

Survey of NAA Members for 10th Edition of Elkouri & Elkouri, How Arbitration Works (Bloomberg, Fall of 2025).

The National Academy of Arbitrators Research and Education Foundation (NAAREF) funded a grant for a survey of NAA members for utilization in the 2025 revision of Elkouri & Elkouri, How Arbitration Works, published initially by Bureau of National Affairs (BNA) and now electronically by Bloomberg with a PDF available from the American Bar Association Labor and Employment Law Section. The survey focused on typical day-to-day arbitration practices. Survey purposes included confirmation of generally utilized best practices as well as identifying diverse views on several procedural issues.

DISCLAIMER

This study was funded, in part, by a grant from the National Academy of Arbitrators (NAA) Research and Education Foundation (REF). It does not represent the views of the NAA or the REF as organizations. Neither the NAA nor the NAAREF had any role in the presentation, characterization, or interpretation of the data that is the basis of this study.

Of the 580 November 2023 total membership, including approximately 200 inactive members, 232 members voluntarily participated by responding to Survey questions. To capture the invaluable experience and views of labor arbitrators, the Survey included arbitrators who have fully retired or maintain a reduced active caseload. The Survey does not contend that the demographics or comments to individual questions are representative of the entire membership, nor do they state any procedural or substantive position of the NAA or NAAREF. The Editors of the 10th edition of How Arbitration Works, NAAREF Board and NAA President Alan Symonette (2024-2025) thank the 232 NAA members who participated in this survey project.

The 62 questions topics are in the following broad categories:

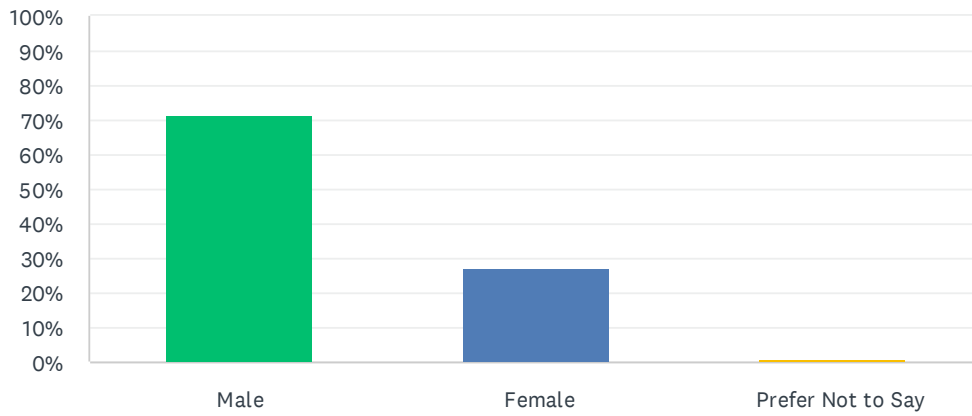
QUESTIONS

- 1-5) Demographics of Responders
- 6-8) Caseload Experience; Settlement Rates
- 9-12) Training; Mentoring
- 13) Arbitrator Docketing Caseload
- 14-16) Disclosures; Social Media
- 17-19) Prehearing Procedures
- 20-31) Issues at Start of Hearing
- 32-36) Evidentiary Issues; Hearsay
- 37-43) Quantum and Burden of Proof
- 44-45) Witness Examination
- 46-50) Remedies; Damages; Back Pay; Interest
- 51-54) External Law Effect
- 55-58) Contract Interpretation
- 59-62) Retention of Jurisdiction

Cite as *NAAREF December 2023 NAA Member Survey* in research, presentations or publications.

Q1 Gender

Answered: 230 Skipped: 2



ANSWER CHOICES	RESPONSES	
Male	71.74%	165
Female	27.39%	63
Prefer Not to Say	0.87%	2
Total Respondents: 230		

Q2 Year of Birth:

Answered: 221 Skipped: 11

#	RESPONSES	DATE
1	1955	12/21/2023 5:04 PM
2	1969	12/18/2023 4:51 PM
3	1947	12/18/2023 9:21 AM
4	1963	12/17/2023 7:22 PM
5	1968	12/17/2023 7:21 PM
6	1953	12/17/2023 5:28 PM
7	1959	12/16/2023 12:39 PM
8	1955	12/16/2023 12:02 PM
9	1947	12/15/2023 11:49 AM
10	1931	12/15/2023 7:09 AM
11	1960	12/15/2023 6:49 AM
12	10/16/34	12/14/2023 9:32 PM
13	1951	12/14/2023 8:33 PM
14	2/19/1939	12/14/2023 8:06 PM
15	1956	12/14/2023 7:48 PM
16	1972	12/14/2023 7:38 PM
17	1946	12/14/2023 6:17 PM
18	1948	12/14/2023 6:05 PM
19	1947	12/14/2023 5:17 PM
20	1954	12/14/2023 5:12 PM
21	1954	12/14/2023 4:13 PM
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23	1954	12/14/2023 3:50 PM
24	1950	12/14/2023 3:42 PM
25	1951	12/14/2023 3:32 PM
26	1945	12/14/2023 3:26 PM
27	1952	12/14/2023 3:26 PM
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33	1953	12/14/2023 3:11 PM

34	1946	12/14/2023 3:09 PM
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36	1956	12/14/2023 3:05 PM
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41	1948	12/13/2023 3:20 PM
42	1938	12/13/2023 2:17 PM
43	1965	12/13/2023 1:42 PM
44	1946	12/12/2023 7:21 PM
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69	1945	12/6/2023 2:40 PM
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NAA REF Survey

