Primer on Grievance Machinery and Voluntary Arbitration

I N T R O D U C T I O N

The Primer answers the numerous questions being asked about voluntary arbitration by parties to labor-management disputes and their arbitrators.

For better appreciation of the subject, the Primer traces first the development of voluntary arbitration within the policy and legal framework of the Philippine labor relations system and explains the meaning of Grievances and importance of Grievance Procedure as prelude to arbitration.

The various topics on the main subject of voluntary arbitration starting from the selection of voluntary arbitrators, scope of voluntary arbitration, arbitrability issues, arbitration procedures and techniques, evidence, and voluntary awards and decisions, combine both the law and procedures and their application in various cases decided by well-known Arbitrators in the United States. In instances where local cases are available, the decisions of the Philippine Supreme Court are also included. The approach provided a more realistic and practical picture of how voluntary arbitration works.

The topic on Arbitration Cost and Special Voluntary Arbitration Fund is included to provide answers to basic questions
relative to expenses involved in arbitration proceedings and entitlement to government subsidy.

With the continued support from government, labor and management advocates, voluntary arbitrators and non-governmental organizations, the Primer ends with a very optimistic note on the future of grievance settlement and voluntary arbitration in the country.

POLICY AND LEGAL FRAMEWORK

1. What is the present national policy on labor dispute settlement ?

The present national policy on labor dispute settlement is enunciated in the following instruments:

A. 1987 Constitution

Sec. 3, Article XIII provides:

"The State shall promote the principle of shared responsibility between workers and employers and **the preferential use of voluntary modes in settling**

disputes, including conciliation, and shall enforce their mutual compliance therewith to foster industrial peace."

B. Labor Code, as amended by Republic Act 6715

Article 211 of the Code provides, among others:

(a) "…It is the policy of the State…to promote and emphasize the primacy of free collective bargaining and negotiations, including voluntary arbitration, mediation and conciliation, as modes of settling labor or industrial disputes."

(b) "To provide an adequate administrative machinery for the expeditious settlement of labor or industrial disputes."

2. What were the early policies adopted by the government on settling labor disputes?

Philippine labor policy may be said to have evolved over four periods:

A. Commonwealth Period (1936-1953)

Commonwealth Act No. 103 established our first labor dispute settlement system by creating the Court of Industrial Relations and vesting it with compulsory arbitration powers over labor disputes involving both workers in the private sector and in government owned or controlled corporations. The enactment of CA 103 was pursuant to a provision in the 1935 Constitution, Section 6, Article XIV, which categorically provided the basis for compulsory arbitration.

On the enactment of CA 103, the highly respected **Dr. Cicero Calderon** had this to say: "The adoption of compulsory arbitration was not the product of mere impulse or sudden inspiration. It was a deliberate response of the policy-makers to the social scene characterized by acute agrarian and industrial unrest of disturbing proportions. Strong measures were necessary to check the surging tide of strikes and uprisings by the tenants and laborers, particularly in rice haciendas and sugar plantations in the country. Other factors contributing to the adoption of compulsory arbitration were the poor state or organization of the workers and farm workers and the resultant lack of effective collective bargaining; the customary reliance of the Filipino upon courts of justice in the adjudication of controversies of whatever nature; the desire to experiment with compulsory arbitration, which had been rejected at least three times under American rule; the apparent inadequacy or ineffectiveness of the Government policy of non-intervention in the area of labor-management relations, and the strong influence of the then President Manuel L. Quezon, who advocated its adoption before the National Assembly."

B. Industrial Peace Act Period (1953-1972)

In 1953, Republic Act No. 875 was enacted fundamentally changing the framework of labor relations policies from that of compulsory arbitration to collective

bargaining. The Act severely restricted the compulsory arbitration powers of the CIR. The latter was divested of the power to set wages, rates of pay, hours of employment, other terms or conditions of employment, or otherwise regulate the relation between employers and employees, as a compulsory arbitration body, except in labor disputes involving industries indispensable to the national interest.

C. Martial Law Period (1972-1986)

It was during the period of martial law that voluntary arbitration became an integral part of the Philippine labor relations policy. This period also marked by the banning of strikes in the so-called " vital industries". To cushion the impact of the strike ban, Presidential Decree No. 21 was issued creating the National Labor Relations Commission, which exercised original jurisdiction over practically all labor disputes. Aside from creating the NLRC, Presidential Decree No. 21 had four other very important provisions:

1. It imposed the clearance requirement for dismissals and terminations of employees with at least one year of service;

2. It made grievance procedure a mandatory initial stage in the settlement of labor disputes;

3. It provided that "before assuming jurisdiction over any issue, dispute or grievance, the Commission shall give the parties a chance to submit their problem for voluntary arbitration;"

4. To ensure the availability of voluntary arbitrators, the Decree provided that " all collective bargaining agreements shall contain a provision designating a voluntary arbitrator… to decide all disputes and grievances arising out of the implementation of the collective bargaining agreements."

D. Post-Martial Law Period (1986-present)

What appears to be the hallmark of this period in so far as labor relations policy is concerned is the government emphasis on the promotion of voluntary modes of dispute settlement. By virtue of Executive Order No. 126 which reorganized the Department of Labor and Employment, the National Conciliation and Mediation Board (NCMB) was created to oversee the implementation of the Constitutional policy of promoting the preferential use of the voluntary modes of dispute settlement, including conciliation. Executive Order 251 which amended Executive Order No. 126 likewise created the Tripartite Voluntary Arbitration Advisory Council (TVAAC) to advise the NCMB on the promotion of the voluntary arbitration program.

Republic Act 6715 introduced amendments to the Labor Code with far-reaching effects on the labor dispute settlement system. One of these is the injunction against the NLRC and the DOLE Regional Directors from entertaining disputes that are under the original and exclusive jurisdiction of voluntary arbitrators. Republic Act 6715 also introduced amendments to the Labor Code which strengthened trade unionism and collective bargaining as essential elements of an effective labor dispute settlement system.

3. Has the new labor relations law strengthened the legal basis of the use of grievance machinery and voluntary arbitration in settling labor disputes ?

Definitely. Republic Act 6715 now provides for **the mandatory use of the grievance machinery** as a prerequisite step to voluntary arbitration of disputes arising from CBA interpretation and implementation, as well as those disputes arising from the interpretation and enforcement of company personnel policies. Article 262 of the Labor Code, before it was amended by Republic Act 6715, merely provided that" … (whenever) a grievance arises from the interpretation or implementation of a collective agreement, including disciplinary actions imposed on members of the bargaining unit, the employer and the bargaining representative shall meet to adjust the grievance".

Secondly, it is now the policy of the State to **encourage voluntary arbitration of all labor-management disputes** other than those arising from the interpretation and implementation of collective bargaining agreement and company personnel policies. This policy is operationalized by the following provisions:

A. Article 260 of the Labor Code, as amended by Republic Act 6715, which provides that: " All grievances submitted to the grievance machinery which are not settled within seven (7) calendar days from the date of its submission **shall automatically be referred to voluntary arbitration** prescribed in the CBA. The seven calendar days shall be reckoned from the date the grievance machinery is submitted to the last step in the grievance machinery immediately prior to voluntary arbitration.

B. Article 261, which provides for the original and exclusive jurisdiction of voluntary arbitrators over unresolved grievances arising from the interpretation or implementation of the CBA arising from the interpretation or enforcement of company personnel policies. With this amendment, the original and exclusive jurisdiction of voluntary arbitrators has been tremendously expanded.

C. Article 261 provides that CBA violations are to be treated as **grievances** instead of unfair labor practice acts except when the violation is gross, meaning it involves flagrant and /or malicious refusal to comply with the economic provisions of the CBA.

D. The same article **enjoins** the NLRC, its Regional Arbitration Branches, and the Regional Directors of the Department of Labor and Employment from entertaining disputes, grievances or matters under the exclusive and original jurisdiction of the voluntary arbitrator. If any of such cases is filed before them, they have to immediately dispose and refer the same to the grievance machinery or voluntary arbitrator provided in the CBA.

E. Moreover, under Article 262, upon agreement of the parties, voluntary arbitrators may also hear and decide all other labor disputes including unfair labor practices and bargaining deadlocks.

F. Lastly, in case issues arising from the CBA interpretation and implementation or those arising from the interpretation or enforcement of company personnel policies are made as grounds for notices of strikes or lockouts or requests for preventive mediation, the NCMB shall advise the parties to submit the issue/s to voluntary arbitration (Rule XI, Section 2, Implementing Rules, Labor Code).

GRIEVANCES

4. What is grievance?

A grievance is defined as "any question by either the employer or the union regarding the interpretation or application of the collective bargaining agreement or company personnel policies or any claim by either party that the other party is in violation of any provision of the CBA or company personnel policies".

5. What is the grievance referred to in Title VII-A of the Labor Code?

The grievance referred to in the technical or restricted sense, is a dispute or controversy between the employer and the collective bargaining agent arising from the interpretation or implementation of their CBA and/or those arising from the interpretation or enforcement of company personnel policies, for the adjustment and resolution of which the parties have agreed to establish a machinery or a series of steps commencing from the lowest level of decision-making in the management hierarchy (usually between the shop steward of the employee or employees aggrieved and the supervisor/ foreman/ manager which exercises control and supervision over the grievants or who is responsible for executing the management action that have given rise to the grievance) and usually terminating at the highest official of the Company. If such dispute remains unresolved after exhausting the grievance machinery or procedure, it shall automatically be referred to voluntary arbitration prescribed in the CBA.

6. When is there a grievance ?

In the technical or restricted sense, there is a grievance when a dispute or controversy arises over the implementation or interpretation of a collective bargaining agreement or from the implementation or enforcement of company personnel policies, and either the union or the employer invokes the grievance machinery provision for the adjustment or resolution of such dispute or controversy.

7. Could there be a grievance without a union or a CBA ?

If the term grievance is to be applied in the loose or generic sense, any dispute or controversy respecting terms and conditions of employment which an employee or group of employees may present to the employer can be a grievance, even without a union or CBA. Under this interpretation, any complaint, question or problem that an employee or group of employees may wish to take up or discuss with the employer respecting terms and conditions of employment for the purpose of resolving or satisfying the same, constitutes a grievance. The expansion of the original and exclusive jurisdiction of voluntary arbitrators to include questions arising from the **interpretation and enforcement of company personnel policies** has the effect of widening the meaning and interpretation of a grievance to include a situation where there is no collective bargaining agent and no CBA.

8. Are all grievances arising from the implementation or interpretation of the collective bargaining agreement and/or interpretation and enforcement of company personnel policies compulsory subject to the grievance machinery ?

Yes. This is clear from Article 260 and Art. 261 of the Labor Code, as amended by Republic Act 6715.

Art. 260 is emphatic on the duty of the parties to a collective bargaining agreement to establish a machinery for the adjustment and resolution of grievances arising from the interpretation and enforcement of the CBA and/or company personnel policies, and for the mandatory use of the said machinery.

Art. 261, on the other hand, directs the NLRC, its Regional Arbitration Branches and the Regional Directors of the Department of Labor and Employment not to entertain disputes, grievances or matters under the exclusive and original jurisdiction of the voluntary arbitrator or panel of voluntary arbitrators and to immediately dispose of and refer the same to the **grievance machinery** or voluntary arbitration provided in the collective bargaining agreement. Moreover, in Rule XI of the Implementing Rules of the Code, the Regional Branches of the National Conciliation and Mediation Board are enjoined, in case issues arising from the interpretation or implementation of the collective bargaining agreements or those arising from the interpretation or enforcement of company personnel policies are raised in notices of strikes or lockouts or requests for preventive mediation, to advise the parties to submit the issue/s to voluntary arbitration.

9. What usual provisions of a collective bargaining agreement whose violation/s arising from interpretation and implementation, may constitute grievance/s or the so-called rights disputes ?

Every collective agreement usually contains non-economic and economic provisions. Non-economic provisions are those whose monetary cost can not be directly computed such as no-strike-no-lockout, union security, management security, check-off clauses, grievance procedures, etc. Economic provisions, on the other hand, are those which have direct and measurable monetary cost consequences such as wage rates, paid vacations, pensions, health and welfare plans, penalty premiums and other fringe benefits. Any violation arising from rights established under collective agreements, laws, rules and regulations and customary practices may constitute as grievance and is often referred to as **rights dispute**.

10. What are the personnel policies and what are the matters usually covered by such policies, whose wrong from enforcement and interpretation may constitute grievance/s or other sources of rights disputes?

Personnel policies are guiding principles stated in broad, long-range terms that express the philosophy or beliefs of an organization's top authority regarding personnel matter. They deal with matters affecting efficiency and well being of employees and include, among others, the procedures in the administration of wages, benefits, promotions, transfers and other personnel movements which are usually not spelled out in the collective agreement. The usual source of grievances, however, is the rules and regulations governing disciplinary actions.

11. What violations of the usual norms of personnel conduct or behavior of employees may constitute grievances often referred to as discipline cases?

Rules and regulations governing personnel discipline may contain the following infractions covering the following subjects:

1. **AGAINST PERSON**
   PHYSICAL INJURY, ASSAULT, HOMICIDE, MURDER
2. **AGAINST PROPERTY**

MIS-USE OF PROPERTY
DAMAGE TO PROPERTY
THEFT AND ROBBERY
NEGLIGENCE IN THE USE OF PROPERTY

3. **ORDERLINESS/GOOD CONDUCT**
FIGHTING/QUARRELING
VIOLATION OF RULES
DISCOURTESY/DISRESPECT
INTOXICATION WHILE AT WORK
POSSESSION OF DRUGS/NARCOTICS/ALCOHOLIC DRINKS
ILLEGAL STRIKE
STRIKE VIOLATIONS/SABOTAGE
FAILURE TO COOPERATE IN INVESTIGATIONS
HYGIENE
SAFETY
UNION ACTIVITY
MOONLIGHTING
DEPORTMENT
FINANCIAL INTEREST
UNAUTHORIZED OUTSIDE WORK
PERSONAL AFFAIRS
ENTERTAINMENT OF VISITORS
DISORDERLINESS, HORSEPLAY
USE OF FOUL LANGUAGE

4. **ATTENDANCE AND PUNCTUALITY**
TIMEKEEPING VIOLATIONS
ABSENTEEISM
TARDINESS
UNDERTIME
AWOL

5. **MORALITY**
IMMORALITY
SEXUAL HARASSMENT

6. **CONFLICT OF INTEREST**
CONFLICT OF INTEREST

7. **NON-PERFORMANCE**
INSUBORDINATION
NEGLIGENCE OF DUTY
INEFFICIENCY
MALINGERING
CARELESSNESS
POOR QUALITY

8. HONESTY/INTEGRITY
FALSITY/FALSIFICATION
FRAUD
DISHONESTY
BREACH OF TRUST
UNFAITHFULNESS

LOSS OF CONFIDENCE
USURIOUS TRANSACTION
DISCLOSURE OF INFORMATION
DISLOYALTY
NON-PAYMENT OF DEBT

THE GRIEVANCE PROCEDURE

12. What is the Grievance Procedure ?

The **grievance procedure** is the series of formal steps that parties to a collective bargaining agreement agreed to take for the adjustment of grievances or questions arising out of the interpretation or implementation of the CBA or company personnel policies including voluntary arbitration as the terminal step. The grievance procedure provides the parties a first crack in addressing problems in the CBA administration and its use is an essential requisite before a voluntary arbitrator can take cognizance of the unresolved grievance. It usually consists of a multi-step procedure starting from or discussion of the grievance between the employee and/or the Union Steward on the one-hand and the foreman and supervisor on the other hand, and ending with the highest decision-making officials of the company, reflecting the hierarchy of command or responsibility.

