

GLOSSARY OF TERMS USED IN ARBITRATION

1. **AD HOC ARBITRATOR** – An arbitrator jointly selected by the parties to serve in a single arbitration. The arbitrator may hear more than one case.
2. **ADVERSE WITNESS** – A witness from the opposing party, hostile to the calling party. For example, the Union calls a foreman as a witness if management does not. Adverse witnesses are usually called when either party feels relevant or material testimony or evidence is being withheld. Arbitrators usually regard the witness from the outset as an adversary and permit questioning as in cross examination; or, may regard the witness as the calling party's witness until hostility develops, then permit questioning as if on cross examination.
3. **ADJUSTMENT BOARD** – A union-management board which frequently operates as the final stage of the grievance procedure. Sometimes arbitration is an automatic next step and in other cases if there is a deadlock, the parties may refer a case to arbitration.
4. **ADVISORY ARBITRATION** – A final step in the grievance procedure in which the arbitrator's decision is only advisory to the parties. In effect this gives the employer the final decision. Advisory arbitration is often used in public employee disputes, particularly in jurisdictions where there are no collective bargaining laws.
5. **AMERICAN ARBITRATION ASSOCIATION** – A private, non-profit organization founded to foster the study of arbitration, and to perfect the techniques of this voluntary method of dispute settlement, administering arbitration in accordance with the agreement of the parties. It maintains panels from which arbitrators may be selected and provides administrative personnel and procedures for cases being arbitrated under the rules of the AAA. There is a charge for this service. The American Arbitration Association's main address is: 140 West 51st Street, New York, NY 10020.
6. **ARB** – Labor Arbitration Awards, published by the Commerce Clearing House, 4025 West Peterson Avenue, Chicago, Illinois 60646. Full texts of labor arbitration awards and opinions are given. A topical digest, table of awards, and arbitrators' biographies are also given.

7. **BEST EVIDENCE RULE** – Rule that favors the use of primary evidence as distinguished from secondary. This is a protection against mistaken or fraudulent admissions as well as a protection against intentional or unintentional misleadings which could occur through the introduction of selected portions of a comprehensive writing to which a proponent has no access.
8. **BRIEF** – A concise statement of fact and law in support of a party's case which is prepared by the advocate and which is then submitted to an arbitrator. Briefs are most commonly used after the arbitration, but occasionally prior to it.
9. **BURDON OF PROOF** – The responsibility placed upon each of the parties to prove to the satisfaction of the arbitrator the truth or correctness of allegations made by each of them. The burden of proof may shift according to the type of arbitration, but usually rests with the party that goes first. Thus, it is on the employer in a discipline case and on the union in other cases. However, it may shift as the arbitration proceeds.
10. **CLOSING ARGUMENT** – A final oral statement made by each party in an arbitration. Closing arguments and post-hearing briefs serve much the same purpose. The parties may elect to do one, or the other, or both, or the arbitrator may make the choice. (See Opening Statement)
11. **CROSS EXAMINATION** – The examination of a witness by the party which did not call him/her. Its purpose is to examine the witness to test the truth of that evidence, or to further develop or clarify it, or to discredit the witness. In labor arbitration, cross examination may go beyond the evidence given in direct examination. (See Direct Examination, Leading Question)
12. **DEMAND FOR ARBITRATION** – The initial notice by one party to the other of an intention to arbitrate their dispute under the arbitration clause in their contract.
13. **DEPOSITION** – The taking of testimony under oath on petition of or on behalf of an absent party to be used as evidence in an arbitration. Representatives of both parties must be present, and there must be an opportunity for cross examination. A reporter must be present so that a verbatim record is kept.

14. **DIRECT EXAMINATION** – The questioning of a witness by the calling party. This is done either by asking the witness to tell their story in narrative fashion or by asking for specific answers to specific questions. (See Cross Examination)
15. **EXHIBITS** – The submission of documents by either side to the arbitrator as part of the proofs of the offering side's case. Exhibits should be introduced through testimony of a witness who lays a foundation as to the authenticity and/or relevance of the exhibit. (See Joint Exhibit)
16. **EX PARTE ARBITRATION** – An arbitration in which one of the parties which has agreed to arbitration under a collective bargaining agreement does not appear.
17. **FEDERAL MEDIATION AND CONCILIATION SERVICE (FMCS)** – A service established as an independent agency of the Federal government under Title II of the Labor Management Relations Act, 1947, to mediate and conciliate labor disputes in any industry affecting commerce other than those occurring in the railroad and air transport industries. The Service also provides panels from which arbitrators may be selected. Many union contracts provide for arbitration under the rules of the FMCS. There is no charge for this service.
18. **GRIEVANCE** – A claim based upon the occurrence of a happening or a condition alleged to affect a member of the bargaining unit, or which creates a question as to the interpretation or application of any provision in the collective bargaining agreement.
19. **HEARSAY** – The report of an oral or written statement made by a person who is not a witness in the proceeding which is introduced to prove the truth of what is asserted. Hearsay evidence is often accepted by arbitrators "for what it's worth."
20. **IMPARTIAL CHAIRMAN** – A permanent arbitrator who is the only impartial member of an arbitration board established jointly by a union and an employer. Sometimes the term is used to describe a permanent arbitrator. (See Permanent Arbitrator)