SurveyMonkey

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81	1946	12/4/2023 10:40 PM
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97	1954	12/3/2023 4:37 PM
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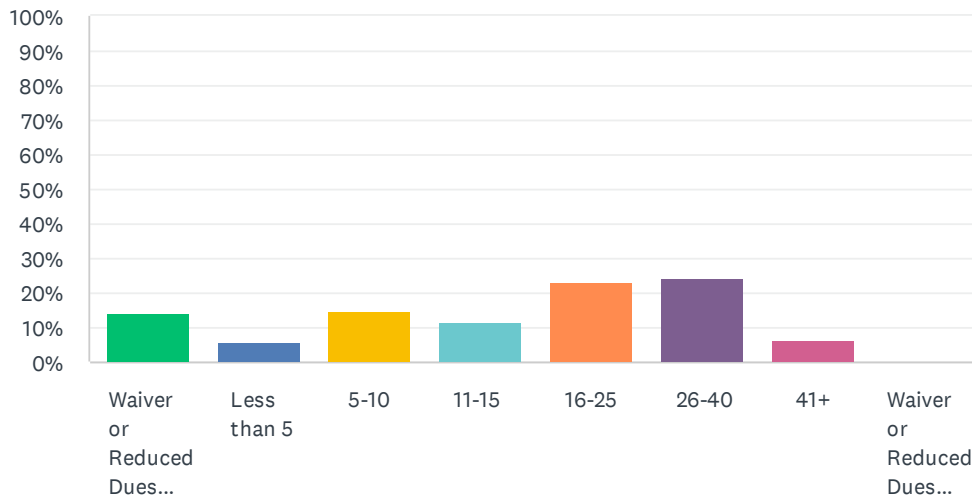
NAA REF Survey

SurveyMonkey

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197	1945	11/29/2023 11:48 AM
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216	1955	11/26/2023 1:47 PM
217	1947	11/15/2023 5:33 PM
218	1947	11/14/2023 12:14 PM
219	1946	11/14/2023 11:53 AM
220	1952	11/13/2023 9:49 PM
221	1941	11/13/2023 2:34 PM

Q3 Years of NAA membership:

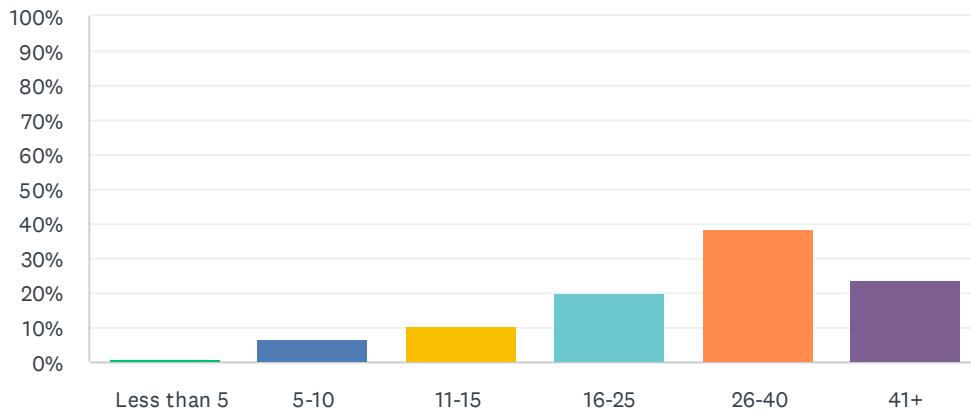
Answered: 228 Skipped: 4



ANSWER CHOICES	RESPONSES	
Waiver or Reduced Dues (Inactive Status)	14.04%	32
Less than 5	5.70%	13
5-10	14.91%	34
11-15	11.84%	27
16-25	23.25%	53
26-40	24.12%	55
41+	6.14%	14
Waiver or Reduced Dues (Inactive Status)	0.00%	0
TOTAL		228

Q4 Years as Labor Arbitrator:

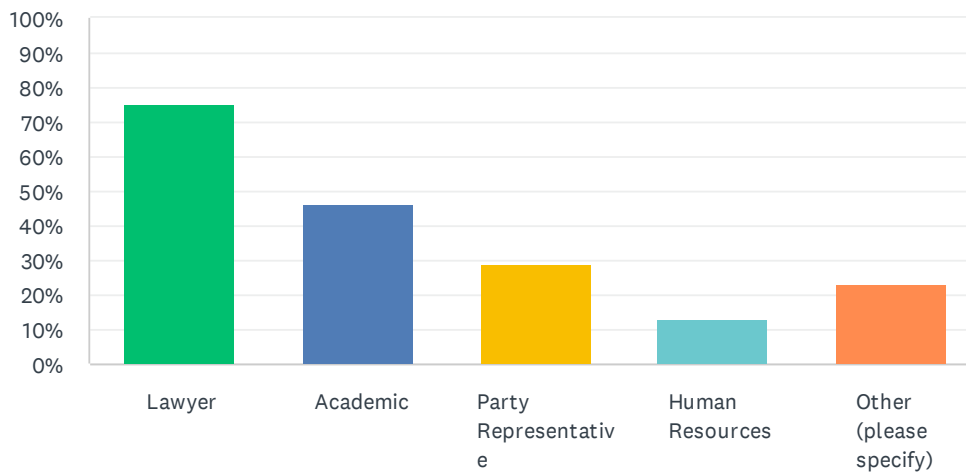
Answered: 230 Skipped: 2



ANSWER CHOICES	RESPONSES
Less than 5	0.87% 2
5-10	6.96% 16
11-15	10.43% 24
16-25	20.00% 46
26-40	38.26% 88
41+	23.48% 54
TOTAL	230

