Grievances, Mediation, and Arbitration 8

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Learning Objectives

After completing this chapter, you should be able to:

- Compare and contrast grievance procedures by type of business entity.
- Describe the purpose of negotiations.
- Summarize the process of mediation.
- Explain the process of arbitration and differentiate the various types.
- Evaluate the career paths available in dispute resolution.

Introduction

In **Chapter 7** (http://content.thuzelearning.com/books/AUBUS372.15.1/sections/ch07sec7.1#ch07sec7.1) we saw the significance of a collective bargaining agreement and some of its important components. Most CBAs have language that reflects the reality that in every workplace there are bound to be disagreements, whether between workers or between workers and management. With that recognition comes the realization that not only does discord lead to an unpleasant workplace, it also reduces productivity. Given that it is inevitable, workers and managers alike are wise to plan ahead for inevitable disagreements by formulating grievance procedures or dispute resolution plans.

This chapter will explore the major types of dispute resolution and what each entails. It will cover the major steps of some of these processes and provide resources to learn more about both the processes and job opportunities in this area.

8.1 Dispute Resolution

The term **dispute resolution** refers to a process, formal or informal, by which people attempt to solve differences between themselves. There are three major types of dispute resolution: negotiation, **mediation**, and arbitration.

This chapter follows the collective bargaining chapter because approximately 97% of all collective bargaining agreements have a grievance procedure (Craver, 1990); breaching the agreement results in arbitration. Therefore, understanding the grievance procedure is a natural progression from collective bargaining.

Despite its direct relationship to collective bargaining, dispute resolution is not unique to labor unions or management. It is a tool used in every facet of life, one you have likely personally used no matter your background or employment history. For example, when you have worked out with family and friends matters as mundane as what to have for dinner, which movie to attend, or where to go on vacation, you have negotiated an agreement and/or participated in dispute resolution.

Everyone has practice with negotiating, but there are other types of dispute resolution: mediation and arbitration. These are also tools that can be used both in a labor context and elsewhere; in other words, they are not limited in their application. This is because **grievances** arise in every context, whether on the world stage, in a family, among roommates, or in the workplace. Grievances can run the gamut from petty complaints that are quickly resolved to serious allegations such as sexual harassment.

In the workplace a grievance is "a claim by an employee that he or she is adversely affected by the misinterpretation or misapplication of a written company policy or collective bargaining agreement" (Society for Human Resource Management, 2012). Disagreements will exist in a business regardless of whether it is public or private, unionized or not. As a result, places of employment should have a procedure that allows employees to resolve disagreements with dignity and respect. Negotiation, mediation, and arbitration are the key components of that procedure.

Grievance Procedure

There is no particular form of grievance procedure, nor is there a law that mandates a workplace have one. Creating a procedure is completely voluntary. A **grievance procedure** is a creature of contract: It might be written in an employee handbook or the collective bargaining agreement. The procedure may begin with an **informal resolution process**, such as discussing a complaint with a supervisor, and progress from there to negotiation, then mediation, and finally, arbitration. How detailed and layered these procedures are depends on the business and its needs.

Recall, however, that one of the chief complaints workers have against employers, and one of the main reasons they choose to unionize, is the perception that employers make unfair decisions or punish employees differently for the same offense. Therefore, from a preventive standpoint, having a procedure in place may help create a work environment perceived as fair and evenhanded.

Some businesses choose not to have a written grievance procedure, preferring instead to deal with individual complaints on an individual basis. One reason is often the expense of hiring an attorney to write the procedure, which may cost thousands of dollars. The consequences of *not* having a procedure, however, can be catastrophic.

Court cases illustrate that problems not resolved through a grievance procedure may escalate and end up in court, where the matter is turned over to an outside third party—the judge and/or the jury—who will decide the matter. The result may cost millions of dollars, far outweighing the initial outlay to hire counsel. It is strongly advised to put a procedure in place, in consultation with one's employees, so that the business can quickly and quietly take care of problems before they proliferate, become public, or end in litigation.

Grievance Processes and Possible Employment Relationships

One way to consider the grievance process is in the context of the four types of businesses or entities. These are:

1. a private business without a union,
2. a private business with a union,
3. a public entity that is unionized, and
4. a public entity that is not unionized.

Private Business, Without a Union

A private business is one that is not governmental, and *without a union* means the workers have not organized, nor are they recognized under a collective bargaining agreement. As already noted, such a business is under no legal obligation to develop or implement a grievance procedure. Yet consider what would happen in the event of the following scenario: An employee named Joshua who works at a private, nonunionized business is hired to run one of the printing presses during the 9:00 a.m. to 5:00 p.m. shift. One night while working near the press, Joshua gets into a physical fight with another employee and is fired. Joshua wishes to bring a grievance about the fact that he was fired, because he did not start the fight and he wants his supervisor to understand he was acting in self-defense.

In a private business without a union, there is no collective bargaining agreement that defines what happens in the event such an issue arises. Employees in such a business can be divided into two types: at-will employees and those with an employment contract. If an employee has an employment contract, his or her employment is for a term, or certain length of time. At-will employees, however, can be fired for any reason that is not protected by law.

For example, suppose that company A decided to fire worker B because he is a Methodist. Since the practice of religion is protected, firing a worker because of religious beliefs would be illegal. However, if worker B is fired because he was in a physical fight, that behavior is not protected. If worker B was an at-will employee, he could be fired for fighting because as an at-will employee he can be discharged for any reason at any time.

Term employees, on the other hand, are hired for a particular length of time, such as 1 year. If a term employee punched a coworker, the company would generally have to honor its commitment to him for 1 year unless there was a written agreement that contained information about how to **discharge** employees for cause. *For cause* means "for a reason," and examples include fighting, drug use, and threats of violence. These might be listed in the individual's contract, in an employee handbook, or some other agreement that would dictate what to do in the event of discharge, or termination of employment.

If, in the same scenario, the employer had a handbook with a grievance procedure, then before the employee was terminated, the employer would have to follow its own internal procedures for termination. Perhaps the employee has the option under the handbook to have a hearing prior to termination. If the handbook grants such a right to employees, the employer is obligated to follow its own set of rules; otherwise, there is no such right. Figure 8.1 offers an example of a grievance procedure.

Figure 8.1: Sample grievance agreement at a private company

Some private businesses develop and enforce a grievance procedure even though they are not legally obligated to do so.

Steps for Raising Any Complaint or Concern

Dutcher Industries

Grievance Procedure

In the event of a dispute between you and one of your coworkers, we, the HRM department at Dutcher Industries, encourage you to work out your differences among yourselves in a respectful manner. If you find, however, that you are unable to do so, this grievance procedure is in place to assist you with reconciling your differences.

