Arbitration Advocacy

Description: This is a class for those who represent parties in federal sector arbitration. It can be adapted to particularly suit Agency or Employee representatives. There is an emphasis on practical exercises. The class culminates with a mock hearing, where the course participants play witnesses and advocates. The topics covered include: the statutory and regulatory background, the tie in to the MSPB and EEOC, a familiarization with labor relations terms, the grievance process, selecting arbitrators, assembling evidence, pre-arbitration matters, interviewing witnesses, representation at the hearing to include presenting evidence and making objections, examination of witnesses, making arguments, and post hearing matters.

Length: 2 to 4 days

Table of Contents

			<u>Page</u>		
I.	Intro	Introduction			
	A.	Review of Session	7		
	B.	Instructor and Participant Introduction	7		
	C.	Objectives	7		
II.		rview of Federal Sector evance-Arbitration Process	9		

	A. The Negotiated Agreement	9		
	B. The election among the EEOC, the MSPB and arbitration	9		
C.	Some important Labor-Relations Terms	10		
III.	A Closer Look at the Grievance Process 12			
IV.	Invoking Arbitration	14		
	A. Selecting the Arbitrator	14		
	B. Scheduling the Hearing	15		
	C. Some Questions	16		
V.	Assembling the Evidence	17		
	A. Defining the Specific Issues, Facts and the Theory of the case	17		
	1. Issue	17		
	2. A chronological approach	17		

		3.	Legal elements or standards	18	
VI.	Other Pre Arbitration Hearing Matters				
	A.	Art	oitrability	23	
	B.	"Di	iscovery" by Union (Section 7114)	23	
	C.	Stipulations			
	D.	Settlement			
	E.	Submission Agreement			
	F.	Researching Authorities and Preparing Arguments			
G.	Interviewing and Evaluating Witnesses			36	
		1.	Brookhaven considerations:	37	
		2.	Interviewing potential witnesses: Format and Techniques	37	
		3.	Evaluating or Selecting Witnesses Some characteristics of marginal Witnesses	39	
		4.	Adapting to Marginal witnesses	39	

5. Other (e.g., site visits, continuances, etc.)39

VII.	. The Hearing			40	
	A.	A. Pre hearing Matters			
	B.	Buro	Burden and Standards of Proof Evidence		
	C.	Evic			
D.		Opening Statements		57	
	E.	Witı	nesses	59	
		1.	Stages of Testimony	59	
		2.	Sequestering Witnesses	60	
		3.	Sequencing (or order of calling) Witnesses	61	
		4.	Swearing of Witnesses	62	
		5.	Preparing Witnesses	63	
		6.	Direct Examination	63	
		7.	Conducting Cross Examination	71	

	8.	Objections	76
	9.	Considerations as to Special Witnesses	83
F.	Clos	sing Arguments	87
VIII.	<u>Cha</u>	llenging or Defending the Award	91
IX.	Post	t Hearing Matters	93
A.	Con	npliance Matters	93
В.	Atto	orney Fees	93
X.		ck Hearing d separate materials)	98
APPEND	OICE	S:	
Appendix A		MSPB: A Closer Look	99
Appendix B		Federal Sector EEO Process	139
Appendix C		Charge Framing Snafus:	
	_	11 Deadly Sins	140
Appendix D		Disciplinary and Adverse Actions:	1 1 1
۸ 1۰	Г	Typical Charges	141
Appendix E		Nexus and Penalty	144
Appendix F		Section 7114 Document Request	

	In Arbitration	147
Appendix G	Settlement Options	149
Appendix H	Sample Proof Grid	159
Appendix I	Factors for Consideration in Assessing	
	The Probative Value of Hearsay	160
	Evidence	
Appendix J	Mistakes Made by Supervisors or in	
	Managers Imposing Discipline or	
	Adverse Actions	161
Appendix K	Factors Used by Fact-finders to Assess	
	Credibility	164
Appendix L	Tips for Witnesses in Arbitration	
	Hearings	167
Appendix M	Arbitration Statistics and Biography	
	(S. Vitaro/Cyberfeds)	176
Appendix N	Problems	178
Appendix O	Glossary of Federal Sector Labor	
	Management Terms	192