Q5 Check all current and prior roles that apply to you:

Answered: 226 Skipped: 6



ANSWER CHOICES	RESPONSES
Lawyer	75.22% 170
Academic	46.46% 105
Party Representative	28.76% 65
Human Resources	13.27% 30
Other (please specify)	23.01% 52
Total Respondents: 226	

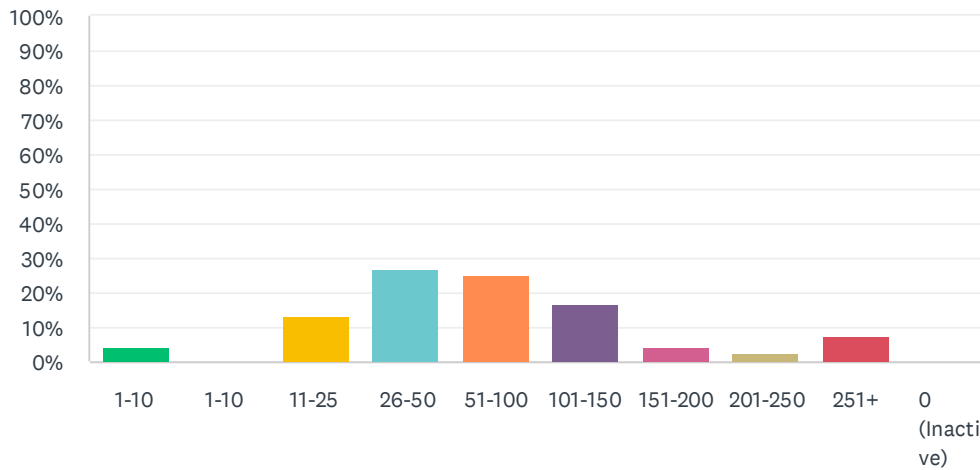
#	OTHER (PLEASE SPECIFY)	DATE
1	Government neutral	12/17/2023 7:22 PM
2	Government Official	12/16/2023 12:39 PM
3	Govt and Union	12/15/2023 7:09 AM
4	General Counsel	12/14/2023 3:53 PM
5	Mediator, ALJ	12/14/2023 3:50 PM
6	Hearing Officer	12/14/2023 3:32 PM
7	Administrative Judge	12/14/2023 3:26 PM
8	Non-profit Management	12/14/2023 3:24 PM
9	Arbitrator	12/14/2023 3:11 PM
10	U.S. Army Military Police Officer	12/14/2023 3:09 PM
11	Arbitrator - Mediator - Factfinder	12/11/2023 3:59 PM
12	Administrative Law Judge	12/11/2023 2:15 PM
13	Wisconsin Employment Relations Commission	12/11/2023 1:59 PM
14	Labor Relations	12/11/2023 10:33 AM

15	Executive Director, Los Angeles City Employee Relations Board; Chairman, Los Angeles County Employee Relations Commission; Chairman, Los Angeles City Employee Relations Board; Chairman, Hermosa Beach Civil Service Board; Instructor, courses in labor relations, at UCLA Extension and Los Angeles CCD	12/10/2023 2:37 PM
16	Labor Relations (Not HR in most companies)	12/10/2023 1:59 PM
17	Personnel consultant	12/9/2023 6:19 PM
18	Labor and Employee Relations	12/9/2023 12:41 PM
19	state labor board hearing officer	12/9/2023 5:54 AM
20	Current: Retired	12/5/2023 1:00 AM
21	Labor Relations	12/4/2023 4:48 PM
22	Federal labor mediator	12/1/2023 2:55 PM
23	Federal Mediator; Executive Director National Commission for Industrial Peace - Direct Presidential Appointment	11/30/2023 4:32 PM
24	ALJ, Mediator	11/30/2023 4:13 PM
25	Hearing Officer	11/30/2023 3:57 PM
26	Government Official	11/30/2023 9:04 AM
27	Labor Relations Agency	11/29/2023 8:54 PM
28	University Professor	11/29/2023 7:17 PM
29	Arbitrator	11/29/2023 6:04 PM
30	Admin Law Judge-State Labor Board	11/29/2023 4:49 PM
31	State Labor Board Hearing Officer	11/29/2023 3:53 PM
32	none of above	11/29/2023 3:25 PM
33	VC Federal Labour Board (Canada)	11/29/2023 3:11 PM
34	Arbitrator	11/29/2023 2:57 PM
35	retired professor-arbitrator	11/29/2023 1:42 PM
36	Public Health Researcher	11/29/2023 1:37 PM
37	neutral arbitrator, mediator, fact-finder	11/29/2023 1:31 PM
38	Retired lawyer academician	11/29/2023 1:25 PM
39	Solely arbitrator	11/29/2023 1:07 PM
40	Labor mediator & factfinder	11/29/2023 12:32 PM
41	Mediator	11/29/2023 12:29 PM
42	Raconteur	11/29/2023 12:23 PM
43	Arbitrator, Mediator, and Impartial Conflict Manager	11/29/2023 12:23 PM
44	Arbitrator, now retired as of late September 2022.	11/29/2023 12:14 PM
45	Arbitrator & Mediator	11/29/2023 12:03 PM
46	Mediator	11/29/2023 11:46 AM
47	Federal Mediator	11/29/2023 11:46 AM
48	Neutral--Federal and State Agencies	11/29/2023 11:42 AM
49	Arbitrator	11/29/2023 11:40 AM
50	Retired	11/29/2023 11:39 AM