Legally speaking, the grievance procedure is an appeal procedure and is a "must" provision in every collective agreement. It is that part of the agreement which provides for a peaceful way of settling differences and misunderstanding between the parties.

13. Are there minimum legal requirements for the establishment of the grievance procedure referred to in Title VII-A of the Labor Code?

Yes. The following are the minimum legal requirements:

1. The grievance machinery established by the parties should be sufficient to ensure mutual observance of the CBA's terms and conditions, for the resolution and adjustment of grievances arising from the CBA interpretation or implementation; and those arising from the interpretation or enforcement of company personnel policies;

2. The parties should include in the agreement a procedure for the selection of voluntary arbitrator or panel of voluntary arbitrators or name and designate in advance a voluntary arbitrator or panel of voluntary arbitrators.

In most collective agreements, the provision of Grievance Procedure contains: 1) definition of grievance, 2) statement of guiding principles in the resolution of grievances, and 3) procedural steps in the settlement and resolution of grievances.

14. Can there be a collective bargaining agreement entered into by the parties and later on duly registered with the DOLE which does not provide for a grievance procedure ?

Legally, none. A grievance procedure is a "must" provision in any CBA and no collective agreement can be registered in the absence of such procedure. In the event that a CBA without such provision is submitted for registration, the registrar shall advise the parties to include a grievance procedure the CBA is considered duly registered.

15. What standards may used as guides in formulating an effective grievance procedure?

The following standards are suggested in the formulation of effective grievance procedure:

1. Collective bargaining agreements should contain provisions that grievances and disputes involving the interpretation or application of the terms of the agreement are to be settled without resort to strikes, lockouts, or other interruptions to normal operations by an effective grievance procedure with arbitration as its final step.

2. To be effective, the procedure established for the settlement of such grievances and disputes should meet at least the following standards:

    a. The successive steps in the procedure, the method of presenting grievances or disputes, and the method of taking an appeal from one step to another should be so clearly stated in the agreement as to be readily understood by all employees, union officials, and management representatives .

    b. The procedure should be adaptable to the handling of various types of grievance and disputes which come under the terms of the agreement .

    c. The procedure should be designed to facilitate the settlement of grievances and disputes as soon as possible after they arise. To this end:

        1. The agreement should provide adequate stated time limits for the presentation of grievances and disputes, the rendering of decisions, and the taking of appeals.

        2. Issues should be clearly formulated at the earliest possible moment. In all cases which cannot be settled in the first informal discussions, the positions of both sides should be reduced to writing.

        3. Management and union should encourage their representatives to settle at the lower steps grievances which do not involve broad questions of policy or of contract interpretation and should delegate sufficient authority to them to accomplish this end.

        4. Provision should be made for priority handling of grievances involving discharge, suspension, or other disciplinary action.

    d. The procedure should be open to the submission of grievances by all parties to the agreement.

3. Management and unions should inform and train their representatives in the proper functioning of the grievance procedure and in their responsibilities under it. In such a program, it should be emphasized:

   a. That the basic objective of the grievance procedure is the achievement of sound and fair settlements and not the "winning" of cases;

   b. That the filing of grievances should be considered by foreman or supervisors as aids in discovering and removing causes of discontent in their departments;

   c. That any tendency by either party to support the earlier decisions of its representatives when such decisions are wrong should be discouraged;

   d. That the willingness of management and union officials to give adequate time and attention to the handling and disposition of grievances and dispute is necessary to the effective functioning of the procedure;

   e. That for sound handling of grievances and disputes both management and union representatives should be thoroughly familiar with the entire collective bargaining agreement.

16. What are the usual steps in the Grievance Procedure ?

A grievance procedure usually consists of a series of steps to be taken within the specified time limits. The nature of the procedure will depend upon the structure of the company and on the needs and desires of the parties, but there is a tendency to follow a fairly definite pattern. Small companies can be expected to have short, simple grievance procedures, sometimes with only one or two steps. Larger companies usually have multi-step procedures. Three-step and four-step procedures probably are most common.

Commissioner Jesus B. Diamonon of the Tripartite Voluntary Arbitration Advisory Council elaborated that the reason for having a number of steps is to provide a method of appeal to higher authority from the decision of a lower supervisory official. Each step is as important as the other. The intermediate steps are not merely a transmission belt for passing grievances along to the top authorities. The representatives therein as in any other steps must have adequate authority either to uphold or reverse decisions made at the lower level.

According to him, the grievance procedure has two (2) periods: the period of persuasion, from the first step to the last step immediately prior to arbitration, where labor and management, with the use of arguments and evidence, persuade one another to give in to one's position or agree to a compromise, and the period of arbitration which begins when the act of persuasion has been exhaustively used and no settlement has been reached. Once and for all, the dispute must be resolved and the parties will have to persuade the arbitrator for a favorable decision or award.

17. What is the interrelationship between the grievance procedure and voluntary arbitration ?

Professor Fernandez quotes Bernstein :

"It is of vital importance that the interrelationship of the two procedures-grievance and arbitration-be borne in mind by those who study and practice arbitration. A grievance procedure in which few disputes are settled inevitably overloads arbitral machinery. Arbitration procedures and awards that undermine the grievance machinery by permitting serious disregard of its prescribed procedures can invite more arbitration and fewer settlements by negotiation. Or arbitration that encourages overemphasis on technical procedural requirements will thwart settlement on the merits so that pressure builds for resort to self-help. Obviously the balance to be struck requires judgment, preeminently on the part of the representatives of unions and management, who have initial and primary responsibility. How they discharge their functions may be affected by what arbitrators do. Arbitration is a powerful tool that can, on occasion, send reverberations through the larger organism, the grievance procedure and shop office relations'"

18. **What are the advantages and disadvantages of fewer stages in the grievance procedure?**

The advantages of fewer stages in the grievance procedure are (1) greater speed in processing, and (2) savings in personnel time. Its disadvantages are (1)vulnerability to grievance overload; (2) excessive involvement of senior officials and (3) inadequate consideration of the merits by lower level supervisors who are in a much better position to make an effective adjustment.

19. What are the advantages and disadvantages of a multi-stage procedure?

The multi-stage procedure has the following advantages: (1) it enables the management-supervisory personnel at all levels to contribute their know-how to the adjustment of grievances; (2) a more adequate consideration of the grievance is likely; (3) involvement of senior officials in grievance processing, is greatly reduced, thereby freeing them for other managerial tasks.

Its disadvantages are: (1) it is wasteful of personnel time and effort and (2) it is less expeditious.

20. What should be the proper attitude of parties to the Grievance Procedure?

The parties' attitude in handling grievances, probably more than in any other aspect of the labor-management relationship, indicates their good faith. Nowhere in that relationship is mutual good faith more important. The attitude of the parties is even more important than the type of grievance provisions contained in the agreement. This view has been shared by unions and management alike in most cases in which the grievance procedure has been considered successful and in the majority of cases in which the procedure has broken down. Good grievance machinery is important, but such machinery alone will not insure success. The attitude, judgment, experience and training of the individuals involved are of prime importance. **Moreover, a desire to settle grievances, rather than to win them, is essential.**

21. What is the responsibility of the union stewards and foreman in handling grievances?

Union stewards and foreman must see to it that grievances are presented only when there is a real basis for complaint or there is a need for a decision. If stewards are convinced

that the worker does not have a real case, it is better to tell him so right from the beginning. In borderline cases where it is felt that the worker has considerable justice on his side, he should be told of the uncertainty of the decision before the case is processed to get a definite ruling through the grievance procedure.

Foreman, on the other hand, should be trained in the human relations aspects of their jobs. They should be ready to listen first before they start debating with the employee. They should note what is being said rather than how the matter is said. This way, gripes are separated from grievances, or gripes are prevented from becoming grievances.

Both stewards and foreman should make every effort to settle grievances at the lowest step. Management has a legal duty to provide all information that will explain the specific details and basis ot its action to enable the shop steward to determine whether to proceed with the grievance.

22. **May parties to a collective bargaining agreement stipulate that certain matters or questions arising under the contract be exempt from the grievance procedure?**

The Labor Code fixes the scope or coverage of the grievance procedure and voluntary arbitration in Article 261, to wit:

" The voluntary arbitrator or panel of voluntary arbitrators shall have original and exclusive jurisdiction to hear and decide all unresolved grievances arising from the interpretation or implementation of the collective bargaining agreement and those arising from the interpretation or enforcement of company personnel policies referred to in the immediately preceding Article. Accordingly, violations of a collective bargaining agreement, except those which are gross in character, shall no longer be treated as unfair labor practice and shall be resolved as grievances under the collective bargaining agreement. For purposes of this Article, gross violations of a collective bargaining agreement shall mean flagrant and/or malicious refusal to comply with the economic provisions of such agreement.

" The Commission, its Regional Offices and the Regional Directors of the Department of Labor and Employment shall not entertain disputes, grievances or matters under the exclusive and original jurisdiction of the voluntary arbitrator or panel of voluntary arbitrator or panel of voluntary arbitrators and shall immediately dispose and refer the same to the grievance machinery or voluntary arbitration provided in the collective bargaining agreement."

It is the law which confers to voluntary arbitrators their original and exclusive jurisdiction and the parties cannot diminish their jurisdiction by stipulation as this would conflict with the basic directive of the Labor Code.

23. May questions concerning terms and conditions actually obtaining but not referred to in the CBA, although provided for in company manuals or policy statements, be subject to the grievance procedure?

With the expansion of the scope of the original and exclusive jurisdiction of voluntary arbitrators to include questions arising out of the interpretation or implementation of company personnel policies, the answer to the above is decidedly "yes".

But even before this expansion of jurisdiction brought about by RA 6715, under the theory of implied incorporation, existing terms and conditions, though not dealt with in specific provisions, were already deemed part of the agreement and thus, grievable.

Fernandez quotes Cox and Dunlop in explaining the so-called theory of implied incorporation:

"A collective bargaining agreement should be deemed, unless an intention is manifest, to carry forward for its term the major terms and conditions of employment not covered by the agreement, which prevailed when the agreement was executed."

24. **How is grievance presented ?**

Grievances ordinarily are brought by the aggrieved employee, usually with the union representative called the shop steward or grievance officer, to the foreman either orally or in writing. Usually a Grievance Form is provided for the purpose. If no settlement is reached at first level, the aggrieved employee or the grievance officer may bring the grievance through the successive steps in the grievance procedure provided for in the CBA.

As mandated by the Labor Code, as amended by Republic Act 6715, all grievances that remain unresolved after exhausting all the internal procedures shall **automatically** be referred to voluntary arbitration prescribed in the CBA if they are not settled within seven (7) days from the date of its submission to the last step in the internal grievance machinery.

25. Who can file a grievance ?

Generally, **employees** initiate a grievance. This is recognized by Article 255 of the Labor Code which provides, among others, that " … an individual employee or group of employees shall have the right at any time to present grievances to their employer."

Secondly, the grievance procedure being part and parcel of the "continuous collective bargaining process" and the union designated or selected by the majority of the employees being their exclusive bargaining representative, **unions** are generally recognized as having the right to initiate, file or present a grievance, either with regard to their rights as unions under the contract, or with regard to the rights of employees, whether collective or individual.

Thirdly, while **employers** do not as a general rule initiate a grievance, it would be prudent to include a provision in the CBA granting the employer such right, especially in cases where the employer may wish to use the grievance machinery to resolve a question over a vague or indefinite provision of a CBA.

26. How are grievance processed ?

Professor Fernandez suggests the following approach in the processing and adjustment of grievances:

"Processing of grievances involves a joint effort on (1) identification of the issue or issues involved (2) developing its factual basis or background (3) determining the contract provisions involved (4) evaluating the merits of the grievance in the light of the factual background and applicable rules and (5) working out a fair and just settlement."

27. What preparations should be undertaken in order that the grievance can effectively be presented by the grievant?

The Trade Union Congress of the Philippines in its **Manual for Shop Stewards** recommends the following steps in preparing for the presentation of a grievance:

1. **Determine first if there is a genuine grievance and if there is, whether the same is justified or not.** Has the contract been violated? Has the worker been treated unfairly by some action of the company? Is the employer responsible? Is the problem covered by the contract or personnel policies in any way?

2. **Study the CBA and company personnel policies.** A Steward or a grievant who is not familiar with the CBA and company personnel policies is like a navigator without a compass. Most grievances are contract violations and if the steward or the grievant does not know the contract or the company personnel polices, he will not recognize a violation when he sees one.

3. **Get all facts of the case.** Be sure to investigate the five W's – the WHO, WHEN, WHERE, WHY and WHAT.

WHO, refers to that part of the form that clearly identifies the worker with the grievance. On this form is included: 1)employee's name, 2) clock number (or chapa number) 3) department, 4) shift, 5) classification.

WHEN, refers to the time element. Often, information regarding more than one date is needed to properly complete the form: 1) the date on which the grievance is officially written, 2) the time and date on which the grievance actually happened, 3) the date on which the grievance was filed in the first step with the foreman, and 4) the date on which the foreman gave his decision. It is particularly important in matters involving back pay that all dates be clearly stated.

WHERE, refers to the exact place where the grievance took place-the department aisle, or miracle.

WHY, refers to the reasons why the complaint is considered a grievance. This is the heart of the grievance and should be written under the section that carries the heading "Nature of Grievance." It is important to remember that it is possible to have a legitimate grievance without being able to point to a violation of a specific clause of the contract.

WHAT, refers to what should be done about the grievance – the settlement desired. Many grievance forms do not have a separate section headed, "Settlement Desired." In those cases,, it is customary for the Steward to list his settlement request at the end of the section Nature of Grievance." It is extremely important that this be done since an arbitrator will often base his award solely on the original request.

4. **Discuss the grievance with the Union or other stewards** in order to learn how the contract should be interpreted and what kind of settlement or adjustment will be demanded.

5. It may be important to know about past grievance settlements of similar nature as the grievance to be presented.

28. What preparations should be undertaken by the respondent and his advocates in a grievance to effectively present his action such that they may be understood and appreciated?

In the same manner that a grievant or a steward has to prepare for the presentation of a grievance, the employer and his advocates down the line in the management hierarchy, has to prepare its "defense" of its action which gave rise to the grievance. They must also prepare by getting all the facts. If it was a disciplinary action , what has the grievant done to deserve the disciplinary action? When? Where? It is the employer who will have the burden of proof in justifying its action after the grievant and /or the Union has presented the grievance.

The employer or respondent has to be thoroughly familiar with the CBA and its own personnel policies. Although the administration of the CBA is a joint effort between the Union and the employer, the primary source or the originator of these policies is the employer and he is therefore expected to be more well-versed with the provisions of the CBA and its own personnel policies.

The employer must be ready to justify its action and convince the union or grievant of its reasonableness and fairness. He may point to a clear CBA provision as the legal basis of its action. He may refer to a known company policy or practice that has been clearly and manifestly violated by the grievant or he may point to precedents of similar grievances that were resolved or adjusted in favor of the employer.

The bottom line is: if both parties agree to the facts, the road ahead is much clearer and wider.

29. What remedy is available to a party if the other refuses to attend or appear in the grievance hearing?

Art. 252 of the Labor Code prescribes attendance in grievance hearings as part of the parties' duty to bargain collectively, to wit:

"The duty to bargain collectively means the performance of a mutual obligation to meet and convene promptly and expeditiously in good faith for the purpose of negotiating an agreement with respect to wages, hours of work and all other terms and conditions of employment including proposals for adjusting any grievances or questions arising under such agreement and executing a contract incorporating such agreements if requested by either party, but such duty does not compel any party to agree to a proposal or to make any concession.