21. **JOINT EXHIBIT** – A document submitted to the arbitrator that both sides agree is authentic and pertinent to the issue to be decided. Since both sides agree to the submission to the joint agreement, there is no need to prove its authenticity. Joint exhibits usually include a copy of the contract and a record of the grievance. (See Exhibits, Stipulation, Submission Agreement)
22. **LABOR ARBITRATION REPORTS** – Published by the Bureau of National Affairs. Published arbitration awards including opinions are given in full. Cases are classified and codified in a separate index by name of parties, arbitrators, and subject. Cumulative digest and index volumes are published at ten-year intervals, and a current paperback index.
23. **LEADING QUESTIONS** – One in which the questioner suggests the desired answer by the form of the question. It appears the questioner is in fact giving the testimony by the form of the question, leaving the witness merely to say “yes” or “no.” Leading questions are permitted in cross examination and when a party calls an “adverse witness,” but not in direct examination, except if not objected to. (See Direct Examination, Cross Examination, Adverse Witness)
24. **NATIONAL ACADEMY OF ARBITRATORS** – An organization of arbitrators founded to foster high standards of knowledge and skill on a professional level among those engaged in the arbitration of industrial disputes. The National Academy of Arbitrators is not an agency for the selection of appointment of arbitrators.
25. **OPENING STATEMENT** – A brief statement made at the opening of a hearing, or prior to the presentation of evidence, by the parties concerned which acquaints the arbitrator with the nature of the dispute and with the evidence they intend to present. Though its use is often optional with parties, the arbitrator may sometimes specifically request that each party make an opening statement. In discipline cases the management is heard first, and in other cases the union is heard first. The arbitrator may vary this order at his/her own discretion. (See Closing Statement)
26. **PAROL EVIDENCE RULE** – Evidence given by a witness in an arbitration as to the making of a contract. This evidence may refer to the “bargaining history” of negotiations between the union and company representatives and is used to help determine the meaning of the contract.

27. **PERMANENT ARBITRATOR** – An arbitrator who is selected to serve under the terms of a collective bargaining agreement for the life of the contract or a specified period of time. The specific functions and responsibilities of the office of the permanent arbitrator are determined by the contract.
28. **PROCEDURAL ARBITRABILITY** – This arises when an arbitrator determines if the case is properly before him/her by making certain that all grievance procedures prior to the final step of arbitration have been complied with as outlined in the collective bargaining agreement.
29. **QUANTUM OF PROOF** – Three levels or degrees of proof that a party may be required to sustain. “Beyond a reasonable doubt” is the strongest quantum of proof; “Preponderance of evidence” or “Fair preponderance” is the minimum quantum of proof acceptable in most arbitration cases; “Clear and convincing evidence” lies somewhere between the two.
30. **RECROSS EXAMINATION** – A line of questioning that usually follows redirect and should be restricted to those matters testified about on redirect. (See Redirect Examination)
31. **REDIRECT EXAMINATION** – A line of questioning used to counter the effect of the cross examination, and occasionally to introduce something which was forgotten or omitted on the first examination. (See Cross Examination, Recross Examination)
32. **RES JUDICATA** – A legal doctrine which holds that once a legal claim has come to a final conclusion it can never again be litigated. Once the case has gone arbitration and has been properly determined, its issues are res judicata and can therefore never be raised again.
33. **RIGHTS ARBITRATION (OR GRIEVANCE ARBITRATION)** – The final and binding decision of an arbitrator or arbitrators in disputes involving the infringement of employer-employee rights. Infringement of such rights is known as grievances.
34. **ROTATING PANELS** – A list of arbitrators established by the parties which is drawn up to function on a rotating basis for the life of the contract. By such means, parties to a contract are able to expedite their arbitration case load,

and take advantage at the same time of the benefits of permanent arbitrators.

35. **SEQUESTER** – Exclusion of witnesses from a hearing used primarily when the outcome of a dispute is likely to rest of credibility. The grievant, however, is exempt from this exclusion.
36. **STIPULATION** – Any agreement between opposing parties in respect to the facts and other evidence not in dispute.
37. **SUBMISSION AGREEMENT** – A document used to initiate an arbitration of an existing dispute stating the nature of the dispute and affirming the parties' intention to arbitrate and to abide by the award. The submission agreement establishes the extent and limit of the arbitrator's authority. It is through this agreement that the arbitrator learns what issues are in question and what relief is being sought. Submission agreements are used primarily in Ad Hoc arbitrations. Arbitration may proceed without such an agreement if it is provided for in the collective bargaining agreement.
38. **THRESHOLD ISSUES** – Issues of either a substantive or procedural nature that may prevent an arbitration from going forward. The most common objections are timeliness, or the grievance does not meet the definitions set forth in the contract. In most areas, the arbitrator has the authority to make a decision.
39. **TRIPARTITE BOARD** - An arbitration board usually composed of one or more members selected by each party, and a neutral member who is selected by both parties to act as chairman.
40. **UMPIRE** – A permanent arbitrator. (See Permanent Arbitrator)
41. **VOIR DIRE** – The qualification of an expert by reference to education, training, experience, and professional reputation.