

CHAPTER 7

ARBITRATION IN THE AIRLINE INDUSTRY: SYSTEM BOARDS OF ADJUSTMENT

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The Statutory Duty to Create a System Board of Adjustment

When the Railway Labor Act (RLA) was amended in 1936 to bring airlines and their employees within its scope, Congress gave the National Mediation Board (NMB) the power to establish a National Air Transport Adjustment Board, along the lines of the National Railway Adjustment Board (NRAB). The purpose of this board would be to resolve “minor” disputes—in other words, disputes between employees and carriers regarding the interpretation and application of agreements concerning rates of pay, rules, and working conditions.¹ To date, the NMB has not established a national board for the airline industry.

At the same time, however, Congress imposed an obligation to establish individual carrier system boards of adjustment, at least until a National Air Transport Adjustment Board is established by the NMB.² Section 184 provides, in pertinent part, that “[i]t shall be the duty of every carrier and of its employees, acting through their representatives, . . . to establish a board of adjustment. . . .”³

Few cases have addressed the question of when the duty to create a system board arises. One court has held that there is an obligation to create such a board even in the absence of a representative selected by the employees.⁴ However, subsequent cases have rejected this view, relying instead on the precise statutory wording that the duty to establish an adjustment board to resolve “minor” disputes arises only after an employee representative is voluntarily

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¹45 U.S.C. § 184.

²*Id.*

³*Id.*

⁴*International Ass’n of Machinists v. Air Indies Corp.*, 86 L.R.R.M. 2076 (D.P.R. 1973).

recognized or certified by the NMB.⁵ The RLA “imposes the duty to create a board of adjustment on the employees only when they have selected a representative.”⁶

If employees have selected a collective bargaining representative, the duty to create a system board of adjustment arises by statute and the duty may be enforced in federal court.⁷

The more recent decisions dealing with this issue have followed the *Royale Airlines* reasoning. For example, in *Association of Flight Attendants v. Atlantic Southeast Airlines*, No. CV289-065 (S.D. Ga. Oct. 17, 1989), the district court held that the duty to create a system board of adjustment as set forth in Section 204 of the RLA does not arise until after the parties have entered into a collective bargaining agreement. The court, citing *Flight Engineers International Ass’n, EAL Chapter v. Eastern Airlines*, 359 F.2d 303 (2d Cir. 1966), held that it was logical to assume that, if no board is necessary after the collective bargaining agreement is terminated, then the carrier should not be required to create one before a collective bargaining agreement is established. The court further stated that it would be difficult to imagine how a system board of adjustment would function without a collective bargaining agreement that creates the board, defines its jurisdiction, and sets forth procedures for its operation since the collective bargaining agreement provides the substantive rights that are subject to mandatory arbitration.⁸

Moreover, the carrier and representative may not, by agreement, divest the system board of its statutorily prescribed jurisdiction over a dispute.⁹

⁵ See *Lum v. China Airlines*, 413 F. Supp. 613 (D. Haw. 1976); *Kent v. Fugere*, 438 F. Supp. 560 (D. Conn. 1977).

⁶ *Kent*, 438 F. Supp. at 565.

⁷ See *International Ass’n of Machinists v. Philippine Airlines*, No. C76-888-WTS (N.D. Cal. May 27, 1976); *contra* *Hillis v. Royale Airlines*, No. 84-2332 (W.D. La. Mar. 18, 1985) (no duty to create a system board during the period of time between NMB certification and the effective date of a collective bargaining agreement to resolve employee’s claim of unjust discharge).

⁸ See also *Quick v. Jetstream Int’l Airlines*, 716 F. Supp. 203 (D.C. Md. 1989) (holding that until and unless the carrier and the union enter into a collective bargaining agreement, § 204 imposes no duty upon either the carrier, its employees, or the union to arbitrate any employment disputes).

⁹ See *Brown v. American Airlines*, 593 F.2d 652 (5th Cir. 1979) (holding that dispute arising out of agreement settling grievance is subject to exclusive jurisdiction of system board); *Air Cargo, Inc. v. Local Union 851, Int’l Bhd. of Teamsters*, 114 L.R.R.M. 2742 (E.D.N.Y. 1983); *Panarale v. Air Wisconsin*, 79 L.R.R.M. 2658 (N.D. Ill. 1972) (rejecting a procedure whereby disputes were to be settled by a member of the staff of the Wisconsin Employment Relations Commission).