Any party guilty of non-attendance may therefore be charged of unfair labor practice, pursuant to Art. 248 (g) or Art. 249 ©. The other party may, as a matter of choice, file request for preventive mediation or a notice of strike with the NCMB, or file a ULP charge with the NLRC but not simultaneously. Art. 264 enjoins a strike or lockout over a dispute that has been certified or submitted to compulsory or voluntary arbitration or during the pendency of cases involving the same grounds for the strike or lockout.

The other school of thought presents this proposition: Non-attendance in grievance hearings implies that the non-attending party is not convinced that the grievance machinery will be useful or effective in adjusting or resolving the grievance and that, therefore, he is deemed to have dispensed with the preliminary step to voluntary arbitration. Under this theory,, the parties may then be deemed to have submitted the grievance to voluntary arbitration.

30. May a union go on strike over an unfair labor practice act despite a no strike/no lockout provision in the CBA providing for the resolution of such dispute through the grievance procedure and voluntary arbitration? Is such a CBA provision providing for arbitration in case of ULP by either party valid?

There are two conflicting decisions of the Supreme Court on this matter.

One, promulgated on May 15, 1979, in the case **of Philippine Metal Foundries, Inc., vs. CIR, et. al,** declared that a no strike prohibition in a Collective Bargaining Agreement is applicable **only to economic strikes**. In other words, ULP is not covered and workers may go on strike based on ULP despite the no strike provision.

The other, issued on September 10, 1979, in the case of **GOP-CCP Workers Union vs. CIR,** which pronounced as not illegal the stipulation in the collective bargaining agreement that " in case of any alleged unfair labor practice on the part of either party, there will be no strikes, lockouts, or prejudicial action … until the question or grievance is resolved by thee proper court if not settled through a grievance procedure therein outlined."

In the light of the fact that the latter case is more recent and in view of the present state policy of preference for voluntary modes of dispute settlement, it is submitted that the latter decision is more conducive to industrial stability, unless the Unfair Labor Practice act of the company is so gross and so patent as to threaten the existence of the union.

SELECTION OF VOLUNTARY ARBITRATOR

31. What general considerations should guide the parties in their choice of a voluntary arbitrator?

The choice of an arbitrator must take into account the following general considerations: 1) field of choice, or the problem of availability of desired persons; 2) legal qualification; 3) legal disqualification; and 4) criteria and attributes of a suitable arbitrator.

32. What attributes or criteria should a voluntary arbitrator possess?

Every arbitrator must possess certain attributes that make him acceptable to the parties interested in naming him as arbitrator: 1) he must be without prejudice or bias, 2) he must be intelligent, 3) he must be capable of exercising sound judgment, 4) he must be immune to pressures from parties to the dispute and from others, 5) he must be experienced in the field of labor relations.

33. What are some established indicators of acceptability of an arbitrator to the parties?

Referring to Seitz. P. " So you Want To Be an Arbitrator," quoted Professor Fernandez listed the following" indices of acceptabilities:

1. highly knowledgeable and has had significant experience in the field of labor law, labor relations, personnel management and union problems;

2. has the capacity to run a hearing fairly and competently and command respect in his role;

3. is sensitive to and understands the needs of the parties insofar as a decision is concerned and the articulation of the reasons upon which it is based;

4. has a reputation in the industrial and union community for fairness and impartiality and,

5. because of character, can be depended upon not to depart from the ethical standards which arbitrators impose upon themselves.

Other salient attributes based on survey of management and union attitudes were also listed:

1) decisions are based on the facts of the specific case
2) highly consistent rulings
3) broad viewpoint
4) submits a detailed justification of the decision
5) develops pertinent information through questioning in the hearing (King B., Management and Union Attitude Affecting the Employment of the Inexperienced Labor Arbitrator)

In another study, Davey. H.. "How Arbitrators Decide Cases." The list consisted of the following:

1) personal integrity
2) judicial self-detachment
3) some knowledge of labor relations
4) reasonably high level of intelligence, combined with analytical ability, humor, patience, and all other good things.

34. Who are available for appointment/selection as voluntary arbitrator in the Philippines?

While in most industrial countries, there are three types of arbitrators available: 1) the professional arbitrators; 2) persons who, without being professional, often serve as arbitrators, and 3) amateurs, in the Philippines, those available for selection/appointment are those who belong to the second and third categories. The list of accredited voluntary arbitrators of the National Conciliation and Mediation Board available for appointment consists of persons engaged in full time work as employees and officials in the Government. Educational, civic and religious institutions, trade union organizations and private enterprises. They are either members of the Arbitration Association of the Philippines (AAP) or the Philippine Academy of Professional Arbitrators (PAPA), whose bonafide membership in those organizations automatically for accreditation. Others are individual applicants who meet the following minimum criteria for accreditation:

1. Must be a Filipino citizen residing in the Philippines.

2. Must be holder of a Bachelor's degree in any field of behavioral or applied sciences or equivalent educational trainings short of a Bachelor's Degree;

3. Must have at least five (5) years experience in labor-management relations;

4. Must have completed a training course on voluntary arbitration conducted by the Board;

5. Must be a person of good moral character, noted for impartiality, probity, and has not been civilly, criminally and administratively adjudged guilty of any offense involving moral turpitude as evidenced by a duly sworn affidavit;

6. Proficient in oral/written communication both in English and Tagalog.

Under the Professional Development Plan for Accredited Voluntary Arbitrators, the following minimum requirements for accreditation were set:

1. Must be a Filipino citizen, residing in the Philippines

2. Must be a holder of a Bachelor's degree in any field of behavioral or applied sciences or equivalent educational training short of a Bachelor's degree;

3. Must have at least five (5) years experience in the field of labor-management relations; and

4. Has not been convicted of any crime involving moral turpitude.

35. If individual applicant, how does one apply for accreditation with the NCMB?

Under the Voluntary Arbitration Accreditation System (VAAS), the applicant shall submit an application letter with the NCMB or any of its Regional Branches, together with:

1. An updated bio-data;

2. Two (2) copies) of "2x2" black and white picture;

3. School records (transcript of records with Special Order No. or equivalent certification from school), certifying that applicant has satisfactorily complied the degree indicated in the bio-data;

4. Certificate of Employment from present employer(if applicable);

5. Affidavit stating that Applicant has not been convicted of any crime involving moral turpitude; and

6. Names of three (3) character references who can attest to applicant's character, stature and experience in the field of labor-management relations.

After the screening of his qualifications by the NCMB and after completion of the background-reference check with regard his stature and experience in the field of labor-management relations, the applicant will be informed accordingly whether he satisfies the minimum requirements or not.

Applicants who meet the minimum requirements will undergo a panel interview to be conducted by the Accreditation Committee. After passing the panel interview, he will be advised to attend a Pre-Accreditation Training program to equip him with the basic knowledge,

skills and orientation necessary for him to dispatch the responsibilities and functions of an accredited voluntary arbitrator.

After the completion of the Pre-Accreditation Training Program, the applicant will undergo apprenticeship to expose him to actual arbitration proceedings as conducted by a seasoned Accredited Voluntary Arbitrator and to enable him to exercise the knowledge, skills and orientation he acquired from the Program in an actual arbitration session, under the supervision of the said AVA.

Upon satisfactory completion of all the phases of the VAAS, the new AVA will be given his Certificate of Accreditation bearing his Accreditation Number, and hereafter will formally take his Oath of Office and sign the Roll of Accredited Voluntary Arbitrators.

36. Why should voluntary arbitrators seek accreditation with the NCMB?

By seeking accreditation with the NCMB, accredited voluntary arbitrators are given more opportunity to be selected by the parties who have not named permanent arbitrator in their CBA, especially if those parties seek the assistance of the NCMB in the selection or appointment of an arbitrator. In cases like this, the NCMB will utilize the list of accredited voluntary arbitrators for purposes of selection and appointment.

Moreover, accredited arbitrators are primary beneficiaries of training programs conducted by the Board and recipients of all information, education and communication (IEC) materials which are available without cost.

37. How are voluntary arbitrators chosen? What are the variety of methods in the selection of arbitrator?

Parties in general may choose between the use of a temporary or permanent arbitrator. They have also a choice as to the number of arbitrators to be used, either single or panel of arbitrators or the so-called Arbitration Board.

The most highly desirable method of selection is by mutual agreement of the parties. Other alternative methods include the election or appointment by an administrative agency like the NCMB.

38. How is a temporary or ad hoc arbitrator distinguished from permanent arbitrator?

Temporary or ad hoc arbitrator is selected after dispute arises. He is named to arbitrate a specific dispute or a specific group of disputes, and there is no commitment to select him again. Permanent arbitrator on the other hand, is one who is selected to serve for a period of time usually during the life of the CBA, rather than for just one case or specific group of cases.

38. What are the advantages and disadvantages in the designation of temporary arbitrators? Permanent arbitrator?

It is conceded that possibility of easy change of arbitrators is one of the chief advantages of the use of temporary arbitrators. If parties are satisfied and the arbitrator is available, he can be selected again and again. For parties with relatively few disputes, appointment of ad hoc arbitrators answer for economy and likewise permits selection of

arbitrators possessed of special qualification and technical expertise needed in each case. Moreover, the temporary nature of his appointment lessens the bias that is likely to result from his personal acquaintance with both parties.

Appointment of permanent arbitrator augers well for continuing stability in relationship, consistency in policy and development of established jurisprudence and mutually acceptable procedures, that can save on time and naturally, on cost. Being named in advance, no time is lost in selecting a permanent arbitrator after the dispute arises and difficulty in selection is avoided through the highly desirable method of mutual choice by the parties.

40. How is a Tripartite Arbitration Board constituted and what are its advantages and disadvantages?

The Board, which may either be temporary or permanent, is made up of one or more members selected by management and equal number selected by labor, and a neutral member who serves as chairman . The impartial member acts like a single arbitrator and partisan members serve as parties' representatives.

Tripartite boards do not often reach unanimous decisions and in most CBAs, a majority award becomes final and binding. The side whose position is favored by the neutral member generally joins the neutral in a majority award, with the right to dissent reserved to the other party representatives.

In a tripartite board, the neutral member is provided with the able advice and assistance the partisan members, keeping him adequately informed of the parties' real positions which may not be exactly the same as their formal positions. The use of a tripartite board is most advisable in the arbitration of interest disputes. But because of the possible delay in the appointment of partisan members, in the hearing of the case, in writing of majority and dissenting opinions, many parties prefer not to use tripartite boards for rights disputes.

41. How may the NCMB assist the parties in the selection of arbitrators?

To facilitate selection, the Board will send/provide the parties with a list of names of accredited voluntary arbitrators from its Roll. The parties will have the privilege to cross off names objected to and to indicate preference from the remaining names in the list. The Board then makes the appointment upon the request of the parties from the remaining names on the list in the order of preference. If the parties fail to agree on any of the names submitted, they may request for additional lists. If they still cannot agree, the NCMB shall appoint an arbitrator not appearing on the list.

42. Do existing laws, rules and regulations in the Philippines provide for the qualifications, attributes, functions, role and extent of authority of voluntary arbitrators?

YES. Republic Act 6715 and its Implementing Rules and the NCMB Procedural Guidelines in The Conduct of Voluntary Arbitration Proceedings provide the basic legal and procedural requirements in handling voluntary arbitration cases. The NCMB Code of Professional Responsibility for Accredited Voluntary Arbitrators of Labor-Management Disputes likewise defines the arbitrators' qualifications, their responsibilities to the profession, to the parties and to the administrative agency in the performance of their functions.

43. Can any of the parties request the replacement of a voluntary arbitrator on such grounds as patent partiality or gross ignorance of the law?

The matter of inhibiting a voluntary arbitrator or requesting his replacement is better addressed to the sound discretion of the voluntary arbitrator himself. Unless the arbitrator is someone chosen for the parties by the NCMB precisely because they have disagreed on the choice earlier, the question of lack of trust and confidence in the impartiality of the voluntary arbitrator is rarely brought at issue because the parties have presumably thoroughly screened the educational and ethical background of the arbitrator before appointing him as their arbitrator.

Whether chosen by the parties or appointed for them by the NCMB, it would be well for the arbitrator to disclose any possible conflict of interest due to pecuniary ties or those arising out of ties of consanguinity or affinity with any of the parties before hearing the merits of the case.

SCOPE OF VOLUNTARY ARBITRATION

44. What are the types of labor disputes that may be submitted to voluntary arbitration?

Under Article 261 of the Labor Code, as amended, the following disputes are subject to the original and exclusive jurisdiction of voluntary arbitrator or panel of voluntary arbitrators: 1) unresolved grievances arising from CBA interpretation or implementation. These include CBA violations which are not gross in character, meaning, flagrant and/or malicious refusal to comply with the economic provisions of the CBA; 2) unresolved grievances arising from personnel policy enforcement and interpretation including disciplinary cases. These disputes are often referred to as "rights disputes".

Under Article 262 of the same Code, all other labor disputes including unfair labor practices and bargaining deadlocks may also be submitted to voluntary arbitration upon agreement of the parties. Bargaining deadlocks are often referred to as "interest disputes."

Article 263 (h) likewise allows the parties upon agreement, to submit even the so-called "national interest cases" to voluntary arbitration, before or any stage of the compulsory arbitration process prior to the submission of the resolution.

Republic Act Nos. 6727 and 6971 enacted on 7 July 1989 and 22 November 1990, respectively, also expanded the jurisdiction of voluntary arbitration to include: 1) all unresolved wage distortion cases as a result of the application of wage orders issued by any Regional Tripartite Wages and Productivity Board in establishments where there is collective bargaining agreement or recognized labor union, and 2) all unresolved disputes, grievances or other matters arising from the interpretation and implementation of a productivity incentives program which remains unresolved within twenty (20) calendar days from the time of the submission to labor-management committee.

45. How are interest disputes distinguished from rights disputes?

The US Supreme Court has explained the fundamental distinction as follows:

"The first relates to disputes over the formation of collective agreements or efforts to secure them. They arise where there is no such agreement or where it is sought to change the terms of one, and therefore the issue is not whether an existing agreement controls the

controversy. They look to the acquisition of rights for the future, not to assertion of rights claimed to have vested in the past.

The second class, however, contemplates the existence collective agreement already concluded or, at any rate, situation in which no effort is made to bring about a formal change in terms or to create a new one. The dispute relates either t o the meaning or proper application of a particular provision with reference to a specific situation or to an omitted case. In the latter event the claim is founded upon some incident of the employment relation, or asserted one, independent of those covered by the collective agreement ***. In either case the claim is to rights accrued, not merely to have new ones created for the future."

46. What is arbitrator's function in rights disputes? In interest disputes?

In general, the function of the rights arbitrator is quite similar to that of court in construing contract. The function is basically that of adjudication rather than legislation. The parties very frequently provide that the arbitrator shall have no power to add to, subtract from, or modify any provision of the agreement.

In United Steelworkers v. Enterprise Wheel and Car Corp., 80 Ct. 1358, 1361, the Supreme Court bluntly confined arbitrators to the function specified by the parties:

When an arbitrator is commissioned to interpret and apply the collective bargaining agreement, he is to bring his informed judgment to bear in order to reach a fair solution of a problem.

This is especially true when it comes to formulating remedies. *** Nevertheless, an arbitrator is confined to interpretation and application of the collective bargaining agreement; he does not sit to dispense his own brand of industrial justice. He may of course look for guidance from many sources yet his award is legitimate only so long as it draws its essence from the collective bargaining agreement. When the arbitrator's words manifest an infidelity to this obligation, courts have no choice but to refuse enforcement of the award.

In interest disputes, the arbitrator's role is that of "legislator" or "bargainer" for the parties. As explained by Arbitrator Emanuel Stein, "the task is more nearly legislative than judicial. The answers are not to be found within the "four corners" of a pre-existing document which the parties have agreed shall govern their relationship. Lacking guidance of such a document which confines and limits the authority of arbitrators to a determination of what the parties had agreed to when they drew up their basic agreement, our task is to search for what would be, in the light of all the relevant factors and circumstances, a fair and equitable answer to a problem which the parties have been able to resolve by themselves."

