

Re: Grievances, Part V - Arbitrations

FROM THE "Did You Know?" E-MAIL SERIES PROVIDED BY THE NOVA SCOTIA UNION OF PUBLIC & PRIVATE EMPLOYEES

This is the fifth and final part of our Did You Know? series on grievances. The majority of grievances are settled before they get to arbitration. But sometimes it's necessary to go all the way. Here is some general information about arbitrations:

- The union and the employer usually agree on which arbitrator will hear a case. When they can't agree, the provincial Minister of Labour will appoint one. The parties can agree on anyone they want but most arbitrators in Nova Scotia are lawyers.
- Sometimes the parties will decide to have a three-person arbitration panel hear the case instead of a sole arbitrator. In that case, the union will appoint a member of the panel, management will appoint a member of the panel, and those two panel members will then agree on a chairperson for the panel.
- Arbitrations are quite often held in meeting rooms in a hotel, usually a unionized hotel. Tables will be arranged in a rectangle with the employer lawyer(s) and/or representatives on one side and the union lawyer(s) and/or representatives on the other side. The arbitrator (or panel) will sit at the head and there will be a seat for the witness at the other end.
- An arbitration is run a bit like a court case, only not quite so formal. Witnesses must swear an oath or solemnly affirm to tell the truth. Rules of evidence are a bit more relaxed than court but you still might not be able to get in all the evidence you want because of the hearsay rule, lack of relevancy, etc.
- The parties' lawyers usually make an opening statement, although sometimes the party going second will wait to make an opening statement after the first side has called all its witnesses. In a disciplinary matter, the employer has to present its evidence and witnesses first. In most non-disciplinary matters, the union has to present its evidence and witnesses first.
- The party that goes first usually has the onus of proving its case on a balance of probabilities. A balance of probabilities is a lower standard of proof than in a criminal court where the Crown must prove its case beyond a reasonable doubt. In a balance of probabilities, you have to prove that it's more likely that something happened than that it didn't.
- If you're called to testify for one party, you're subject to cross-examination by the other party. During cross-examination, you may be asked leading questions (such as, "you agree that your employer has been very fair, don't you?")

- When an arbitration begins, the arbitrator will ask whether there are any preliminary objections before the main case begins. Preliminary objections can be about all sorts of things – the arbitrator's jurisdiction, whether the parties followed the time limits in the grievance procedure, whether the issue is about discipline (and who has to present evidence first) and so on. Sometimes, if you lose on a preliminary objection, your case is thrown out before you even get to the merits.
- At the end of the hearing, the parties' lawyers will make closing arguments and present any previous cases that they think the arbitrator should consider in making a decision.
- How long a hearing takes depends on the issues and how many witnesses each side has. Some hearings are done in less than half a day while others take several days of hearing. Sometimes a hearing isn't held at all and instead all the submissions are done in writing.
- After the hearing, it may take several months for the arbitrator to give a written decision either upholding or denying the grievance. The arbitrator's decision is a public document.
- The arbitrator's decision is final and binding. It can be appealed to the provincial supreme court but only on the grounds that the arbitrator exceeded her/his jurisdiction in some way. Appeals are usually very difficult to win – but sometimes it's worth trying.

That's it for our series on grievances. We've only been able to give you a tiny bit of all there is to know about grievances and what can happen to a grievance. Every case is different and labour laws are constantly evolving. If something is going on with you at work, you don't have to figure it all out yourself: call the union

NOTE: The Did You Know? series is general information only. For advice specific to your workplace or personal circumstances, please contact a union representative. Comments are welcome at nsupe@ns.sympatico.ca. For back issues of Did You Know, look under "News" on the NSUPE website: www.nsupe.ca.