

What Arbitrators Wish Advocates Knew: Best Practices for Labor and Employment Arbitration

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Arbitration in labor and employment law presents unique challenges which require advocates to be strategic, precise, and respectful of both the process and the participants. Arbitrators in these cases often observe common missteps that can be avoided with a thoughtful, streamlined approach. This article provides advice from the perspective of an arbitrator on how advocates can prepare and participate more effectively, ultimately making a positive impression on the arbitrator and strengthening their case.

Labor and employment disputes typically involve complex issues such as collective bargaining agreements, workplace policies, and sensitive employee matters. Given the nuanced nature of these cases, arbitrators emphasize the importance of careful preparation and clear presentation of evidence. They advise advocates to understand and be able to explain the contract, gather and present strong evidence, focus on key issues, and maintain a respectful and professional demeanor throughout the hearing.

1. Thoroughly Review the Contract

Advocates should review the CBA or employment contract well in advance, identifying the specific clauses that apply to the case. This may include clauses related to termination procedures, grievance procedures, discipline, and employee/management rights. A strong understanding of these terms is essential because labor disputes often hinge on precise contractual language. Each word or phrase in a contract can carry significant implications, and arbitrators expect advocates to be ready to explain and interpret these nuances effectively.

- **Identify Relevant Clauses and Interpretations**

When reviewing the contract, advocates should consider multiple interpretations of relevant clauses, especially those with vague or open-ended language. Anticipating how the opposing side might interpret a clause allows advocates to prepare counterarguments in advance, adding depth to their case. Arbitrators appreciate advocates who present a balanced perspective, acknowledging ambiguities in the contract and offering reasoned interpretations or evidence of past practice that supports their case. By demonstrating a command of the contract language, advocates build credibility and lay the groundwork for persuasive arguments.

2. Present Strong Evidence

A strong case is built on a foundation of solid evidence and arbitrators rely on advocates to present credible, well-organized evidence that supports their arguments. Advocates should gather all supporting documentation, including relevant employment records, communications, policies, and other materials directly related to the dispute. In addition to these documents, ensure that every essential piece of evidence is readily accessible in the case file, as arbitrators value a well-prepared file that eliminates unnecessary delays or gaps in the case.

- **Establish Credibility and Relevance**

In selecting evidence, advocates should focus on relevance and credibility. Highlight the most compelling documents and witness testimony without overloading the case with superfluous details. Each piece of evidence presented should be clearly tied to the case's main arguments, allowing the arbitrator to easily connect the evidence with the advocate's theory of the case.

- **Agree on Joint Exhibits When Possible**

To streamline proceedings, advocates should work with opposing counsel to establish joint exhibits wherever possible. Agreeing on joint exhibits reduces redundancies and allows the arbitrator to focus on the core evidence efficiently. Visual aids, if used, should enhance the arbitrator's understanding of complex information without adding unnecessary volume to the presentation.

- **Address Attorney Fees Early**

In many employment law cases, advocates may seek attorney fees as part of the remedy. Discussing attorney fees early provides clarity on the potential entitlement basis—whether statutory or contractual—and allows the arbitrator to set a scheduling order that includes provisions for post-hearing briefs if fees are awarded. Establishing a framework for attorney fees at the outset helps streamline the process, reducing the likelihood of disputes or procedural delays after the award.

3. Structure Arguments Logically

While advocates know their case, they need to appreciate the art of telling the story; meaning, presenting arguments in a logical sequence. Opening with a clear statement of the case theory, followed by a methodical presentation of evidence and witness testimony, helps the arbitrator grasp the key points without distraction. Avoiding unnecessary

tangents or lengthy asides is essential. Instead, advocates should focus on delivering a structured presentation that flows naturally from one point to the next.

4. Focus on Key Issues

Employment and labor cases often involve multiple points of contention, but not all issues carry equal weight in the final decision. Advocates who successfully identify and emphasize the most critical issues are better positioned to persuade the arbitrator. This may include disputes over specific contract terms, interpretations of workplace policies, or the justification for disciplinary actions. Focusing on these central issues prevents advocates from diluting their arguments by addressing peripheral matters that have minimal impact on the arbitrator's final decision.

5. Maintain a Professional Demeanor

Professionalism extends beyond the arbitrator to include respect for opposing counsel, witnesses, and other participants in the hearing. Advocates should avoid personal attacks, overly aggressive tactics, or inflammatory language, as these behaviors detract from the case's focus and can hinder productive dialogue. Even when opposing views or decisions are contested, maintaining a respectful approach strengthens the advocate's credibility and reinforces their commitment to a fair process.

- **Avoid Excessive Objections and a Combative Tone**

Arbitration often involves a more relaxed standard for the admissibility of evidence than traditional court proceedings. Advocates should avoid excessive objections and refrain from an overly combative stance. The arbitrator is a trained, neutral decision-maker who can assess the relevance and weight of evidence as it is presented. By allowing a broader scope of evidence and maintaining a cooperative approach, advocates demonstrate respect for the arbitrator's role and create a smoother, less confrontational hearing process.

6. Communicate Effectively

Effective communication is essential in arbitration. Advocates should strive to present information clearly and avoid excessive legal jargon that may obscure their points. Arbitrators welcome advocates who focus on clarity, simplicity, and precision in their language.

- **Use Plain Language**

While legal terminology is sometimes unavoidable, advocates should aim to use plain language wherever possible. By speaking directly and avoiding overly technical language,

advocates make it easier for the arbitrator to follow their arguments. Clear language also reduces the risk of misinterpretation, ensuring that the arbitrator grasps the main points without confusion.

- **Explain Technical Terms When Necessary**

If specialized terms or industry-specific jargon are essential to the case, advocates should take the time to explain these terms in plain English. This approach demonstrates consideration for the arbitrator's understanding and helps bridge any potential knowledge gaps that might otherwise impact the arbitrator's understanding of the case.

7. Consider the Bigger Picture

Labor and employment disputes often involve ongoing relationships between employees, employers, and unions. Advocates who keep the bigger picture in mind help create a more constructive process that can support future interactions. While advocates should vigorously represent their clients, they should also be mindful of the lasting impact of the dispute on the relationship between the parties. Advocates who approach arbitration with an understanding of these long-term dynamics demonstrate a balanced perspective.

Conclusion

Labor and employment arbitration requires advocates to prioritize preparation, clarity, and professionalism. By understanding the contract, presenting strong evidence, focusing on key issues, and respecting the arbitrator's role, advocates can strengthen their case and contribute to an effective arbitration process. These practices not only enhance the advocate's credibility but also foster a respectful and efficient environment that benefits all parties involved.