Step 1–Notify your immediate supervisor by e-mail that you are having a dispute. Outline the nature of the dispute and what other employees are involved. Once your supervisor is notified, the matter will be referred to the HR specialist, Louise Millar, whose e-mail is lmillar@dutcherindustries.com.

Step 2–The HR specialist will meet with each of the parties within five (5) business days of receipt of the email. If necessary, the HR specialist will conduct an investigation within ten (10) business days.

Step 3–The HR specialist will make a determination as to who is at fault and will place a letter of warning in the wrongful employee's HR file upon the making of such a determination.

Notice that in step 1 of the grievance procedure, the company has a designated point person to handle grievance procedures within the company. This is important since it makes the company aware of the problem, keeps the problem centralized, and makes someone in the business accountable for overseeing the dispute.

Step 2 of the procedure sets out timelines for when things will happen. This is important since both the employer and employee will want to resolve the dispute so that business can return to normal. There is a downside to time requirements, however. If they are in the policy but not followed, the courts might find that this is a violation of the company's policy and find in favor of the complainant, no matter what the grievance. Failure to follow an internal grievance procedure is a serious matter.

Also note that this procedure allows an employee of the company—an HR specialist—to make the decision regarding this dispute. There are numerous instances in which such an arrangement is unwise. For example, if the employer is viewed as unfair in the first place and allows an employee to make a determination, this might exacerbate a controversy.

Private Employer With a Union

If this same private employer's workers were unionized and that union had a collective bargaining agreement in place, then the distinction between at-will or term employees would likely not matter. Instead, once Joshua's fight occurred, all of the rules and regulations regarding him would fall under the collective bargaining agreement, which would set out a procedure for how to bring a grievance.

Typically, this involves bringing a complaint to an immediate supervisor, usually in writing. Grievances are then reviewed by the supervisor and a union representative, who may then decide whether a grievance exists. If a grievance is deemed to exist, there may be a hearing with a union representative present. The formality of the hearing depends on the employer; some places of business have a preset committee of workers and supervisors, whereas others will constitute a committee when the grievance arises. If the matter still remains unresolved, the company may bring in a mediator or arbitrator to resolve the issue. What most grievance procedures have in common is union representation and a process by which to consider the employee's complaint (Society for Human Resource Management, 2012).

Public Employer With and Without a Union

If the employer is a governmental entity, then a different set of rules applies. If the employees are not members of a union, then the rules vary from one state to the other, often in the form of state civil service laws, which will dictate whether employees can be terminated and for what reasons. To review an example of a state entity's grievance procedure, click **here** (https://www.suny.edu/sunypp/documents.cfm?doc_id=298) to see the procedure for classified civil service employees in the State University of New York system of colleges and universities.

If the governmental entity does have a union with a collective bargaining agreement, then it might have a grievance procedure similar to the one illustrated in Figure 8.2, which shows the procedure for a grievance in Santa Barbara County, California, as it pertains to the union of physicians and dentists working for that county.

Figure 8.2: Sample grievance procedure at a county employer

The following memorandum outlines six steps of a Santa Barbara County grievance procedure. An individual can proceed from one step to the next based on whether the individual is satisfied with the resolution.

Memorandum of Understanding Between Union of America Physicians and Dentists and County of Santa Barbara

E. Grievance Procedure Steps

1. Step 1–Informal Discussion with Supervisor

a. The grievance shall first be discussed on an informal basis by the grievant and his immediate supervisor within ten (10) calendar days from the date of the action causing the grievance, or date of discovery of such action, except that in no event shall any grievance be accepted for consideration more than one (1) year from the action claimed as its basis, regardless of the date of discovery.

b. Every effort shall be made to resolve the grievance at this level, and may include conferences among supervisory and administrative personnel. The immediate supervisor shall verbally respond to the grievant within ten (10) calendar days of the informal discussion between grievant and supervisor.

2. Step 2–Written Grievance

a. In the event the employee believes the grievance has not been satisfactorily resolved, the employee shall submit the grievance in writing to the supervisor within ten (10) calendar days after the receipt of the immediate supervisor's verbal response. The employee shall file one (1) copy with the Human Resources Department and with the Union.

b. In larger departments, it may be necessary to involve the division or section head in the processing of the grievance at this level. In such departments, it shall be the responsibility of the employee to file one (1) copy of the grievance with said division or section head at the initiation of Step 2. It shall be the responsibility of the supervisor to consult and involve the division head in any or all grievance meetings and in arriving at a written response to the aggrieved employee.

c. Within ten (10) calendar days of receipt of the grievance, the immediate supervisor shall schedule a meeting with the employee to discuss the grievance. Within ten (10) calendar days of the grievance meeting, the immediate supervisor shall deliver his written decision to the grievant and his representative. Should the written decision of the supervisor propose a solution to the grievance, it shall be reviewed and approved by the department head prior to the delivery to the employee.

3. Step 3–Department Head

a. In the event the employee believes the grievance has not been satisfactorily resolved, the employee shall submit the grievance in writing to the department head within ten (10) calendar days after receipt of the immediate supervisor's written response.

b. Within five (5) working days after receiving the completed grievance form, the department head or his representative shall meet with the employee to discuss the grievance. The department head shall deliver his written decision to the employee and his representative within ten (10) working days after the discussion.

4. Step 4–County Administrator

a. In the event the employee believes his grievance has not been satisfactorily resolved, he shall submit the grievance in writing to the county administrator within seven (7) days from receipt of the department head's written response. A meeting of the parties may be held by mutual agreement of the parties.

b. Within ten (10) working days from receipt of the grievance, the county administrator shall deliver his written decision to the employee and his representative.