Interest arbitrator supplements the collective bargaining process by doing the bargaining for both parties after they have failed to reach agreement through their own bargaining efforts. In carrying out this function as legislator or bargainer for the parties, interest arbitrator must strive to achieve a workable solution. Quoting Soule, Wage Arbitration, 6-7 (1928), Elkouri states: "(The arbitrator is) not a superior sort of dictator, dispensing justice from on high, but an agent of the two sides to the collective bargaining. His job is to reach a solution that will be satisfactory enough to be workable. He has to take into consideration their relative strength and their relative necessities. He has to remember not to depart so far from a possible compromise, consistent with the respective power and desires of the parties, that one or the other of them will be likely next time to prefer open hostility to peaceful settlement. He has also to remember that a decision is useless if it cannot be enforced and that the power

and ability of the respective parties to administer a decision successfully is an integral part of the decision itself.

"A decision which cannot be carried into effect or which will create lasting dissatisfaction is not really a decision at all. On this account a wage arbitration is not an exercise in pure reason and a summary of merely logical arguments, accompanied by the opinion accompanying the decision, does not tell the whole story. Arbitrators frequently do not, of course, fully understand these limitations the more successful ones do so."

ARBITRABILITY ISSUES:

47. Can a grievance be brought to voluntary arbitration without passing through the grievance procedure under the CBA?

This appears to be prescribed by the Labor Code which directs the parties to a CBA to establish a grievance machinery for the adjustment and resolution of grievances arising from the interpretation or implementation of their CBA and those arising from the interpretation or enforcement of company personnel policies.

In view, however, of the State policy to encourage voluntary arbitration of all other labor-management disputes, it is submitted that a grievance may be brought directly to voluntary arbitration without passing through the grievance machinery, especially when the latter has been proven to be ineffective in the past, or when the parties inadvertently railed to include a grievance machinery provision in their CBA.

48. If a grievance is brought to arbitration, could any party add issues other than the grievance itself?

Since the labor policy encourages the settlement or resolution of all issues or irritants in the labor-management relationship as a means of promoting industrial stability, it is submitted that a party to a voluntary arbitration case can add issues other than the grievance, provided it does not give undue advantage to one and cause prejudice to the other. The party wishing to add other issues must inform the other party and seek his conformity.

The other situation which could allow an issue to be added is when after the grievance has been presented, it was discovered that it was linked or interrelated to another issue not previously resolved and the resolution of the latter is necessary to the final determination of the grievance.

49. What are "arbitrability issues" and when may they arise?

Issues of arbitrability are those that may be raised by any of the parties to an arbitration case on any of the following grounds:

1. that the case does not involve any of the disputes that are covered by the arbitration clause;

2. that while covered by the arbitration clause, some conditions precedent such as the exhaustion of the grievance procedure, or timely notice of intent to arbitrate has not been met.

When an existing dispute is taken to arbitration by a joint submission of the parties, ordinarily there is no problem of arbitrability since the submission by the parties identify the

dispute and agree to its arbitrability. However, when only one party initiates arbitration by filing a notice of intent to arbitrate under the arbitration clause he agreement, the other party may raise issues of arbitrability.

50. Who decides the issue of arbitrability?

The determination of arbitrability is often left by the parties to the arbitrator or to the administrative agency like the NCMB in lieu of the court. The parties can specifically provide in the agreement the proper authority to decide the issue of arbitrability. Even in the absence of such provision, it is an accepted principle that a preliminary decision relating to arbitrability by an arbitrator is an inherent parts of his duty.

ARBITRATION PROCEDURES AND TECHNIQUES

51. In general, what is the extent of the authority of an arbitrator?

As a general rule, the authority of an arbitrator embraces or covers the following:

1. General authority to investigate and hear the case upon notice of the parties and to render an award based on the contract and record of the case;

2. Incidental authority to perform all acts necessary to an adequate discharge of his duties and responsibilities like setting and conduct of hearing, attendance of witnesses and proof documents and other evidences, fact-finding and other modes of discovery, reopening of hearing, etc.;

3. Special power in aid of his general contractual authority like the authority to determine arbitrability of any particular dispute and to modify any provision of existing agreement upon which a proposed change is submitted for arbitration.

52. Who determines the arbitration procedures that may apply in a given case?

In practice, it frequently happens that in a given case, some of the procedures used are based upon the legal requirements (Republic Act 6715 and Implementing Rules), agreement of the parties (CBA and relevant agreements), directives of the arbitrator, and procedural rules of appropriate agencies like the NCMB Procedural Guidelines in Conduct of Voluntary Arbitration Proceeding.

53. Who controls the arbitration proceedings?

It is generally accepted that the conduct of arbitration proceedings is under the jurisdiction and control of the arbitrator subject to such rules of procedures that the parties may jointly prescribe or those which appropriate agencies like the NCMB may legally require.

54. How may arbitration be initiated?

Arbitration may be initiated either by 1) a Submission or 2) by a demand or Notice invoking a collective agreement arbitration clause. Sometimes both instruments are used in a case. (Elkouri and Elkouri).

55. How do we distinguish Submission from Demand or Notice to Arbitrate?

Submission is sometimes called a "Stipulation" or an "Agreement to Arbitrate". It is used where there is no previous agreement to arbitrate. The Submission which must be signed by both parties, describes an existing dispute often names the arbitrator, procedures in the hearing and it sometimes contains considerable details of the arbitrator's authority and other matters which the parties wish to control. Submission is more appropriate in interest disputes since collective agreement generally do not provide for the arbitration of such disputes that may arise in the future. Submission is often entered into after the dispute has materialized and the issues can already be defined.

However, Demand or Notice of Intent to Arbitrate is more applicable to rights dispute because collective agreements are required under Republic Act 6715 to provide for a grievance procedure and a voluntary arbitration clause with respect to disputes arising from the application or interpretation of the agreement. Thus, there is an "agreement to arbitrate" future dispute that may arise under and during the term of the CBA. If a dispute is covered by such an arbitration clause, arbitration maybe initiated unilaterally by one party by serving upon the other a written demand or notice of intent to arbitrate.

56. What are some of the reasons why parties to a case may still choose to execute a submission even if there is already an arbitration clause in the CBA? In various decided American cases, some reasons were given for doing so:

1. To expand or diminish the authority of the arbitrator provided by the collective agreement (International Shoe Co., 21 LA 550, 550-551, Roder, 1953; E.K. Porter Co. vs. United Saw, File and Steel Production Workers, 406 F.2d 643 and District Council vs. Anderson, 104 LRRM 2188, 2189)

2. To state precisely the issue to be decided by the arbitrator, and indicate the scope of is jurisdiction more precisely (E.I du Pont de Nemours and Co., 39 LA 1083, 1084)

3. To state procedural details where the parties desire to control them and the collective agreement contains little or no detail in regard thereto.

4. In arbitration under a law, to complete any statutory requirements not met by the arbitration clause of the collective agreement

5. To confirm the arbitrability of the particular dispute (Kraft Foods Co., 145 LA 336)

6. To provide additional opportunity to settle the dispute

7. To agree to a remedy

In negotiating on a submission, the parties may find that they are not too far apart for negotiated settlement of the basic dispute.

57. What preparations should the parties and their advocates undertake in order that they will be able to present their respective cases and positions most effectively?

To facilitate the hearing of the case, parties shall ensure the effective presentation of the facts and arguments of their respective cases by undertaking the following preparations:

1. Study the original statement of the grievances and review its history through every step of the grievance machinery.

2. Examine carefully the initiating document whether it is the Demand for Arbitration or the Submission Agreement, to help determine with certainty the scope of the arbitrator's jurisdiction

3. Review the collective bargaining agreement particularly the specific provisions involved and other related provisions including any pertinent company policy, rules and regulations.

4. Compile all documents needed at the hearing make available photocopies for the arbitrator and the other party. Where some of the documents needed are in the possession of the other party, make arrangements to ensure availability during the hearing. Otherwise, motions for the issuance of subpoenas may be availed of prior to or during the hearing.

5. If ocular inspection is material to the case, make advance arrangements with the arbitrator. During on-the-spot investigations, the arbitrator must be accompanied by the representatives of both parties.

6. Interview all witnesses and ensure that they understand the whole case and their particular relevance and importance of their testimony to the case. Make a written summary or checklist of the points upon which each witness will testify to ensure that nothing is overlooked during the hearing.

7. Study the case from the other party's point of view. Anticipate rebuttal questions and prepare to respond to the evidence and arguments presented by the other party.

8. Review articles, references and published awards/decisions and jurisprudence on the general subject matter in dispute

ARBITRATION HEARING

58. In general, what are the procedural steps in the conduct of arbitration hearing?

Arbitration hearing normally involves many, if not all, of the following steps:

1. The taking of the oath by the arbitrator and his opening statement

2. Brief statement of the issues in controversy by the parties

3. Stipulation of the facts

4. Presentation of evidence by the grievant. The voluntary arbitrator shall have a wide latitude of discretion in determining the order of presentation. In disciplinary cases, it is the party who disturbed the status quo in the relationship who will present the case. In cases of contract interpretation, the statement shall be presented first by the initiating party.

5. Presentation of evidence by the other party

6. Supplementary fact-finding procedures, such as ocular inspections

7. Hearings and judgment of Default

8. Formal offer of evidence

9. Filing of briefs and reply briefs.

10. Closing of Hearing

59. Who may represent parties in arbitration proceedings?

It is generally agreed that each party has the right to be represented in arbitration proceedings by persons of their own choosing. He can be the spokesman in the prearbitral stages of the grievance procedures like the shop stewards and foremen, top union and company officials, or company or union attorney.

60. Who are entitled to attend arbitration hearings?

As a rule, arbitration hearing is not open to the public. Only persons having direct interest in the case, that is, the parties and their authorized representatives are entitled to attend the hearing. Other persons may be permitted to attend the hearing only with the permission of the arbitrator or the parties.

61. Who is responsible in setting the time and place of hearing and the sending of the notice of hearing?

Ordinarily, the arbitrator will meet at any time and place agreed to by the parties, if he is available. Otherwise, he fixes the time and place in consultation with the parties and gives timely and written notice of such date, time and place of the hearing.

62. Is the taking of the oath by the arbitrator of the NCMB and witnesses necessary in arbitration proceedings?

All Accredited Voluntary Arbitrators of the NCMB take their oath of office to complete their accreditation and are no longer required to do so before proceeding with the first hearing of the case.

The swearing in of witnesses is often preferred whether required by law or not. But this depends on the Arbitrator.

63. What is the importance of Stipulation of Facts? When may parties enter into such stipulation?

An agreed statement of facts expedites the arbitration hearing by reducing the number of necessary witnesses and focusing attention on disputes on disputed issues or facts of the case. The parties at their own initiative or upon the suggestion of the arbitrator, may enter into Stipulation of Facts before or during the hearing.

64. To what extent should arbitrator participate in the hearing?

Arbitrators must feel free to participate personally in the hearing by asking questions, seeking information, and exploring all angles which he deems necessary for a full understanding of the case. He must take the initiative in reconciling apparent contradictions or in seeking insights into the motives of those whose testimony is at odds.

65. Should settlement by the parties on some or all of the issues be encouraged or allowed after arbitration has been initiated or hearing has already commenced?

Arbitrators are encouraged under the law to conciliate or mediate to aid the parties in reaching voluntary settlement even after arbitration has been initiated and an arbitration hearing already commenced.

66. Is the arbitrator compelled to set forth the terms of settlement in an award?

Generally, when parties settle their dispute during the course of arbitration they often request that the arbitrator set forth the terms of the settlement in the award. If the arbitrator believes that the agreement is proper, fair, sound and lawful, it becomes his responsibility to adopt the same.

67. Is the need for a hearing a basic requirement in all arbitration proceedings?

A hearing in the presence of the arbitrator is deemed imperative in virtually all cases. In giving each party full and fair opportunity to be heard, the arbitration hearing simultaneously serves to inform the arbitrator fully regarding all material aspects of the disputes. Even when the parties agree to submit their case on the basis of stipulated facts, written briefs and affidavits, the arbitrator may not always agree that the case be properly resolved without a hearing.

In the case of Natividad vs. Workmen's Compensation Commission, cited in the paper presented by Atty. Rosa Maria Bautista during the Institute on Grievance Settlement and Voluntary Arbitration, where the Department of Labor held no hearing to enable it to dispose of or terminate at the quickest possible time all workmen's cases filed on or before March 31, 1975, the Supreme Court through Justice Cecilia Munoz Palma stated:

Such an argument does violence to the principle of due process which the Court must uphold at all times especially where substantial rights of a litigation are at stake. Expediency cannot be invoked at the sacrifice of procedural due process.

The due process requirement is not a mere formality that may be dispensed with at will. Its disregard is a matter of serious concern. It is a constitutional safeguard of the highest order. It is a response to man's intimate sense of justice. It demands that government acts, more especially so in the case of the judiciary, be not infected with arbitrariness. It cannot be satisfied unless the elementary requirements of fairness are met.

Generally, the arbitrator must inform the parties that relevant and material evidences must be presented regardless of the form with minimal use of technicalities.

68. When may an arbitrator grant continuances or adjournment of hearing?

An arbitrator may grant continuances or adjourn the hearing from time to time upon joint request of the parties or at the initiative of only one party for good cause shown.

Continuances are often due to the absence of witnesses or evidence and the request, even if opposed by the other party, may be granted if such absence was not due to the fault of the requesting party.

69. Are transcripts of hearing always necessary in arbitration proceedings? Who pays for the cost?

A formal written record of the hearing is not always necessary. In simple cases, the arbitrator can take adequate notes. On contract interpretation cases, there being no disputed facts,, the arbitrator's notes, the parties exhibits and briefs ordinarily makes a transcript unnecessary. In complicated cases, however, stenographic records will be very help if not indispensable. The transcript will aid the arbitrator in studying the case, the parties in preparing the briefs, and the court in reviewing the case on appeal.

The cost of the transcript is usually shared equally by the parties with each party paying for extra copies it orders.

70. What are exhibits and how are they offered in evidence?

They are evidence presented and preserved in written form. Each party may use a witness to identify the exhibit and to show its accuracy if the other party does not accept the same for what it purports to be. Copies of the exhibit should be prepared in advance and copies given to the other party and the arbitrator

71. When may a voluntary arbitrator conduct ex parte proceedings and render default awards?

Only an unexplained failure to appear due notice, not a delay in appearance, can justify an ex parte proceeding. The Arbitrator must proceed to hear the testimony and receive all the evidences submitted by the other party including those that he may require for the making of an award.

72. When may plant visits by arbitrator necessary in arbitration proceedings?

A plant visit may be indispensable if the conduct thereof helps the arbitrator secure a better understanding of the case and in some cases, avoid voluminous testimony. Plant visit may be done at the initiative of the arbitrator or at the request of any party to the dispute.

73. What is the importance of opening and closing statements in arbitration proceedings?

Opening statements provide the arbitrator in brief and clear language about each party's view of what the dispute is all about and what each expects to prove by its evidence. Through closing statements, parties render a real service to the arbitrator and to themselves

by careful analysis and synthesis of the important aspects of the cases, the facts proven and placing them in proper relation to the ultimate conclusion they seek the arbitrator to arrive.

74. When is the hearing deemed "closed" for purposes of rendering an award?

Hearings are deemed closed when all evidence and arguments of the parties have been received and final adjournment is declared. However, if briefs and other documents are to be filed after such adjournment, the hearing is deemed closed after receipt of said documents.

