1. To Postpone or Not to Postpone, that is the Question

After months of going around to schedule a hearing date on a discharge case, you show up at the hearing. The parties are already present and present you with the following situation. One party came in prepared to move forward with the case. The other party showed up with a new attorney in tow. The new attorney informs you that he had just been hired the day before and needs time to review the file and prepare the case for his client. He is asking for a three-week postponement. The other side, with no attorney, says that after this many months, it is no excuse not to be prepared and insists on going forward. The attorney asks for a caucus with his client. Five minutes later, the attorney comes in and announces that if you do not grant a postponement, they are walking out.

Red: Grant a one-hour delay in starting the hearing.
Green: Grant the requested three-week delay.
Who should pay your per diem for the day?

2. Conduct Unbecoming Says Who?

The grievant, a state trooper, was terminated for conduct unbecoming an officer for moonlighting. It had come to the attention of the State that for years the officer had been mowing the lawn for a nominal fee for a wealthy, elderly gentleman, and stayed for coffee to chat. When the elderly man passed away, he left $100,000 to the officer in his will, which was contested by his children. The court ruled in their favor and found that the officer had undue influence over the gentleman. At arbitration over the discharge, the town wanted to submit the ruling into the record as evidence of the officer's alleged misconduct.

Red to sustain the objection. Green to overrule the objection.
Red to sustain the discharge. Green to overturn the discharge.

3. Switching Sides

The Company manufactures large thermal tanks, and the Union represents the mechanics and welders. The Company has been represented by an employee, Sam Switchee, who came up through the Union ranks, starting out as a welder but slowly progressing up the mechanical trades jobs, earning a GED, and thereafter attending junior college by way of the Company's educational reimbursement program. After earning the associate degree, he began working in the Company's Human Resources Department and eventually became the Director of Human Resources. One of Switchee's duties was to negotiate the collective bargaining agreement with the Union. Switchee negotiated a number of such agreements and had a very good relationship with the Union, never having endured a strike and settling all grievances amicably.

One year ago, a new CEO came into office and became concerned that Switchee was not being tough enough on the Union in meeting the terms of the parties' Agreement. Rather than replace Switchee, the new CEO placed an Executive Vice President in charge of negotiating a new Agreement and handling all grievances. Switchee was placed in charge of recruitment and administering Workers' Compensation. Switchee did not like the arrangement, but since he had twenty-five years with the Company, he thought he would stick it out.

A grievance arose over the Company's termination of Joe Welder for failing to inspect one weld on a thermal tank, causing the tank to fail and the customer to return the tank. The Union grieved Joe Welder's discharge as lacking just cause because it was extremely difficult to detect the failed weld and because it was inconsistent with prior discipline. Switchee had nothing to do with Joe Welder's termination or grievance.

A month prior to the scheduled arbitration Welder's grievance, Switchee resigned from his position. On the day of the arbitration hearing Switchee appears to represent the Union. The Company's Executive Vice President objects to Switchee's representing the Union, stating Switchee was a party to exclusive, secret, and privileged Company information and this was clearly a detriment to the Company. The Union says knowledge of the Company's Human Resources Department does not preclude him from representing the Union on an issue he had nothing to do with. The Company moves to exclude him as the Union's representative.

Red to exclude Switchee. Green to allow him to continue.

Assume you find that Joe Switchee has a conflict of interest in representing the Union, but then during the hearing, the Union calls Switchee as a witness. The Company objects citing the same conflict of interest which you used to exclude him as the Union's representative.

Red to exclude Switchee. Green to allow him to testify.

4. Not Getting Paid?

You are one of three arbitrators who are assigned to hear three separate grievances by the same State employee providing social services. The first grievance involves the employee receiving a one-day suspension for insubordination. The second grievance involves the employee receiving a thirty-day suspension for insubordination and in the third one, the State agency fired the employee for insubordination. During the processing of each grievance the Agency took the position that what the employee did was just so obviously terrible, that the Agency should not have to go through the grievance/arbitration process and the Union should withdraw the grievances. The Union declines to do that and marches straight through to arbitration.

You are the arbitrator in the third case involving the employee's termination. After the three Notices of Hearing are issued by AAA, the Agency writes each of the three arbitrators the same letter stating in essence, that the grievance is stupid and has no business in arbitration. The Agency refuses to appear and further that if the arbitrator appears, the Agency will not pay them one red cent.

