

Instructions for Witnesses In Arbitration

I. The Reason for Arbitration Hearings

Arbitration hearings are held when the union claims that the Postal Service has violated a provision of the Collective Bargaining Agreement (CBA) or that it has improperly disciplined or discharged an employee, and has filed a grievance. The grievance has not been answered to the union's satisfaction, and the union has requested arbitration under the terms of the CBA. The Postal Service denies that it has violated the contract or says it has just cause for the discipline or discharge. Both parties will try to prove their case to the arbitrator.

Arbitrators are selected jointly by the parties and have the responsibility of determining whether the grievance should be decided in favor of the union or the Postal Service.

As a witness for the union, you have a very important responsibility. Your testimony and conduct is vital to the proceeding. You will be under oath and you must tell the truth in response to questions. Based on the facts as the union knows them, we believe our position is sound. To win the case, we must present the facts – and our arguments – to the arbitrator.

II. The Nature of the Hearing

Hearings are held before impartial arbitrators, who act as both judge and jury: They hear the facts, decide who wins the case, and decide on a “remedy.” It is our responsibility to see to it that the true and complete facts are put before the arbitrator and to make sure he or she fully understands the facts and the union’s reasoning.

In disciplinary cases, hearings usually begin with the testimony of witnesses called by the Postal Service. Witnesses are usually asked to swear or affirm to the truthfulness of their testimony.

After a witness has given direct testimony, the other side has the opportunity to cross examine the witness. After all those witnesses have testified, then the union puts on their case. You are expected to be a witness.

You will first be asked questions by the representative for the union. This is known as “direct examination.” Next, the Postal Service representative will ask questions, known as “cross examination.” There may be further redirect or re-cross examination; the arbitrator also may pose questions to you.

In many arbitration proceedings, there are disputes over the facts. The chief reason you will appear as a witness is to establish the facts. Your ability to tell the truth, and the impression you leave as an honest, truthful witness is of extreme importance. **THE ARBITRATOR MUST DECIDE WHO IS TELLING THE TRUTH.**

There are two ways to tell the truth. One is in a halting, stumbling, hesitant manner, which makes the arbitrator doubt that you are telling all the facts in a truthful way. The other is

in a confident, straight-forward manner, which makes the arbitrator have more faith in what you are saying. You help yourself, the union, and the arbitrator by giving your testimony in this latter way.

To assist you in this, we have prepared a list of suggestions, which, if followed, will make your testimony more effective.

III. Appearance and Manner

1. Be truthful. (We cannot over-emphasize this.)
2. Dress neatly and be well-groomed.
3. Speak distinctly and loud enough so that everyone in the room may hear.
4. Be alert – don't slouch, don't sit chin-in-hand, don't chew gum.
5. Tell your story to the arbitrator. After all, he or she is one who must be convinced. Most of the time, you will want to direct your answers to the arbitrator.
6. Be cooperative.
7. Be courteous, including to management representatives.
8. Be natural.
9. Be sincere.
10. Be serious and avoid joking. Normal pleasantries are expected, but decorum must be observed in the hearing and during recesses.
11. In your conduct, remember you are a union witness and as such, you are expected to display a high level of respect for the arbitrator, a friendly relationship with all employees in the proceedings, and both fairness and truthfulness.
12. Avoid discussing the case with management representatives.

IV. Answering Questions

1. THINK before you answer, particularly on cross-examination. Take your time; it indicates sincerity. Think back to the event at issue – and relate it as accurately as possible.
2. Be sure you UNDERSTAND the question before you respond.
3. DO NOT VOLUNTEER INFORMATION. Simply answer the question asked and then stop. If explanation is needed, you will be asked to explain. If a question cannot be truthfully answered with a "yes" or "no," you have a right to explain the answer and you will be called upon to do so.
4. If you are asked to recall a situation that didn't happen, say, "That didn't happen."
5. If you cannot remember the details of an event, say "I do not remember."
6. If you don't know the answer, say, "I don't know."
7. Do not hedge or become evasive.
8. Do not say "I think..." or "I believe..." when recalling a fact. Say, "I remember..." This is particularly important.
9. Do not say, "That's all of the conversation," or "That's all that happened," unless you are positive there was nothing else. You may have forgotten some detail. If you are not positive, say, "That is everything I can remember." It may be that after more thought or another question, you will remember something important.
10. If you give a wrong answer by mistake, say so and correct your answer.
11. Do not exaggerate or be overly dramatic. Simple answers, positively stated, without

- "window dressing" are more persuasive.
12. If possible, avoid the use of technical jargon or "shop talk." Remember that the arbitrator may not know the details of your work or the Postal Service. However, if you must use "shop talk" to clarify a point, be sure to briefly define what you mean.
 13. Do not use provocative words or epithets. These actions create a bad impression and cloud issues rather than clarifying them.
 14. As much as possible, avoid repetition in your testimony, unless, of course, you are asked to repeat a part of your story.

V. Special Notes for Cross-Examination

The purpose of cross-examination is to test your honesty and your ability to observe, recall, and report accurately. In addition to attacking credibility, management often endeavors to draw out on cross-examination additional information, which it hopes will support its position.

The best approach to cross-examination is open, honest, and truthful direct testimony. Management's advocates will try their best to shake your testimony – that's their job – but if you have been truthful on direct examination, they will be unable to do it. Therefore:

1. Above all, this is most important: Do not lose your temper or become excited, even if the cross-examiner becomes obnoxious and is obviously baiting you. Testifying for a length of time can be tiring. It causes fatigue. You will recognize fatigue by certain symptoms: tiredness, crossness, nervousness, anger, carelessness when answering, and a willingness to say almost anything in order get off the witness stand. If you feel these symptoms, strive to overcome them. Remember that some cross-examiners will try to wear you out so you will lose your temper and say things that are incorrect, or that will hurt you or your testimony. **DO NOT** let this happen.
2. Do not look at the union representative or at the arbitrator for help in answering a question. You are on your own. If the question is improper, the union will object. And don't try to answer questions the way you may think we might want them answered – just tell the truth to the best of your knowledge.
3. Think, understand, and then answer questions deliberately. If the union representative objects to a question posed by management's representative, stop. Do not answer until the arbitrator tells you to answer.
4. Do not be misled. If you are asked, "Didn't you say..." or, "You testified that..." do not answer "Yes" or agree unless the question contains your exact words. Your usual answer should be, "What I said was..."
5. Do not be hesitant or evasive when you are answering a clear question. If you do not know the answer based on your own observation and experience, say that you don't know.
6. If a question is asked concerning a contract provision, you may ask to see a copy of the contract before answering. It also may be necessary to ask the cross-examiner what contract provision they have in mind. (This same approach may also be helpful if you are asked about documents entered as exhibits.) If you are asked about the meaning of a contract provision and you are not certain about it, you may reply that you are not familiar with all parts of the contract – that you would normally refer such a question to a Shop Steward if that is a fact.

7. If you are asked if you "talked with anyone" about your testimony, say "Yes" if you have. Usually you have, or you would not be appearing as a witness. If asked who, answer truthfully – and name the people you talked with, including the union representatives, union officials, your spouse, etc. If asked what you were "told to say"— the only truthful answer is—you were told to TELL THE TRUTH.
8. When you leave the witness stand after testifying, wear a confident expression, not a downcast one, return to your seat, and remain until you have been excused or the hearing has ended.
9. Arrange your time, if possible, to be present for the entire proceeding. This will help to prepare you and perhaps refresh your memory about certain facts in the event you are must be recalled as a witness.

Thank you.

Mike Morris
Director, Industrial Relations
American Postal Workers Union