51	Mediator	11/29/2023 11:36 AM
52	Executive Director, Los Angeles City Employee Relations Board; Chairman, Los Angeles County Employee Relations Commission; Chairman, Los Angeles City Employee Relations Board; Chairman, Hermosa Beach Civil Service Board	11/14/2023 11:53 AM

Q6 Approximate number of total Appointments in the last 24 months. (Count Railroad or other multiple or expedited cases heard in same hearing as only 1 per block of cases)

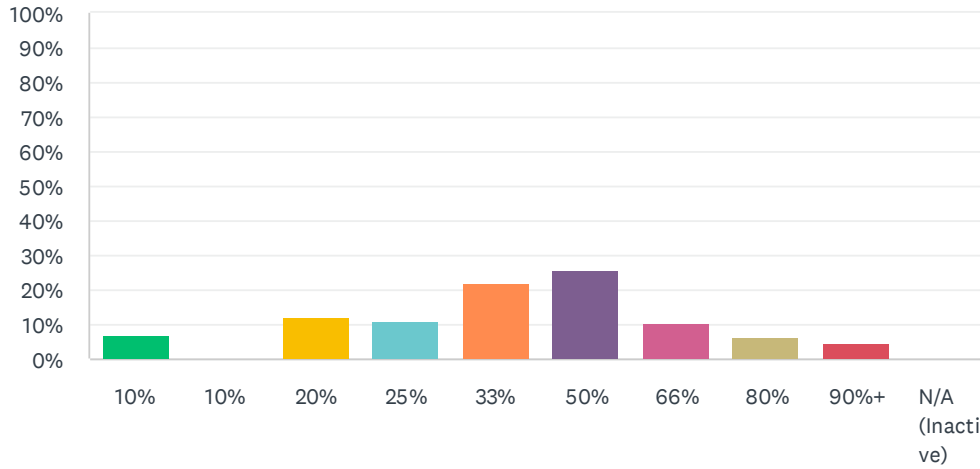
Answered: 225 Skipped: 7



ANSWER CHOICES	RESPONSES	
1-10	4.00%	9
1-10	0.00%	0
11-25	13.33%	30
26-50	26.67%	60
51-100	25.33%	57
101-150	16.89%	38
151-200	4.00%	9
201-250	2.67%	6
251+	7.11%	16
0 (Inactive)	0.00%	0
TOTAL		225

Q7 Approximately what percentage of these cases settled without an award being issued?

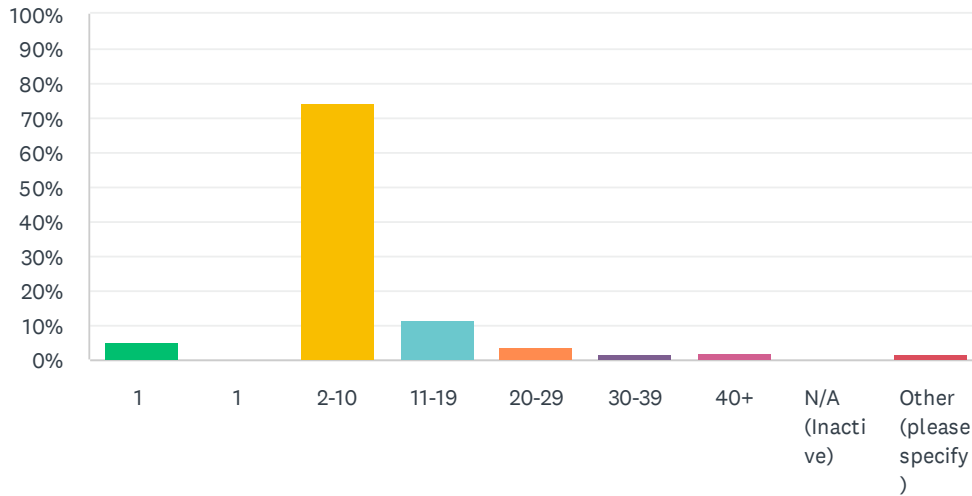
Answered: 216 Skipped: 16



ANSWER CHOICES	RESPONSES
10%	6.94% 15
10%	0.00% 0
20%	12.04% 26
25%	11.11% 24
33%	22.22% 48
50%	25.93% 56
66%	10.65% 23
80%	6.48% 14
90%+	4.63% 10
N/A (Inactive)	0.00% 0
TOTAL	216

Q8 Estimate how many different geographic jurisdictions (U.S. states, territories, Canadian provinces) you have had cases in over the last 2 years?

