

**IPMA – ORPELRA
ANNUAL CONFERENCE
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**INTEREST ARBITRATION:
POSITIVE LESSONS LEARNED**

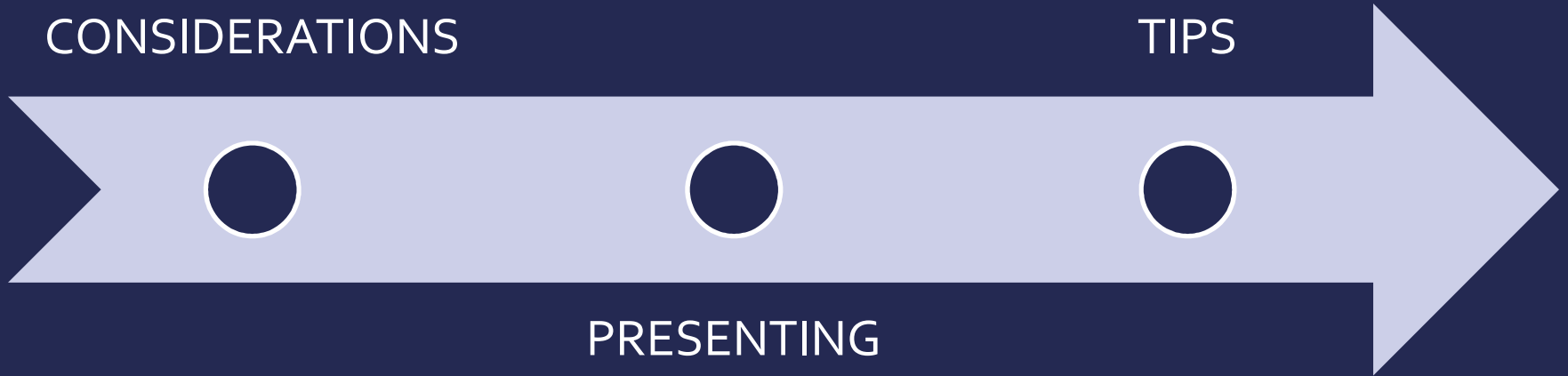
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PRE-ARBITRATION
CONSIDERATIONS

POST-HEARING
TIPS

PRESENTING
YOUR CASE



PRE-ARBITRATION

TIPS ON SELECTION OF THE ARBITRATOR

- ◆ **Carefully review backgrounds**
 - Underlying biases?
 - Hidden agendas?
 - Smart? Complexity of issues.
 - Oregon v. Non-Oregon (politically hot issues).
- **Contact Peers**

- **Read Interest Arbitration Decisions – ERB Website**

- Past rulings on issues you will face.
- Position on selection of comparators.
- Recognize potential importance of “Score Card” and “Last Ruling”.

- **How to strike:**

- Whenever possible they strike first.
- Do your best to anticipate their strikes and carefully plot your strike strategy.
- Consider flow charts.
- Record their strikes for future selections and sharing with peers.

CAREFULLY FORMULATE YOUR LAST BEST OFFER

◆ Legal Considerations

- ◆ Do **NOT** include any permissive or prohibited subjects of bargaining.
- ◆ Recognize potential application of Status Quo/Quid Pro Quo doctrine. Under this principle, the party seeking to change the status quo bears the burden of proving:
 1. The status quo has proven unworkable or inequitable;
 2. Quid pro quo has been given to justify the taking away of a benefit gained by the other party in negotiations; *and*
 3. A compelling need exists to change the status quo
1A-16-01; 1A-16-99; 1A-03-99; 1A-09-95

◆ PRACTICAL CONSIDERATIONS:

- ◆ Review the interest arbitration decisions issued by the arbitrator you have selected to decide what needs to be changed.
- ◆ Remove issues of insignificance.
- ◆ Analyze and revise your Last Best Offer based on the statutory criteria. (ORS 243.746)
- ◆ At the Last Best Offer stage, it is generally best to put your money where it will count toward overall compensation.
- ◆ Consider the impact of your Last Best Offer on the other bargaining units within your jurisdiction – escalation/“spreading” effect.

PRESENTING YOUR CASE AT ARBITRATION

- ◆ No Burden of Proof: The pros and cons of going 1st or 2nd.
- ◆ What about a pre-hearing brief?
- ◆ Use the statutory criteria as a “blue print” for the presentation of your evidence.
- ◆ Gather your “brain trust” to determine how to paint the picture that your jurisdiction’s Last Best Offer best fulfills the statutory criteria.
 - ◆ **WHAT** evidence needs to be presented.
 - ◆ **WHO** will be most effective presenting that evidence.

