PREPARATION FOR ARBITRATION AND HEARING PROCEDURE

A Summary of Advice and Information for Company and Union Representatives

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It is believed that if the following suggestions are followed all matters of fact, contract interpretations, and points of law relevant to labor disputes will in most cases be fully and properly presented at arbitrational hearings:

1. When selecting an impartial arbitrator or chairman look for intelligence, honesty, experience, and courage. The broader the arbitrator's background of knowledge, the more likely he is to understand your case fully and to decide it correctly.

2. Try to get, as early as possible, a complete understanding of the opposite parties' evidence and contentions. This may lead to a settlement. It will, at least, tend to prevent your being "surprised" at the hearing.

3. Avoid being so steeped and stubborn in your own feelings about the dispute that you cannot see the possible merits of your opponents' position. You can't defeat their contentions if you refuse to understand them.

4. Remember that fixing a time and place for hearing requires commitments for numerous people. Be as considerate of the others as they should be of you in adapting other work to arrange attendance at the hearing. After the date is fixed, do not try to change it.

5. Make a searching, full examination of the testimony of your own witnesses well before the hearing. Make a brief, logical summary of their evidence and write a preliminary statement of the contentions you will make at the hearing. This will aid you to plan a full, logically organized, and persuasive presentation of your position.

6. Be sure that all of the people who will be in your group at the hearing understand who will be the principal spokesman for your side, who the witnesses will be, and what will be the main substance of their testimony. This will contribute to making the hearing orderly and efficient.

7. Try to agree with the opposing party as to wording the exact question or questions to be submitted to the arbitrator and have a written memorandum stating the same signed by both parties prior to the dates set for the hearing. Deliver a copy of this to the arbitrator as soon as it is ready, or offer it at the beginning of the hearing.

8. If there are several issues to be submitted, try to agree with all other parties in advance on the order in which they will be taken up at the hearing.

9. Prepare a brief, written pre-hearing summary of your contentions and deliver one copy of it to the arbitrator and one copy to your oppo-

nent at the beginning of the hearing or prior thereto. If possible, agree with the opposition for both parties to do this at the same time.

10. Have copies of all documents which you desire to present as evidence ready for delivery at the hearing. Have also at least one copy of each one for your opponent unless you know he has copies of the same.

11. If a view of a place, a machine or an operation would seem to be helpful, have a picture, drawing, or blueprint of it ready for introduction in evidence or arrange in advance that it will be available for observation and for the arbitrator to go to see it during the hearing so that as little time as possible will be required.

12. Be on time, or early if at all possible, in arriving at the place set for hearing. Tardiness wastes the time of others, is discourteous, and creates a generally bad impression.

13. Do not shout nor speak more loudly than necessary at the hearing. Never use provocative words or epithets. These actions create bad impressions of those guilty of them and in fact cloud rather than clarify issues.

14. During the hearing, do not mention nor refer to old and long-settled former frictions or acts of misconduct by your opponent unless the matters brought up are clearly relevant to the issue at present in dispute.

15. Strive for clearness and coherence in your oral presentation and, as much as possible, avoid repetition; if one of your colleagues has stated facts or arguments, avoid restating the same matters.

16. Avoid mixing presentation of facts and arguments. The effect of this is confusing and may result in weakening your own case.

17. Do not interrupt statements of the opposing party or the presentation of its evidence. You will have full opportunity to cross-examine opposing witnesses. You and your witnesses will be protected from interruption. This is an arbitrational hearing, not an informal grievance committee meeting nor bargaining conference.

18. If you intend to call witnesses, have them present in the room or in an adjacent room ready for call when the hearing starts. (If they are employed near the hearing room, they may remain at work, but they should be notified in advance that they may be called and should be requested not to leave, even though their work shift may end before they are needed as witnesses.)

19. Prove your case by your own witnesses. Do not try to establish it by evidence gleaned from people put on the stand by your opponent. They are there to oppose you, not help you.

20. If you cross-examine the other parties' witnesses, *make it short.* Do not unduly prolong cross-examination in attempts to get damaging admissions. The more questions you ask on cross-examination, the more opportunity you give a hostile witness to repeat the adverse testimony

he came to give. Choose most carefully the inquiries you make of such parties. Make them as few as possible.

21. Each party has the right to ask leading questions when cross-examining hostile witnesses. Each party should save time by asking its own witnesses leading questions, excepting at points where disputed facts are involved. Testimony on controverted matters should be brought out by questions which do not suggest the answer, if possible.

22. Do not make captious, whimsical, or unnecessary objections to testimony or arguments of the other party. Such interruptions are likely to waste time and confuse issues. The arbitrator, no doubt, will realize without having the matter expressly mentioned more than once, when he is hearing weak testimony such as hearsay or immaterial and irrelevant statements.

23. If you have extraordinarily long or highly technical matters to present, or if you wish for any reason to preserve a reliable record of the hearing, make advance provision for the attendance at the hearing of an efficient public court reporter. This involves a moderate expense, which in most cases is equally divided between the parties. It will tend to insure that when the arbitrator is working on the award and reviewing the evidence, he will have it all before him and will not be hampered by the frailties of human memory. Furthermore, it will furnish a reliable record of the actual words of witnesses, should a question arise concerning the same at a later time.

24. If one party requests the privilege of filing a post-hearing brief, it must be granted, as part of a "fair hearing." Both parties, however, should be given equal time, which should be limited to a comparatively short period of a week or two after the hearing or after the reporter's transcript is received. If reply briefs are agreed upon, they should follow within three or four days after the delivery of the post-hearing briefs. It is customary in these situations for the parties to mail briefs to the arbitrator and to opponents at the same time.

Many arbitrations are closed without post-hearing briefs, but they are desirable if the written statement prepared for the arbitrator prior to the hearing was not full, or if, in the light of matters which develop at the hearing, it should be for any reason supplemented.

25. After you receive it, read the entire award, not merely the result. Try to give your constituents and associates a full, correct understanding of the arbitrator's reasoning. Only in this way can you get the full value of the decision whether it was in your favor or against you. The logic of the prior decision often indicates clearly whether the next dispute should be taken to arbitration because distinguishable, or dropped because it is similar to the previous one.

26. If there is any question in your mind as to the expenses of arbitration, ask the arbitrator about it at the earliest possible time.