NALC Arbitration Advocate

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Unadjudicated Discipline

Management Still Can't Use It in Arbitration

Management: *Madame Arbitrator, the union is simply wrong when it argues that you cannot consider previous discipline. You can do so even if the earlier discipline is still under consideration in the grievance procedure. This is relevant evidence of the grievant's work record.*

Union: *That simply is not so, Madame Arbitrator. The parties are bound by a national arbitration decision from Arbitrator Paul Fasser, dated 1977. Fasser ruled that previous, unadjudicated discipline has no standing before an arbitrator. It cannot be considered or even admitted in a regional arbitration hearing. Management knows this rule as well as the union.*

Management: *It seems the union has not kept up with new legal developments, Madame Arbitrator. I have here a decision, dated November 13, 2001, from the Supreme Court of the United States, entitled U.S. Postal Service v. Gregory. Maria Gregory was a Postal Service letter carrier who was removed, like the grievant in this case. She challenged her removal all the way up to the Supreme Court. And the Court ruled—unanimously, I might add—that previous, unadjudicated discipline could indeed be considered in the removal case.*

Now Madame Arbitrator, Maria Gregory was a veteran and she did appeal her removal to the Merit Systems Protection Board before getting to federal court. However, although the forum she chose may be different, the question of binding authority is clear. With all due respect to

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Past Practice

The Joint CAM and More

The 2001 Revisions to the USPS-NALC Joint Contract Administration Manual (JCAM) contain language on the meaning of a "past practice." This is the first time the parties have reached agreement on such language, and represents another large step forward in the parties' efforts to make the National Agreement better understood by those who administer and enforce it.

A binding past practice is an unusual part of the National Agreement, for it possesses contractual force even though it was neither explicitly negotiated, written down nor signed in the usual way. Past practices develop because no contract, no matter how voluminous, can anticipate every potential interaction between workers and the employer. A past practice is one illustration of the fact that the labor relationship is "dynamic" or "alive"—that is, past practices develop out of the way that employees and employer relate and interact in

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> *Arbitrator Fasser, his opinion has been overruled by a much higher authority. The Supreme Court has spoken, and its holding must be obeyed.*
>
> Union ("Uh-oh!"): *Let me have a look at that case . . .*

What's this new management twist? What was this *Gregory* case all about? Is the USPS advocate right—did the Supreme Court really overrule the Fasser case? The short answer: No. However, a more complete explanation should help NALC advocates confront and defeat this new, and utterly preposterous, management argument.

Some Arbitral History

NALC arbitration advocates know it is unfair for an arbitrator in a discipline case to consider evidence concerning prior discipline, when that prior discipline was grieved and the grievance remains unresolved. Such discipline is called, in advocates' legalese, "unadjudicated." The unfairness is obvious—an arbitrator should not base a decision on previous discipline that is not final and that might be reduced or reversed.

Fasser award. Under the NALC-USPS contract, the introduction of evidence of unadjudicated prior discipline is not only unfair—it has long been *prohibited* by national arbitration precedent. National Arbitrator Paul J. Fasser, Jr. ruled in 1977 that the Postal Service had relied improperly in arbitration on a previous disciplinary action against the grievant which was scheduled to be heard in arbitration. He ruled, "Until that appeal is finally adjudicated, it has no standing in this proceeding." C-03910, MC-S-0874-D, June 18, 1977, at p. 7.

It should be noted that this rule applies to the *arbitration process*—that is, it prohibits arbitrators from admitting or considering evidence of unadjudicated previous discipline. Fasser's ruling did not apply to management's decisions to use prior, unadjudicated discipline as a basis for issuing further discipline.

Delay of hearing for resolution of unadjudicated discipline. The Fasser rule on unadjudicated discipline served as the backdrop to a dispute, ultimately solved in another national arbitration, concerning the scheduling of cases involving removal or other serious discipline. Article 15.4.B.4 provides:

> *4. Cases referred to arbitration, which involve removals or suspensions for more than 14 days, shall be scheduled for hearing at the earliest possible date in the order in which appealed.*

Based on this language, NALC appealed a grievance to the Step 4, interpretive level that challenged an arbitrator's postponement of an arbitration hearing involving a removal. The arbitrator postponed the case because prior disciplinary actions against the grievant had not yet been resolved.

