Labor Arbitration Roadmap Series: Roadblocks, Bumps & Detours

Webinar – October 9, 2013 – 2:00 p.m. ET

PROGRAM SUMMARY

Speakers: Kathryn VanDagens, Esq. and Michael Long, Esq.

This webinar will address advanced in-depth issues pertaining to evidence. Learn how to manage the roadblocks, bumps and detours that you may face when preparing for your grievance arbitration. Documentary evidence may be an essential part of the case. Properly presented documentary evidence can be most persuasive and merits careful handling. What evidence do you need to introduce and what do you need to do to introduce and show it? Don’t be mislead by the misnomer that the “facts speak for themselves”! The facts are what the evidence establishes. Arguments are the reasons why those facts should affect the outcome of the grievance. Attendees will learn strategies on how to offer your best evidence.

AGENDA

2:00 p.m. Welcome and Introduction of Speakers (5 minutes)

2:05 p.m. Goals for the Session (5 minutes)

2:10 p.m. What you Need to Avoid the Roadblocks, Bumps & Detours” (70 minutes)

- Hearsay – Why do Arbitrator Care About it?
- Introducing Documentary Evidence
- What Should You be Introducing?
- Medical Evidence
- Getting the Evidence In
- What do you Need to do to Introduce and Show it?
- Parol Evidence Rule
- Rules of Evidence
- Investigations
- Privacy Issues
- Direct Testimony
- Past Practice
- How to Put on your Witness

3:20 p.m. Conclusion and Questions (10 minutes)

3:30 p.m. Evaluation (5 minutes)

3:35 p.m. Adjourn
Current Employer-Title  Oakland University - Chair & Associate Professor, Department of Human Resource Development; Self-employed - Arbitrator, Attorney

Occupation  Educator - Attorney

Experience  Attorney since 1973, Practice limited to service as arbitrator, sole practitioner. Director of Oakland University's Ken Morris Center for the Study of Labor and Work. Associate Professor of Human Resource Development since 1988, Chair of the Department of Human Resource development since 2003; Courses in business, employment and labor law, collective bargaining, ethics, arbitration, labor/management cooperation and business policy. Considerable experience in labor relations; labor and management. Permanent Arbitrator, Chrysler & UAW; Oakland County & Oakland County Employees' Assn.; US Postal Service and APWU and NALC.

Work History  Arbitrator and Attorney, Self-employed, 1973-present; Chair & Associate Professor, Department of Human Resource Development and Director of the Ken Morris Center for the Study of Labor and Work, Oakland University, 1988-present; Administrative Manager, Dunnage Engineering, 1987-88; Assistant Professor, School of Business, University of Detroit, 1984-88; Attorney, Michigan AFSCME Councils 23 and 25, 1974-82; Probation Officer, Adult Felony Division and Drug Enforcement Division, Detroit Recorder's Court, 1968-73.

Education  University of Detroit (AB-1968); Detroit College of Law (JD-1973).

Professional Associations  National Academy of Arbitrators; American Bar Association; Michigan Bar Association (ADR Section); Labor & Employment Research Association (International Chapter; Detroit Chapter, Past President; Mid-Michigan Chapter, Past President); American Association of University Professors.


Publications and Speaking Engagements  COMPILATION OF COLLECTIVE BARGAINING AGREEMENT PROVISIONS, May 2004; COLLECTIVE BARGAINING SIMULATION, FROM EMPLOYEE HANDBOOK TO BARGAINED CONTRACT, 10th ed.

**Alternative Dispute Resolution Training**
AAA Chairing an Arbitration Panel:

**Compensation**
$950.00 Per Day
Cancellation Fee: $750.00 for each hearing day cancelled within 15 days of established hearing date; $475.00 for each day cancelled after hearing is scheduled, but prior to 15 days of the established hearing date.

**Citizenship**
United States of America

**Locale**
Rochester Hills, MI
Contact  American Arbitration Association  
13455 Noel Road - Suite 1750  
Dallas, TX 75240  
telephone: 972-702-8222  facsimile: 855-267-4082

Kathryn A. Van Dagens, Esq.

