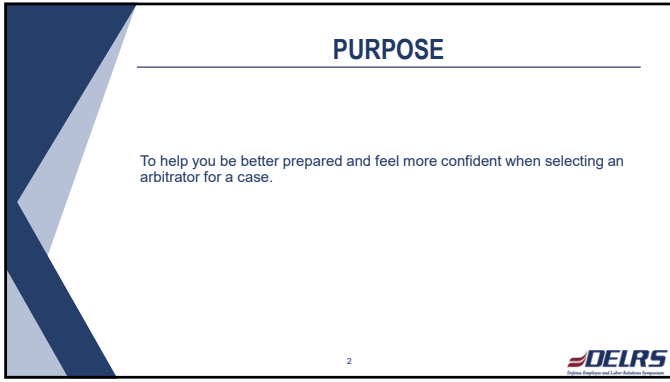
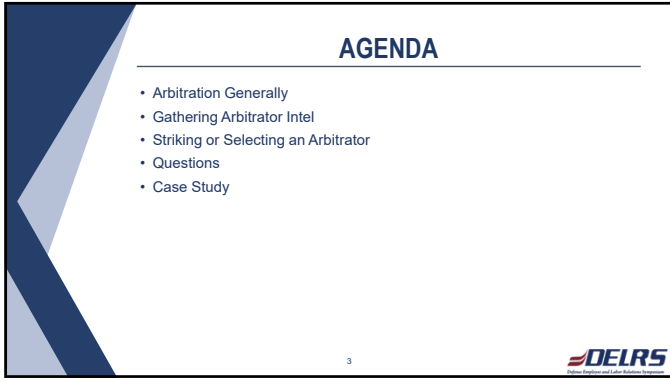




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3

ARBITRATION GENERALLY

What is arbitration?

- Section 7121 of the Federal Service Labor-Management Relations Statute ("the Statute") requires that all collective-bargaining agreements (CBAs) "provide procedures for the settlement of grievances, including questions of arbitrability."
- Arbitration, the final step in a negotiated grievance procedure, is the exclusive administrative procedure for resolving grievances that fall within its coverage.
 - Exceptions: Prohibited Personnel Practices and matters covered under 5 U.S.C. 4303 and 7512. See § 7121(e), (f), and (g).
 - Parties may also exclude specific subjects and matters from the negotiated grievance procedure in the collective-bargaining agreement. See § 7121(a)(2).
- The Statute also requires binding arbitration. This means that the parties are bound by the arbitrator's opinion; it is not a consideration or recommendation. The decision generally has the force of law but does not set a legal precedent.



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ARBITRATION GENERALLY (cont.)

The "Rules" of Arbitration

- While it is required by the Statute, the arbitration is creation of the parties' CBA; this includes all processes and procedures.
 - Rules of evidence
 - Court reporter
 - Transcript requirements
 - Parties' own notes
 - Treatment of witnesses and exhibits
 - Exchanged in advance of hearing?
 - Shared with arbitrator in advance of hearing?
 - Number of arbitrators requested
 - Arbitrator qualifications/criteria
 - Membership in certain organizations
 - Other professional requirements

If it's not in the CBA (or other agreement), it's not a requirement!




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GATHERING INTEL ON ARBITRATORS

Evaluating the Panel

- Ensure that it complies with the parties' request
- Read bios provided by FMCS
- Compile statistics from cyberFEDS
 - Labor Relations >> Arbitrator Stats and Bios

	Total	M	U	S	I	J	
All Cases	124	46	47	28	1	2	
Fed Cases	77	19	40	15	1	2	
M = Management	U = Union	S = Split	I = Internal	J = Jurisdictional Dispute			
	Total	P	S	O	D	M	K
Fed Appeals	37	2	22	1	6	3	4
P = Pending S = Sustained O = Dismissed D = Review Denied M = Modified K = Reversed							




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GATHERING INTEL ON ARBITRATORS (cont.)

Evaluating the Panel (cont.)

- Review past decisions of your component/activity
- Consider the frequency that arbitrator's awards are challenged on exceptions
- Work your network – or build one!
- Consider the subject matter of the grievance
 - Discipline
 - Performance
 - Application of the parties' collective-bargaining agreement
 - Contract interpretation/bargaining history
 - Unfair Labor Practice
 - Application of law, rule or government-wide regulation



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GATHERING INTEL ON ARBITRATORS (cont.)

Three Categories

- Fairness and Equity – discipline
- Application of the Statute – bargaining, official time, ULPs
- Application of law, rule, regulation – career ladder promotion, WIGIs, Back Pay Act, etc.

Examining Experience and Education


- Professional certifications and degrees
 - Attorneys
 - Former ALJs or AJs – FLRA, EEOC, MSPB
 - Mediators/Interest Arbitrators
 - CPAs or Statisticians
 - HR Professionals
- Work history and industries
 - *Federal and Private sector experience are not interchangeable!*
 - The National Labor Relations Act (NLRA) is very different from the Statute



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GATHERING INTEL ON ARBITRATORS (cont.)

I looked over your list of arbs. OMG! Their combined record is 65 wins for mgnt and 105 for unions. When I was with [redacted] told us she did not want to travel anymore. I know [redacted] and [redacted] well. Both are very good lawyers which I assume is what you want since our only chance of winning this case is on the law/regs. If it turns on equity, we are screwed. Good luck.



9

STRIKING OR SELECTING AN ARBITRATOR


Preparation is Key

- Categorize the arbitrators
- Rank the options
- Consider if the parties can name-select
- Have your notes ready

...But Don't Overthink It!

- Arbitrator selection is an art, not a science
- While a solid indicator, past performance does not indicate future results
- Most often, you will end up with an arbitrator from the middle of your list

In every arbitration, regardless of the arbitrator, preparation is paramount!



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 **ANY QUESTIONS**



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CASE STUDY

The Union files a grievance over the Activity's implementation the Withholding Tax Allowance (WTA) and the Relocation Income Tax Allowance (RITA). It alleges that the Activity's failure to take appropriate actions resulted in employee debts related to PCS moves. As a remedy, the Union is requesting back pay and interest.


Arbitrator #1: Attorney, NAA & AAA; worked at NAGE, IRS and GAO before becoming full-time arbitrator; permanent panel member for IRS, DOE, GSA, OPM, DOL and other private sector employers.

Arbitrator #2: Attorney, AAA; worked at NLRB, at a private firm, and as labor counsel at an international company before becoming a full-time arbitrator; no panels listed.

Arbitrator #3: Federal personnel policy professional for over 30 years before becoming a full-time arbitrator, AAA & SFLRP; permanent panel member for SSA, Foreign Service Grievance Board, IRS, and other public sector employers.

Arbitrator #4: Attorney, AAA; worked as an ALJ at NLRB, DOL, and FLRA before becoming a full-time arbitrator; permanent panel member with USPS.

Arbitrator #5: ADR specialist; no professional affiliations; worked as a professor of Labor Relations, as an FMCS mediator and at NLRB prior to becoming a full-time arbitrator; no panels listed.



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