Arbitrator Fasser ruled in a 1977 national arbitration case that evidence of previous, unadjudicated discipline has "no standing" in arbitration. Both NALC and USPS have long recognized this rule.

NALC argued in the case that Article 15.4.B.4 preempts (takes precedence over) an arbitrator's authority to postpone a hearing, because the contract provision requires the parties to schedule a removal grievance at the earliest possible date. The union reasoned that a postponement or continuance, even when granted to await the outcome of a grievance concerning unadjudicated discipline, would contradict the explicit language of Article 15. NALC asked Arbitrator Snow to rule that arbitration cases must be heard on the date scheduled without regard to any unadjudicated grievances.

Management opposed, arguing that nothing in the contract or bargaining history between the parties showed that they intended to restrict the discretion of arbitrators to grant continuances. USPS also stated a belief that, in light of the Fasser ruling, upholding NALC's position would produce a "Catch-22" situation in which some employees could escape the consequences of their misconduct merely because their removal hearing is held at a time when earlier discipline had not yet been adjudicated.

Snow award. Arbitrator Snow denied NALC's grievance, holding that Article 15.4.B.4 "does not preclude an arbitrator from granting a continuance in a removal hearing pending resolution of an underlying disciplinary grievance." C-19372, National Arbitrator Carlton Snow, E94 N-4E-D 96075418, April 19, 1999. So although arbitrators may not, under the Fasser ruling, admit or consider evidence of previous, unadjudicated discipline in an arbitration hearing, they do have authority to postpone the hearing until the earlier disciplinary matters are resolved. (The Snow

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award is noted in the 2000 JCAM (with 2001 Revisions) under Article 15.4.B, page 15-16).

The Gregory Case

Maria Gregory was working as a T-6 when she received a letter of warning, a 7-day suspension and a 14-day suspension during the period April-August, 1997. In November, 1997 the Postal Service removed her. Ms. Gregory, a preference eligible, appealed her termination to the Merit Systems Protection Board (MSPB), choosing that forum instead of arbitration under the contractual grievance-arbitration procedure.

At the time of her hearing before an MSPB Administrative Law Judge (ALJ), all three of Ms. Gregory's previous disciplinary actions were pending in the NALC-USPS grievance procedure. The ALJ, following MSPB precedent, nonetheless considered and analyzed the prior discipline. The ALJ's decision upheld the removal. Ms. Gregory requested review by the full MSPB (the Board). While that request was pending, an arbitrator heard and reversed Ms. Gregory's letter of warning. The Board, which Ms. Gregory did not inform of the arbitration award, denied her request for review.

Ms. Gregory then appealed the Board decision to the U.S. Court of Appeals for the Federal Circuit. The court reversed the MSPB, holding that when assessing the reasonableness of serious disciplinary actions, the Board may not consider prior disciplinary actions that are pending in collectively bargained grievance proceedings. 212 F. 3d at 1296,1298 (2000).

The Postal Service appealed the case to the U.S. Supreme Court, which unanimously reversed the Federal Circuit decision. The court held that the Federal Circuit court had overstepped its authority in reviewing the MSPB decision. It said that the MSPB has wide latitude in performing its review of agency disciplinary actions, and that the courts can overturn an MSPB decision only if it is arbitrary and capricious. 534 U. S. ____, No. 00-758 (2001).

The Gregory case is simply irrelevant to any arbitration proceeding under the NALC-USPS contract. Justice Thomas's concurring opinion made it crystal-clear that the MSPB's review of agency disciplinary actions is a matter entirely separate from a grievance procedure established by collective bargaining.

The Supreme Court remanded the case to the Federal Circuit for reconsideration in light of its ruling, as well as the new factual development—the dismissal of the letter of warning. The Federal Circuit in turn remanded the case to the MSPB.