5. Step 5–Arbitration
a. If the grievance is not settled or disposed of at Step 4, the grievance may be submitted within ten (10) calendar days to the human resources director who shall arrange for arbitration. The arbitrator shall be selected from a panel provided by the State Conciliation Service. The hearing shall be conducted in accordance with the rules and regulations of the American Arbitration Association unless the parties mutually agree to other rules or procedures. The arbitrator's decision and award shall be final and binding on the parties unless the grievance is based solely on a department policy or practice, in which case the matter may go to Step 6 as provided for below.
b. The fees and expenses of the arbitrator shall be shared equally by the parties involved. All other fees and expenses including, but not limited to those for witnesses, transcripts, and similar costs incurred by the parties during arbitration, will be the responsibility of the parties individually. When the grievant is representing himself, he shall be solely responsible for his share of such fees and expenses.
c. Not more than one grievance shall be submitted to arbitration in the same proceeding without the consent of the parties, except that grievances based on the same set of facts which must necessarily be decided in the same way can be submitted in a single arbitration, subject to the consent of the parties.
d. The county and the union shall endeavor to prepare a submission agreement, setting forth the issue or issues to be submitted to arbitration and any stipulated relevant facts and principles. In the event of disagreement between the county and the union, the issue or issues of the grievance shall be determined by the arbitrator.
e. For the purposes of such arbitration the arbitrator shall have jurisdiction and authority to interpret the specific terms and provisions of this Memorandum of Understanding. Only those grievances which directly concern or involve the interpretation or application of the specific terms and provisions of this Memorandum of Understanding may be submitted to arbitration hereunder. In no event shall such arbitration extend to:
1. The interpretation, application, or legality of any federal, state or local law, ordinance or resolution adopted by the county's Board of Supervisors. However, if the arbitrator, in his discretion, finds it necessary to interpret or apply such federal, state, or local law or ordinance or resolution in order to resolve the grievance which has been submitted to arbitration, he may do so.
2. The interpretation, application, or legality of any or all of the County of Santa Barbara Civil Service Commission rules, nor matters under the jurisdiction of said Civil Service Commission for which the commission has established procedures or processes by which employees may appeal to, or request investigation or review by, said Civil Service Commission; however, if the arbitrator, in his discretion, finds it necessary to interpret or apply such civil service rules or matters under the jurisdiction of said Civil Service Commission in order to resolve the grievance which has been submitted to the arbitrator, he may do so.
3. The interpretation, application, or the legality of the rules or regulations of the department head, or the county administrator, or any other county agency or commission; however, if the arbitrator, in his discretion, finds it necessary to interpret or apply such rules or regulations in order to resolve the grievance which has been submitted to the arbitrator, he may do so.

6. Step 6–Board of Supervisors' Final Decision
The arbitrator's decision and award provided for in Step 5 shall be final and binding on the parties UNLESS the board of supervisors, when the grievance is based solely on a department policy or practice, by majority vote, votes to set aside the decision and award of the arbitrator within forty (40) calendar days from the date of their issuance. In such event, the board of supervisors shall deliberate concerning the grievance and, within a reasonable period of time (not to exceed forty (40) calendar days), shall arrive at a decision which shall be final and binding. Before such deliberations, the county administrator, or his designated representative, and the union representative or the grievant shall present arguments concerning the grievance to the board of supervisors. Where possible, such arguments shall be made within thirty (30) calendar days from the date of the issuance of the arbitrator's award. In the event the board sets aside the decision and award of the arbitrator, the county shall pay the arbitrator's fee, but each party to the arbitration will remain responsible for its own expenses and costs of arbitration.

County of Santa Barbara. (2013). Memorandum of understanding between Union of American Physicians and Dentists and County of Santa Barbara. Retrieved from **http://cosb.countyofsb.org/hr/default.aspx?id=10948#uapd_36** (http://cosb.countyofsb.org/hr/default.aspx?id=10948#uapd_36)

This agreement sets out in detail the steps, timelines, and requirements for all the parties. Notice how detailed the steps are and how the grievance progresses from informal resolution to arbitration.

In summary, the type of employment—private with no union, public, or public/private with a union—determines the type of grievance process used. As you explore the types of dispute resolutions that follow, remember that none of these apply unless they are part of the collective bargaining agreement.

The Role of the Union Steward in Grievance Resolution

A **union steward** is an employee who serves as an intermediary between the employer and the employees. The steward listens to employees' grievances, counsels them, and helps interpret the collective bargaining agreement. If the employee brings a grievance, the steward attends the meeting and speaks on behalf of the employee. The steward is protected by laws that prohibit discrimination against union activities. The following case is an example of the special protection afforded to a union steward.

You Be the Judge: *Hertz Corporation d/b/a Hertz Rent-A-Car,* Case 20-CA-22259, November 21, 1989, Judge Boyce F. Martin

The following text is from the court opinion in this case.

Susan Butler worked for Hertz as a bus driver who drove customers from the airline terminal to the Hertz facility about a mile away. Butler was appointed a shop steward. Her duties included policing the collective bargaining agreement and where disagreements exist between management and the Union to file grievance on behalf of employees. To identify herself as a union steward, Butler wore an identifying pin on her uniform at work above her nametag. A few months later, Hertz introduced a new uniform program which included a statement that said "Effective immediately the only acceptable pins to be worn on your outermost garment is your name pin, any current promotional pins that the Hertz Corporation provides and any Hertz award pins. No other pins other than the above is [sic] to be worn." Butler continued to wear her union steward pin.

She was approached by a manager telling her that the steward pin was a violation of the dress code policy and was requested to remove it. Butler told her supervisor that she believed the NLRB allowed her to wear it at which time her supervisor said, "The union doesn't advertise for Hertz and Hertz isn't going to advertise for the union." Other employees testified however, that they were not only allowed to wear pins for the holidays, but that they were complimented by this same supervisor and took no action to enforce the dress code.

Discussion Questions

1. If Butler had *not* been a union steward, do you think that Hertz could have enforced the dress code and prohibited her from wearing pins?
2. Do you think the NLRB should take into account in its decision the fact that Hertz failed to enforce its own dress code? Why or why not?
3. Why are union stewards afforded extra protection under the law? What purpose does this protection serve?

After you have answered the discussion questions, click here to see the holding for this case.

HOLDING: The NLRB found that Hertz violated Section 8(a)(1) of the NLRA by not permitting the employees to wear their union steward pins and that prohibiting the pins constituted an unfair labor practice. The NLRB ordered Hertz to cease and desist from

promulgating, maintaining or enforcing any dress code or rule, or other prohibition which forbids the wearing of union steward pins or other union insignia. . . . Threatening employees with discipline pursuant to an overly broad dress code or rule which prohibits the wearing of union steward pins. (*Hertz Corporation, 1989*)

There are many steward guides. Table 8.1 shows some of the guidelines provided to union stewards that instruct them on how to carry out their duties.

Table 8.1: Union steward manual examples

Union	Website for steward's manual	Description
American Federation of Government Employees	**http://www.afge.org /Documents/Steward.pdf** (http://www.afge.org/Documents/Steward.pdf)	A reader-friendly guide to being a union steward, with clear explanations
United Steelworkers Local	**http://www.steelworkers1-1937 .ca/Role%20of%20Steward%20&%20Grievance%20Procedure .pdf** (http://www.steelworkers1-1937.ca/Role%20of%20Steward%20&%20Grievance%20Procedure.pdf)	A firsthand listing of do's and don'ts for being a union steward
International Union, Security, Police, Fire Professionals	**http://www.spfpa.org/online -steward-training-manual.html** (http://www.spfpa.org/online-steward-training-manual.html)	An online training manual for union stewards
California School Employees Association	**http://members.csea.com /memberhome/nbfo/Members Only/StewardTips/tabid/26180 /Default.aspx** (http://members.csea.com/memberhome/nbfo/MembersOnly/StewardTips/tabid/26180/Default.aspx)	Information on strategic grievance handling

No matter which type of organization one belongs to, it is imperative to have a detailed grievance process communicated to employees and implemented by human resources or another designated office. This is one area in which it is worth obtaining legal advice to ensure that the procedure is sufficiently detailed and does not violate any state or federal laws.