Statutory Regulation of System Board Composition and Procedures

Section 184 of the RLA does not mandate any specific requirements for arbitration procedures or process be met in the airline industry. Rather, all that is required is that “a system board” be created to handle minor disputes that are not resolved through the carrier’s regular grievance procedure, up to and including the highest operating officer charged with the responsibility of handling such disputes. The parties are left with broad flexibility to determine the makeup of the board and the procedural powers granted to it. The details about the composition of the board, the parameters of its jurisdiction, and the method of its operation are all subjects of negotiation at the bargaining table. Generally these details are worked out during the negotiations of the initial collective bargaining agreement and may be amended in later negotiations of amended agreements. The overriding parameter is “what works for the parties” given their unique cultures.

Typical Structure of an Airline Grievance Procedure and System Board of Adjustment

Generally, a system board consists of an equal number of carrier and union-chosen members. In the event that this board deadlocks, the parties select an additional neutral member whose decision binds the parties. Occasionally, parties may agree to submit the dispute directly to a neutral arbitrator sitting alone who hears the matter without the parties’ system board representatives. However, in the case of some small carriers, agreements provide that disputes that are not resolved in direct meetings with carrier officials are to be referred directly to a neutral, eliminating all intermediate steps.

With respect to the neutral member, again some flexibility exists. Some procedures call for the parties to request a panel of prospective neutral members from the NMB from which one is selected. In other cases, the parties agree upon one or more permanent members, and, where more than one is agreed upon, disputes may be assigned on a rotating basis, or any other basis of selection as agreed upon by the parties. Perhaps most common today is an agreed upon list of arbitrators from which a neutral is selected on an individual basis.

Where a system board consists of only carrier and union members, in other words, no neutral, the nature of the functions of these board members is sometimes unclear. The courts have indicated that, in most situations, these members can be advocates of the parties by whom they were selected.¹⁰

Where the neutral member has sole and final responsibility for deciding a deadlocked dispute, and does so without influence from either side, the impartiality of carrier and union members appears to be of little or no significance, as it would have little impact upon the decision. However, where a majority of the system board members, including the neutral, must join in the decision, there is some support for the proposition that each member has a duty to make his decision impartially.¹¹ Many collective bargaining agreements expressly provide that system board members are free to discharge their duties in an independent manner without fear of retaliation for the unbiased performance of official duties.

Creating an Effective Grievance Procedure

The negotiated establishment of a grievance procedure and system board of adjustment is one area where creativity may pay dividends in labor harmony and efficiency. Procedures can be tailored so that grievances are processed efficiently and frivolous grievances are discouraged without compromising fairness.

To facilitate the orderly flow of grievances, a time limit is often placed on each step in the grievance procedure, including a time limit on the actual filing of grievances. The time limits for filing often range from three days after an employee is disciplined or discharged to 90 days after a carrier's action giving rise to a nondisciplinary grievance. In any case, the grievance procedure should expressly provide that grievances filed after the time limit

¹⁰See *Arnold v. United Air Lines*, 296 F.2d 191, 195 (7th Cir. 1961) (noting that four-member board intended to be "bipartisan rather than impartial and disinterested"); see also *Farris v. Alaska Airlines*, 113 F. Supp. 907, 910 (W.D. Wash. 1953) ("Board Members are not jurors; the Board is bipartisan rather than impartial."); but see *Edwards v. Capital Airlines*, 176 F.2d 755 (D.C. Cir.), cert. denied, 338 U.S. 885 (1949) (finding improper union board members having interests directly adverse to those of grievants); accord *Rychlik v. Pennsylvania R.R.*, 229 F.2d 171 (2d Cir. 1956), rev'd on other grounds, 352 U.S. 480 (1957) (holding that board comprising company and one union's representatives cannot render opinion depriving members of another union of jobs); *Sadler v. Union Pac. R.R.*, 123 F. Supp. 625, amended, 125 F. Supp. 912 (W.D. Pa. 1954) (same).

¹¹*Wells v. Southern Airways*, 517 F.2d 132, 134 n.5 (5th Cir. 1975), cert. denied, 425 U.S. 914 (1976).

are barred from further consideration or submission to the system board. Similarly, the time limits for each step in the grievance procedure should be strictly adhered to.

The grievance procedure should also provide for grievances to be filed in a written form. Such a rule serves to crystallize the actual dispute and prevent later expansion of the scope of the grievance into new areas not raised by the original grievance. Each step in the grievance procedure should also be documented by the parties to build an accurate record should the grievance proceed to the system board.