The Gregory Case is Irrelevant

As the reader probably has concluded already, the *Gregory* case has no application whatsoever to arbitration proceedings under the NALC-USPS grievance procedure. The decision applies only to cases heard by the Merit Systems Protection Board, and *concerns only the rules of evidence established by the MSPB for its own proceedings.* Here is the first paragraph of the Supreme Court's opinion, penned by Justice Sandra Day O'Connor:

> *The Civil Service Reform Act of 1978 allows eligible employees to appeal termination and other serious disciplinary actions to the Merit Systems Protection Board. 5 U.S.C. §§ 7512-7513. The Federal Circuit ruled that, when assessing the reasonableness of these actions, the Board may not consider prior disciplinary actions that are pending in collectively bargained grievance proceedings. 212 F. 3d 1296, 1298 (2000). Because the Board has broad discretion in determining how to review prior disciplinary actions and need not adopt the Federal Circuit's rule, we now vacate and remand for further proceedings.*

Moreover, in his concurring opinion, Justice Thomas made it crystal-clear that the MSPB's review of agency disciplinary actions is entirely separate and unrelated to any grievance procedure established by collective bargaining:

> *The central flaw in the Federal Circuit's decision is that it relies on the mistaken assumption that the Board's review process and collectively bargained grievance proceedings are somehow linked. 212 F. 3d, at 1300. This assumption is not supported by the CSRA. Under the statute, the Board's review*

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> *grievance proceedings are somehow linked. 212 F. 3d, at 1300. This assumption is not supported by the CSRA. Under the statute, the Board's review process and collectively bargained grievance procedures constitute entirely separate structures. . . .*

As Justice Thomas recognized, the grievance-arbitration procedure has its own rules and is established under a different law than MSPB appeals. An NALC-USPS arbitration hearing operates under the rules of arbitration established by the National Agreement, as authorized by the Postal Reorganization Act of 1970. MSPB appeals operate under the separate authority of the Civil Service Reform Act of 1978, specifically 5 U.S. Code Sections 7511-7513. The Supreme Court decision in the *Gregory* case dealt only with MSPB appeals. Each of these two distinct forums has its own evidentiary rules, hearing procedures and so forth, and each forum has its own rules concerning the consideration of unadjudicated, prior discipline differently.

Advice for Advocates

When an NALC advocate is faced with a management advocate arguing that the *Gregory* case overrules the Fasser award, perhaps the best response is to ask the arbitrator to read the *Gregory* case carefully, with special attention to the excerpts quoted above. It should be clear to anybody who reads the decision that it applies only to the MSPB forum, and certainly not to NALC-USPS arbitration hearings.

When a removal or other discipline is appealed to arbitration, the advocate must determine whether the grievant has other disciplinary grievances pending. If so, then assuming that management will insist on postponing the hearing, there are two logical courses of action: (1) The parties can agree that they will not schedule the arbitration hearing until all of the underlying discipline is resolved; (2) in the alternative, the parties could agree to merge all of the disciplinary cases into one and try them all in one hearing. However, the latter alternative should be chosen only after the advocate has a firm grasp of all the cases. In some cases the multiple disciplinary actions could give the arbitrator an unfavorable impression of the grievant and lower the chances for success.

In arbitration under the National Agreement, letter carriers enjoy the protection of the Fasser rule against consideration of unadjudicated discipline. The same cannot be said of an appeal to the Merit Systems Protection Board.

As an aside, the *Gregory* case is one more reason why letter carriers facing serious discipline should think twice before opting for an MSPB appeal over the contractual grievance procedure. When a grievance is pursued under the grievance-arbitration procedure rather than to the MSPB, the Fasser rule prevents an arbitrator from considering any previous, unadjudicated discipline. What is more, the MSPB has very legalistic procedures and carriers should be informed that it may be wise to hire a lawyer when pursuing an appeal to that agency.

If a union advocate encounters a management argument that the *Gregory* case applies in arbitration, it may be useful to point out to the arbitrator that the opposing advocate has introduced a precedent so clearly inapplicable that the claim must be seen as disingenuous, at best.("Disingenuous" is a term often used by advocates and lawyers to characterize the opponent's words or actions as "lacking in candor" or even "deceitful." It is a mild way of saying the other side has offered calculated B.S.). The union advocate might add that management's introduction of irrelevant Supreme Court precedent is an attempt to confuse or intimidate the arbitrator. Such tactics, an advocate should note, show disregard for the arbitrator and for the arbitration forum. □

Copies of the Advocate

How to Obtain Copies of Past Issues

NALC advocates may obtain copies of previous issues of the NALC *Arbitration Advocate* from the office of the national business agent. If the NBA office does not have a particular issue, the headquarters Contract Administration Unit can provide a copy. □

Past Practice . . .

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the natural course of business at the workplace. By definition, a past practice exists outside or "between the lines" of the written words of the National Agreement.