75. When may re-opening the hearing be allowed?

Under accepted practice the arbitrator on his own initiative, or upon request of a party for good cause shown, may reopen the hearing at any time before the award is rendered. If reopening would prevent the issuance of the award within the mandatory time limit, the hearing may not be reopened unless the parties agree to extend the time limit.

Good cause shown include the introduction of new evidences not available during the hearing, the admission of which will probably affect the outcome of the case, and it is shown that reason reasonable grounds exist for its non-production at the of hearing.

76. When may withdrawal of cases from arbitration be allowed?

Parties may withdraw a case through agreement. It has been suggested that the complaint usually may withdraw the case at any point prior to arbitration hearing, but after the hearing has commenced, he may not withdraw the case over the objection of the other party unless permitted by the arbitrator. Agreement provision usually allows withdrawal of the case after arbitration hearing only by mutual consent of the parties.

EVIDENCE

77. How is evidence appreciated in voluntary arbitration proceedings?

Section 8, Rule VI of the NCMB Procedural Guidelines in the Conduct of Voluntary Arbitration Proceedings states that the relevancy and materiality of the evidence presented may be solely determined by the arbitrator and he may allow or accept evidence, the arbitrator shall not be bound by the Rules of Court pertaining to evidence.

78. How should a voluntary arbitrator receive the evidence presented by the parties?

Strict observance of legal rules of evidence usually is not required but not the parties in all cases must be given adequate opportunity to present all of their evidences and arguments. Voluntary Arbitration are well advised to be very **liberal** in the reception of evidence.

79. What are the common types of evidence used in arbitration proceedings?

Evidence introduced vary from case to case according to the question involved. There are however more or less specific types of evidence required for each general type of case:

1. In disputes over the setting of general wage rates – the most important type of evidence is documented statistical and economic data on such matters as prevailing practice, cost of living, ability to pay and the like.

2. In discharge or discipline cases, the most important evidence generally comes in the form of testimony of witnesses that will establish the facts that led to the disciplinary action. If the issue penalty determination, the past record of performance of employee and evidence of past disciplinary action will be material.

3. In contract interpretation cases, the history of pre-contract negotiations and the past practice of the parties n applying the disputed provision will be important

In some cases, visual or pictorial evidence is useful. Indeed, as long as evidence "fits" and is relevant to the case the unusual nature of the evidence should not bar its admission and consideration.

80. Are voluntary arbitrators authorized to issue subpoena?

Republic act 6715 and its implementing rules empower the voluntary arbitrator to hold hearings, receive and "take whatever action is necessary to resolve the issue or issues subject of the dispute, x x x"

Using the foregoing statement conferring broad and general powers on the arbitrator, the NCMB Procedural Guidelines in the Conduct of Voluntary Arbitration Proceedings specifically grant to voluntary arbitrators the compulsory power to subpoena witnesses and documents when the relevancy of the testimony and the materiality thereof have been demonstrated to the arbitrators.

A view has been expressed that "Even assuming its legality, the use of subpoena is not to be encouraged. Demands for relevant information by either party should be honored without the formality of a subpoena."

81. What should be the approach of the arbitrator in giving weight and credibility to the evidence presented?

Noted Arbitrator George Cheney pointed out that, in arriving at the truth in such case, an Arbitrator must consider whether conflicting statements run true or false; what he will note is the witnesses' demeanor while on the stand; and that he will credit or discredit testimony according to his impression of the witnesses veracity.

He also pointed out that in determining where the preponderance of evidence lies with respect to any material point, the arbitrator will into consideration whether the witness speaks from first-hand information to whether the testimony is largely based in hearsay or gossip."

In summarizing, Arbitrator Cheney stated that the duty of the Arbitrator is simply to determine the truth respecting material matters in controversy as he believes it to be, based upon a full and fair consideration of the entire evidence, the weight, if any, to which he honestly believes it to be entitled.

82. In giving weight and credibility to testimony in discharge and discipline cases, what special considerations should be taken into account by the arbitrator?

In discharge and discipline cases, if there is evidence of will on the part of the accuser against the accused, the testimony of the former will be subject to doubt and careful scrutiny by the arbitrator.

In one case, Arbitrator Shulman recognized that an accused employee has an incentive for denying the charge against him in that he stands immediately to gain or lose in the case, and that normally there is no reason to suppose that a plant protection man, for example, would unjustifiably pick one employee out of the hundreds and accuse him of an offense, although in particular cases the plant protection man may be mistaken or in some cases even malicious. Arbitrator Shulman declared that, if there is no evidence of ill will toward the accused on the part of t he accuser and if there are no conclusion that the charge is true can hardly be deemed improper.

In several decided American cases, one other factor to be considered by the arbitrator in weighing testimony in discharge and discipline cases is the so-called code which inhibits one member of the organization and frequently one member of an unorganized working force from testifying against another.

83. What is the value of hearsay evidence in arbitration hearings?

Arbitrators generally admit such evidence, but qualify its reception by informing the parties that it is admitted only "**for what it is worth**."

In Walden vs. Teamasters case, the Court held that a union's failure to object to hearsay evidence in arbitration did not constitute a breach of its duty of fair representation the court declared that: An arbitration hearing is not a court of law and need not be conducted like one. Neither lawyers nor strict adherence to judicial rules of evidence are necessary complaints of industrial peace and stability – the ultimate goals of arbitration.

In many decided American cases, very little weight is given to hearsay evidence, and it is exceedingly unlikely that an arbitrator will render a decision supported by hearsay evidence alone. Then, too hearsay evidence will be given little weight if contradicted by evidence which has been subjected to cross-examination.

The rule on hearsay evidence likewise applies to affidavits. Objections to its admission must be considered and the other party should be given the opportunity to cross-examine the persons making the affidavits.

84. What is the value of circumstantial evidence in arbitration hearing?

There are times when arbitrators decide cases on the basis of circumstantial evidence. Arbitrator Paul H. Herbert stated that the use of circumstantial evidence does not eliminate in any sense the requirement that there must be clear and convincing proof to establish that the offense charged was committed. Certainly, mere suspicion is not enough to establish wrong doing.

Moreover, as basic safeguard, Arbitrator Claire V. Duff emphasized that an arbitrator in using circumstantial evidence "must exercise extreme care so that by due deliberation and careful judgment he may avoid making hasty or false deductions. If the evidence producing the chain of circumstances pointing to guilt is weak and inconclusive, no probability of fact may be inferred from the combined circumstances.

Circumstantial evidence, according to Arbitrator Joseph A. Jenkins is often far more persuasive than direct testimony, particularly when action in the nature of a conspiracy is involved. In Lone Star Steel Co. Case involving unauthorized work stoppage found that circumstantial evidence made out a "prima facie case" of guilt, leaving a burden on each individual employee to offer evidence of excuse (such as illness) for not reporting for work.

The following admissions, on the other hand, may be given significant weight:

- admission made by the grievant in the presence of union representatives during pre-arbitral grievance hearings.

- Grievant's admission at the arbitration

- Admissions asked on by others and those that appear in the record of prior proceedings so as to partake of the nature of judicial admissions.

SOME ARBITRATION STANDARDS IN CONTRACT INTERPRETATION

85. What are some of the standards which an arbitrator may use as guide in interpreting contract language?

In a paper provided by Mr. Tom Riley, Asian-American Free Labor Institute (AAFLI) Country Program Director, to the participants of the Institute of Grievance Settlement and Voluntary Arbitration, the following standards in contract interpretation based on a Section of How Arbitration Works by Elkouri and Elkouri, were summarized:

1. **Language which is "clear and unambiguous":** Even when the parties themselves disagree on what contract language means, the arbitrator may find kit to be clear and definite. Interested parties are inclined to make a clause mean what they want it to mean. The arbitrator brings a certain amount of objectivity to the process.

2. **Specific versus general language:** Where contract language is specific in some respects, it will normally be held to supersede another more general clause. "Specific" means constituting or falling into a named category.

3. **To express one thing is to exclude another:** To mention one item of a group or class of items, and not to mention others, may be construed to mean that others were meant to be excluded.

4. **Words will be judged by their context:** The meaning of the words or phrases will be judged by the context in which they appear.

5. **Agreement to be construed as a whole:** Arbitrators normally will hold that all parts of the contract have some meaning or the parties would not have included them in the agreement.

6. **Normal and technical usage:** Words and phrases will be given their popularly-accepted meaning in preference to some special meaning which one of the parties may try to give them. Arbitrators will take the meaning customary in labor relations.

7. **Intent of the parties:** Where the contract is not a sufficient guide, the arbitrator will look beyond it to see if he can determine the intent of the parties.

8. **List of union or company demands submitted at negotiations.**

9. **Contract negotiations:** The history of negotiations, as evidenced by minutes or records, is important. The arbitrator may rely on oral evidence, if he is convinced of its accuracy.

10. **Settlement memoranda.**

11. **No consideration to compromise offers:** Offers made in negotiation leading up to arbitration will normally no be considered in arbitration. It is recognized that parties will make offers,, looking towards a settlement, that might be less than they consider to be their strict contractual rights. (Here, however, it must be determined that it is a compromise offer and not an admission that the case is really based on considerations other than those put forward in negotiations).

12. **Custom and past practice:** "What the parties do under a collective agreement might be even more important than what they say in it."

13. **The salient contract versus expressed provisions:** A "salient" contract is one which contains no express obligations to continue in force practices or working conditions which existed at the time that collective agreements is signed.

It is recognized that there is practical inability of the parties to deal fully and conclusively with all aspects of local working conditions. The following sets forth "general principles and procedures which explain the status of these matters and furnish necessary guideposts to the parties" and the board of arbitrators:

1. There is recognition that an employee does not have the right to have a working condition established where it has not previously existed or to have an existing condition changed or eliminated except to the extent that the existence of the local working condition thwarts application of a specific agreement's provision.

2. That no local working condition shall be effective to deprive any employee of rights under the agreement.

3. That local working conditions providing benefits "in excess of or in addition to "those in effect for its term except as changed or eliminated by mutual agreement or in accordance with the fourth guidepost.

4. That the company has the right to change or eliminate a local working condition if management's actions under the management clause change or eliminate the basis for the existence of the local working condition, thereby making its continuance unnecessary. But it has been held that in the exercise of its management rights, the company must observe the provisions of the contract, including the local working conditions section. Hence an action of management taken pursuant tot he management clause which does not change or eliminate the basis for the existence of the local working condition cannot result in its change or elimination.

5. That the establishment of or agreement on any local working condition hereafter which changes or modifies any provisions of the agreement, except to the extent approved by top management and union officials, is barred.

6. That attempts to thwart the development of a practice, even if unsuccessful, may prevent it from attaining the status of a local working condition. As an example, it was held that persistent, though largely unsuccessful efforts by supervisor to prevent employees from taking wash-up time prior to shift end did not establish a viable practice protected by a local working condition clause. "Laxity in enforcing a reasonable rule is not tantamount to the establishment of a local working condition.

14. In interpreting the working intent and application of contractual provisions, arbitrators may be guided by past practice under the contract. "A practice is a reasonable uniform response to a recurring situation over a substantial period of time, which has been recognized by the parties implicitly or explicitly as the proper response."

The term practices usually refer to local practices and working conditions which can vary considerably at different plants of the same company. They are often a customary way, not necessarily the best way of handling a given problem. A method of handling a problem cannot be considered a practice if it is only one of several ways of doing it.

The practice must be recurring and deal with the same type of situation. It must have existed over a substantial period of time. The lax enforcement of a rule may not constitute a valid practice since there may not be acceptance, either implicit or explicit. Lax enforcement might nonetheless be used in some cases to build proof of discriminatory or inequitable treatment.

Generally, the burden of proof is on the union to show that the practice in fact does exist. This is frequently difficult to do, since the union may not have very complete records and the company is able to give evidence of a different practice.

If the practice is unclear or conflicting, the arbitrator is not likely to place much weight on either way.

86. How important are past practices in collective bargaining?

Past practices have made the following contributions to the development of industrial self-government:

1. They can be an aid to the interpretation of ambiguous contract language.

2. Even where contract language is clear an agreed practice may modify it.

3. Past practice is important in defining jobs and classification lines which may affect layoffs, wages and promotions.

4. Under some circumstances a long history of a practice indicates a mutual agreement even though the contract is silent.

5. A past practice is not binding and cannot be enforced when it is clearly contrary to the contract.

The validity of a past practice argument can only be determined by complete knowledge of the details of the individual agreement in effect in the plant or industry.

87. What are the other special considerations that must guide arbitrators in interpreting contract language?

1. Interpretation in the light of the law: When two interpretations are possible, one making the agreement lawful and the other making it lawful, the former may be used on the presumption that the parties intended to have a valid judgment of a reasonable man."

2. **Reason and equity:** Where language is ambiguous arbitrators usually will strive to apply it in a manner that is reasonable and equitable to both parties. As one arbitrator put it: the arbitrator should " look at the language in the light of experience and choose that course which does the least violence to the judgment of a reasonable man."

3. **Avoiding harsh, absurd or nonsensical results:** When one interpretation would bring just and reasonable results and another would lead to harsh, absurd or non-sensical results, the former will be used.

4. **Forfeitures or penalties:** Both arbitrators and courts are reluctant to assess a penalty or forfeiture if another interpretation is reasonably possible. On the other hand, many arbitrators are inclined to rule that some "remedy" (including back pay and even interest in some cases), is appropriate in certain types of cases. The question of remedies is one of the most controversial for arbitrators, unions and employers.

5. **Experience and training of negotiators:**Arbitrators are less inclined to apply a strict construction of language where the negotiators are inexperienced. The assumption is that the rules and practices were better understood by the parties than the words by which they tried to express such practices. This liberal attitude would not be taken with experienced negotiators who were known to have scrutinized the language closely.

6. **Interpretation against selecting the language:** When no other rule or standard applies, arbitrators sometimes will rule against the party which drafted the language. The reason is that the drafting party can more easily prevent doubts as to its meaning.

The party whose interpretation of ambiguous language is contracted by an established practice has the obligation in negotiations of clarifying the ambiguity in its favor if the practice is to be discontinued or changed."

ARBITRATION STANDARDS IN DISCIPLINE CASES

88. What standards may serve as guides to arbitrator in arbitrating discipline or discharge cases?

The following standards in the arbitration of discipline cases have been suggested:

1. Prior knowledge by the employee of the rules and penalties for violation

1. foreknowledge or forewarning properly have been given orally by management or in writing through the medium of typed or printed sheets or books of shop rules and penalties for violation thereof

2. there must have been actual oral or written communication of the rules and penalties to the employees. There are, however, certain offenses such as insubordination, coming to work intoxicated, drinking intoxicating beverages on the job, theft of property of the company or of fellow employees which are so serious that any employee in the industrial society may properly be expected to know already that such conduct is offensive and heavily punishable

3. In the absence of any contractual prohibition or restriction,, the company has the right unilaterally to promulgate reasonable rules and give reasonable orders, and same need not have been negotiated with the union.

2. Reasonableness of the company rules in relation to the orderly, efficient and safe operation of company's business.

Under this standard, if an employee believes that said rule or order is unreasonable, he must nevertheless obey the same, in which case, he may file a grievance, unless he sincerely feels that to obey the rule or order would seriously and immediately jeopardize his personal safety and/or integrity. Given a firm finding to the latter effect, the employee may be said to said to have had justification for his disobedience.

3. Employee's "Day in Court" Principle.

Under this standard, it becomes a duty on the part of management that before administering discipline to an employee, there should be an honest effort to investigate whether the employee did in fact violate or disobey a rule or order of the company.

The company's investigation must normally be made before its disciplinary decision is made. If the company fails to do so, its failure may not normally be excused on the ground that the employee will get his day in court through the grievance procedure after the exaction of discipline. By that time has usually been too much hardening of positions.

