>Dick Grayson</th>
<th>Clark Kent</th>
<th>Matt Murdock</th>
<th>John Rambo</th>
</tr>
</thead>
<tbody>
<tr>
<td>Panels</td>
<td></td>
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<tr>
<td>Per Diem</td>
<td>$650</td>
<td>$600</td>
<td>$1,000</td>
<td>$1,300</td>
<td>$850</td>
<td>$1,200</td>
<td>$1,000</td>
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<tr>
<td>Hearing Procedures</td>
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<td>Arbitrated Issues</td>
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<td>Arbitrated Industries</td>
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<td>Publications</td>
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<td></td>
</tr>
<tr>
<td>Award History – Percentage of All Cases</td>
<td>0% Mgmt 100% Union 0% Split Total = 1 (100%)</td>
<td>40% Mgmt 45% Union 16% Split Total = 38</td>
<td>53% Mgmt 26% Union 20% Split Total = 33</td>
<td>43% Mgmt 42% Union 16% Split Total = 343</td>
<td>43% Mgmt 31% Union 27% Split Total = 49</td>
<td>25% Mgmt 38% Union 38% Split Total = 8</td>
<td>28% Mgmt 53% Union 19% Split Total = 36</td>
</tr>
<tr>
<td>Award History - Percentage of Non-Discipline Cases</td>
<td>0% Mgmt 0% Union 0% Split Total = 0 (0%)</td>
<td>36% Mgmt 52% Union 13% Split Total = 31 (86%)</td>
<td>66% Mgmt 33% Union 0% Split Total = 9 (60%)</td>
<td>44% Mgmt 47% Union 9% Split Total = 224 (65%)</td>
<td>43% Mgmt 40% Union 17% Split Total = 30 (61%)</td>
<td>29% Mgmt 43% Union 29% Split Total = 7 (88%)</td>
<td>32% Mgmt 57% Union 11% Split Total = 28 (78%)</td>
</tr>
</tbody>
</table>
Selecting an Arbitrator

Team Activity, continued

1. List the arbitrators whom you might select for your case (if any). Explain your reasoning for each selection.

____________________________________________________________________________
____________________________________________________________________________
____________________________________________________________________________
____________________________________________________________________________
____________________________________________________________________________
____________________________________________________________________________

2. List the arbitrators whom you would cross off your list (if any). Explain your reasoning for each selection.

____________________________________________________________________________
____________________________________________________________________________
____________________________________________________________________________
____________________________________________________________________________
____________________________________________________________________________
____________________________________________________________________________
Selecting an Arbitrator

Guided Discussion

Although the IAFF arbitrator reports are helpful, you should not rely solely on them to make your decision. Even though an arbitrator might appear to favor unions (or management) on paper, it will not guarantee that he/she truly has a bias toward unions (or management). These background reports are best used to narrow down your selection of arbitrators.

Once you narrow down your choices, additional research is often necessary to determine the best arbitrator for your case. We recommended that you read the arbitrator’s published decisions (if any) and call other locals for their opinions. You should be aware, however, that not all arbitrator’s decisions are published. Often, arbitrators are not permitted by one of the parties to publish their decisions, or they may publish only those decisions that they consider most beneficial to their reputations.

Team Activity

Role Play – Meeting with the Opposing Party to Select an Arbitrator

Directions:

▪ Team One (union) will give Team Two (management) one of the names of the arbitrators that it crossed off the list. Team One must explain its reasoning for not selecting the arbitrator. The reporter will speak for the team. The team can confer briefly before the reporter announces the name.

▪ Team Two (management) will give Team One (union) one of the names of the arbitrators that it crossed off its list. Team Two must explain its reasoning for not selecting the arbitrator. The reporter will speak for the team. The team can confer briefly before the reporter announces the name.

▪ Both teams will continue taking turns crossing off names (and explaining their reasons) until each team crosses off three names. The remaining arbitrator will be the arbitrator selected to hear the case.

▪ Neither team should reveal to the other party the names of their top choice arbitrators. This would most likely prompt the opposing party to cross those arbitrators off the list.

Team Activity

This role play will be conducted in the same manner as the previous role play. Teams Three and Four will assume the union and management roles. Teams One and Two will observe.
Summary

Arbitration is always the last resort used for resolving grievances. If a significant number of your grievances are not resolved internally, you should examine your grievance procedures and work on your labor-management relations.

It is important to become familiar with the arbitration process and protocol. Locals should understand the similarities and differences between arbitration and litigation.

Selecting an arbitrator is one of the most important steps of the arbitration process. The arbitrator’s background and experience may affect his/her opinion on labor issues and the case in general. When selecting an arbitrator, you should research their background by:

- Contacting the IAFF Labor Issues and Collective Bargaining Department at (202) 824-1546 for reports on the arbitrators;
- Reading the arbitrator’s published decisions; and
- Calling other locals for their opinions.

Refer to Appendix B for more information on the arbitration process including a glossary of terms and information on how to cut costs. The arbitration process has hidden fees and that the manual has useful tips on avoiding them.

Some cost cutting measures include:

- **Forgo Transcripts and Briefs:**
  
  Only order transcripts and prepare briefs when necessary. These items take time to prepare and cost more for the local. However, if management is preparing a post-hearing brief, it is in the union’s best interest to prepare one as well.

- **Avoid Delays:**
  
  Do your part to make sure the arbitration hearing begins on time. Delays cause unnecessary fees.

- **Clarify the Issues:**
  
  It will save time and money if the union and management clarifies the issues before the hearing.

- **Forgo Ordering Opinions:**
  
  Do not order an opinion from the arbitrator unless absolutely necessary. Written opinions cost extra.

Learn More

The IAFF Department of Education offers other workshops through its Partnership Education Program. Visit our web site at [http://www.iaff.org/PEP](http://www.iaff.org/PEP) to learn more.

We also allow you to learn without ever leaving your fire station or home via our Online Learning Modules. Visit [http://www.iaff.org/et/](http://www.iaff.org/et/) to view our latest offerings.
APPENDIX B

Grievance Arbitration Manual