8.2 Negotiations

The most common method of resolving a dispute is through **informal negotiations** such as discussing differences and coming to a conclusion about how the matter will be resolved. An informal negotiation is one that has no preset structure. The parties are free to resolve the matter via any approach that works.

For example, suppose an employee has a coworker with poor personal hygiene. The employee may complain about the situation to his or her supervisor, who might then speak with the coworker to resolve the matter. Nothing is written, there is no hearing, and other employees or management do not get involved. Instead, the parties solve the issue among themselves to arrive at a mutually satisfying resolution. This form of informal problem solving takes place in businesses all the time, likely thousands of times a day across the country.

Many issues cannot be resolved informally, because the parties are too entrenched in their beliefs to compromise. In the event that an informal negotiation fails or is not possible, it is often helpful to bring in a third party to resolve a grievance. These types of dispute resolution are discussed in the following sections.

Watch This

The ability to negotiate can be learned. The following video, titled The Art of Negotiation, *provides advice about how to negotiate and offers actionable tips for enhancing negotiating skills. It features Stan Christensen, a negotiator for midmarket technology companies. Click* ***here*** **(http://www.youtube.com/watch?v=eKFElV8tS48)** *to watch the video.*
As you watch the video, make a list of the points Christensen makes about negotiating.

8.3 Mediation

Mediation is a process whereby a third party, a mediator or a **neutral**, is brought into the negotiations to help the parties resolve their issues. Mediation has become an important tool, partially due to the many mandates issued by state and federal courts requiring parties to try mediation prior to coming to court. The **Alternative Dispute Resolution Act of 1998** (28 U.S. Code § 651, 1998) authorizes every U.S. district court to require litigants in all civil cases to consider using the alternative dispute resolution process. Familiarity with mediation is important for everyone in business because it is a highly useful and popular tool.

It is important to note that the mediator does *not* resolve the dispute or find one party right and the other wrong; instead, the mediator helps the parties arrive at a mutually satisfying conclusion. This is important because the parties themselves have to work out their differences; the mediator merely facilitates the process. When parties work out their own differences, they tend to abide by the final agreement. In this way mediation is distinguishable from arbitration, in which the arbitrator makes the decision.

Mediation has numerous benefits. It is held in private and can be completed fairly quickly. The only cost is hiring the mediator, and depending on the type of dispute and how long it takes to resolve, the cost might be minimal. Although fast, inexpensive, and private, the downside to the process is that the mediator cannot force a decision; only the parties can. If they are unable to do so, then the matter cannot be resolved by mediation and will move on to arbitration. Another disadvantage is that if the parties come to a successful resolution and draw up an agreement or contract, and one of the parties breaches that contract, the dispute may end up in court when the nonbreaching party tries to enforce the agreement by suing the other party for breach of contract.

Because of mediation's numerous advantages, however, it is beneficial to require the process in all disputes. To do so, the employer should mandate mediation in the collective bargaining agreement and/or employment contract. An example of what a mediation clause looks like is found in Figure 8.3.

Figure 8.3: Draft mediation clause

An employer can mandate mediation in a collective bargaining agreement or an employment contract. Here two mediation clauses offer guidance on how to resolve a dispute.

Clause 1: If a dispute arises out of or relates to this contract, or the breach thereof, and if the dispute cannot be settled through negotiation, the parties agree first to try in good faith to settle the dispute by mediation administered by the American Arbitration Association under its Commercial Mediation Procedures before resorting to arbitration, litigation, or some other dispute resolution procedure.

Clause 2: The parties hereby submit the following dispute to mediation administered by the American Arbitration Association under its Commercial Mediation Procedures [the clause may also provide for the qualifications of the mediator(s), the method for allocating fees and expenses, the locale of meetings, time limits, or any other item of concern to the parties].

American Arbitration Association. (2014). Labor arbitration.

Mediation clauses should also set out where the parties will meet, who will be present in the room, whether recording of the proceedings is permissible, how long the parties will meet per day and for how many days, who in the place of business will handle the grievance procedure, and who is accountable for getting the matter resolved. It is important to have detailed rules regarding dates, such as how long a party has to submit a grievance to the employer.

One entity that assists with mediation is the **American Arbitration Association (AAA)**, a large nonprofit organization that helps parties with all types of dispute resolution. The AAA provides a wealth of dispute resolution materials that are available online at no cost. For example, the booklet titled *Drafting Dispute Resolution Clauses. A Practical Guide* includes suggested language for a collective bargaining agreement (or any other type of agreement, such as an employment contract), to help specify what will happen in the event the parties disagree. This organization has also compiled lists of mediators and their hourly rates. In addition, the AAA runs training programs and online courses for people interested in the field of mediation. To view the American Arbitration Association's website, visit **www.adr.org** (http://www.adr.org) . To view the AAA's educational resources, click **here** (https://www.adr.org/aaa/faces/educationresources?_afrLoop=678821490677357&_afrWindowMode=0&_afrWindowId=pgi3t97mf_1#%40%3F_afrWindowId%3Dpgi3t97mf_1%26_afrLoop%3D678821490677357%26_afrWstate%3Dpgi3t97mf_55) .

Watch This

Understanding what mediators do is easier when you have the opportunity to see a mediation actually taking place. Numerous videos are available that show people conducting mediations, some well and some poorly. To view a video that describes what mediation is, click ***here*** (https://www.youtube.com/watch?v=KLdia39awl0) .
To view a video that introduces the mediation process, click ***here*** (https://www.youtube.com/watch?v=H0_h1BDOhtw) .
To view a video that provides a four-step introduction to mediation, click ***here*** (https://www.youtube.com/watch?v=heUcre2d9wg) .

The AAA also offers online mediation for a flat fee of $200. The mediator communicates with the parties via a chat room and instant messaging. The mediator can meet with each party confidentially and then come back into the chat room, where all three can discuss a possible outcome. Since the mediator is appointed within 48 hours of receiving the responding party's agreement to mediate, the cost is low and the process is efficient. This is an appealing way to settle a dispute, but is limited to cases involving a claim of $10,000 or less (Mediation.org, 2014).