Negotiating System Board Composition and Procedures

The function of a system board of adjustment is to resolve those grievances that were not withdrawn or settled within the grievance system. Some carriers and unions have adopted innovative dispute resolution procedures to deal with the backlog of cases and the adversarial atmosphere sometimes created by the traditional system board approach. For example, several carriers and unions have developed an "interest-based" approach that includes Notices of Disputes, Quarterly System Boards, Grievance Resolution Conferences (GRC), and Dispute Resolution Conferences (DRC). These procedures envision confidential and nonprecedential resolutions, and, at the DRC level, utilize nonadversarial facilitators, rather than adjudicative arbitrators. The facilitators' recommendations are nonbinding, and employees can choose to progress their grievances to the System Board level for binding arbitration. The NMB's Interest Based Bargaining (IBB) approach to grievance resolution is an excellent program and has also been successful with several carriers/unions.

The nature of these innovative programs serves both carriers and unions. Mediation aims to bring about the voluntary settlement of disputes involving employees and supervisors. Mediation enables the parties to properly understand the true nature of the dispute to facilitate a resolution. The emphasis is on cooperatively resolving the grievance, rather than on "winning." Interest-based and grievance mediation programs are less emotional and confrontational than either litigation or arbitration.

The form of the submission to the system board may also be regulated by the collective bargaining agreement. The agreement

may specify that the parties provide the system board with statements of the question presented, the facts, and the relative positions of the parties. Such a rule reveals areas of agreement and helps the parties to crystallize the question at issue.

System Board Jurisdiction

Understanding the Distinction Between Major and Minor Disputes

Under the RLA, disputes are classified as being either major disputes or minor disputes. Major disputes involve statutory rights, such as matters relating to the negotiation of a new or revised agreement; these types of disputes are not subject to the jurisdiction and mandatory processes of a system board of adjustment. Rather, federal courts have jurisdiction to hear major disputes. Minor disputes concern the interpretation and application of an agreement relating to rates of pay, rules, and working conditions, and are resolved through binding arbitration before system boards of adjustment.¹² Federal courts do not have jurisdiction to resolve the substance of minor disputes.¹³ Rather, arbitration is the “mandatory, exclusive, and comprehensive system” for resolving minor disputes.¹⁴

Restraints on the ability of federal courts to hear claims arising under the RLA have been delineated by a number of cases. For instance, the Supreme Court has held that Section 152 (Fourth) of the RLA primarily addresses the precertification rights and freedoms of unorganized employees.¹⁵ Federal courts are charged with hearing disputes involving the initial step in collective bargaining and the determination of employee representatives.¹⁶ In matters arising after certification, the jurisdiction of the federal courts has been limited to cases where federal courts are the only body that can enforce the provisions of the RLA (e.g., where the fundamental framework for bargaining has broken down or where management has demonstrated antiunion animus in an attempt to destroy the union). However, major disputes can also

¹²45 U.S.C. § 184.

¹³*See, e.g.,* *Airline Prof'ls Ass'n v. ABX Air, Inc.*, 400 F.3d 411 (6th Cir. 2005); *International Ass'n of Machinists and Aerospace Workers v. Alaska Airlines*, 813 F.2d 1038 (9th Cir. 1987).

¹⁴*Hastings v. Wilson*, No. 05-2566, 2007 U.S. Dist. LEXIS 7578 (D. Minn. Feb. 1, 2007) (quoting *Brotherhood of Locomotive Eng'rs v. Louisville & Nashville R.R. Co.*, 373 U.S. 33, 38 (1963)).

¹⁵*Trans World Airlines, Inc. v. Indep. Fed'n of Flight Attendants*, 489 U.S. 426 (1989).

