

Hello NWP Reps and Members:

Welcome to LR Chronicles number 10. Many questions are asked of us, at the Regional level, regarding what an Arbitration Hearing consists of, as well as what happens before, during and after a Hearing. In order to answer these questions, I will explain to you the full and complete process of Arbitration. I will dedicate my next several LR Chronicles to this very important topic. As of right now, I do not know how many Chronicles it will take to do this, but it could be as many as five or six. I hope that you will indulge me while I explain the process from start to finish.

We will start, in this version of the LR Chronicles, on what occurs before a Hearing. This version will be limited to the Union's "internal process" even before we contact the agency to schedule the Arbitration Hearing.

Since it is the Union that normally files the grievance, it is incumbent upon the Union to comply with the timelines as outlined in Article 9 of the collective bargaining agreement (CBA) and ensure that the grievance is properly elevated in a timely manner. However, in accordance with Article 9, Section 11 of the CBA, the Agency may file a grievance against the Union. In this case, it is solely their responsibility to ensure that the grievance is properly elevated within the appropriate timelines.

Prior to the Union contacting the Agency to schedule a Hearing on a particular grievance, the Union typically vets the grievance in order to determine our chances of prevailing at Arbitration. The decision to take a grievance to arbitration is one that should not be taken lightly. First, every grievant should know that it is not within their power to determine whether or not a grievance is elevated to arbitration. While an individual grievant or facility representative may present compelling arguments for going to arbitration, the ultimate decision remains with NATCA.

Because the final decision to go to arbitration occurs beyond the facility representative's level, all information related to the grievance must be provided at each step. If we are missing information/documentation, then any decision that we make regarding whether or not to proceed to Arbitration may be an incorrect decision and will not be an "informed"

decision. In other words, our decisions will ONLY be based on the information and documentation that is contained on the GATS or that the representative otherwise provides to us at the Regional/National level. This information is essential when making the decision to elevate a matter to arbitration. NATCA's internal regulations call upon the RVP to provide the National Office with a cover letter for every grievance elevated for arbitration. That cover letter includes the strengths and weaknesses of the case as well as the RVP's assessment of the case.

The vetting process starts out with me, as the Regional LR Lead and our National LR Staff Representative. If we agree on whether or not the grievance has a good chance of prevailing, then we will contact the agency to schedule, or we will notify the RVP that we recommend the grievance be withdrawn. However, if we cannot agree on whether or not the grievance has a chance of prevailing before a third party (Arbitrator), then we will bring in others for their perspective and opinion. This could include, the RVP, the National Director of Labor Relations, another National Office LR Staff Representative, another member of the NWP LR Team and/or the FACREP.

The RVP has the responsibility for the decision at this juncture. If, after the vetting process, the RVP is not convinced of our chances of prevailing, then he will notify the FACREP and the grievant that the grievance will be withdrawn. However, if there is a difference of opinion between the RVP and the Director of Labor Relations, and the RVP believes that the grievance stands a good chance of prevailing at Arbitration, based on the merits of the grievance and/or supporting research and case law, both the RVP and the Director of Labor Relations submit their recommendations and supporting documentation to the President of the Union.

The President of the Union is responsible for the decision at this juncture. After evaluation of both recommendations, the President makes his decision. If the decision is to deny the RVP's request for Arbitration, the President notifies the RVP and the FACREP, in writing, of the decision, and the reasons for that decision. If the decision of the President is to move forward to Arbitration, then the grievance will be scheduled for Arbitration and case Advocate(s) will be assigned.

If the decision of the President is to deny Arbitration, then the RVP has the option of appealing that decision to the National Executive Board (NEB). It is the full NEB who has responsibility for the final and ultimate decision. If the RVP chooses this option, a vote among the NEB is taken. If the RVP garners the support of three-quarters (3/4) of those NEB members voting, the decision of the President is overturned and the grievance will proceed to Arbitration.

As you can see, sometimes even internally, we do not always agree on whether or not a particular grievance can survive the scrutiny of a third party Arbitrator. This is why we have this process in place. If you would like to see this process in writing, it is fully outlined in our National Constitution dated April 14, 2006, under Standing Rules, Section L, SRL-1.

The seemingly simple task of requesting arbitration involves multiple layers of review within the Union. As such, every grievant and initiating facility representative must be aware of the Union's role as the exclusive representative. It is within the Union's responsibilities to invoke arbitration. Neither a grievant nor an individual facility representative can force an issue to arbitration. That decision lies with the President of NATCA. While the processes described above indicate that there are a variety of players—individual RVPs, the NEB, and the Director of Labor Relations—in the final decision, the power to go to arbitration is reserved for the President and the Union. As such, throughout the arbitration process, all involved must consider the grievance to be the Union's grievance. Even if a single employee is harmed, it is the Union that may determine the fate of a grievance proposed for elevation.

Another reason why this process is in place is because of the costs associated with Arbitration. The Union does not engage in a simple cost-benefit analysis when elevated grievances—there are some issues that must be addressed regardless of the costs—but the cost of arbitration is a factor. In accordance with Article 9, Section 12 of the CBA, the cost of Arbitration is "borne equally by the Parties" (NATCA and FAA). The costs of Arbitration that are borne equally are only some of the related costs. Most of the costs associated with a Hearing must be borne solely by NATCA. It typically costs NATCA between \$5,000.00

and \$7,000.00 to take one single grievance to Arbitration. There are some variables that must be considered as well, such as whether the Hearing will be a one, two or multiple day hearing, whether or not those days can be together (based on everyone's schedule and availability) and whether or not we finish in the allotted time and must "reschedule" for another date to conclude the proceeding. Please keep in mind Arbitration Hearings are paid for by Union dues dollars. Some of the costs associated with an Arbitration Hearing include:

- The fees and expenses of the Arbitrator (Split 50% between NATCA and FAA)
- The fees and expenses of the Court Reporter (Split 50% between NATCA and FAA)
- Travel (airfare, mileage, rental car) of the Advocate(s) assigned to the case as well as any observers we choose to have present
- Hotel Rooms
- Meeting space
- Printing and Copying
- Mailing (overnight or two-day)
- Meals of the NATCA members involved

My next LR Chronicles will continue the process of an Arbitration Hearing and what occurs once the Union makes contact with the Agency to schedule the Arbitration Hearing.

If there are any questions, please feel free to contact me.

Thank you,

Mike Hull
NWP LR Lead