Cities, towns, and counties throughout the United States also have dispute resolution centers where mediators can be located and hired. Many such centers offer mediation services for low hourly rates. There are varying state rules pertaining to mediation. These, too, are available online.

8.4 Arbitration

Arbitration is different from mediation. It is a process whereby a third party, an arbitrator, is brought in to make a decision about which party should prevail in the dispute. Arbitration is more structured than mediation and involves many steps. It is similar to a trial and concludes with the arbitrator writing a decision that is considered binding on both parties. Close to 96% of all collective bargaining agreements mandate arbitration as the final step in a grievance process (Advameg, 2014).

Arbitration is governed by the Federal Arbitration Act, which was passed by Congress in 1925. Section 2 of that act states that if the parties agree in a written contract (such as a collective bargaining agreement) to submit disputes to arbitration, they are bound to do so. If one party refuses, the other may petition the courts to hear the dispute and order the matter to arbitration (9 U.S.C §2, 1925).

Arbitration is limited to situations in which both parties agree to its use. In so doing, the parties give up the right to **litigate**, or sue in a court of law. At the conclusion of the process, the arbitrator makes a **final award**, which is then **confirmed** by a court. Confirmation means that a court of law takes the final award made by an arbitrator and turns it into a judgment so that it can be enforced (*National Wine & Spirits v. Ernst & Young*, 2012). The confirmation is necessary to reduce the award to a **judgment**, or order from the court.

In 1960 the U.S. Supreme Court issued rulings on three separate cases—referred to as the **Trilogy Cases—**that deal with arbitration informally. The court stated that when there is a question about whether a case should be heard by the courts or by an arbitrator, the process of arbitration should prevail, and matters under the collective bargaining agreement should be deferred to arbitration as well. Following from this analysis, the court reasoned that the grievance procedure in a labor agreement "is at the very heart" of industrial self-government, assists in "molding a system of private law," and is "part of the continuous collective bargaining process" (Winograd, 2006). These holdings firmly entrenched arbitration as the major process by which to settle disputes.

Grievance Arbitration

There are numerous types of arbitration; one is **grievance arbitration.** This takes place when an employee disputes an employer's decision, believing there has been a violation of the collective bargaining agreement, or the employment contract. In grievance arbitration the first issue is whether the employee is covered by the collective bargaining agreement. For example, if the person complaining is not covered by the agreement, he or she would be precluded from bringing a grievance.

In order to determine coverage, the agreement must be examined. Lawyers commonly refer to this as the "four corners of the agreement," meaning that the grievance must deal with an item contained within the collective bargaining agreement. If it is not, then the issue is not grievable. Since collective bargaining agreements typically cover broad items such as compensation and working conditions, most complaints are covered.

An example of how the paragraph in the CBA referring matters to arbitration is worded is as follows:

> *Any dispute, claim, or grievance arising from or relating to the interpretation or application of this agreement shall be submitted to arbitration administered by the American Arbitration Association under its Labor Arbitration Rules. The parties further agree to accept the arbitrator's award as final and binding on them.* (American Arbitration Association, 2013)

If the matter is covered by the CBA, such as overtime, hours, or pay, then the CBA's grievance process dictates the steps to follow. Most have as a first step to informally submit the grievance to a supervisor. If that does not resolve the matter, the CBA might require that the grievance be taken to the next level. For example, in the following CBA between the Childcare Guild of Local 925, Service Employees International Union and the Association of Childcare Employers, the next step is prescribed as follows:

> **Step 2** Formal Level: Written Submission of Grievance/Conflict to Supervisor.
>
> Within ten (10) days of the Step 1 meeting, the Union Steward and/or Representative together with the grievant shall submit to the immediate supervisor a completed standard grievance form and request a meeting. Within 10 days following receipt of the completed grievance form, the immediate supervisor will meet with the grievant and the union representative.
>
> The immediate supervisor will inform the grievant and the Union in writing of his/her response to the grievance/conflict within 10 days of the presentation of the grievance/conflict.
>
> If a satisfactory resolution is not reached, the grievant may proceed to Step 3. Where another level of authority does not exist, the grievant may proceed to Step 4. (Collective Bargaining Agreement, 2014, p. 19)

Note that this step involves a more formal proceeding. The parties must now complete a grievance form. This is step 3, which takes the matter to a different level, since putting the allegations in writing formalizes them and makes them permanent, as opposed to the discussions that characterized step 1. After the grievance form has been completed, the parties meet with the supervisor and the union steward. After they discuss the grievance, the supervisor completes the process by providing his/her response.

If the employee is unsatisfied with the steps taken to this point, then the matter may proceed to step 4, which is mediation.

> **Step 4** Mediation
>
> The Union and the Employer shall request within 10 days, the grievance mediation services of the Federal Mediation & Conciliation Service.
>
> If satisfactory resolution is not reached in Step 4, the grievant may proceed to Step 5. (Collective Bargaining Agreement, 2014, p. 19)

If mediation does not resolve the grievance, then the parties next proceed to step 5, arbitration.

> **Step 5** Arbitration
>
> Arbitration shall be limited to issue(s) involving the interpretation or application of specific terms of the Agreement. The parties will request a list of arbiters from the Federal Mediation & Conciliation Service. Taking turns, each party will strike names one at a time until one arbiter's name is left. That arbiter will be contacted to conduct the arbitration.
>
> The parties agree that the arbiter shall have no power to render a decision that adds to, subtracts from, alters or modifies in any way the terms and conditions of the Agreement. (Collective Bargaining Agreement, 2014, pp. 19–20)

Note how the parties will choose an arbitrator. This is especially important because each side wants to make sure that the person chosen is unbiased about the dispute.

> The parties agree that the decision of the arbiter will be final and binding on all parties.
>
> The cost of the arbitration shall be borne equally by the parties and each party shall bear the full cost of presenting its own case. (Collective Bargaining Agreement, 2014, p. 20)

The CBA specifies that the parties will share the cost of the arbitration. This means that the parties split the fees to the Federal Mediation & Conciliation Service, and the hourly cost to the arbitrator, but each pay their individual attorney's fees. Few workers can afford such expenses, which effectively excludes them from using the process without additional support. If the worker is supported by a union, however, then the cost is borne by that organization, making arbitration a feasible option.

Arbitrators are generally selected from the AAA or from the FMCS. There are several differences to consider when choosing arbitrators from the AAA as opposed to the FMCS. The FMCS is less expensive; an online panel request fee is $30, whereas the AAA's cost is $250. The FMCS allows arbitrators to make their own arrangements for the hearing, whereas the AAA makes all the arrangements, acting as an intermediary and slowing down the process (Federal Mediation & Conciliation Service, 2003).