Answered: 221 Skipped: 11

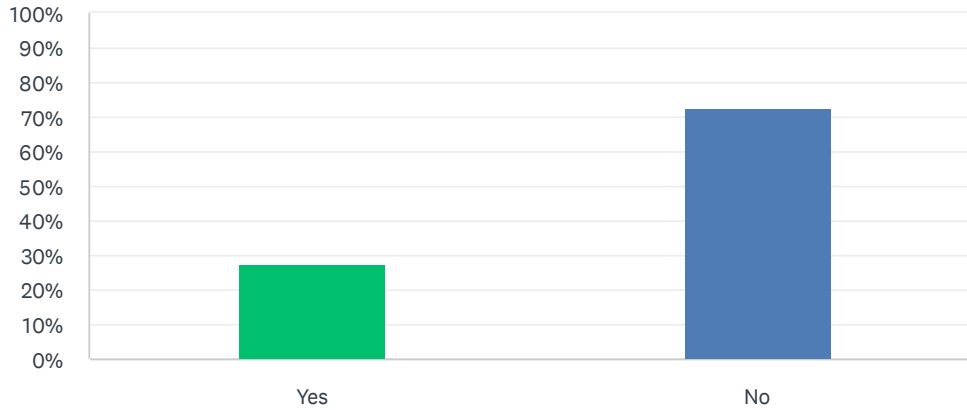


ANSWER CHOICES	RESPONSES	
1	5.43%	12
1	0.00%	0
2-10	74.21%	164
11-19	11.76%	26
20-29	3.62%	8
30-39	1.81%	4
40+	2.26%	5
N/A (Inactive)	0.00%	0
Other (please specify)	1.81%	4
Total Respondents: 221		

#	OTHER (PLEASE SPECIFY)	DATE
1	0% I have been on sabbatical	12/5/2023 11:14 AM
2	Does this mean political/geographic "jurisdictions"?	11/29/2023 1:33 PM
3	Western states practice	11/29/2023 1:24 PM
4	What do you mean by jurisdiction? companies, different government entities, different states	11/29/2023 1:07 PM

Q9 Did you serve as a FORMAL apprentice or mentee for more than 6 months to any labor arbitrator(s)?

Answered: 225 Skipped: 7

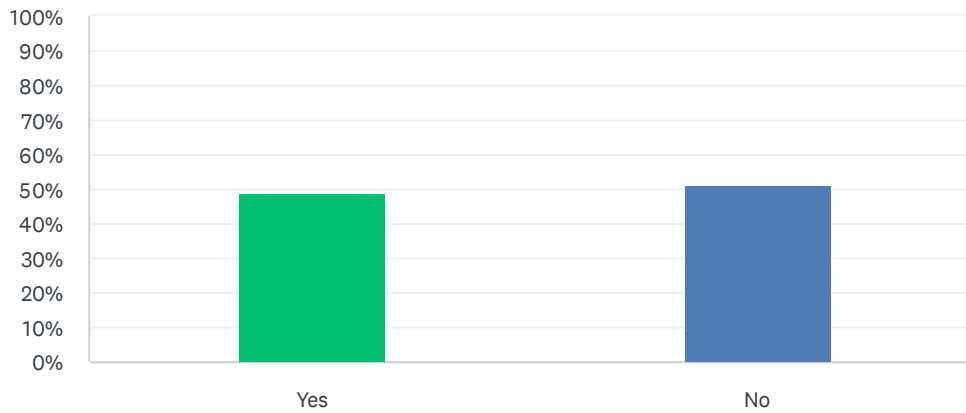


ANSWER CHOICES	RESPONSES
Yes	27.11% 61
No	72.89% 164
TOTAL	225

#	OTHER (PLEASE SPECIFY)	DATE
1	Tried over 2000 arbitrations as a union advocate	12/14/2023 9:32 PM
2	Have provided some advise to new arbitrators in Southern California	12/10/2023 2:37 PM
3	I attended hearings with four NAA members early in my career	12/9/2023 6:19 PM
4	Worked as a law clerk for George Roumell. Attended arbitrations with Alan Walt as part of my training	12/6/2023 11:27 AM
5	adjudicated at a labour relations tribunal	11/29/2023 3:43 PM
6	Mentor to Law Professor in PRD	11/29/2023 3:11 PM
7	All but formal	11/29/2023 12:27 PM

Q10 Did you attend a FORMAL training program or course of study for labor arbitrators under the auspices of the NAA, AAA, FMCS, Cornell or any other entity (not including conferences and educational programs)?