Current Employer-Title  Self-employed

Occupation  Attorney - Labor and Employment Law

Experience  Presently working exclusively as a labor and employment neutral; experience in many industries and dealing with a variety of issues including contract interpretation and discipline and discharge. Previously, extensive private practice exclusively in labor and employment law. Represented management, union, and individual clients. Extensive experience in federal, state, and administrative forums. Also experienced in public sector labor law, including unfair labor practices and elections/representation matters. Represented clients in numerous disciplinary and contract dispute arbitrations. Also represented individuals under state tenure law in hearings before boards of education and State Tenure Commission, as well as representing individuals in employment discrimination matters and constitutional claims in administrative, state, and federal forums. Represented employers and employees in unemployment compensation and wage and hour matters. Additional experience creating affirmative action plans and reviewing and drafting personnel policies and handbooks. Arbitrator and fact-finder for the Michigan Employment Relations Commission since 1999; member of the Rules Subcommittee. Labor arbitrator for the Federal Mediation and Conciliation Service since 2000. Member of the Detroit City Changer Cases permanent panel. Case evaluator for Ingham County Circuit Court in labor and employment cases.

Issues  Absenteeism, arbitrability, bargaining unit work, contract interpretation/application, demotion, discharge/discipline, discrimination, drug/alcohol offenses, fringe benefits, health/hospitalization, holidays and holiday pay, job performance, job posting/bidding, jurisdictional disputes, layoff/bumping/recall, management rights, off-duty conduct, overtime, past practices, retirement, safety/health concern, scheduling of work, seniority, sexual harassment, subcontracting/contracting out, tenure, union security, violence/threats, wages.

Industries  Aerospace, agriculture, automotive, banking, beverage, broadcasting, clerical, communications, construction, corrections, education, entertainment/arts, federal sector, food, furniture, grain mill, health care, hospital/nursing home, hotel/restaurant, insurance, local government, machinery, manufacturing, office workers/clerical, organizations, police and fire, printing and publishing, public sector government, public works, pulp and paper, real estate, retail stores, services, transportation, utilities.

Kathryn A. Van Dagens, Esq.

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**Permanent Arbitrator**  Office of the State Employer & Michigan Public Employees/SEIU Local 517M; Office of the State Employer & United Techical Employees Assoc/SEIU Local 517M; Wayne State University & WSU Chapter of the AAUP-AFT Local 6075; Allegan Area Educational Service Agency Board of Education and the Educational Staff Association of Allegan Intermediate MEA/NEA; City of Grand Rapids & Association of Public Administrators of Grand Rapids; United Mine Workers of America & Bituminous Coal Operators Association.

**Work History**  Arbitrator and Attorney, Self-employed, 1997-present; Visiting Assistant Clinical Professor, Adjunct Professor and Instructor, Michigan State University College of Law, 2000-present; Senior Shareholder/Associate, White, Przybylowicz, Schneider & Baird, P.C., 1988-97; Associate, Labor Department, Foster, Swift, Collins & Coey, P.C., 1986-88.

**Education**  Michigan State University (BA, Journalism, with honors-1983); University of Michigan (JD-1986).

**Professional Associations**  National Academy of Arbitrators; State Bar of Michigan (Labor and Employment Law Section, Past Council Member; Alternative Dispute Resolution Section); Labor and Employment Relations Association (Mid-Michigan Chapter, Past President).

**Professional Licenses**  Admitted to the Bar, Michigan, 1986.


*Kathryn A. Van Dagens, Esq.*

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Compensation $1,000.00 Per Day
One full per diem for cancellation of hearing within fourteen days of confirmed hearing date; one half per diem ($500.00) for cancellation of hearing within thirty days of confirmed hearing date.

Citizenship United States of America

Locale Lansing, MI

Kathryn A. Van Dagens, Esq.
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M-1. Agreement of Parties

Whenever, by stipulation or in their contract, the parties have provided for mediation or conciliation of existing or future disputes under the auspices of the American Arbitration Association (AAA) or under these procedures, the parties and their representatives, unless agreed otherwise in writing, shall be deemed to have made these procedures, as amended and in effect as of the date of filing of a request for mediation, a part of their agreement and designate the AAA as the administrator of their mediation.

The parties by mutual agreement may vary any part of these procedures including, but not limited to, agreeing to conduct the mediation via telephone or other electronic or technical means.

M-2. Initiation of Mediation

Any party or parties to a dispute may initiate mediation under the AAA’s auspices by making a Request for Mediation to any of the AAA’s regional offices or case management centers via telephone, email, regular mail or fax. Requests for Mediation may also be filed online via WebFile at www.adr.org.