The organization that provides the arbitrator dictates which rules will be followed during the arbitration. For example, if the CBA states that the arbitrator will be selected from the AAA, then the arbitration itself will follow the rules of that organization. Sometimes the CBA will stipulate that the parties choose from a list of three to five arbitrators. In that case the parties may choose which rules to follow, since the arbitrators listed may be from both organizations.

Arbitrators are typically chosen according to their specialties. The organizations provide arbitrator biographies that include their background information and areas of expertise so an arbitrator can be selected based on the type of dispute resolution in which they specialize.

Prior to the arbitration, both sides prepare their case. In doing so, they must frame the issue that they want the arbitrator to decide. The issue can be thought of in the form of a question, such as, "Was the employer in error when it discharged the employee without a hearing?" Framing the issue narrows the scope of the inquiry and helps keep the preparation phase on track by focusing all of the subsequent steps on answering that specific question.

The next step involves determining who are the best witnesses and the points on which they will testify. Careful consideration must be given to which witnesses will be called and in what order. Witnesses should be prepped so they can readily and knowledgeably answer the questions. Attorneys often practice cross-examining their own witnesses so that witnesses can get a sense of what the hearing will be like and feel prepared to field questions that may be sarcastic, demeaning, or condescending. Witnesses give evidence in the form of testimony. Other types of evidence may be in the form of exhibits. For example, if an employee was injured on the job, there might be machinery or photographic evidence that must be prepared for display.

A Closer Look: The Case of the Militant Shop Steward

The following videos feature a shop steward who was suspended from his job and subsequently filed a grievance with his company that led to arbitration. They offer an excellent (if a bit outdated) portrayal of employee misconduct and the resulting arbitration. In part 1 the arbitrator lays out the case with flashbacks to what happened at the business that led to the firing and the grievance.

There is language (profanity) in these videos that may be offensive to some students.

Part 1 video located **here** (http://www.youtube.com/watch?v=e1qQ2_kvHfk) .

The second video features the company's attorney setting out the company's case at the arbitration hearing; the attorney argues that the shop steward was insubordinate and describes how the company used steps of progressive discipline against him. Then the steward presents his case, which tells a different story than that of management.

Part 2 video located **here** (http://www.youtube.com/watch?v=zf5Bl2ETH5M) .

Finally, the last video features the grievant's attorney making a legal argument for the rights of the steward to carry out his role and bring a collective bargaining agreement violation to the attention of management.

Part 3 video located **here** (https://www.youtube.com/watch?v=L--wfm-a8kg) .

The arbitration is often referred to as a hearing and includes both procedural considerations and substantive considerations. Procedural considerations consist of issues such as where the arbitration will take place, what witnesses each side will call, and how long the arbitration will last. The union or union attorney and the attorney representing the employer will decide on a date, time, and place for the arbitration, with the consent of the arbitrator. They will also decide if they will hire a court reporter to transcribe the testimony. This is a costly addition because court reporters are paid by the page of typewritten testimony and will only be worth the cost if an appeal is likely. However, it preserves the testimony, which can be important.

The substantive considerations are those that deal with the application of law or reason to the issue. These are the questions that the arbitrator must examine and decide. A clear and concise issue frames the question that the arbitrator will entertain. By so doing, the arbitrator's decision is limited to that issue alone.

Procedurally, the arbitration looks a lot like a trial; parties may make an opening statement to the arbitrator. It is at this juncture that the parties can remind the arbitrator of the issue. Then each side has the opportunity to call witnesses for what is called direct testimony, or the testimony given by its own witness. Each witness is then subject to **cross-examination**, or questions from the opposing side. To a limited degree, the respective sides may make objections to testimony; for example, if it is outside the scope of the arbitration or irrelevant.

After all the testimony is given, each side may make a closing statement. Sometimes **briefs** are submitted. Briefs are most likely prepared by the attorneys and consist of legal arguments with references to legal precedent. After the submission of briefs, there is a waiting period during which the arbitrator makes a decision. In **expedited proceedings** before the AAA, for example, that decision can come as early as 14 days after the close of the hearing.

Expedited procedures can be used when the matter is not complicated, both parties agree to the procedure, and an appeal is not contemplated (in expedited proceedings, stenographic records are not kept). These expedited arbitrations can be used to fast track the procedure and are shown in Table 8.2. Note that under the AAA Labor Rapid Resolve Procedures, the parties receive a resolution within 48 hours, and under the Expedited Labor Arbitration Procedures, the ruling comes in just 7 days.

Table 8.2: Expedited proceedings timetable

	AAA Expedited Labor Arbitration Procedures	AAA Labor Rapid Resolve Procedures	AAA Emergency Scheduling Procedures
Appointment of arbitrator	AAA appoints a single arbitrator to hear and decide the dispute.	AAA prescreens experienced arbitrators who are available on a mutual hearing date provided by both parties and sends a list of five names. Parties have 24 hours to return the list, with the right to strike two names.	AAA prescreens experienced arbitrators who are able to provide hearing dates within a 14-day time period. List is provided to parties of arbitrators who are available on the date specified by both parties.
Scheduling of hearing	Arbitrator sets date, time, and place of the hearing.	Parties agree in advance to the hearing date.	Hearing is scheduled within 24 hours of the demand request on the date specified by both parties.
Proceedings	Arbitrator conducts hearing in a manner that allows the evidence and arguments of all parties to be fully presented.	When processing three cases, no single case lasts longer than 2 hours. Each party is allowed 45 minutes to present its case at the hearing, and additional minutes may be added by mutual consent in order to sum up.	Arbitrator conducts hearing in a manner that allows the evidence and arguments of all parties to be fully presented.
Stenographic record	No stenographic record of the proceedings.	Not contemplated or suggested for these procedures.	Not restricted—varies according to the specific and mutual needs of the parties.
Posthearing briefs	No posthearing briefs.	Not contemplated or suggested for these procedures.	Not restricted—varies according to the specific and mutual needs of the parties.
Number of grievances	Single grievance anticipated.	For uncomplicated grievances—up to three cases heard in 1 day.	Not restricted.
Time and form of award	Award due 7 days from close of hearing. If opinion is necessary, it shall be in summary form.	Arbitrator issues a one-paragraph decision on each grievance within 48 hours of hearing.	Award due 30 days from close of hearing or receipt of briefs.
AAA administrative fees and arbitrator compensation	Administrative fee: $125 per party. Arbitrator compensated per fee structure contained in arbitrator's résumé submitted to parties.	AAA flat fee: $500. Arbitrator compensated with a $1,000 flat daily fee, which includes travel expenses but not study time. Each party will be billed $750.	Administrative fee: $225 per party. Arbitrator compensated per fee structure contained in arbitrator's résumé submitted to parties.

