

The Do's



The Don'ts

Arbitrator Practices: Do's and Don'ts

**Survey Results of
USPS Labor Relations
Specialists**

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Labor-Management Relations in the United States Postal Service

An Introduction



LR SURVEY

- **Genesis**
- **Intent**
- **Methodology**
- **Response**
- **Presentation**



7 BEST & WORST PRACTICES



1. Punctuality
2. Hearing Management
3. Engagement
4. Demeanor
5. Neutrality
6. Special Treatment
7. Quality of Written Decision

PUNCTUALITY

- **DO PRACTICES**

- Consistently on time-
 - To the hearing & ready to start
 - From breaks
 - Issues timely awards

- **DON'T PRACTICES**

- Repeated-
 - No shows
 - Requests to push back hearing time
 - Late arrivals
 - Not ready to start the hearing immediately
 - Tardy from breaks
 - Extension requests and untimely decisions



HEARING MANAGEMENT

DO PRACTICES

- Run a professional hearing
- Organized & prepared
- Cover ground rules & standards
- Clearly defined issue statement(s)
- ID specific source of contract violation
- Mark all exhibits beforehand
- Confirm witness availability
- Limit evidence/argument to grievance file
- Promptly decide objections; enforce ground rules
- Manage hearing time
- Keep hearing on track
- Promptly address incivility



HEARING MANAGEMENT

DON'T PRACTICES

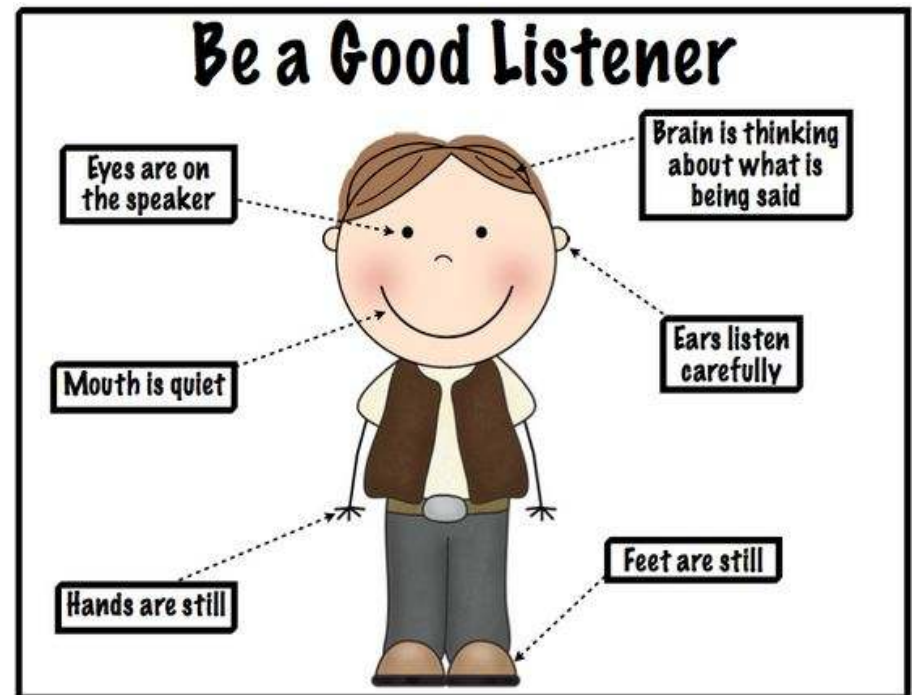


- Does not control the hearing
- Allows hearing to veer off course from accepted issues
- Allows witnesses to ramble on
- Fails to promptly rule on objections/enforce ground rules
- Allows endless point-counterpoint arguments between advocates
- Tells advocates to work out their differences rather than make a ruling
- Always lets in new evidence/argument
- Permits incivility and profanity to go unchecked

ENGAGEMENT

DO PRACTICES

- Visibly engaged throughout the hearing
- Active listening
- Maintain appropriate eye contact with speaker
- Take concurrent notes; use recorder
- Follow along/mark-up presented documents
- Ask appropriate clarifying questions
- Repeat testimony or statements to clarify the record, as appropriate
- Plan to stay the entire hearing day and potentially hearing another case