¹⁶*Switchmen's v. Nat'l Mediation Bd.*, 320 U.S. 297 (1943).

arise where an agreement is silent because interpretation of the agreement will not resolve the dispute.¹⁷ A dispute will be deemed major when it concerns rights that do not already exist under an agreement or when it concerns an attempt to create new rights. Therefore, whenever a dispute can be conclusively resolved by interpreting the existing agreement, it will be a minor dispute.¹⁸

Moreover, under the RLA, once a union is certified, the system board of adjustment is put into place and “judicial intervention is generally unnecessary and undesirable.”¹⁹ Where management asserts a contractual right to take action, the ensuing dispute will be classified as a minor dispute if it is “arguably justified” under an existing agreement. Such a dispute is subject to the exclusive jurisdiction of a system board of adjustment.²⁰ “Arguably justified” has been interpreted to mean that the claim is neither obviously insubstantial nor frivolous nor made in bad faith.²¹ Furthermore, courts construe “minor dispute” broadly in a conscious effort to steer as many disputes as possible toward system board resolution because such a forum cuts off any possibility of a strike. Courts have stated that it is a “light burden” of establishing that a dispute is minor, and therefore, subject to system board procedures.²² In close cases, a court should classify a dispute as being minor.²³

For instance, in *Horizon Air Industries, Inc.*, the court held that the system board of adjustment should decide whether a union negotiated away its members’ rights to wear a union pin under their contract.²⁴ Had the board determined that the parties did not reach an agreement over the wearing of union pins, then the union could pursue its rights to wear the pins. Either way, the determination of whether the union members could wear union pins did not involve statutory rights. Rather, it concerned the interpretation of the parties’ agreement because the validity of management’s policy depended on whether the contract restricted the wearing of union pins. Therefore, the dispute was minor.

¹⁷Burlington N. R.R. Co. v. United Transp. Union, 862 F.2d 1266 (7th Cir. 1988).

¹⁸Airline Prof’ls Ass’n v. ABX Air, Inc., 274 F.3d 1023 (6th Cir. 2002).

¹⁹Association of Flight Attendants v. Horizon Air Indus., Inc., 280 F.3d 901, 906 (9th Cir. 2002) (quoting Fennessy v. Southwest Airlines, 91 F.3d 1359, 1362–63 (9th Cir. 1996)).

²⁰See Consolidated Rail Corp. v. Ry. Labor Executives’ Ass’n, 491 U.S. 299 (1989).

²¹*Id.*

²²Railway Labor Executives Ass’n v. Chesapeake Western Railway, 915 F.2d 116 (4th Cir. 1990).

²³Railway Labor Executives Ass’n v. Norfolk and W. Ry. Co., 833 F.2d 700 (7th Cir. 1987).

²⁴Horizon Air Indus., Inc., 280 F.3d at 906.

Additionally, implied terms are part of an agreement. A likely source of implied terms is a management's rights provision, although management does not have to expressly reserve its rights in order to retain discretion on managerial issues not expressly discussed in the agreement.²⁵ One court has held that collective bargaining agreements regulate or restrict management actions, and absent an agreement, managerial actions are not limited except by public law.²⁶ Past practices may also create implied terms of an agreement. Such terms might arguably justify a company's actions.²⁷ It is not the role of federal courts to determine whether implied terms of an agreement actually permit action but only to determine whether the action was arguably justified under implied terms of an agreement. In other words, the primary task of a federal court is to determine whether the dispute presented to it is minor or major.

Other Jurisdictional Concerns Regarding System Boards

Even though, as a general rule, employees must attempt to exhaust grievance procedures before seeking relief in court, federal courts have recognized several exceptions to this rule.²⁸ For instance, even though a federal court cannot decide the merits of a minor dispute, a court can enjoin strikes over minor disputes to enforce compliance with system board procedures.²⁹

Employees can also pursue resolution of a minor dispute in federal court without first exhausting system board procedures when, under an agreement, a union has total discretion to pursue relief under the contractual framework and wrongfully refuses to process an employee's grievance (in violation of its duty of fair representation). In such situations, the employee is relieved of the obligation to exhaust system board procedures before seeking relief in federal court.³⁰ However, the federal court will likely stay the employee's claim until it is established that the union had in fact breached its duty of fair representation. Establishing

²⁵*Appalachian Reg'l Healthcare v. United Steelworkers of Am.*, 245 F.3d 601 (6th Cir. 2001).

²⁶*United Steelworkers of Am. v. Warrior & Gulf Navigation Co.*, 363 U.S. 574 (1960).

²⁷*See Airline Prof'ls Ass'n v. ABX Air, Inc.*, No. 00-4109, 2001 WL 1609934 (6th Cir. Dec. 13, 2001) (unpublished decision).

²⁸*See, e.g., Atkins v. Louisville & Nashville R.R. Co.*, 819 F.2d 644 (6th Cir. 1987).