Answered: 226 Skipped: 6

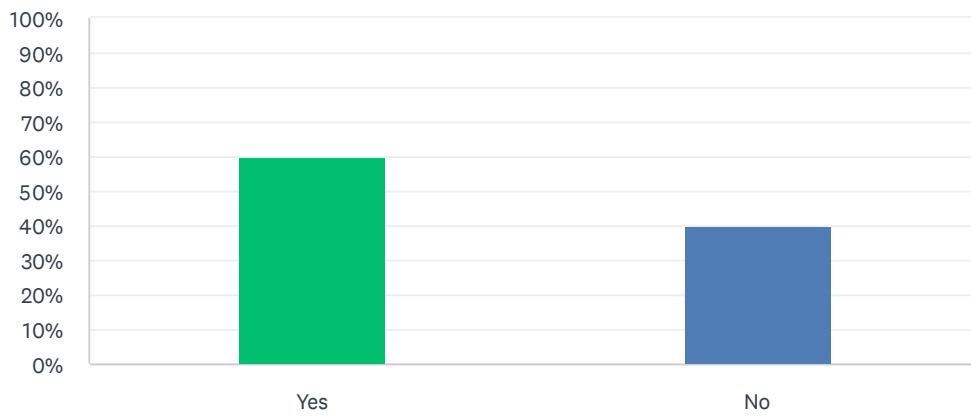


ANSWER CHOICES	RESPONSES
Yes	49.12% 111
No	50.88% 115
TOTAL	226

#	OTHER (PLEASE SPECIFY)	DATE
1	Ontario Ministry of Labour	12/14/2023 4:13 PM
2	I served as mock arbitrator in USW training programs	12/9/2023 6:19 PM
3	AAA, FMCS , MERC & MERC. Also took statutory arbitration training at Cornell	12/6/2023 11:27 AM
4	After law school, I earned a masters degree in Labor Relations.	12/4/2023 11:11 AM
5	As trainer	11/30/2023 3:02 PM
6	FMCS	11/30/2023 2:22 AM
7	Bar Association	11/29/2023 3:11 PM
8	Ontario Ministry of Labour	11/29/2023 2:57 PM
9	OLMAA	11/29/2023 2:37 PM
10	At any time in 35 years?	11/29/2023 1:33 PM
11	BALA	11/29/2023 12:23 PM
12	New York State Bar and New York City Bar Mediation Training	11/29/2023 12:18 PM
13	Again nj PERC NYS patient abuse panel	11/29/2023 11:50 AM
14	I helped run and teach in one for 12 yrs	11/29/2023 11:46 AM
15	FMCS	11/29/2023 11:45 AM
16	Factfinding training by Calif PERB; Classes at UCLA Extension.	11/14/2023 11:53 AM

Q11 Have you formally mentored new arbitrators or novices?

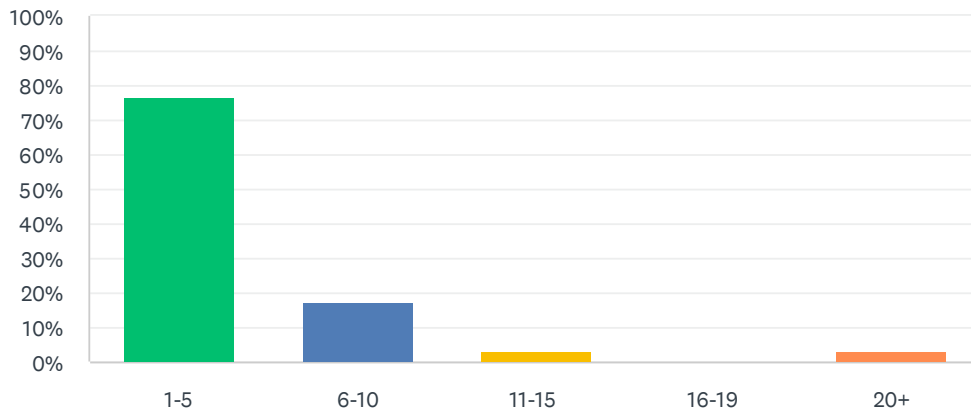
Answered: 229 Skipped: 3



ANSWER CHOICES	RESPONSES
Yes	60.26% 138
No	39.74% 91
TOTAL	229

Q12 If yes, how many?

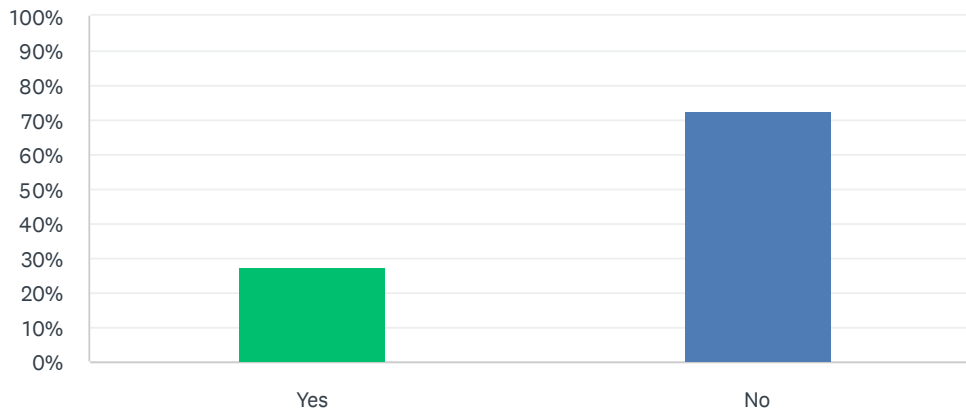
Answered: 138 Skipped: 94



ANSWER CHOICES	RESPONSES	
1-5	76.81%	106
6-10	17.39%	24
11-15	2.90%	4
16-19	0.00%	0
20+	2.90%	4
TOTAL		138

Q13 Do you currently keep track of the outcome of all awards on any type of list or document, such as a docket, independent of maintaining electronic or other copies of the award?