ENGAGEMENT

DON'T PRACTICES

- On arrival announce early end time for hearing due to arbitrator's travel schedule
- Require advocates to cut witnesses to meet arbitrator's early departure deadline
- Immediately press for settlement
- Repeatedly look at watch; check/compose emails and otherwise fiddle with smartphone during hearing
- Book flights during the hearing
- Take or make calls during hearing
- Rarely ask clarifying questions
- Fail to stay engaged b/c you are recording hearing
- Avoid eye contact; close eyes or read case file during opening/testimony
- Fall asleep



DEMEANOR

DO PRACTICES

- **Maintain appropriate professional demeanor**
 - **Genuine**
 - **Calm**
 - **Courteous**
 - **Cordial**
 - **Respectful**
 - **Decisive**
 - **Firm**





DEMEANOR DON'T PRACTICES

- Arrive in highly agitated state
- Run hearing with agitation, arrogance, anger or disrespect
- Yell, be rude, sarcastic, condescending, short, impatient
- Repeatedly interrupt, argue with, chastise or disparage an advocate
- Bring up politics; trash others
- Inappropriately touch advocates
- Emote that you would rather be somewhere (anywhere) else but at the hearing

NEUTRALITY

DO PRACTICES



- Demonstrate fairness and neutrality to both sides
- Afford both sides a fair opportunity to make their case
- At the conclusion of the hearing ask the parties if they had a full and fair opportunity to present their case

NEUTRALITY

DON'T PRACTICES



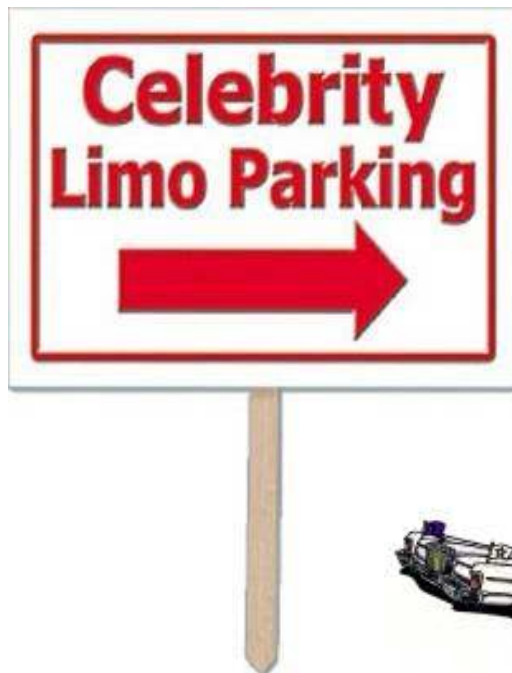
- **Fraternize w/one party/advocate**
- **Opine on an issue in contention before the hearing commences**
- **Make explicit disparaging remarks about one party/advocate**
- **Direct sarcasm or make side comments disfavoring/favoring one side**
- **Coaching one party**
- **Arguing/interrupting one advocate**
- **Unequal approval of witnesses**
- **Allow new evidence, argument into hearing & after record close**
- **Excessive/aggressive witness questioning of one side**
- **Become third advocate; intro new arguments; raise/rule on own objections**
- **Before the record closes, assure the grievant that they will be back to work soon**

SPECIAL TREATMENT **DO PRACTICES**

Do Not Ask for Any



SPECIAL TREATMENT DON'T PRACTICES



- Rides
- Pens, Notepads, Staplers, Paperclips, Post It Notes
- Mail Hearing File
- Personal Copies
- Coffee & Refreshments
- Room Temperature



QUALITY OF WRITTEN DECISION

DO PRACTICES



- Decision resolves the dispute
- Follows structure template
- Briefly summarize background and positions; devote the bulk of decision to analysis of facts, contract language, arguments and decision rational
- Contractually based, including remedies
- Award is based on the evidence of record provided during the hearing
- Decision is clear and concise
- Proofread and spellcheck
- Sustain or deny the grievance

QUALITY OF WRITTEN DECISION

DON'T PRACTICES

- Award does not resolve dispute
- Perils of cut & paste
- Bullet point decisions
- Excessively long awards
- Cites non-postal arbitration decisions
- Creates new contract standards not in CBA
- Incorporates legal standards from other venues not the CBA
- Creative or windfall remedies
- Remand to the parties re: remedies
- Splits the baby
- Decision reflects what arbitrator brings to the hearing not what they take out





FINAL THOUGHTS

- **As you judge others so shall you be judged**
- **It's about professionalism, not just wins/losses**
- **Arbitrator's role: transactional - relational spectrum**
- **Danger in the comfort zone**
- **Feedback loop**