This article reprints the JCAM language and offers commentary and examples to illustrate how a practice may evolve—or fail to evolve—into a binding contractual obligation. Before going to the JCAM, however, it should be noted that Article 5 prohibits the employer from taking unilateral action that affects wages, hours and working conditions—including unilateral changes to binding past practices.

ARTICLE 5. PROHIBITION OF UNILATERAL ACTION

The Employer will not take any actions affecting wages, hours and other terms and conditions of employment as defined in Section 8(d) of the National Labor Relations Act which violate the terms of this Agreement or are otherwise inconsistent with its obligations under law. . . .

JCAM Language

The new JCAM language on past practice follows. Please note that the JCAM language is presented in this Helvetica typeface and within boxed columns, while the extra commentary appears in this Palatino typeface in the usual columns.

Past Practice

The following explanation represents the national parties' general agreement on the subject of past practice. The explanation is not exhaustive, and is intended to provide the local parties general guidance on the subject. The local parties must ensure that the facts surrounding a dispute in which past practice plays a part are surfaced and thoroughly developed so an informed decision can be made.

Article 5 may also limit the employer's ability to take a unilateral action were a valid past practice exists. While most labor disputes can be resolved by application of the written language of the Agreement, it has long been recognized that the resolution of some disputes require the examination of the past practice of the parties.

Defining Past Practice

In a paper given to the National Academy of Arbitrators, Arbitrator Mittenthal described the elements required to establish a valid past practice:

First, there should be clarity and consistency. A course of conduct which is vague and ambiguous or which has been contradicted as often as it has been followed can hardly qualify as a practice. But where those in the plant invariably respond the same way to a particular set of conditions, their conduct may very well ripen into a practice.

Second, there should be longevity and repetition. A period of time has to elapse during which a consistent pattern of behavior emerges. Hence, one or two isolated instances of certain conduct do not ordinarily establish a practice. Just how frequently and over how long a period something must be done before it can be characterized as a practice is a matter of good judgment for which no formula can be devised.

Third, there should be acceptability. The employees and supervisors alike must have knowledge of the particular conduct and must regard it as the correct and customary means of handling a situation. Such acceptability may frequently be implied from long acquiescence in a known course of conduct. Where this acquiescence does not exist, that is, where employees constantly protest a particular course of action through complaints and grievances, it is doubtful that any practice will be created.

One must consider, too, the underlying circumstance which give a practice its true dimensions. A practice is no broader than the circumstances out of which it has arisen, although its scope can always be enlarged in the day-to-day administration of the agreement. No meaningful description of a practice can be made without mention of these circumstances. For instance, a work assignment practice which develops on the afternoon and midnight shifts and which is responsive to the peculiar needs for night work cannot be automatically extended to the day shift. The point is that every practice must be carefully related to its origin and purpose.

Finally, the significance to be attributed to a practice may possibly be affected by whether or not it is supported by mutuality. Some practices are the product, either in their inception or in their application, of a joint understanding; others develop from choices made by the employer in the exercise of its managerial

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discretion without any intention of a future commitment.

Commentary

The Mittenthal article is the classic, seminal work on the issue of past practice: "Past Practice and the Administration of Collective Bargaining Agreements," 59 Michigan Law Review 1017 (1961). In that article Arbitrator Mittenthal laid out the fundamental elements of a past practice, paraphrased in the JCAM language above. These elements have been restated in various ways by various writers, any comprehensive definition must include those elements set forth in the JCAM.

1. Longevity and repetition
2. Clarity and consistency
3. Acceptability/mutuality
4. Purpose and scope

A failure to prove one of the essential, underlying elements is usually fatal to a claim of past practice. In C-12026, NALC made an argument that under an established past practice carriers were permitted take their street breaks either during the first 8 hours of the workday or later, on overtime. Regional arbitrator Kenneth M. McCaffree, May 20, 1992.

The arbitrator rejected that contention partly because he found no evidence that the practice was mutually recognized and acceptable to both parties:

> *. . . the evidence was insufficient to establish that supervisors were aware of the practices and acquiesced in that practice . . . the arbitrator heard no Union witness affirm the name of a supervisor who knew of the practice in July, 1990 . . . All supervisors denied any knowledge of a general practice to allow a break on overtime.*

Even if NALC had proven in this case the elements of longevity, repetition, clarity and consistency, and shown the practice's purpose and scope, the inability to show acceptability/mutuality doomed the union's case.