Source: Based on American Arbitration Association. (2013). Labor arbitration rules (including expedited labor arbitration rules). Retrieved from **https://www.adr.org/aaa/ShowPDF?url=/cs/groups/lee/documents/document/dgdf/mdey/~edisp /adrstg_012406.pdf** (https://www.adr.org/aaa/ShowPDF?url=/cs/groups/lee/documents/document/dgdf/mdey/~edisp/adrstg_012406.pdf)

As a general rule, the union has the **burden of proof** in an arbitration. That means the union must convince the arbitrator that the employer has violated the contract. In matters involving the discharge of an employee, however, the burden of proof is on the employer to show that the person was discharged with just cause, or for good and proper reasons.

Once the arbitrator has ruled, many people assume that the arbitration is final because arbitrations are deemed final and binding. This is not true, however, and many parties who have the resources will continue with an appeal. Appeals may be taken to either state or federal court (Labor Management Relations Act, 1947).

In the News: Law Enforcement Finds Arbitration Imperfect

When a public employee violates policies at work, he or she is subjected to a hearing pursuant to disciplinary procedures spelled out by his or her employer. Normally, the employee's supervisor will then render a decision. Following the decision, the employee may appeal the decision to an arbitrator. The problem in many jurisdictions is that arbitrators are overturning the decisions of supervisors. In particular, in some cases involving police officers who have engaged in violent behavior against arrestees, arbitrators have overturned the decisions of a local police unit and reinstated the person terminated for criminal activity.

In one case an officer was fired for punching a mentally ill man who spat on him. The Police Officers Association challenged the supervisor's decision to fire the officer and asked for a hearing by an arbitrator. The arbitrator ordered the officer reinstated. The arbitrator's decision stated that the officer did not have a prior record of violence, when in fact he had committed another criminal violation while on duty.

As a result of such decisions, some municipalities attempt to get around the arbitration process by offering money in exchange for a resignation. Others attempt to have legislation implemented that would automatically terminate police officers who use unwarranted force against arrestees. While often touted as a helpful way to resolve disputes, this is an example of one of arbitration's shortcomings.

To read more about this case, click **here** (http://www.columbian.com/news/2014/sep/21/law-enforcement-finds-arbitration-imperfect) .

Discussion Questions

1. When do public employees have the right to have an arbitrator hear their dispute?
2. What is the problem with an arbitrator overturning the decision of a supervisor? Do you think this problem is exacerbated when a police officer is released back to work?

Interest or Contract Arbitration

Another type of arbitration is **contract (or interest) arbitration**. This is not an internal grievance. Rather, when the parties to a collective bargaining agreement cannot come to a decision about its terms, an arbitrator is brought in to decide "what will be included in the agreement. While rarely used in the private sector, more than half of all states have enacted some form of interest arbitration procedure for at least one group of public employees" (Gaylord, 2010). One of the major reasons for this is to prevent a strike in the public sector.

Interest arbitration is generally used after other methods of resolving a dispute reach an impasse (Ricketson, 2013). For example, suppose the police in a city are unionized and have negotiated a collective bargaining agreement, but cannot agree on cost of living increases. The matter could then go to interest arbitration, which would prevent the police force from striking. The arbitrator would hold a formal hearing, during which each side would present its point of view. The arbitrator would then make a decision that would be binding on both parties (Anderson & Krause, 1987).

A Closer Look: Interest Arbitration Abroad

In the following article the case is made for expanding interest arbitration to other countries based on the model used in the United States. To read about a case that shows the need for interest arbitration in other places, click **here (http://theconversation.com/qantas-case-shows-the-need-for-interest-arbitration-4436)** .

Union Fees Arbitration

Finally, a special type of arbitration is known as **union fees arbitration**. This was borne from the case *Chicago Teachers Union v. Hudson*, in which the U.S. Supreme Court held that labor unions that charge nonmember employees union fees must explain the basis of the fees and offer an opportunity to challenge the amount of the fee. As a result, the American Arbitration Association established union fees arbitration, a procedure for when an employee challenges union fees. Union fees arbitration is also known as the Rules for Impartial Determination of Union Fees.

Under this guideline, when the union requests, the AAA will hold a hearing with an arbitrator on issues regarding local, statewide, or national fees. The union has the burden of proving the justification for its fees. These guidelines are available **here (https://www.adr.org/cs/groups/lee/documents/document/dgdf/mda4/~edisp/adrstg_008031.pdf)** .

8.5 Careers in Dispute Resolution

Many students become interested in becoming a negotiator, mediator, or arbitrator after learning more about what each does. Many local and state governments need these positions in order to staff hearing panels for government agencies. The following information will help you learn more about how to become a mediator, arbitrator, or labor organizer.

Mediators

Effective mediators are created, not born, and training requires both classroom and clinical experience.

There are many websites that provide information on how to become a mediator and demonstrate what mediation actually looks like. The FMCS hosts an information channel on YouTube, with case studies (found **here** (http://www.youtube.com/user/FMCSInfo)). One such video is titled *FMCS Success Story: Dominion Virginia Power and IBEW*, in which the agency helped Dominion Virginia Power and the International Brotherhood of Electrical Workers Local 50 achieve a positive outcome to a dispute. To view the video, click **here** (http://www.youtube.com/watch?v=2_wAEYocsCw) . Another good site is Mediation.org, which is a division of the American Arbitration Association. This organization also provides training for new mediators. If you are interested in a career as a mediator, visit Judicial Arbitration and Mediation Services, available **here** (http://www.jamsadr.com) . In addition, review the article "So, You Want to Be a Mediator?" located **here** (http://www.mediate.com/articles/melamed10.cfm) .

To learn more about the Federal Mediation & Conciliation Service or to access its resources, visit **http://www.fmcs.gov/internet** (http://www.fmcs.gov/internet) .

Arbitrators

Becoming an AAA arbitrator is highly competitive and difficult. To apply for membership on the AAA National Roster of Arbitrators, 10 years of experience in alternative dispute resolution–related activities is required, as well as direct training or experience in arbitration. Most people start out with a law degree and years of experience in a law firm that practices labor law.

Teaching part time and serving on local and state panels is a good way to gain experience. Many communities have dispute resolution centers that need neutrals to help resolve disputes. Although these may be volunteer positions, they are a great way to gain experience. In addition to experience, most arbitrator paths will require a graduate degree such as a law or labor relations degree.

The American Arbitration Association serves as one of the premier organizations. The best place to investigate a future as a labor arbitrator is at the American Arbitration Association website.