There may, of course, be circumstances under which management must react immediately to the employees's behavior. In such cases, the normally proper action is to suspend the employee pending investigation, with the understanding that (a) the final disciplinary decision will be made after the investigation and (b) if the employee is found innocent after the investigation, he will be restored to his job with pay time lost.

The company's investigation must also include an inquiry into possible justification for alleged rule violation.

4. Requirement of fair and objective investigation.

At such investigation, the management official may both "prosecutor" and "judge" but he should not also be a witness against the employee. It is essential for some higher, detached

management official to assume and conscientiously perform the judicial role,, giving the commonly accepted meaning to that term in his attitude and conduct.

5. Requirement of substantial evidence or proof that the employee was guilty as charged.

It is not required that the evidence be preponderant, conclusive or beyond reasonable doubt. But evidence must be truly substantial and not flimsy. The management judge should actively search out witnesses and evidence and not just passively take what participants ot "volunteer" witnesses tell him.

6. Requirement of consistent and non-discriminatory application of rules.

A finding of discrimination warrants negotiation or modification of the discipline imposed. If the company has been laxed in enforcing its rules and decides henceforth to apply them vigorously, the company may avoid a finding of discrimination by telling all employees beforehand of its intent to enforce hereafter all written rules.

7. Requirement of reasonableness and appropriateness of the penalty depending on the seriousness of the employees' proven offense and the employment record of the employee.

A trivial offense does not merit harsh discipline unless the employee has properly been found guilty of the same or other offenses a number of times in the past. There is no rule as to what number of previous offenses constitutes a "good ","fair" or a "bad" record. Reasonable judgment thereon must be used.

An employee's record of various offense should not be used to discover whether he was guilty of the immediate or latest offense. The only proper use of his record is to help determine the severity of discipline once he has properly been found guilty of the immediate offense.

89. To what extent may arbitrators review the penalties imposed by management?

One view maintains that the determination of the penalty for misconduct is properly a function of management and that an arbitrator should hesitate to substitute his judgment and discretion for that of management. Elaborating this view, Arbitrator Whitley P. McCoy states:

Where an employee has violated a rule or engaged in conduct meriting disciplinary action, it is primarily the function of management to decide upon the proper penalty. If management acts in good faith upon a fair investigation and fixes a penalty not inconsistent with that imposed in other like cases, an arbitrator should not disturb it. The mere fact that management has imposed a somewhat different penalty or a somewhat more severe penalty than the arbitrator would have, if he had the decision to make originally, is no justification for changing it. The minds of equally reasonable men differ. A consideration which would weigh heavily with one man seem of less importance to another. A circumstance which highly aggravates an offense in one man's eyes may be only slight aggravation another. If an arbitrator could substitute his judgment and discretion for the judgment and discretion honestly exercised by management, then the functions of management would have been abdicated, and unions would take every case to arbitration. The result would be as intolerable

to employees as to management. The only circumstances under which a penalty imposed by management can be rightfully set aside by an arbitrator are those where discrimination, unfairness, or capricious and arbitrary action are proved – in other words, where there has been abuse of discretion.

The "unreasonable, capricious or arbitrary action" standard of review has been repeatedly expressed by many other arbitrators in decided cases cited in the Elkouri and Elkouri.

A less restricted role of the arbitrator in reviewing discipline imposed under agreements requiring cause is expressed by Arbitrator Henry H. Platt:

It is ordinarily the function of an Arbitrator in interpreting a contract provision which requires "sufficient cause" as a condition precedent to discharge not only to determine whether the employee involve is guilty of wrong-doing and, if so, to confirm the employer's but also to safeguard the interests of the discharged employee by making reasonably sure that the causes for discharge were just and equitable and such as would appeal to reasonable and fair-minded persons as warranting discharge. To be sure, no standards exist to aid an arbitrator in finding a conclusive answer to such a question and, therefore, perhaps the best he can do is to decide what reasonable man, mindful of the habits and custom of industrial life and of the standards of justice and fair dealing prevalent in the community, ought to have done under similar circumstances and in the light to decide whether the conduct of the discharged employee was defensible and the disciplinary penalty just.

Finally, it should be recognized that while arbitration do not lightly interfere with management decisions in discharge and discipline matters, the arbitrators are expected to act firmly when management decisions are found to be unjust and unreasonable under all the circumstances. Arbitrator Charles B. Spaulding says:

Three answers to this line of argument seem appropriate. The first is that arbitrators very frequently do step in and upset the decisions of management. The second is that, if arbitrators could not do so, arbitration would be of little import, since the judgment of management would in so many cases constitute the final verdict. Finally, the more careful statement of the principle would probably run to the effect that where the contract uses such terms as discharge for "cause" or for "good cause" or for "justifiable cause" an arbitrator will not lightly upset a decision reached by competent careful management which acts in the full light of all the facts, and without any evidence of bias, haste, or lack of emotional balance. Even under these conditions, if the decision is such as to shock the sense of justice of ordinary reasonable men, we suspect that arbitrators our have a duty to interfere. Since the acts of management in this case do shock our sense of justice, and since they do seem to have occurred in a situation of emotional tension, in haste, and without a very careful weighing of the facts, we find ourselves inevitably driven to overthrow the decision of this management.

90. What are the arbitral remedies in discharge and discipline cases?

The more common remedies utilized by arbitrators in setting aside managerial actions in discharge and discipline cases include the following:

a. if a penalty of discharge is upset through arbitration, the award often will order reinstatement either with back pay, without back pay, or with partial back pay, and often will further order that other rights and privileges shall remain unimpaired; or the discharge maybe commuted to suspension for a specific period, or even to a reduced penalty of only a reprimand or warning;

b. Where a penalty of suspension assessed management is upset through arbitration, the award will either void the suspension completely (sometimes substituting a reprimand or warning), or will simply reduce the length of the time the employee is deemed suspended-in either event back pay will be ordered consistent with the shortened or eliminated period of suspension .

The remedy may, however, be provided in the Submission agreement of the parties from the Arbitrator cannot dictate.

91. What are some violations in arbitral remedies that are less frequently used?

a. **Loss of seniority**. Some employees have been ordered reinstated on the basis that they not be credited with any seniority for the period between discharge and reinstatement. Loss of some seniority that had accrued prior to the discharge is also a possibility.

b. **Loss of other benefits under the agreement**. In denying seniority credit for the period between discharge and reinstatement, arbitrators often prohibit the accumulation of the other agreement-provided benefits during said period.

c. **Probation or final warning**. Some discharged employees have been reinstated on a probation basis (the probation conditions varying from award to award and the probationary periods often ranging from 1 to 12 months), or with a final warning that any repetition of the offense will justify immediate discharge.

d. **Reinstatement conditioned upon some special act or promise by employee**. Reinstatement has been ordered on the condition that the employee resigns his outside job, that he furnishes an indemnity bond required by the employer, that he signs an agreement by which he promises to apply and comply conscientiously with company safety rules, that he accepts counseling from his pastor or some competent social agency, or that the employee complies with some other specified condition.

e. **Written waiver required**. Where the collective agreement arguably might have required back in the event of reinstatement after discharge, a condition to reinstatement was imposed in the form of a requirement that the employee agree in writing to waive back pay.

SOME STANDARDS IN ARBITRATION OF INTEREST DISPUTES

92. What are some standards that serve as guides in the arbitration of interest disputes?

Arbitrators often use some of the following standards in arbitrating interest disputes: 1) prevailing practice, 2) cost of living, 3) living wage, 4) ability to pay, 5) competition, 6) wage pattern, 7) productivity, 8) take-home pay, 9) past practice and bargaining history

93. What should guide the arbitrators in giving effect to the prevailing practice?

Arbitrators usually rely upon precedent, adopting for the parties that which has been adopted by other parties through collective bargaining or, sometimes, as a result of arbitration awards. An award based upon the application of these standards is not likely to be too far from the expectations of the parties, since most persons in the business community have long accepted the idea that there should be no basic inequalities among comparable individuals or groups.

94. What are some limitations on the use of comparative standards based on prevailing practice?

Application of the prevailing practice standard may involve difficulties. First, what is to be the basis of comparison? Is it the entire industry, the particular industry within the area, or the industry in general within the area? After the question is decided, what practice should be determined? Finally, how to apply the practice to the particular company involved in the case should also be determined?

In many cases, strong reasons rest for the case of prevailing practice of the same class of employees within the locality or area. The responsibility of the arbitrator is to determine the appropriate basis for the comparison from the facts and circumstances of the case.

95. If a prevailing practice has already been determined, how should the arbitrator apply the same in a given case?

It would be difficult to apply the standard if the issue does not involve the fixing of the wage rates like the number of paid holidays. However, the application of prevailing wage rates is not so simple and arbitrators often resort to "minor" standards to justify why the employer should not pay the prevailing rates. These reasons include such matters as relative general differentials of skill and training, responsibility, steadiness of employment, hazards of the employment, fringe benefits, established geographical differentials and wage leadership.

96. When and how do arbitrators use cost of living standards in arbitrating interest disputes?

During periods characterized by pronounced changes in living costs, the use of the standard measured in terms of the Consumer Price Index (CPI) makes it possible to measure changes in retail costs of services and commodities and the resulting effect upon the purchasing power of the income of the workers. The CPI reflects the cost of living as of a date about six weeks prior to its issuance or publication.

97. What is the living-wage standard?

The living-wage standard is related to, but not the same as, the cost-of-living standard. The living-wage standard is based upon the idea that the standard of living of workers should be raised to the highest level possible, but more realistic basis for it is the belief that "employees are entitled to wages and salaries sufficient to enable them, through the exercise of thrift and reasonable economy, to maintain themselves and families in decency and comfort and to make reasonable provision for old age."

98. What is the ability-to-pay standard? To what extent should it be applied in the arbitration of interest disputes?

Although it is a generally recognized principle that large profits do not alone justify demands for wages substantially higher than those which are standard within an industry while small profits do not justify the payment of substandard wages, the ability-to-pay criterion is of great importance in the determination of wage rates and other contract benefits.

Employers who have pleaded inability to pay have been held to have the burden of producing sufficient evidence to support the plea. In a number of decided American cases, it has been held that the alleged inability must be more than "speculative" and factors to produce sufficient evidence will result in a rejection of the plea. The payment of reasonable dividends to stockholders and of reasonable salaries to top management has been held to render invalid a plea of inability to pay. Arbitrators should provide any safeguards needed to protect the confidential nature of such evidences.

99. When is the competitive nature of the business standard relevant in arbitrating interest disputes?

Quoting a long line of decided cases, Elkouri and Elkouri explains that a factor which must be given consideration in interest arbitration is the competitive nature of the employer's business. In some respect this is related to the ability-to-pay standard. In other respect it is related to the prevailing-price standard. For these reasons it is generally not considered as an independent standard. Where, however, an employer is engaged in a highly competitive business or is faced with special competitive problems, the arbitrator may specifically point out the competitive nature of the employer's business as a factor to be given special consideration in setting contract terms (sometimes even justifying a wage reduction).

100. What are "wage patterns" as standards in arbitration of interest disputes?

The "pattern" may be defined as a particular kind of solution of collective bargaining issues which has been used on a wide enough scale to be distinctly identified. The pattern standard is obviously related to the prevailing-practice standard and could reasonably be considered merely as one of its aspects. However, it is often spoken of as if it were a distinct criterion.

A "pattern" in wage arbitrations is often stated in terms of a specific number of cents per hour, or it may be stated as a percentage wage increase. For instance, the pattern standard would recognize that where companies or industries A, B, and C have granted several wage increase of 10 cents per hour, related company or industry D should grant a 10 cent increase also. In the application of this standard, stress is placed upon the granting of the same number, amount or percentage of increase granted by others, rather than granting of the same total wage that is paid by comparable employers.

101. How do arbitrators apply productivity standards in wage dispute?

The application of productivity standards proceeds from the recognition that there is a close relationship between the general level of productivity and the general level of wages and that both an increase in wage rates and a reduction in hours may be warranted by increased productivity measured in terms of added output per man-hour.

Increases in productivity can relatively result in decreased wages, decreased prices, increased profits, or some combinations of the three. If the increase in output per man-hour is due to greater effort and to greater skill, there would appear to be no doubt that the gain

should accrue to the benefit of the employees. But if the increase is the result of technological progress or better management, several considerations must be taken into account.

102. When is past practice and bargaining history of special significance in arbitration of interest disputes?

Arbitrator Clark Kerr gave importance to the standard when the parties are negotiating their contract for the first time. He said that the arbitrator considers past practice a primary factor. It is standard form to incorporate past conditions into collective bargaining contracts, whether these contracts are developed by negotiation or arbitration. The fact of unionization creates no basis for the withdrawal of conditions previously in effect. If they were justified before, they remain justified after the event of union affiliation. It is almost axiomatic that the existing conditions should be perpetuated. Some contracts even blanket them in through a general "catch-all" clause.

ARBITRATION AWARD/DECISION

103. How is Award distinguished from an Opinion?

The award is the arbitrator's decision of the case. Often the arbitrator accompanies his award with a written opinion stating the reasons for the award. Under existing laws and procedures, the award must state in clear, concise and definite terms the facts and the basis upon which the award is rendered.

In cases involving monetary claim, the award must specify the amount granted and the formula used in the computation.

The award must be signed by the arbitrator. If rendered by arbitration boards, it must be signed by all the members where a unanimous decision is required, otherwise, it must be signed by at least a majority unless the argument permits the issuance of the award by the neutral alone.

104. What are the elements of a good Decision?

The following essential elements make up the format of a good Decision:

1. Essential preliminary matters like who are the parties, where and when the hearing was held, who appeared for each party, who were the witnesses, whether briefs were filed and if so, when,

2. Statement of the issue, whether stipulated by the parties or as determined by the arbitrator;

3. Contract clauses that bear upon the issues;

4. Background of the dispute, meaning the facts that led to the grievance;

5. Position of the parties;

6. Arbitrator's discussions of the positions as they apply to the background and relevant contract clauses, giving his or her considered conclusion on each argument made and the reasons for it;

7. The award, stating what will happen to the grievance, whether sustained or denied, and, if the former, what will be the remedy.

105. What are some "tips" in writing a Decision?

Atty. Rosa Maria Bautista in the same paper presented at the Institute on Grievance Settlement and Voluntary Arbitration, shared the following tips in writing a decision:

1. Make your award a masterpiece. It should be brief, clear and direct to the point. Every word and sentence count.

2. Enumerate your facts chronologically based on the stipulation of the facts by the parties. Be objective in writing the facts. No opinion or conclusion should appear as facts.

3. Refer to the Submission Agreement and attach it as Annex "A" since this is the basis of your authority.

4. Have the Supreme Court in mind when you write your award. Remember that the Justices are very busy and that if your award is twenty pages or more, they may not have the time to read your award fully.

5. If you write in English, be sure that your grammar is correct. Otherwise, you may go down in history (seldom do you have a chance to have your work elevated to the Supreme Court) as the arbitrator whose verbs and tenses do not agree with one another. Continue to improve yourself. Grow in the law, in English, and in style. Use short sentences. If you can still delete a sentence or a word, your award is still not tight and concise.

6. State the issue/s directly and simply. Avoid verbosity. Phrase and rephrase the issue/s until an ordinary layman can read your statements and not be confused. Formulate the issue or issues in the form of questions, if possible.

7. State your decision by answering the question or questions in either yes or no. Then tackle the reasons one by one. Cite the specific provisions of the labor law, or the CBA, or the rules and regulations of the company, or the particular policy, or practice. Remember that the intent of the parties (not your own) is the one that matters.