Answered: 224 Skipped: 8

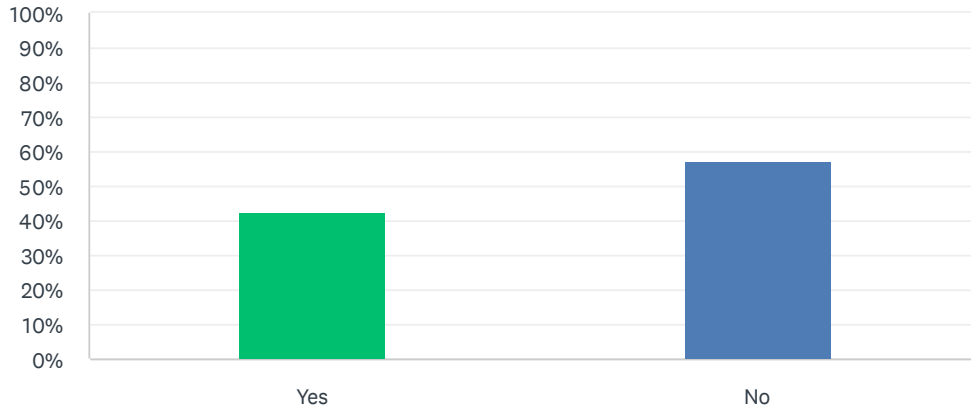


ANSWER CHOICES	RESPONSES
Yes	27.23% 61
No	72.77% 163
TOTAL	224

#	OTHER (PLEASE SPECIFY)	DATE
1	Canadian awards are reported	12/14/2023 3:26 PM
2	I do keep collies of all awards, both electronic and hard copies.	12/10/2023 2:40 PM
3	...but I created the document so I could fill out this survey...	12/9/2023 5:57 AM
4	Not actlve	12/4/2023 4:50 PM
5	I keep careful records of cases, not including outcomes	12/4/2023 11:15 AM
6	my mentors told me NOT to count winners/losers and i agree	11/29/2023 3:27 PM
7	All I.R. awards need to be kept + copy filed with depts of Labour	11/29/2023 3:11 PM
8	I forward completed decisions to Cornell ILR	11/29/2023 1:34 PM
9	Pros dont track percentages	11/29/2023 12:25 PM
10	All awards are kept by year in a computer folder	11/29/2023 12:13 PM
11	I maintain hard copies of all decisions (hoping to scan and save someday!)	11/29/2023 12:10 PM
12	I used to do that.	11/29/2023 11:50 AM

Q14 Are you active on any social or business media platforms, such as LinkedIn, Facebook, or Alignable?

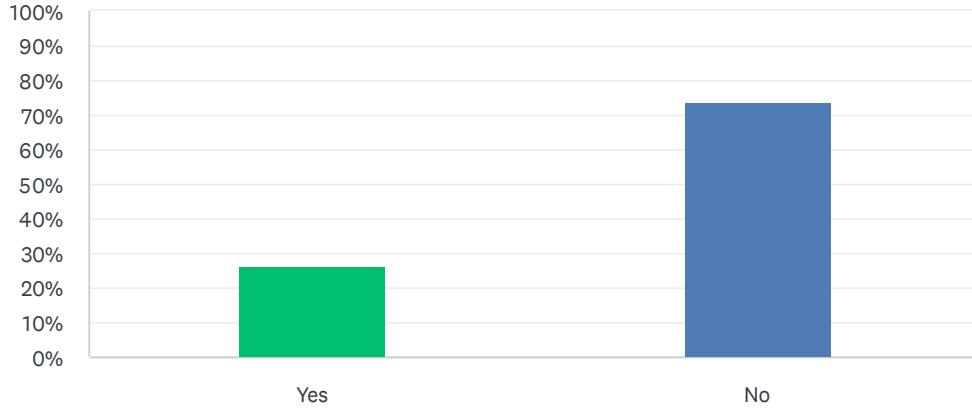
Answered: 228 Skipped: 4



ANSWER CHOICES		RESPONSES	
Yes		42.54%	97
No		57.46%	131
TOTAL			228

Q15 If yes, do you consciously accept or maintain representatives of parties in your network?

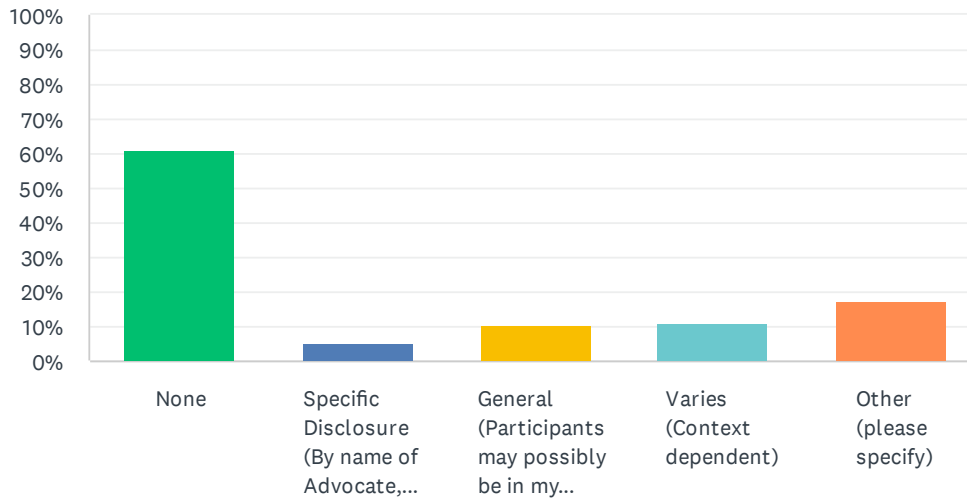
Answered: 133 Skipped: 99



ANSWER CHOICES		RESPONSES	
Yes		26.32%	35
No		73.68%	98
TOTAL			133

Q16 What disclosures do you make to the parties of these in-network connections?

Answered: 154 Skipped: 78



ANSWER CHOICES	RESPONSES	
None	61.04%	94
Specific Disclosure (By name of Advocate, etc.)	5.19%	8
General (Participants may possibly be in my social network)	10.39%	16
Varies (Context dependent)	11.04%	17
Other (please specify)	17.53%	27
Total Respondents: 154		

