

KEYS TO INTERPRETING MOU LANGUAGE

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Labor Forum

City and County of San Francisco

Background

- ▣ Why is this important?
 - DPOs often advise on the meaning of the MOU.
 - It is also vitally important in responding to grievances. It helps Human Resources professionals assess the strength of a grievance, in other words, whether it is in the department's interest to deny or settle the grievance.

#1 Rule – Plain Meaning of the Contract



- ▣ According to Elkouri and Elkouri, the Plain Meaning rule is defined as *“if the words are plain and clear, conveying a distinct idea, there is no occasion to resort to interpretation, and the meaning can be derived entirely from the nature of the language used.”*

Tool Kit for Interpreting Contract Language



- ▣ However, many grievances arise due to ambiguous contract language. In these cases, the following ideas may help you in interpreting MOU language.
- ▣ If the contract language is not crystal clear, Labor arbitrators will often allow the parties to submit “parol evidence” to help them interpret MOUs.

Parol Evidence

- ▣ Parol Evidence is external evidence that is not included in the relevant written document.

Past Practice



- ❑ Past Practice is the most widely used tool to interpret the intent of the MOU language.
- ❑ It may also be used to clarify language that is ambiguous or “fill in the gaps” if the MOU is silent on an issue.
- ❑ Again, Past Practice may not be admissible if the plain meaning of the contract is clear.
- ❑ Additionally, check to see if the MOU in question has a past practice provision (many craft unions do).



Negotiating History

- ▣ When contract language is vague, an arbitrator may look to the bargaining history in order to determine the intent of the parties.
 - Negotiation Notes, Proposals and Previous Contracts may be very important in deciphering the intent.
 - Some examples:
 - ▣ 1. The negotiating notes might capture the intent of the language that is not in writing. Bargaining notes can reveal that the parties shared a common understanding of the language when it was negotiated.
 - ▣ 2. Often, we look for how a previous MOU may have been changed. Additions and deletions of language usually show an intent to address specific issues.

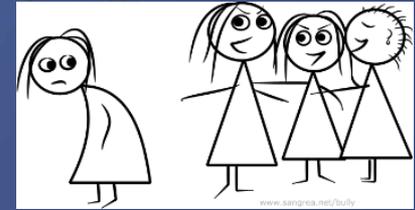


Negotiation History Con't...

- 3. When a party consistently proposes a certain idea and the opposing party continually rejects the idea, the arbitrator must conclude that the parties did not agree to that provision.

Maxims of Interpretation

Expressio unis est exclusio alterius



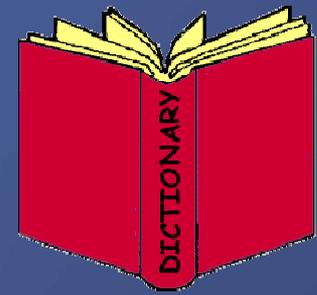
- When one or more things of a class are expressly included others are excluded.
 - For example if a contract said the following:
“Employees assigned to work in large cities namely San Francisco, San Diego and Los Angeles areas will be paid a 10% differential.”
 - Presumably, employees in all other cities including Sacramento and Anaheim are excluded from the 10% differential because they were not expressly stated.

Specific Language Controls the General



- ▣ Arbitrators will generally give greater weight to specific language over general language. Specific language usually expresses the parties intent on specific issues, while general language expresses the parties general approach.
- ▣ For example: *It is the intent of the parties to provide a differential to employees that work in large cities in order to account for the additional costs of living. Specifically, the Agency will provide a 10% differential to employees that live in a city larger than 500,000 people.*

Word Definitions



- When there is confusion over words you can use the following tools.
 - Dictionary Definition or Ordinary Words will be given their ordinary meaning.
 - Ex: If vacation was not defined clearly in labor contract then an arbitrator may consult a common or specialized dictionary.
 - Technical Term
 - Ex: “Passport” in a Fire Department may have a different meaning from document issued by the U.S. State Department.
 - Same word, same meaning
 - Ex: If “day” is defined as calendar day for the Leaves Article then an arbitrator may decide that calendar days applies to the Grievance Article, as well. (Protect against this by defining terms as necessary – “for purposes of this section only.”)

All Parts of the Contract Must be Read Together

- ▣ Arbitrators will look at the MOU as a whole in determining the meaning of a provision. More specifically, if one interpretation of contract language (Interpretation A) renders other parts of the contract void, while Interpretation B complies with the rest of the contract, an Arbitrator is likely to rule in favor of Interpretation B.



Other factors to Consider...



- ❑ An arbitrator is unlikely to rule in favor of an interpretation of language that leads to an absurd result or a gross injustice.
- ❑ The Law – An arbitrator will choose a legal interpretation over one that would render the language illegal. Some arbitrators decisions have presumed that parties were aware of the current law when the contract was negotiated and intended the contract to comply with law.
- ❑ Previous Settlements – provided that they are precedent setting.
- ❑ Previous Arbitration Decision – Talk to ERD.
- ❑ The Experience of the negotiators – An arbitrator may give the benefit of the doubt to a novice negotiator and expect a seasoned negotiator to know how to express their intent.

An Example from the City You be the Arbitrator!

- ▣ In December of 1997, SEIU filed a grievance against the Department of Public Health/CCSF for implementing a new “practice” concerning the payment of a uniform allowance to employees.

MOU Language - Article 12 - For Public Health Employees

- ▣ “Employees, excluding as-needed employees, who are required to wear and supply their own uniform or lab coat or smock in the course of their duties shall be paid an annual uniform allowance of two hundred twenty-five dollars (\$225).

Background

- ▣ Since about 1982 some CCSF employees in DPH had been paid the uniform allowance despite the fact that they were not actually required to wear a uniform while on duty.
- ▣ An Agent of the Union had a informal discussion with Management and told them of the practice.
- ▣ At the time the City did not discontinue the practice so according to the Union it tacitly accepted the practice.
- ▣ In 1996 - 1997 the City conducted an investigation/survey to determine if indeed employees who were not required to wear uniforms were receiving the allowance.

Union's Argument

- ▣ The City and the Union's had a long standing, binding Past Practice from 1982 to 1997.
 - Since Past Practice may become part of the contract when the language is vague, the Union asserted that the Department had violated the MOU.

The City's Argument

- ▣ The Contract language is clear that only employees who are required to wear uniforms will be paid the allowance. Past Practice is only relevant when contract language is ambiguous.
- ▣ The Department made a unilateral mistake, which is not tantamount to a contract change or a binding Past Practice.
- ▣ DPH provided bargaining history which proved the intent of the uniform allowance was that it would only be disbursed to employees who were required to wear a uniform.

You be the Arbitrator!

- ▣ 1. Do you grant or deny the grievance?

Arbitrator's Decision

- ▣ (1) The arbitrator ruled that the plain meaning of the language was in favor in the City thus making the Union's argument of a binding past practice irrelevant.
- ▣ (2) The employees who received the uniform allowance in the past did so as a result of Department's unilateral mistake. Therefore, a binding past practice did not exist.
- ▣ Grievance Denied!