²⁹*See International Bhd. of Teamsters v. Chautauqua Airlines*, 186 F. Supp. 2d 901 (S.D. Ind. 2001).

³⁰*Newsome v. Northwest Airlines Corp.*, 225 F. Supp. 2d 822 (W.D. Tenn. 2002).

a breach of the duty of fair representation is thus a prerequisite to an employee's right to bring a claim in federal court—it must therefore be resolved first.³¹

The duty to exhaust system board procedures is also excused when an employer's conduct can be construed as a repudiation of the grievance procedures set forth in the agreement.³² In addition, a minor dispute can be brought initially in a federal court where an attempt to follow system board procedures would be wholly futile.³³

Furthermore, some courts have recognized implicitly the right of carriers and unions to limit by agreement the scope of a system board's jurisdiction. In *Texas International Airlines v. Ass'n of Flight Attendants*,³⁴ the district court found no conflict between the RLA and a provision in the collective bargaining agreement that excluded probationary employees from access to system board procedures. As a result, the court held that the system board was without jurisdiction to adjust a probationary employee's grievance.³⁵

In *Whitaker v. American Airlines, Inc.*, the court held that a probationary employee failed to show that any provision of the agreement was violated when he was discharged.³⁶ Therefore, the dispute did not involve the interpretation or application of the agreement, and as such, it was not a minor dispute and not within the jurisdiction of the system board. The employee had no right to compel arbitration and instead had to rely upon common law theories as a basis for any recovery.³⁷ While the parties may limit an employee's substantive rights (e.g., probationary employees may be terminable at will), some courts have held that a collective bargaining agreement may not validly deny probationary employees access to the grievance and arbitration process.³⁸

It is not completely clear whether disputes that may be submitted to the system board are limited to those submitted by the carrier or the representative or may also include those submit-

³¹ *Id.* (citing *Landis v. N. Am. Co.*, 299 U.S. 248 (1936)).

³² *Id.*

³³ *Glover v. St. Louis-San Francisco Ry. Co.*, 393 U.S. 324 (1969).

³⁴ 498 F. Supp. 437 (S.D. Tex. 1980), *aff'd*, 667 F.2d 1169 (5th Cir. 1982).

³⁵ *Accord Adams v. Nw. Airlines*, 48 EMP. PRAC. DEC. (CCH) ¶ 38,596 (E.D. Mich. 1988); *Swanigan v. Western Airlines*, 111 LAB. CAS. (CCH) ¶ 11,086 (Minn. Ct. App. 1986).

³⁶ 285 F.3d 940 (11th Cir. 2002).

³⁷ *Id.* at 947.

³⁸ *Cf. Trans World Airlines v. Sinicropi*, 887 F. Supp. 595 (S.D.N.Y. 1995) (retirement board is a system board of adjustment), *with American Train Dispatchers Dep't of Int'l Bhd. of Locomotive Eng'rs v. Chicago & N.W. Transp. Co.*, 1994 U.S. Dist. LEXIS 17903 (N.D. Ill. 1994) (joint safety committee with limited jurisdiction is a system board of adjustment).

ted by individual employees. The RLA clearly permits railroad employees to submit grievances to the NRAB without union participation.³⁹ Although the language of Section 184 only speaks of submission by the “parties” or either “party,” in 1979, the Supreme Court seemed to leave the door open to possibly requiring a system board to hear a grievance submitted by an individual employee, even if not supported by the employee’s union.⁴⁰

The Third Circuit has held that employees whose claims were the subject of a grievance are proper parties to challenge an adjustment board decision in court, even though the union brought the grievance in its name.⁴¹ The court rejected the argument that “only parties to original proceedings may appeal.”⁴²

The Practical Aspects of Handling a Grievance Before a System Board

Selection of a Neutral Board Member

Unless the parties have designated a permanent neutral board member or panel, an important step in the system board procedure is the selection of a neutral member. Arbitrators are often selected from a panel of neutral arbitrators obtained from the NMB. Once the panel is received, the parties generally examine each proposed member’s background and record of cases decided. Some arbitrators are well known in the industry and require less research. The parties then determine the order for striking the panel members based upon the information obtained. Some procedures permit either party to reject a panel in its entirety if no desirable members appear on the list.