The party initiating the mediation shall simultaneously notify the other party or parties of the request. The initiating party shall provide the following information to the AAA and the other party or parties as applicable:

i. A copy of the mediation provision of the parties’ contract or the parties’ stipulation to mediate.

ii. The names, regular mail addresses, email addresses (if available), and telephone numbers of all parties to the dispute and representatives, if any, in the mediation.

iii. A brief statement of the nature of the dispute and the relief requested.

iv. Any specific qualifications the mediator should possess.
Where there is no preexisting stipulation or contract by which the parties have provided for mediation of existing or future disputes under the auspices of the AAA, a party may request the AAA to invite another party to participate in “mediation by voluntary submission.” Upon receipt of such a request, the AAA will contact the other party or parties involved in the dispute and attempt to obtain a submission to mediation.

M-3. Fixing of Locale (the city, county, state, territory and, if applicable, country of the mediation)

i. When the parties’ agreement to mediate is silent with respect to locale and the parties are unable to agree upon a locale, the AAA shall have the authority to consider the parties’ arguments and determine the locale.

ii. When the parties’ agreement to mediate requires a specific locale, absent the parties’ agreement to change it, the locale shall be that specified in the agreement to mediate.

iii. If the reference to a locale in the agreement to mediate is ambiguous, the AAA shall have the authority to consider the parties’ arguments and determine the locale.

M-4. Representation

Any party may be represented by counsel or other authorized representative.

M-5. Appointment of the Mediator

Parties may search the online profiles of the AAA’s Panel of Mediators at www.aaamediation.com in an effort to agree on a mediator. If the parties have not agreed to the appointment of a mediator and have not provided any other method of appointment, the mediator shall be appointed in the following manner:
i. Upon receipt of a request for mediation, the AAA will send to each party a list of mediators from the AAA’s Panel of Mediators. The parties are encouraged to agree to a mediator from the submitted list and to advise the AAA of their agreement.

ii. If the parties are unable to agree upon a mediator, each party shall strike unacceptable names from the list, number the remaining names in order of preference, and return the list to the AAA. If a party does not return the list within the time specified, all mediators on the list shall be deemed acceptable to that party. From among the mediators who have been mutually approved by the parties, and in accordance with the designated order of mutual preference, the AAA shall invite a mediator to serve.

iii. If the parties fail to agree on any of the mediators listed, or if acceptable mediators are unable to serve, or if for any other reason the appointment cannot be made from the submitted list, the AAA shall have the authority to make the appointment from among other members of the Panel of Mediators without the submission of additional lists.

M-6. Mediator’s Impartiality and Duty to Disclose

AAA mediators are required to abide by the Model Standards of Conduct for Mediators in effect at the time a mediator is appointed to a case. Where there is a conflict between the Model Standards and any provision of these Mediation Procedures, these Mediation Procedures shall govern. The Standards require mediators to (i) decline a mediation if the mediator cannot conduct it in an impartial manner, and (ii) disclose, as soon as practicable, all actual and potential conflicts of interest that are reasonably known to the mediator and could reasonably be seen as raising a question about the mediator’s impartiality.
Prior to accepting an appointment, AAA mediators are required to make a reasonable inquiry to determine whether there are any facts that a reasonable individual would consider likely to create a potential or actual conflict of interest for the mediator. AAA mediators are required to disclose any circumstance likely to create a presumption of bias or prevent a resolution of the parties’ dispute within the time-frame desired by the parties. Upon receipt of such disclosures, the AAA shall immediately communicate the disclosures to the parties for their comments.

The parties may, upon receiving disclosure of actual or potential conflicts of interest of the mediator, waive such conflicts and proceed with the mediation. In the event that a party disagrees as to whether the mediator shall serve, or in the event that the mediator’s conflict of interest might reasonably be viewed as undermining the integrity of the mediation, the mediator shall be replaced.

M-7. Vacancies

If any mediator shall become unwilling or unable to serve, the AAA will appoint another mediator, unless the parties agree otherwise, in accordance with section M-5.

M-8. Duties and Responsibilities of the Mediator

i. The mediator shall conduct the mediation based on the principle of party self-determination. Self-determination is the act of coming to a voluntary, uncoerced decision in which each party makes free and informed choices as to process and outcome.

ii. The mediator is authorized to conduct separate or ex parte meetings and other communications with the parties and/or their representatives, before, during, and after any scheduled mediation conference. Such communications
may be conducted via telephone, in writing, via email, online, in person or otherwise.

iii. The parties are encouraged to exchange all documents pertinent to the relief requested. The mediator may request the exchange of memoranda on issues, including the underlying interests and the history of the parties’ negotiations. Information that a party wishes to keep confidential may be sent to the mediator, as necessary, in a separate communication with the mediator.