In a more recent regional case Arbitrator Carlton Snow discussed the elements of past practice and upheld a grievance alleging that the union's long-term use of management's photocopying machine for grievance business had evolved into a binding past practice. The element of acceptability/mutuality was in dispute. Snow resolved it based on a strong factual presentation showing that the union had used the copiers at the Monterey Post Office consistently "for over a decade with the full cooperation of management." Snow noted that the practice was "specific"—that is, the copying was done specifically as part of the union's grievance processing work, and that supervisors had helped union officials to schedule their larger copying projects. C-23104, November 5, 2001.

JCAM Language

continued

Functions of Past Practice
In the same paper, Arbitrator Mittenthal notes that there are three distinct functions of past practice:

To Implement Contract Language: Contract language may not be sufficiently specific to resolve all issues that arise. In such cases, the past practice of the parties provides evidence of how the provision at issue should be applied. For example, Article 15, Section 2, Step 3 of the 1978 National Agreement (and successor agreements through the 2000 National Agreement) required the parties to hold Step 3 meetings. The contract language, however, did not specify where the meetings were to be held. Arbitrator Mittenthal held that in the absence of any specific controlling contract language, the Postal Service did not violate the National Agreement by insisting that Step 3 meetings be held at locations consistent with past practice. N8-NAT-0006, July 10, 1979, C-03241.)

To Clarify Ambiguous Language: Past practice is used to assess the intent of the parties when the contract language is ambiguous, that is, when a contract provision could plausibly be interpreted in one of several different ways. A practice is used in such circumstances because it is an indicator of how the parties have mutually interpreted and applied the ambiguous language. For example, in a dispute concerning the meaning of an LMOU provision, evidence showing how the provision has been applied in the past provides insight into how the parties interpreted the language. If a clear past practice has developed, it is generally found that the past practice has established the meaning of the disputed provision.

To Implement Separate Conditions of Employment: Past practice can establish a separate enforceable condition of employ-

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ment concerning issues where the contract is "silent." This is referred to by a variety of terms, but the one most frequently used is the "silent contract." For example, a past practice of providing the local union with a file cabinet may become a binding past practice, even though there are no contract or LMOU provisions concerning the issue.

Commentary

The regional award involving union photocopying (C-23104, the Snow award) was a clear case of the "silent contract" type of past practice. Arbitrator Snow rejected a management claim that union use of USPS copy machines was controlled by Sections 352.71 and 352.722 of the Administrative Support Manual. He found instead that "the National Agreement is silent with regard to the Union's use of copiers in Monterey." Snow then stated the rule on "silent agreement" past practices:

> *In the presence of a silent agreement, a past practice of parties may become binding on them as long as the practice does not conflict with the negotiated agreement and complies with the general requirements elucidated by Arbitrator Richard Mittenthal. (Award at 18.)*

Unstated element. Arbitrator Snow noted an additional element of every past practice that is seldom stated in the short-hand definitions. That element, common to all valid past practices, is that a past practice may not be established which directly and unequivocally contradicts the written contract. For a past practice to exist, there must be an absence of specific, enforceable contract language defining the practice. If the contract defines a rule or practice to a certainty, then its detailed instructions must be followed. Past practice arises when the contract is unclear, when it fails to define something or specify how a rule is to be implemented, or when the contract is silent on a topic.

If the contract stated, "Carriers shall not whistle while casing," then a practice in one station of permitting carriers to whistle only "Dixie" and "Old MacDonald" could not be established as a binding past practice. On the other hand, say that the contract stated, "Carriers may whistle 'Dixie' while casing," and a long-standing, consistent and mutually accepted local practice developed in which carriers were permitted to whistle tunes of their own choosing. The union could argue that the contract is silent on the topic of melodies other than "Dixie," so the past practice has evolved to the point where it has created a separate, enforceable condition of employment.

JCAM Language
continued

Changing Past Practices

The manner by which a past practice can be changed depends on its purpose and how it arose. Past practices that implement or clarify existing contract language are treated differently than those concerning the "silent contract:"

Changing Past Practices that Implement or Clarify Contract Language: If a binding past practice clarifies or implements a contract provision, it becomes, in effect, an unwritten part of that provision. Generally, it can only be changed by changing the underlying contract language, or through bargaining.