³⁹*See, e.g.,* Miklavic v. USAir, 21 F.3d 551 (3d Cir. 1994) (“[N]othing in the Railway Labor Act prevents an employee from bringing an arbitration on his or her own behalf, without the support of the union.”); Masy v. New Jersey Transit Rail Operations, 790 F.2d 322, 326 (3d Cir. 1986), *cert. denied*, 479 U.S. 916 (1987) (“The Railway Labor Act’s administrative remedy is a statutory grievance procedure that can be invoked by the employee.”); Graf v. Elgin, Joliet & E. Ry., 790 F.2d 1341, 1348 (7th Cir. 1986) (“It is true that the Railway Labor Act, unlike the National Labor Relations Act, permits the worker to bypass the union and file his own grievance.”).

⁴⁰*See* International Bhd. of Elect. Workers v. Foust, 442 U.S. 42, 49 n.11 (1979). *See* Pyles v. United Airlines, Inc., 79 F.3d 1046, 1052 (11th Cir. 1996) (noting that an individual airline employee is entitled to convene special boards of adjustment as a matter of statutory right without union assistance) (citing *Stevens v. Teamsters Local 2707*, 504 F. Supp. 332, 334 (W.D. Wash. 1980)).

⁴¹*McQuestion v. New Jersey Transit Rail*, 892 F.2d 352, 354 (3d Cir. 1990).

⁴²*Id.*

Discovery

The existence and extent of the role discovery plays in regard to the arbitration of grievances has become a highly contentious issue in recent years. Courts have typically been unwilling to permit wide discovery in arbitration because arbitration is supposed to be more expeditious and less complex than litigation.⁴³ To decipher the role of discovery in grievance arbitration, it should be noted at the outset that courts have held that the RLA does not authorize court-ordered discovery because doing so would be “incompatible with the aims and structure of the Railway Labor Act.”⁴⁴ Unlike the National Labor Relations Act, the RLA does not contain a provision creating a broad obligation to disclose information.⁴⁵

However, parties in their collective bargaining agreement often set forth specific provisions governing the role of discovery in the arbitration of grievances. In such cases, an arbitrator has authority to resolve any disputes over these types of provisions because they involve the interpretation of terms contained in a collective bargaining agreement.

In the absence of specific contract language addressing discovery rights, parties often turn to other sources in order to validate their positions on the permissible scope of discovery in grievance arbitration. State arbitration statutes modeled after the Uniform Arbitration Act, the U.S. Arbitration Act, and federal common law are some such sources. Under the Uniform Arbitration Act, the power of the arbitrator is directed solely at the production of evidence at the hearing; it does not include authority to require any prehearing discovery. Thus, the Uniform Arbitration Act does not grant any authority to the arbitrator to employ discovery devices such as interrogatories or requests for admission. Furthermore, state laws are typically not a strong source of support for any discovery argument because federal law controls the enforcement of collective bargaining agreements. Additionally, it is now clear that the U.S. Arbitration Act does not apply to collective bargaining agreements.⁴⁶

⁴³*Comsat Corp. v. Nat'l Science Found.*, 190 F.3d 269 (4th Cir. 1999).

⁴⁴*Pac. Fruit Exp. v. Union Pac.*, 826 F.2d 920, 923 (9th Cir. 1987).

⁴⁵*Air Line Pilots Ass'n v. Trans World Airlines, Inc.*, 729 F. Supp. 888 (D.D.C. 1989); *International Bhd. of Teamsters v. Pan Am. World Airways, Inc.*, 716 F. Supp. 726 (E.D.N.Y. 1989).

⁴⁶*See United Paperworkers Int'l Union v. Misco, Inc.*, 484 U.S. 29 (1987).

Presentation of Evidence to the System Board

As in arbitration hearings, the rules of evidence are relaxed in system board hearings. Where appropriate, evidence of the past practice of the parties should be introduced. Past practice evidence may act as an aid in interpreting ambiguous contract language.

Also, it is often useful to have the notes and copies of proposals made by both the carrier's negotiating team and the union's negotiating team during contract negotiations. This may help the System Board interpret ambiguous contract language. However, it should be noted with the advent of interest-based bargaining (IBB), a party's notes are not subject to being admitted as evidence in an arbitration hearing because doing so would have the effect of chilling the free and open discussions that IBB promotes.

Once the hearing is completed, the parties will often file a written brief rather than present an oral closing argument. The brief serves as a means for the parties to summarize the evidence, the arbitral authority supporting their respective positions, and argue their case. Although each case will be decided on its relative merits, prior arbitral opinions often serve as a guide for the arbitrator and System Board, particularly if from the airline industry.