iv. The mediator does not have the authority to impose a settlement on the parties but will attempt to help them reach a satisfactory resolution of their dispute. Subject to the discretion of the mediator, the mediator may make oral or written recommendations for settlement to a party privately or, if the parties agree, to all parties jointly.

v. In the event a complete settlement of all or some issues in dispute is not achieved within the scheduled mediation session(s), the mediator may continue to communicate with the parties, for a period of time, in an ongoing effort to facilitate a complete settlement.

vi. The mediator is not a legal representative of any party and has no fiduciary duty to any party.

vii. The mediator shall set the date, time, and place for each session of the mediation conference. The parties shall respond to requests for conference dates in a timely manner, be cooperative in scheduling the earliest practicable date, and adhere to the established conference schedule. The AAA shall provide notice of the conference to the parties in advance of the conference date, when timing permits.
M-9. Responsibilities of the Parties

The parties shall ensure that appropriate representatives of each party, having authority to consummate a settlement, attend the mediation conference.

Prior to and during the scheduled mediation conference session(s) the parties and their representatives shall, as appropriate to each party’s circumstances, exercise their best efforts to prepare for and engage in a meaningful and productive mediation.

M-10. Privacy

Mediation sessions and related mediation communications are private proceedings. The parties and their representatives may attend mediation sessions. Other persons may attend only with the permission of the parties and with the consent of the mediator.

M-11. Confidentiality

Subject to applicable law or the parties’ agreement, confidential information disclosed to a mediator by the parties or by other participants (witnesses) in the course of the mediation shall not be divulged by the mediator. The mediator shall maintain the confidentiality of all information obtained in the mediation, and all records, reports, or other documents received by a mediator while serving in that capacity shall be confidential.

The mediator shall not be compelled to divulge such records or to testify in regard to the mediation in any adversary proceeding or judicial forum.

The parties shall maintain the confidentiality of the mediation and shall not rely on, or introduce as evidence in any arbitral, judicial, or other proceeding the following, unless agreed to by the parties or required by applicable law:

i. Views expressed or suggestions made by a party or other participant with respect to a possible settlement of the dispute;
ii. Admissions made by a party or other participant in the course of the mediation proceedings;

iii. Proposals made or views expressed by the mediator; or

iv. The fact that a party had or had not indicated willingness to accept a proposal for settlement made by the mediator.

M-12. No Stenographic Record

There shall be no stenographic record of the mediation process.

M-13. Termination of Mediation

The mediation shall be terminated:

i. By the execution of a settlement agreement by the parties; or

ii. By a written or verbal declaration of the mediator to the effect that further efforts at mediation would not contribute to a resolution of the parties’ dispute; or

iii. By a written or verbal declaration of all parties to the effect that the mediation proceedings are terminated; or

iv. When there has been no communication between the mediator and any party or party’s representative for 21 days following the conclusion of the mediation conference.

M-14. Exclusion of Liability

Neither the AAA nor any mediator is a necessary party in judicial proceedings relating to the mediation. Neither the AAA nor any mediator shall be liable to any party for any error, act or omission in connection with any mediation conducted under these procedures. Parties to a mediation under these procedures may not call the mediator, the AAA or AAA employees as a witness in litigation or any other proceeding relating to the mediation. The mediator, the AAA and AAA employees are not competent to testify as witnesses in any such proceeding.
M-15. Interpretation and Application of Procedures

The mediator shall interpret and apply these procedures insofar as they relate to the mediator’s duties and responsibilities. All other procedures shall be interpreted and applied by the AAA.

M-16. Expenses

All expenses of the mediation, including required traveling and other expenses or charges of the mediator, shall be borne equally by the parties unless they agree otherwise. The expenses of participants for either side shall be paid by the party requesting the attendance of such participants.

M-17. Cost of the Mediation

A nonrefundable filing fee of $150 is payable by both parties. In addition, the parties are responsible for compensating the mediator at the flat fee of $1,200 for a mediation conference, plus any expenses as referenced in Section M-16. The parties will be billed equally for said costs and expenses, unless mutually agreed otherwise.

Conference Room Rental

The costs described above do not include the use of AAA conference rooms. Conference rooms are available on a rental basis. Please contact your local AAA office for availability and rates.

If you have questions about mediation costs or services visit our website at www.aaamediation.com or contact your local AAA office.
Grievance Mediation Procedures

Notes
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Notes
Click here to go to the Commercial Arbitration Rules

Click here to go to the Commercial Arbitration Rules
Effective 10/1/13

Click here to go to the Construction Arbitration Rules

Click here to go to the Employment Arbitration Rules

Click here to go to the Labor Arbitration Rules