

Preparing for Settlement While Preparing for Arbitration

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Arbitrator and Mediator

A Question to ask, right up to the day of hearing –

Does Arbitration remain my best alternative to a negotiated solution?

As you proceed, here are other questions you might ask.

Who are the decision-makers in your case?

What might a negotiated solution look like?

What is at issue?

A contract or rule interpretation ?

A gap in the contract language?

Ambiguous language?

Factual dispute?

Solution could range from an MOU (rather than cease and desist) to a practical fact-based remedy

Discipline

What are Grievant's interests?

Does Grievant still want to work there?

Does either party (Union or Management) still want Grievant to work there?

If not, what would settlement package look like?

If yes, what are chances conduct will be proven? If so, any room for mitigation?

Main Obstacles to Settlement

Risk

Risk of recidivism — without a decision afraid they'll do it again

Risk of setting precedent -- they'll just ask for more

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But this factor could also drive a settlement—

Does an arbitration award run the risk of a bad precedent?

Could the precedent be used to encourage more grievances?

Or foster disillusionment with the Union?

Money

Are money damages sought?

calculate what's demanded, taking into account the
***cost now vs. the cost at the time an adverse award
may issue***

back pay

Interest

*Future costs -- might a non-precedential
settlement cut future costs?*

***e.g. could an ordered remedy set a precedent that
must be followed in future cases?***

Transaction Costs – Money and Time

Arbitrator's schedule of charges
including cancellation fee

Witnesses' time away from job

Virtual or in-person

Travel

Official time for Union reps

Overtime to cover shifts

Time for preparation, hearing and briefs? --
easily be weeks of time

Control -- Keeping Control, Gaining or Regaining control

Is it insecurity -- loss of control might lead to loss of power or loss of control in other areas?

Could just perception be the reality?

Is there any solution that might allow the other side to save face without compromising my own interests?

How to Address these Obstacles?

*We may still be interested in settlement.
From your end what would it take?*

*The message sent -- We're willing to listen to
your concerns.*

Other Obstacles

- Low Trust
- Misunderstanding
- Miscommunication
- Differing views of interpretation —
contract, rules, company policy, the law
- Witness Credibility
- Interpersonal conflict

How to Address?

**How you prepare your case for hearing
may make a big difference --**

If trust is low –share information early

Offer and Accept Joint Exhibits

Agree on witnesses

Look for easy factual stipulations

If at play is

Misunderstanding

Miscommunication

Differing views of interpretation — contract, rules, company policy, the law

Exchange Issue Formulations

If an interpretive ruling needed – engage your arbitrator

Witness Credibility

try to interview your fact witnesses, including witnesses who have already provided statements

Reassess your witnesses' credibility

If there are issues –

We may still be interested in settlement. From your end what would it take?

Grievance Mediation -- is it worth the cost?

Possible sources of mediators

<https://www.ilr.cornell.edu/ncrs>

<https://www.mass.gov/grievance-mediation>

Your arbitrator

Why Grievance mediation?

**Opportunity to focus on the here
and now**

Opportunity to focus on gains

**What would you each like to see
happen today?**

Interpersonal Conflict

Give the mediator a heads up.

Are those in conflict decision makers?

Do you want them at the session?

Or not?

Perhaps the mediator can make use of private caucuses?

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