A Closer Look: A Practical Focus: DeMaurice Smith, Executive Director of the NFL Players Association and Labor Negotiator

Did you know that professional football players are unionized? They are members of the NFL Players Association, a certified union associated with the AFL-CIO that represents the players in collective bargaining, grievances, and working conditions. Each NFL team elects a representative to the NFL Players Association, which meets at least once a year to make decisions regarding terms of employment. DeMaurice Smith, an attorney, is the executive director of the association. Smith was elected to his second 3-year term in 2012. He leads the negotiations with the owners of the teams on behalf of the players. The following links contain interviews of Smith explaining what his job entails:

http://www.youtube.com/watch?v=d3vA_Uxp4sM%20 (http://www.youtube.com/watch?v=d3vA_Uxp4sM%20)

http://www.pattonboggs.com/blog/-articles/q-a-demaurice-smith-executive-director-nfl -players-association (http://www.pattonboggs.com/blog/-articles/q-a-demaurice-smith-executive-director-nfl-players-association)

Labor Organizer

The description *labor organizer* can refer to many types of people and many types of jobs. Probably the best place to start, if one is interested in representing a union, is as a union member. There are numerous volunteer positions that union members can undertake and, in so doing, learn about their organization and its needs. Unions are constantly striving for new members and are always in need of people who can assist with increasing their numbers at the local level.

People who excel at recruiting and organizing often move up to the national level, where they assist with elections at businesses undergoing a union campaign. A cursory view of labor's top leadership indicates that they all started with local unions and moved up the ranks from local to national offices. To understand how to become an organizer, visit the American Federation of State, County, and Municipal Employees (AFSCME) website, available at **http://www .afscme.org/organize** (http://www.afscme.org/organize) .

Prior to this course, you may have had a vague idea about what it means to be a negotiator, arbitrator, or mediator. After concluding this chapter, however, you should be able to differentiate between what each of these jobs entails and where it fits into the world of labor relations. As long as there are people, there will be disputes; as a result, there is much demand for people who have the skills to help resolve the myriad differences that inevitably arise in the world of business.

Summary & Resources

Summary of Chapter Concepts

- Dispute resolution describes a constellation of methods to resolve a disagreement. It is an important component of labor relations because it is almost always included in the collective bargaining agreement.
- Dispute resolution is not mandated by law; it is a right that is created by a contract such as a collective bargaining agreement. However, failure to have a dispute resolution process in place may be costly to a business.
- Union stewards are union employees who serve as the intermediary between employees and their unions.
- The major forms of dispute resolution are negotiation, mediation, and arbitration.
- In a private business that is not unionized, whether an employee is an at-will or a term employee will impact the employer's ability to discharge that employee and will also inform the existence of any agreement about resolving disputes with employees.
- In a private or public entity with a union, dispute resolution will be outlined in the collective bargaining agreement.
- In a public entity without a union, dispute resolution will be subject to state civil service laws.
- Mediation is a process whereby a mediator or neutral enters the dispute in an effort to help the parties reach a mutually satisfying conclusion; this person does not personally impose a resolution, however.
- Grievance arbitration is a process, similar to a trial, whereby an arbitrator enters the dispute by invitation of the parties, hears testimony from the parties, and then provides a binding decision.
- Interest arbitration is when an arbitrator is invited into a collective bargaining dispute in order to finish the agreement for the parties who cannot agree on its terms.
- The American Arbitration Association is a highly regarded and internationally recognized organization that provides assistance with all forms of dispute resolution, along with training and educational materials.
- The Federal Mediation & Conciliation Service is another widely regarded organization that provides mediation and arbitration services to industry, communities, and government agencies.
- Union fees arbitration is a special type of arbitration that occurs only when an employee challenges the amount of money he/she has to pay the union for membership.
- Careers in labor relations include mediators, negotiators, and labor organizers.

Chapter 8 Review Quiz

Chapter 8 Flashcards

A federal law that authorizes every U.S. district court to require litigants in all civil cases to consider the use of the alternative dispute resolution process.

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Key Terms

Alternative Dispute Resolution Act of 1998
A federal law that authorizes every U.S. district court to require litigants in all civil cases to consider the use of the alternative dispute resolution process.

American Arbitration Association (AAA)
A private entity that assists parties with all forms of dispute resolution by providing highly qualified negotiators, mediators, and arbitrators as well as educational and training services.

briefs
At the conclusion of an arbitration, the documents submitted by the attorneys for each side that contain their respective legal arguments.

burden of proof
In an arbitration the degree to which each side has to convince the arbitrator of their respective stance or arguments.

confirmed
Following the conclusion of an arbitration, the process by which a court validates the decision of the arbitrator and makes it enforceable.

contract (or interest) arbitration
The process whereby an arbitrator is brought into a dispute about the terms of the collective bargaining agreement in order to resolve that dispute and decide what terms will be included in the agreement.

cross-examination
In an arbitration hearing, when the attorney from one side asks questions of the opposing side's witness.

discharge
To let go of or fire an employee.

dispute resolution
A system for resolving disagreements between people or organizations.

expedited proceedings
A faster form of arbitration offered by the AAA.

final award
The decision of an arbitrator at the end of an arbitration.

grievance
A dispute.

grievance arbitration
A form of arbitration that centers on disagreements about the interpretation of the collective bargaining agreement.

grievance procedure
A process whereby parties having a disagreement can resolve the dispute.

informal negotiations
Talking to parties involved informally and without any structure in an effort to resolve differences.

informal resolution process
A process without structure that attempts to resolve a dispute.

judgment
An order by a court to pay money to the winning party.

litigate
To sue someone in court; to bring a court-related action.

mediation

A form of dispute resolution in which a third party called a mediator is brought into the dispute to help the parties come to a mutually satisfying resolution.

neutral
A third party such as a mediator or arbitrator.

Trilogy Cases
Three U.S. Supreme Court cases that held that where labor disputes are concerned, the courts should defer to arbitration and the arbitration process.

union fees arbitration
A specific type of arbitration that deals only with whether an employee must pay union dues.

union steward
A union employee who acts as the intermediary between the union and the employees at a business.

Critical Thinking Questions

1. List five important points that Stan Christensen raises in his video *The Art of Negotiation* and why you think the points you listed are significant.
2. What are the major differences between negotiation, mediation, arbitration, and litigation? Make a chart showing each one's advantages and disadvantages and why you would pick one over another.

Research Project

1. Choose a partner and assign one of you to play the role of manager and the other to play the role of employee. The manager represents the entire classroom or college, whereas the employee represents the students. You will then negotiate a grievance procedure for the classroom, such as a procedure for how students should address a grievance they have about the class. The procedure should be detailed and outline when meetings will take place; where they will take place; whether they will be held online and, if so, how; the length of each meeting; and what items may be negotiated and what may not.