- ◆ Develop an “order of proof”, i.e. the order you will introduce your witnesses/exhibits (foundation witness to anchor witness).
- ◆ Prepare for cross examination
- ◆ Serve subpoenas/subpoenas duces tecum where appropriate (signed by arbitrator with witness fees and mileage payments).
- ◆ Always insist on making an opening statement.
 - ◆ **Keep it factual, but persuasive.**
 - ◆ **Your purpose is to notify the arbitrator of what the issues are; what evidence will be introduced and why your Last Best Offer best fulfills the statutory criteria.**
 - ◆ **Do not argue.**
 - ◆ **Do not overstate.**

- ◆ Outline witness questions for your direct witnesses.
- ◆ Anticipate and outline cross examination questions for their witnesses.
- ◆ Identify exhibits to be used in cross examination.
- ◆ Whenever possible, back up witness testimony with data.

RECOGNIZE THE IMPORTANCE OF GRAPHIC/VISUAL EXHIBITS

- ◆ Retention of Information Studies.
- ◆ The “brain trust” you form to determine what needs to be presented should also determine how to create charts, spreadsheets and other exhibits to best illustrate the points you want to make.
- ◆ Learn the proper way to introduce exhibits. After the witness makes the point your are trying to get across, ask:
 - “Did you, in preparation for this hearing, prepare a chart depicting...?”
 - “I’d like to refer you to the document marked Exhibit ___ for identification purposes...is that the chart you are referring to?”
 - “Can you tell us what it shows?”

RECOGNIZE THAT IRRESPECTIVE OF HOW THE STATUTE IS WRITTEN, ARBITRATORS RELY HEAVILY ON OVERALL COMPENSATION COMPARISONS

- ◆ Select defensible and balanced jurisdictions (no “cherry picking”).
- ◆ Verify the jurisdictions the Association will use.
- ◆ Reach stipulated agreements on comparators whenever possible.
- ◆ Be prepared to attack any jurisdictions that are not on your list.
- ◆ Be prepared to attack any inappropriate selection of the classifications being compared.
- ◆ Use witnesses from those jurisdictions to provide direct evidence to support your position(subpoena).

- ◆ Contact any jurisdiction the Association is using that you are not using. Ask if they use your jurisdiction and, if not, why not.
- ◆ Check and re-check accuracy of your data (MOU revisions; unexpressed practices).
- ◆ Use “apple to apple” snap shots.
 - ◆ New hire.
 - ◆ 5 years.
 - ◆ 10 years.
 - ◆ 20 years.
- ◆ Use defensible and persuasive methodology.

◆ IDEAS:

- ◆ Consider using 50% rule (if over 50% of the bargaining unit receive a premium, include it) where appropriate.
- ◆ Consider using “inflow/outflow” method.
- ◆ With regard to insurance, remember the statutory language refers to a comparison of *benefits*, not a comparison of costs. If the insurance offered by other comparators is relatively or substantially equal, subtract the employee’s contribution.
- ◆ Use color and font size effectively.
- ◆ Consider Powerpoint overheads as “back-up” to exhibits.

PRESENT YOUR DATA EFFECTIVELY

Use well organized Hearing Binders

- 4 binders (both parties, the arbitrator, the witness).
- No filler material.
- Separate support data binder from evidence binder (4 of each).
- Organize your binders.
- **IDEAS:**
 - Introduction to Statutory Criteria
 - Current CBA
 - Employer's LBO
 - Association's LBO
 - Public Interest & Welfare
 - numerical exhibit tabs (1,2,3,4...)
 - Comparators – Overall Compensation
 - numerical exhibit tabs (1,2,3,4...)

Inability to pay (if appropriate)

- numerical exhibit tabs

Recruitment and Detention

- numerical exhibit tabs

Other factors traditionally considered

- **Followed by Issue tabs.**

EXAMPLES: Article 10 – Sick Leave

- numerical exhibit tabs

Article 12 – Hours of Work and Overtime

- numerical exhibit tabs

- **Include a Table of Contents – The goal is to make it easy for the arbitrator to find your data.**

GENERAL TIPS ON THE PRESENTATION:

- ◆ Don't waste the arbitrator's time.
- ◆ Wise use of breaks.
- ◆ Acknowledge and correct mistakes discovered during the hearing.
- ◆ Be prepared for redirect.
- ◆ Recognize what evidence is best reserved for rebuttal.
- ◆ Object where appropriate.

POST-HEARING BRIEFS

- ◆ Organize based on statutory criteria.
- ◆ Reference exhibits in briefs.