

MERC's GRIEVANCE MEDIATION PROCESS

I. *OVERVIEW OF LABOR MEDIATION*

A. Statutory Basis – Labor Relations and Mediation Act 1939 (LMA)

1. Provided MERC with authority to set meetings to resolve labor disputes involving grievances and negotiations
2. No charge to parties by MERC

B. What is Grievance Mediation?

1. Informal process where parties meet with neutral 3rd party
2. Purpose is to attempt to resolve alleged violation of CBA by seeking mutually acceptable settlement of issue in dispute

C. Essential characteristics of mediator

1. Integrity
2. Confidentiality
3. Belief in the collective bargaining and grievance process
4. No power to bind the parties

II. *GRIEVANCE MEDIATION PROCESS: What and Why?*

A. Cost effective - No charge to the parties for mediator

B. Expedient

1. Arbitration may take months to schedule
2. Mediation – weeks, or even days
3. Arbitration a formal process - may take all day or days
 - a. Exhibits to be entered / challenged
 - b. Testimony - direct and cross examination

4. Mediation informal – usually 2 – 4 hours
 - a. Exhibits are accepted
 - b. No direct and cross examination
 5. No post hearing brief
 6. Process concluded quickly
 - a. Arbitration – 30 days to brief; decision from arbitrator
30 days after receipt
 - b. Mediation - resolution may occur in 1 or 2 hours
- C. Meetings informal; Less adversarial
1. Arbitration is like a hearing before a judge
 - a. Natural tension
 1. Parties typically angry with one another
 2. Win or lose outcome
 - b. Parties remain together
 - c. Witnesses sworn in
 - d. Direct examination
 - e. Cross examination
 2. Mediation is like a discussion between parties
 - a. Each shares perspective of dispute
 - b. Parties then separated
 - c. No swearing in of witnesses
 - d. No direct or cross examination
- D. Significant Differences in Processes
1. Arbitration focuses on winning
 2. Arbitration can destroy relationships
 - a. Always the threat of losing
 - b. Relationship highly strained from beginning

- c. Direct examination
 - 1. Sworn testimony may be viewed as a bold lie
 - 2. Lie or different perspective?
 - 3. Doesn't matter - loss of respect happens
 - d. Cross examination
 - 1. Purpose is to impeach testimony
 - 2. Point out the lie
 - 3. Destroy the witness
 - e. Parties remain together, face to face
 - 1. Impact – elevated anger
 - 2. Desire to get even
 - f. Dirty laundry exposed
3. Mediation promotes cooperation
- a. Focus is resolution, not winning
 - b. More relaxed environment
 - 1. No swearing of witnesses
 - 2. No direct or cross examination
 - c. While together, parties asked to give their *"perspective"* of what happened
 - 1. Review grievance chain
 - 2. Review contract language
 - 3. Share needed clarification
 - d. Parties then separated
 - 1. May vent anger, without consequences
 - 2. Discuss underlying issues – *the "real issues"*
 - 3. Discuss settlement possibilities
 - e. "Settling the issue" builds relationships

- f. "Winning the issue" means someone loses
 - 4. Mediation can uncover flaws in a position
 - a. Parties to dispute sometimes too close to see clearly
 - b. Assumptions can be disproven
 - 5. Mediator can give a neutral perspective on chances of prevailing in arbitration
 - a. Mediators have extensive experience in contract administration and arbitration
 - b. Neutral perspective from experienced mediator can get one side or other "off the hook"
 - 1. Management needs to support supervisor
 - 2. Union concern about DFR suit, appearing weak; Union's obligation under DFR
 - 3. If can't convince mediator, probably can't convince arbitrator
 - 6. Mediator not tied to contract language
 - a. Arbitrator cannot modify, add to or take away from clear contract language – limited to win/lose
 - b. Mediator can focus on the real issues and help craft settlement that works for all parties
- E. To work effectively with mediator
 - 1. Trust your mediator
 - a. Neutral, no vested interest
 - b. Laws of confidentiality apply
 - 2. Be open and honest
 - a. Clearly explain your position and perspective
 - b. Paint a complete picture, bad or good

3. Be open-minded.
 - a. Listen to mediator
 - b. Be open to options for resolution
 - c. Remember – problem solving process
- F. Conduct of parties
 1. Focus on issues, not personalities
 2. Don't attack or insult anyone
 3. Respect dignity of others present
 4. Remember – purpose is to cooperatively resolve the issue, not beat the other side into submission
 5. Reserve the “win/lose” mentality for arbitration
- G. Fundamental requirements for grievance mediation
 1. Copy of contract
 2. Grievance chain
 3. Exhibits
 4. Witnesses
 - a. Appropriate
 1. First-hand knowledge
 2. Grievant, where appropriate
 - b. Inappropriate
 1. Spectators
 2. Interested parties
 3. Family members of grievant
- H. Summary – Advantages of Grievance Mediation
 1. Cost effective
 2. Expedient
 3. Informal – less adversarial

4. Promotes cooperation
 5. Not tied to a contract remedy
 6. Deals with “real” issues
 7. Can get you out of a tight spot
- I. To initiate grievance mediation
1. Forms available
 - a. Website: www.michigan.gov/merc
 - b. Detroit or Lansing BER office
 2. Upon submission
 - a. Case initiated
 - b. Mediator assigned
 - c. Mediator contacts the parties

FINAL COMMENT

If a grievance remains unresolved after using the grievance mediation process, arbitration still remains as a tool to ultimately settle the dispute.