8. Be sure that your award is specific enough to be understood and enforced. If your award or decision will just add to the conclusion, re-draft it, having in mind the justices of the Supreme Court who will read it. While your award or decision may not be questioned on certiorari, write it in such a manner that it can survive a petition for certiorari. It should be more than one that you can defend through all the legal attacks of the learned justices, and most important of all, the admonition of your own conscience.

9. Your award should promote not only industrial peace but your own peace of mind. It should achieve the highest ladder of impartiality and justice, otherwise there is no use being a voluntary arbitrator because the parties will never get you again as their arbitrator.

10. The shorter your award, the less mistakes you commit. But be sure it is complete and can stand alone and needs nothing else besides.

106. What is the period required for a voluntary arbitrator or panel of voluntary arbitrators to render an award or decision?

Unless the parties agree otherwise, it shall be mandatory for the Voluntary Arbitrator or panel of Voluntary Arbitrators to render an award or decision within twenty (20) calendar days from the date of submission of the dispute to voluntary arbitration (Art. 262-A, Labor Code).

In cases involving unresolved wage distortion issues, the period to render an award or decision should be within ten (10) calendar days from the time the case was referred to voluntary arbitration, unless agreed otherwise by the parties in writing (Art. 124, Labor code as amended by R.A. 6727).

107. May the voluntary arbitrator modify his award, by motion or motu propio?

No, the Supreme Court has categorically ruled on this issue in the case of Consolidated Bank and trust Company (Solidbank) Inc. vs. Bureau of Labor relations, et. al., G.R. No. 64962, October 15, 1988. In this case, the voluntary arbitrator did more than justify the original award: he modified it. The High Court reminded the parties that "the arbitration law or jurisprudence on the matter is explicit in its stand against revocation and amendment of the submission agreement and the arbitration award once such has been made. The rationale behind this is that: "An award should be regarded as the judgment of a court of last resort so that all reasonable presumption should be ascertained in its favor and easy mode of obtaining justice, would be merely an unnecessary step in the course of litigation, causing delay and expenses, but not finally settling anything. Notwithstanding the natural reluctance of the courts to interfere with matters determined by the arbitrators they will do so in proper cases where the law ordains them (Arbitration, Manguiat, citing U.S. vs. Geason 175 US 588).

In the interest of justice and industrial peace, however, the consistent stand of the National Conciliation and Mediation Board has been that voluntary arbitrator may modify their original awards or decisions but only to correct typographical or harmless errors that are patently obvious on the face of the award or decision. They may not, however, introduce a substantial amendment to their award or decision in the guise of correcting a harmless or typographical error.

108. Is the decision of a voluntary arbitrator appealable?

No, the decision is final, unappealable and executory after ten (10) calendar days from the receipt of the copy of the award or decision by the parties. (Article 262-A, Labor Code of the Philippines, as amended by republic Act 6715)

However, in the cases of Oceanic Bic Division (FFW) vs. Romero, G.R. No. L-43890, July 16, 1984 SCRA 392 and Mantrade/FMMC Division Employer and Workers Union vs. Bacungan, G.R. No. L-48437, September 30, 1986, 144 SCRA 510, the Supreme Court said that there are exceptions to the rule and these are:

1. want of jurisdiction
2. grave abuse of discretion
3. violation of due process
4. denial of substantive justice
5. erroneous interpretation of the law

In these instances, the Court may review the Arbitrator's decision in a special civil action of certiorari.

109. Are arbitrators bound to follow legal jurisprudence in rendering an award?

A voluntary arbitrator is neither legally normally bound by what another arbitrator has ruled in a previous case. There is nothing in the Labor Code that says so. But where there is a similarity of the parties, the contract and the issues, the present arbitrator would be well advised to take a long and careful look at the earlier decision. If the latter is sound, it would not hurt to follow its precedent, as otherwise, chaos and confusion would result from the conflicting rulings on the same issue between the same parties and arising out of the same contract.

On this matter, an American Arbitrator, Maurice H. Merrill's statement is very relevant: "As to arbitral decisions rendered under other contracts between parties not related to those in the case at hand, usefulness depends upon similarity of the terms and of the situations to which they are to be applied. They must be weighed and appraised, not only in respect to these characteristics, but also with regard to the soundness of the principles upon which they proceed. Certainly, an arbitrator may be aided in formulating his own conclusions by knowledge of how other men have solved similar problems. He ought not to arrogate as his own special virtue the wisdom and justice essential to sound decision. In at least two instances in recent months I have found by investigation that a strong current of arbitral decision had overborne my first impression of the implications of particular language. To yield to this "common sense of most", especially as, on examination, the reason on which it was based carried plausibility, was neither to evade my responsibility nor to sacrifice my intellectual integrity. Contrarywise, it reduced discriminatory application of similar provisions. It enabled me to make use of the wisdom of others who work in the same field."

VOLUNTARY ARBITRATION COST AND SPECIAL VOLUNTARY ARBITRATION FUND

110. What are the responsibilities of the parties in the payment of the cost of voluntary arbitration?

The parties to a collective bargaining agreement shall provide therein a proportionate sharing scheme to pay the cost of voluntary arbitration, including the voluntary arbitrator's fee.

Unless the parties agree otherwise, the cost of voluntary arbitration proceedings and voluntary arbitrator's fees shall be shared equally by the parties out of the funds that they may set aside for the purpose, under their collective agreement.

111. What are the factors to be considered in determining the fee of voluntary arbitrators?

The fixing of the fee of voluntary arbitrator or panel of voluntary arbitrators, whether shouldered wholly by the parties or subsidized by the Special Voluntary Arbitration Fund, shall take into account the following factors:

a. Nature of the case
b. Time consumed in hearing the case
c. Profession standing of the voluntary arbitrator
d. Capacity to pay of the parties; and
e. Fees provided for in the Revised Rules of Court

112. Are there government guidelines in fixing voluntary arbitrator's fee?

In the absence of any agreement fixing the fee of the voluntary arbitrator or panel of arbitrators, the parties and the voluntary arbitrator may use the following schedule of fees approved by the TVAAC for subsidy purposes, and reference guide:

a. Interpretation or implementation of CBA P5,000.00

b. Interpretation or enforcement of company personnel policies/suspension and dismissal/termination P 5,000.00

c. Interpretation or implementation of productivity incentive agreement P 10,000.00

113. May an arbitrator charge fees if the case is withdrawn after he has been selected and a date for hearing is set?

The arbitrator is permitted to charge not only per diem fee but also other fees like cancellation, postponement, rescheduling or administrative fees.

114. Is there a fund provided by the government to subsidize the cost of voluntary arbitration?

Yes, section 33 (f) of republic Act 6715 provides for a Special Voluntary Arbitration Fund (SVAF) which will subsidize the cost of voluntary arbitration including the arbitrator's fees, and such other related purposes to promote and develop voluntary arbitration. The Board shall administer the SVAF in accordance with the guidelines it may adopt upon the recommendation of the Tripartite Voluntary Arbitration Advisory Council, which guidelines shall be subject to the approval of the Secretary of labor and Employment.

115. How is the government subsidy involving voluntary arbitration raised?

Continuing funds for this purpose takes the nature of an amount of fifteen million pesos (P15,000,000) in the General Appropriations Act.

In addition, the Bureau of Labor relations or the regional Offices of the Department of Labor and Employment shall assess employer, for every CBA registration fee of not less than

one thousand pesos (P1,000.00) for the effective and efficient administration of the voluntary arbitration program. The amount collected shall accrue to the SVAF.

116. How my one avail of the government subsidy in voluntary arbitration?

The TVAAC's resolution No. 2, series of 1992 sets the following guidelines for the availment of the voluntary arbitration subsidy:

I. Coverage - Parties to a Collective Bargaining Agreement are qualified to avail of the voluntary arbitration subsidy

II. Cases to be Subsidized - The voluntary arbitration cases which can be subsidized are as follows:

1. unresolved grievances involving the interpretation or implementation of the collective bargaining agreement and those arising from the interpretation or enforcement of company personnel policies;
2. productivity incentive program
3. wage distortion cases and other issues related to wage and salary administration including those resulting from the application of Wage Orders issued by regional Tripartite Wages and Productivity Board;
4. all other cases not falling within the original and exclusive jurisdiction of voluntary arbitrators which are submitted for voluntary arbitration.

III. Amount of Subsidy - Both parties shall be entitled to the following maximum fixed subsidy per case submitted for voluntary arbitration:

a. Interpretation or implementation of CBA
P 10,000.00

b. Interpretation or enforcement of company personnel policies/suspension and dismissal/termination
P 10,000.00

c. Interpretation or implementation of productivity incentive agreement
P 10,000.00

d. Wage distortion cases and other issues related to wage and salary administration including those resulting from the application of wage order issued by Regional Tripartite Wages and Productivity Board P 10,000.00

e. Collective Bargaining Deadlock
P 15,000.00

f. The case is a rights dispute involving two or more issues
P 15,000.00

g.	The case is submitted under the Expedited Voluntary Arbitration Procedure as laid down in TVAAC Resolution No. 2, series of 1999.	P	15,0000.00
h.	The case is submitted under the FLAVAS Program, which shall be paid as follows: P1,000.00 to the legal aid office, P500.00 to to the PAVA local chapter, P3,500.00 to the voluntary arbitrator	P	5,000.00
g.	All other issues	P	10,000.00

IV. Procedure for the Payment of Subsidy

1. Parties availing of the voluntary arbitration subsidy shall accomplish the Request for Subsidy Entitlement Form and file the same with the appropriate regional Branch of the Board together with a copy of the award or decision.

2. The Regional Branch concerned shall immediately act on the request within two (2) days upon receipt thereof. If the conditions for entitlement are satisfied, the Regional Director shall forward the request together with all the required supporting documents to the NCMB executive Director with the recommendation that the request be granted. Once the entitlement to subsidy is established, the amount shall be directly paid by the Board to the voluntary arbitrator concerned. However, in case the arbitrator's fee has been fully paid in advance by the party or parties to the arbitrator concerned, the amount shall be reimbursed to the party or parties availing of the subsidy.

THE FUTURE OF GRIEVANCE PROCEDURE AND VOLUNTARY ARBITRATION

We are quite optimistic about the future of grievance machinery and voluntary arbitration in the settlement of labor disputes.

The hindrances that were identified as contributory to the failure of these two modes of dispute settlement in the past are being addressed. The problem of the high cost of voluntary arbitration fees has been addressed by the creation of the Special Voluntary Arbitration Fund out of the General Appropriation Act and the CBA registration fees. The shortage in the number of available trained, qualified and competent voluntary arbitrators is seriously being addressed by the continuing training programs being initiated and conducted by the National Conciliation and Mediation board, in coordination with non-government organizations.

The legal infrastructure has also been laid down. With the promulgation of Republic Act 6715, voluntary arbitration has been given a fresh impetus, with the expansion of the original and exclusive jurisdiction of voluntary arbitration and those that they may hear and decide upon agreement of the parties.

Administrative support for the program is also very strong. A whole division of the NCMB and its counterpart units in fifteen (15) Regional Branches are tasked to promote the program over a five-year period. The Tripartite Voluntary Arbitration Advisory Council (TVAAC) has also been created solely for the purpose of advising the NCMB on how to promote the voluntary arbitration program. The greater challenge now faces labor and management whose use and support of voluntary arbitration will spell the difference between success and failure.

Republic of the Philippines
Department of Labor and Employment
National Conciliation and Mediation Board
TRIPARTITE VOLUNTARY ARBITRATION ADVISORY COUNCIL
Ground Floor, DOLE Building, Intramuros, Manila
Telephone Numbers: 527-3463; 527-3496; 527-3474

RESOLUTION NO. 1
Series of 1999

AMENDING AND CONSOLIDATING THE GUIDELINES ON THE FEES AND IN THE PROCESSING AND PAYMENT OF SUBSIDY ENTITLEMENT FOR VOLUNTARY ARBITRATION CASES

WHEREAS, Resolutions no. 1, 2 and 3, series of 1997, all of which were passed by the Tripartite Voluntary Arbitration Advisory Council and approved by the Secretary of Labor and Employment on January 6, 1997, established the Guidelines on Expedited Voluntary Arbitration Procedure, revised the Guidelines on the Processing and Payment of Subsidy Entitlement and the Guidelines for Subsidy Under the Free Legal Aid and Voluntary Arbitration Services (FLAVAS) program, respectively;

WHEREAS, these guidelines need to be reviewed periodically particularly in view of the changing times and increasing costs of professional service and other expenses incidental to arbitration of labor disputes;

WHEREAS, to promote acceptance of voluntary arbitration, there is a need to remove the burden of cost from the parties;

WHEREAS, the Council, during its 39th Special Meeting held on 23 April 1999, resolved to revise the Guidelines On Expedited Voluntary Arbitration Procedure and consolidate under one general guidelines, subject to appropriate distinctions as herein provided, all guidelines on subsidies for cases falling under regular and expedited voluntary arbitration procedures as well as cases falling under the FLAVAS program;

WHEREAS, the Council likewise resolved that the subsidy should be provided only to parties who have no capacity to pay the arbitrator's fees;

WHEREFORE, pursuant to the provisions of Republic Act. No. 6715 authorizing the Council to recommend appropriate guidelines on the use of the Special Voluntary Arbitration Fund particularly on subsidy, Resolution No. 3, Series of 1997 is

hereby incorporated and Resolution No. 2, Series of 1997 is hereby amended to read as follows:

I. COVERAGE

The subsidy shall cover all arbitration cases whether involving unionized or non-unionized establishments, upon proof by either or both parties of lack of capacity to pay the cost of arbitration in accordance with no. II herein and subject to the following conditions:

A. **UNDER REGULAR AND EXPEDITED VOLUNTARY ARBITRATION CASES**

The subsidy shall be provided to all arbitration cases involving unionized establishments.

B. UNDER THE FREE LEGAL AID AND VOLUNTARY ARBITRATION SERVICES (FLAVAS) PROGRAM, the subsidy shall be available to the following:

1. Individual workers in establishments with no unions or with no collective bargaining agreements (CBAs);

2. Unions which are still in the organizational stage; and

3. Management of distressed companies and small and medium enterprises (SMEs)

II. PROCEDURES AND REQUIREMENTS

The subsidy is payable to the voluntary arbitrator or to the Chairman and its members in case of panel of voluntary arbitrators except in cases of reimbursement for amounts paid to the arbitrator or panel of arbitrators by either party, in which case it shall be paid to the union or the company, as the case may be.

The request for subsidy shall be supported by the following:

A. Duly-accomplished request for Subsidy Entitlement Form;

B. Copy of Decision or Award;

C. For establishments with CBAs, copy of CBA or Certificate of CBA REGISTRATION;

D. Copy of Submission Agreement;

E. In cases of reimbursement, proof of partial/full payment to the voluntary arbitrator;

F. Waiver from the other party not availing of the subsidy, where appropriate.

All requests, accompanied by the aforementioned documents shall be filed with the appropriate Regional Branch.

III. AMOUNT OF SUBSIDY

A. As a rule, the amount of subsidy shall be **Ten Thousand Pesos (P10,000.00**) for all types of voluntary arbitration cases, except as specified hereunder:

1) **Fifteen thousand pesos (P15,000.00)** shall be provided if:

a) The case is submitted under the Expedited Voluntary Arbitration Procedure as laid down in TVAAC Resolution No. 2, series of 1999.

b) The case is a rights dispute involving **two or more issues**.

c) The case involves **bargaining deadlock**regardless of the number of issues.

2) **Five thousand pesos (P5,000.00)** shall be provided if the case is submitted under the FLAVAS program.