Changing Past Practices that Implement Separate Conditions of Employment: If the Postal Service seeks to change or terminate a binding past practice implementing conditions of employment concerning areas where the contract is silent, Article 5 prohibits it from doing so unilaterally without providing the union appropriate notice. Prior to making such a change unilaterally, the Postal Service must provide notice to the union and engage in good faith bargaining over the impact on the bargaining unit. If the parties are unable to agree, the union may grieve the change. Management changes in such "silent" contracts are generally not considered violations if 1) the company changes owners or bargaining unit, 2) the nature of the business changes or, 3) the practice is no longer efficient or economical. The first of these has rarely arisen in Postal Service cases involving its numerous bargaining units. A change in local union leadership or the arrival of a new Postmaster or supervisor is not, in itself, sufficient justification to change or terminate a binding past practice, as noted in the previous paragraph.

Commentary

These rules point out the different treatment of different sorts of past practices. When a past practice implements or clarifies existing contract language, then it is very closely tied to the actual, written contract lan-

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Court Vacates Award Firing Postmaster

Joint Statement Remains Intact, NALC Appeals Decision

A federal court has vacated a regional arbitration award ordering the Postal Service to remove a Postmaster from USPS employment. The court found that the provisions of the Joint Statement on Violence did not permit the arbitrator to order the Postmaster's removal as the result of a first and apparently minor offense.

The federal court decision pointed to this Joint Statement language:

> *... Those who do not treat others with dignity and respect will not be rewarded or promoted. Those whose unacceptable behavior continues will be removed from their positions.*

The arbitration case had involved an altercation between a Postmaster and a letter carrier. Regional Arbitrator Raymond Britton ruled that the Postmaster had violated the Joint Statement on Violence and ordered USPS to remove him. C-21913, April 13, 2001, discussed in the August, 2001 *Arbitration Advocate*.

Joint Statement Left Intact

Although the federal court vacated the arbitrator's award, it did not accept any of the Postal Service legal attacks on the remedial powers available to arbitrators under the Joint Statement. Arbitrators still have the power to issue appropriate remedies affecting supervisors.

The Postal Service has argued recently, both in arbitration hearings and federal court, that arbitrators may not order remedies against supervisors who have violated the Joint Statement on Violence and Behavior in the Workplace, purportedly because of supervisors' rights under the Constitution and federal law. To date no court has accepted these arguments, and USPS remains bound by the commitments it made in the Joint Statement to punish and rid the organization of bullying, harassing supervisors.

NALC has appealed the decision to the United States Court of Appeals for the Fourth Circuit, based in Richmond, Virginia. □

Past Practice . . .

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guage. In that situation arbitrators usually accord the practice the same status and protection as a written provision. That is, the practice may be changed only through the same methods used to change the written contract.

On the other hand are practices which develop in areas that the contract does not address at all—that is, the contract is silent on that subject. These types of past practices also have contractual force, but there are circumstances under which management can move to change them. The JCAM language specifies the requirements that apply to such changes.

* * * * *

Persuasive Proof

NALC is usually the party arguing that a past practice has been established—and that the practice is binding on the other party. A union advocate preparing such a case must plan carefully to cover all the bases. Each required element must be explored separately with witnesses who have knowledge of the practice, its origins, its longevity, consistency, clarity, repetition and so forth.

This is something of a history project and several witnesses may be needed. Moreover, management witnesses cannot be depended upon to help the union case.

The party claiming that a past practice exists has the burden of proof. So when attempting to establish a past practice, the union should open with a strong affirmative case backed by knowledgeable, credible union witnesses. Artful cross-examination of opposition witnesses may elicit facts helpful to the union or, if necessary, impeach them. Rebuttal witnesses should be well-prepared to challenge any unexpected management claims. In the end, past practice cases depend on the specific facts of each case, so a comprehensive factual presentation is the key to prevailing. □

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Note on Citations

Please note that the C-number arbitration cases and M-number Materials Reference System materials cited in this publication are available to interested advocates. All materials are available from the office of the National Business Agent. All but the newest arbitration cases are available on the NALC Arbitration CD-ROMs. All M-number materials are available online at http://www.nalc.org and all but the latest are contained in the September, 2000 Contract Materials CD.

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