Red: Conduct the hearing ex parte

Green: Postpone the hearing

Brown (red and green): Contact the AAA case administrator and say you will not proceed without a deposit for the full amount of your fee being placed in escrow.

5. Case of the Unsigned Agreement

The contract provides an incentive for those teachers who do not use various amounts of sick leave in a particular year, ranging from not using any days to using only 3 days. It also has a provision granting the employer the discretion to grant unpaid leave for personal or medical leave.

Kathleen took no sick leave during the year and would normally have been entitled to a $500 incentive payment. However, during the year she took 5 district-approved unpaid days for personal leave, which caused the district to deny her the incentive payment.

The union contends that the contract has no provision allowing for an exception to the sick leave incentive. The employer, however, relies on a memorandum of agreement between the union and the district that said that *"a no pay day will be treated as a sick day in determining the total of sick days taken for purposes of the sick leave incentive."* The district did not grant Kathleen the $500 incentive because she took the 5 unpaid days and it contends granting her the incentive when she was out for 5 days defeats the intent of the incentive.

The memorandum of agreement, which is labeled "DRAFT" and is undated other than "2023" and was not signed by either the union or the district. The union does not contest that it was an agreement reached in good faith by the parties, but contends that it was only a "draft" agreement and that the contract language is clear that:

> "This Agreement [CBA] constitutes the entire and complete record of the binding commitments between the parties. From and after Execution Date of the Agreement, no other document shall constitute a binding commitment between the parties unless it is dated on or after such execution date and is signed by a duly authorized representative of each party."

Another section of the contract states that "*No provisions of the Agreement may be . . . changed, and no provision may be added . . . other than [by] a written and dated amendment to this Agreement signed by a duly authorized representative of each party."*

The parties' established practice is that when there is side memorandum of understanding the drafter forwards it to the other side for review, possible amendment, and signature. It is then returned to the drafter for signature or amendment. Here the district drafted the memorandum of agreement disallowing the incentive if unpaid leave was taken and forwarded it to the union. But, for inexplicable reasons, the union did not sign the agreement though it forwarded it back, unchanged, to the district, who also or unknown reasons did not sign it.

The district contends that there is no question that the memorandum of agreement was reached in good faith. It also points out that the union conceded that *it* had proposed the memorandum because it had recently learned the district had been denying the incentive to anyone who took any amount of unpaid leave and it wanted a more moderate application of unpaid days to the incentive eligibility. According to the district, this is just a matter of something "slipping through the cracks," and the Arbitrator should not invalidate an agreement reach by the parties in good faith by both side's oversight.

The Union argues that the language is clear that no document can constitute a binding commitment unless it is dated and signed and this the memorandum of agreement was neither.

Red – The Union loses

Green – The Union wins

6. Contract Interpretation Case (Longevity Payment)

A teacher union and school district have a collective bargaining agreement that provides longevity payments as follows:

"Article 15 – Salaries

3. Longevity

In addition to the salary paid under the salary schedule teachers shall be paid longevity as follows:

a. After completion of 10 years of service - $500
b. After completion of 15 years of service - $1,500
c. After completion of 20 years of service - $3,500
d. After completion of 25 years of service - $7,500

The above longevity payments are cumulative."

The Union has filed a grievance on behalf of a teacher who has completed 20 years of service claiming that the district's $3,500 longevity payment to her is in error. It claims that the language indicating that longevity payments are cumulative requires that she should be receiving $5,500 ($500 +$1500 + $3,500 =$5,500).

The District shows that the longevity structure has been the same under the two previous contracts, that only the amounts of the longevity payments have changed, that there are numerous cases of teachers receiving longevity payments with more than 15 years of service, and that they have not received payments other than those listed ($1,500, $3,500, $7,500), depending on length of service.

The Union concedes the history of how payments have been made but argues that it put the District on notice during the last negotiations that it intended on enforcing what it believes is the clear language that the longevity payments are cumulative and that the District's failure to cumulate the payments violates the collective bargaining agreement.

The District has introduced a spreadsheet developed for bargaining purposes by the County School Boards Association showing the longevity payments shown in all the teacher contracts in the county where the District is located. All but one of those 10 contracts show that the longevity payments in the county districts are substantially similar to the amounts listed in Article 15.3. The spreadsheet also shows that if the amounts listed in Article 15.3 are cumulated as the Union contends, the 15, 20 ,and 25-year longevity payments would be two to three times higher than every other district.

Green: Grievance sustained. The Union is correct.

Red: Grievance denied.