The amount shall be disposed of as follows:
a) P1,000 shall be paid to the office of the legal aid;

b) P500 shall be remitted to the pava regional chapter;

c) P3,500 shall be paid to the voluntary arbitrator

B. In instances where the case is settled through a compromise agreement entered into by the parties with the assistance of the Voluntary Arbitrator, full regular subsidy may be given to the parties should it appear to the satisfaction of the Board that the compromise agreement is not contrary to law, morals, good order and public policy and entered into in good faith and not solely for the purpose of claiming the subsidy. The subsidy under this provision can be availed of by the same parties only once. Any agreement which tantamounts to a mere withdrawal of the case is excluded from coverage of this provision.

C. If both parties avail of the subsidy, the applicable amount shall be applied in accordance with the sharing scheme of the parties per CBA provision. Should the sharing scheme provide for 60-40 or 70-30 or any sharing other than 50-50, for purposes of subsidy, the amount to be provided shall be reversed, the bigger amount will be applied to labor. In the absence of any scheme, the subsidy shall be applied equally. However, in no case shall the subsidy be more than the share of either party in the agreed fees of the arbitrator.

IV. SUPERSESSION CLAUSE

Resolution No. 2, Series of 1997 Providing Guidelines on the Fees and in the Processing of Payment of Subsidy Entitlement for Regular Voluntary Arbitration Cases is hereby amended. Resolution No. 3, series of 1997 providing Guidelines for Subsidy Under the Free Legal Aid and Voluntary Arbitration Services Program is hereby incorporated by reference.

All other resolutions inconsistent with this are hereby superseded.

V. APPROVAL OF THE GUIDELINES

These guidelines shall be subject to the approval of the Secretary of Labor and Employment.

NOW, THEREFORE, the Tripartite Voluntary Arbitration Advisory Council has RESOLVED, as it is hereby **RESOLVED**, that the National Conciliation and Mediation Board shall observe and comply with the guidelines set forth herein as approved by the Secretary of Labor and Employment, in the administration of the Special Voluntary Arbitration fund and in the use of the voluntary arbitration subsidy.

APPROVED.

Manila, Philippines, November 15, 1999

(SGD.) BUENAVENTURA C. MAGSALIN
Chairman

(SGD.) BENEDICTO ERNESTO R. BITONIO, JR.
Member-Government Sector

(SGD.) ROBERTO A. PADILLA
Member-Labor Sector

(SGD.) EDGAR C. RECIÑA
Member-Labor Sector

(SGD.) RANULFO P. PAYOS
Member-Employer Sector

(SGD.) ANIANO G. BAGABALDO
Member-Employer Sector

APPROVED:

(SGD.) BIENVENIDO E. LAGUESMA
Secretary

Republic of the Philippines
Department of Labor and Employment
National Conciliation and Mediation Board
TRIPARTITE VOLUNTARY ARBITRATION ADVISORY COUNCIL
Ground Floor, DOLE Building, Intramuros, Manila
Telephone Numbers: 527-3463; 527-3496; 527-3474

RESOLUTION NO 2.
Series of 1999

ESTABLISHING THE REVISED EXPEDITED PROCEDURES FOR VOLUNTARY ARBITRATION OF LABOR-MANAGEMENT DISPUTES

WHEREAS, Resolution No. 1 series of 1997 was passed by the Council on January, 1997 establishing the Expedited Procedures for Voluntary Arbitration of Labor and Management disputes;

WHEREAS, the Council during its 39th Special Meeting held on 23 April 1999 resolved to amend these guidelines to further promote the expeditious settlement of labor disputes, as follows:

1. The procedures shall apply to **all** voluntary arbitration cases handled by a single voluntary arbitrator involving simple issue/s where hearings, reception of evidences, submission of post hearing briefs/ position papers, if necessary, and promulgation of decision can be completed within **twenty (20) calendar** days from submission of the case to the arbitrator. However, this procedure shall not apply to cases falling under the Free Legal Aid and Voluntary Arbitration Services (FLAVAS) program.

2. The arbitrator shall meet the parties within two (2) days from referral of the case for arbitration. For subsequent hearings, the arbitrator, with the agreement or in consultation with the parties, shall fix the date, time, and place of the hearing.

3. The hearing shall be conducted by the arbitrator in a manner that will expedite full presentation of the evidence and arguments of the parties. The arbitrator shall prepare minutes of the proceedings duly signed the parties and attested to by the arbitrator, and which shall form part of the records of the case.

4. The award shall be in writing, signed by the arbitrator and rendered **within twenty (20) calendar** days from the date the case is submitted for arbitration.

5. In case of compliance with this Resolution, any party who has no capacity to pay the arbitrator's fee and upon approval of the application for subsidy shall be entitled to a maximum subsidy of fifteen thousand pesos (P15,000.00). Such subsidy shall be paid directly to the voluntary arbitrator upon submission of the documentary requirements by the parties.

APPROVED.

Manila, Philippines, November 15, 1999.

(SGD.) BUENAVENTURA C. MAGSALIN
Chairman

(SGD.) BENEDICTO ERNESTO R. BITONIO, JR.
Member-Government Sector

(SGD.) ROBERTO A. PADILLA
Member- Labor Sector

(SGD.) EDGAR C. RECINA
Member-Labor Sector

(SGD.) RANULFO P. PAYOS
Member-Employer Sector

(SGD.) ANIANO G. BAGABALDO
Member-Employer Sector

APPROVED:

(SGD.) BIENVENIDO E. LAGUESMA
Secretary

Department of Labor and Employment
National Conciliation and Mediation Board
TRIPARTITE VOLUNTARY ARBITRATION ADVISORY COUNCIL
Ground Floor, DOLE Building, Intramuros, Manila
Telephone Numbers: 527-3463; 527-3496; 527-3474

RESOLUTION NO 1.
Series of 2001

WHEREAS, on 07 June 1999, The National Conciliation and Mediation Board (NCMB), the Philippine Overseas Employment Administration (POEA), the Seafarer's Unions Group and the Seafarers Employers Group entered into a Memorandum of Agreement adopting the system of voluntary arbitration as a mode of settling disputes between the seafarers and their employers-principals;

WHEREAS, said Memorandum of Agreement covers the Seafarers' Unions and Seafarers' Employers Group in the maritime industry with collective bargaining agreements;

WHEREAS, under said Memorandum of Agreement, unresolved disputes involving seafarers and their employers-principals arising from the interpretation or implementation of the Standard Employment Contract, the Shipping Article, Collective Bargaining Agreement, the interpretation, enforcement of company personnel policies at the worksite, and other employer-employee relations cases involving Filipino seafarers and their employers, principals and contracting partners, including but not limited to causes arising from contracts, disciplinary actions, or other cases shall be submitted to voluntary arbitration for resolution;

WHEREAS, under the said Memorandum, the NCMB has committees to provide subsidy to parties under Special Voluntary Arbitration Fund in defraying the cost of voluntary arbitration under the existing guidelines on availment of subsidy and such other guidelines it may promulgate:

WHEREAS, on 15 November 1999, the Tripartite Voluntary Arbitration Advisory Council (TVAAC) passed Resolution No. 1, Series of 1999 which amends and consolidates the guidelines on fees and on processing and payment of subsidy entitlement for voluntary arbitration cases;

WHEREAS, during the 44th Special Meeting of the TVAAC held on August 11, 2000 at the Office of the National Conciliation and Mediation Board in Manila, the members of the Council have agreed to extend the subsidy to maritime voluntary arbitration cases covered by the aforementioned Memorandum of Agreement, subject to existing guidelines on the availment of subsidy;

WHEREFORE, pursuant to the provisions of Republic Act. No. 6715 authorizing the TVAAC to recommend appropriate guidelines on the use of the Special Voluntary Arbitration Fund particularly on subsidy, Resolution No. 1, Series of 1999 is hereby made applicable also to all maritime disputes as defined under the above-mentioned Memorandum of Agreement.

APPROVED.

Manila, Philippines, 11 April, 2001.

(SGD.) ROLANDO RICO C. OLALIA
Chairperson, TVAAC

(SGD.) BENEDICTO ERNESTO R. BITONIO, JR.
Member-Government Sector

(SGD.) ROBERTO A. PADILLA
Member- Labor Sector

(SGD.) EDGAR C. RECINA
Member-Labor Sector

(SGD.) RANULFO P. PAYOS
Member-Employer Sector

(SGD.) ANIANO G. BAGABALDO
Member-Employer Sector

APPROVED:

(SGD.) PATRICIA A. STO. TOMAS
Secretary

Republic of the Philippines
Department of Labor and Employment
NATIONAL CONCILIATION AND MEDIATION BOARD
Intramuros, Manila

REQUEST FOR SUBSIDY ENTITLEMENT

Pursuant to Revised Guidelines on the Utilization of the Special Voluntary Arbitration Fund on the grant of subsidy, the undersigned party/parties request for

entitlement under the following circumstances (PLEASE CHECK APPLICABLE CONDITIONS):

1. Parties availing of the subsidy

We are party to a duly signed CBA with DOLE.

We are party to a CBA not yet registered with DOLE, a copy of which is attached.

We are a party not represented by duly recognized union.

We are a party belonging to the unorganized sector.

2. Reasons for availing the subsidy

The Voluntary Fund provided in our CBA is insufficient as we are able to shoulder the part of the cost of voluntary arbitrator's fees in the amount of P_____.

Due to financial and budgetary constraints we are unable to pay the remaining balance of the total cost of the proceedings, especially the voluntary arbitrator's fees corresponding to our share.

We have no fund to pay for the voluntary arbitrator's fees.

Other reasons, please specify
_____
_____
_____
_____
_____

3. Procedure Utilized

Expedited Voluntary Arbitration Procedure (decided within 20 calendar days from date of submission to arbitration)

Regular Voluntary Arbitration Case Procedure

Free Legal Aid and Voluntary Arbitration Services (FLAVAS)

4. Relevant information are as follows:

a) Parties:
Union:_____

Management:
_____

b) Name of Arbitrator: _____ Acc. No._____

c) Issue/s involved _____

_____

d) Date Submitted to Arbitration _____
e) Date Submitted for Decision _____

f) Date Decided _____

g) Total Cost of Arbitration (including Counsel/Lawyer's Fees) P _____

Union Share P _____ Management Share P _____

h) Cost-Sharing Scheme under CBA
Union _____% Management _____%

i) Amount Paid to Arbitrator P _____

j) Amount of Subsidy Requested P _____

Payable to Arbitrator

Reimbursable to Requesting Party

The other party is not availing of the Subsidy (Please check if applicable)

In support of this request, we submit herewith the following documentary requirements:

Authenticated copy of the Certificate of CBA Registration

Copy of Unregistered CBA

Photocopy of CBA Provision on Grievance Machinery and Voluntary Arbitration authenticated by both parties (In its absence, cost sharing scheme shall be 50%-50%)

Copy of Submission Agreement

Copy of Decision/Award

Waiver from the other party not availing of the Subsidy, where applicable

Proof of Partial/Full Payment to the arbitrator (for reimbursement only)

Submitted by:

_____
Signature over Printed Name

_____
Position

_____
REQUESTING PARTY

Attested by:

_____
Voluntary Arbitrator

_____
Accreditation Number

Republic of the Philippines
Department of Labor and Employment
NATIONAL CONCILIATION AND MEDIATION BOARD
Regional Branch No. _____

S U M M I S S I O N A G R E E M E N T
FOR EXPEDITED VOLUNTARY ARBITRATION PROCEDURES

Date _____

The parties herein, after exhausting the procedures of the grievance machinery, do hereby agree to adopt the expedited voluntary arbitration procedure pursuant to TVAAC Resolution No. 1, Series of 1999.

TO SUBMIT to arbitration the following issue/s:

_____
_____
_____
_____

TO DESIGNATE AND APPOINT _____
as the voluntary arbitrator

TO ABIDE BY and comply with the Decision/ Order / Resolution / Award of the Arbitrator on the issues submitted for arbitration and to accept the same as final and biding upon the parties herein.

TO PAY the arbitrator's fees in accordance with the proportionate sharing scheme under the CBA and in the absence or insufficiency of funds, to avail of the subsidy pursuant to existing TVAAC guidelines.

EMPLOYER: _____

Address: _____

Telephone No. _____ Fax No. _____

Represented by: _____
Position:_____

UNION: _____

Address: _____

Telephone No. _____ Fax No. _____

Represented by: _____
Position:_____
CONFORME:

_____ _____

Union Management

_____
Voluntary Arbitrator

_____
Date Accepted

Republic of the Philippines
Department of Labor and Employment
NATIONAL CONCILIATION AND MEDIATION BOARD
Regional Branch No. _____

S U M M I S S I O N A G R E E M E N T

Date _____
_____

The parties herein, after exhausting the procedures of the grievance machinery, do hereby agree:

TO SUBMIT to arbitration the following issue/s:

_____
_____
_____
_____

TO DESIGNATE AND APPOINT _____ as the voluntary arbitrator or the following as panel of arbitrators in this case.

1. _____, Chairman
2. _____, Member
3. _____, Member

TO ABIDE BY and comply with the Decision/ Order/ Resolution/ Award of the Arbitrator/Panel of Arbitrators on the issues submitted for arbitration and to accept the same as final and binding upon the parties herein.

TO PAY the arbitrator's fees in accordance with the proportionate sharing scheme under the CBA and in the absence or insufficiency of funds, to avail of the subsidy pursuant to existing TVAAC guidelines.

EMPLOYER: _____
__

Address: _____
_____

Telephone No. _____ Fax No. _____

Represented by: _____
Position:_____

UNION: _____
_____

Address: _____
_____

Telephone No. _____ Fax No. _____

Represented by: _____
Position:_____

CONFORME:

_____ _____
___

Union Management

_____
Voluntary Arbitrator

_____
Date Accepted

R E F E R E N C E S

Arbitration Association of the Philippines (AAP) and Federacion International Abogadas (FIOA). **Voluntary Arbitration Whys and Wherefores** Quezon City: Rex Printing Co., Inc. 1987.

Asian-American Free Labor Institute (AAFLI), Arbitration Association of the Philippines (AAP), Department of Labor (DOL), **Open Symposium on Arbitration**. Quezon City, 1974

Asian-American Free Labor Institute (AAFLI)-Washington, "Contract Interpretation and Application." **Labor Management Arbitration**, Washington, 1975.

Bautista, Rosa Maria J., **Hearing Procedures in Voluntary Arbitration**, Institute on Grievance Settlement and Voluntary Arbitration, Baguio City, 1989.

Diamonon, Jesus B., **The Collective Bargaining Agreement: Its Content, Interpretation and Enforcement**, Institute on Grievance Settlement and Voluntary Arbitration, Bacolod, Cagayan de Oro City, Baguio City and Quezon City, 1989.

Elkouri, Frank and Edna Asper Elkouri, **How Arbitration Works**, 4th ed., Washington, D.C.: Bureau of National Affairs, Inc. 1985.

Fernandez, Perfecto V., **Labor Arbitration**, Quezon City: Tala Publishing Corporation, 1975.

ILO/UNDP/ASEAN Programme on Industrial Relations for Development, **Voluntary and Compulsory Arbitration of Labor Disputes**. International Labour Organization, 1988.

Labor Code of the Philippines, 1985 Edition.

Magnaye, Bienvenido, **Company Personnel Policies**, Institute on Grievance Settlement and Voluntary Arbitration, Bacolod City and Cagayan de Oro City. 1989.

National Conciliation and Mediation Board, Department of Labor and Employment, **Basic Documents on Voluntary Arbitration of Labor-Management Disputes**. Manila, 1992 Revised Edition.

Trade Union Congress of the Philippines, **Manual for Shop Stewards**, Department of Education and Research, TUCP.

TUCP/AAFLI, **Voluntary Arbitration in the Philippines, How to Make it Work**, 1981.

Republic Act No. 6727.

Republic Act No. 6971.

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