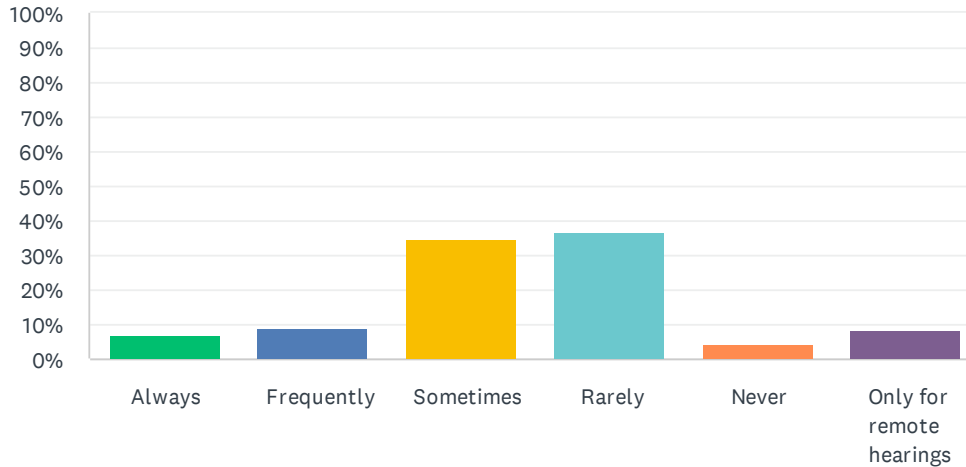
#	OTHER (PLEASE SPECIFY)	DATE
1	I don't maintain representatives of parties in my network	12/18/2023 4:52 PM
2	Don't have any representatives of parties in the network so no need to disclose	12/14/2023 7:50 PM
3	None, since I am not active on social media.	12/11/2023 4:14 PM
4	My LinkedIn page is informational only; I don't correspond with anyone through it, nor do I control who can follow me.	12/10/2023 2:40 PM
5	No disclosure because no connections	12/10/2023 2:39 PM
6	Public social media in my rather unique name are their own disclosure, IMO. Additionally, on those sites I state my occupation/role.	12/9/2023 5:57 AM
7	N/A	12/8/2023 5:12 PM
8	I don't do connections with advocates. Would have to be explained, and it will only raise problems. "Appearance of impropriety"	12/6/2023 11:30 AM
9	Will only accept if they contact me if no mutual matters pending. Maintain social media with those created prior to becoming neutral	12/6/2023 10:06 AM
10	I would not have a client or potential client as a friend on Facebook. As for LinkedIn, I do not	12/4/2023 1:35 PM

believe it to be necessary to disclose that a party is connected to me on that platform because it does not indicate "friendship" with that person, but rather a business relationship.

11	No need to cl m m	12/4/2023 11:15 AM
12	Critical distinction required here for labor vs employment. I know the survey is just re labor, but it is dangerous not to acknowledge the different standard for employment	12/3/2023 4:38 PM
13	I have never been active on any social media platforms	12/1/2023 3:22 PM
14	Questions 15 and 16 are not applicable	11/30/2023 4:35 PM
15	NA	11/29/2023 8:25 PM
16	not applicable	11/29/2023 4:00 PM
17	NA	11/29/2023 3:11 PM
18	not on any	11/29/2023 2:33 PM
19	NA	11/29/2023 12:29 PM
20	Not Applicable. No network connections	11/29/2023 12:24 PM
21	I do not accept advocates in my Linkdin network except those who may have worked in my former law firms. I disclose those prior connections to the parties.	11/29/2023 12:13 PM
22	LinkedIn only with public statement that I do not "link" with ANY advocates	11/29/2023 12:10 PM
23	"I have a LinkedIn site. I do not keep track of my connections."	11/29/2023 11:48 AM
24	No networks, no disclosures	11/29/2023 11:41 AM
25	N/A	11/29/2023 11:36 AM
26	Not applicable	11/15/2023 5:34 PM
27	N/A	11/14/2023 11:56 AM

Q17 Do you conduct a pre-hearing case management conference with both parties by telephone or remote meeting technology?

Answered: 226 Skipped: 6



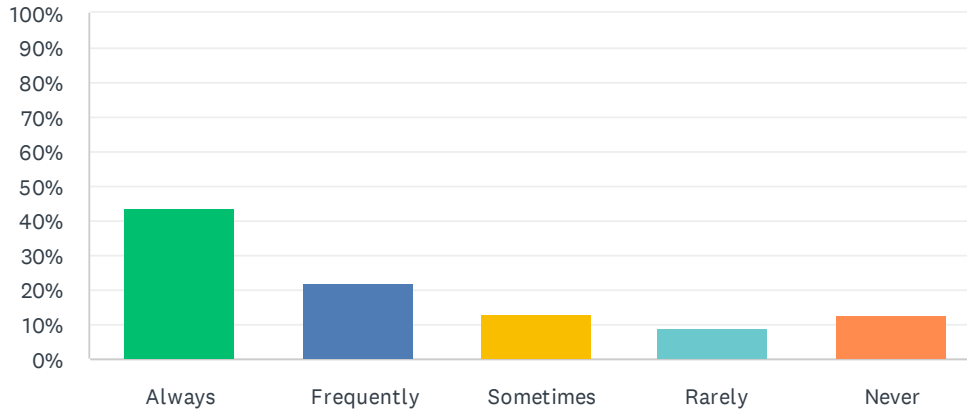
ANSWER CHOICES	RESPONSES	
Always	7.08%	16
Frequently	8.85%	20
Sometimes	34.51%	78
Rarely	36.73%	83
Never	4.42%	10
Only for remote hearings	8.41%	19
TOTAL		226

#	OTHER (PLEASE SPECIFY)	DATE
1	On request in labor cases and always in employment cases.	12/17/2023 5:30 PM
2	Only for Interest Arbitrations	12/14/2023 3:20 PM
3	On request of parties; rarely.	12/10/2023 2:40 PM
4	Only for employment arbitration cases, not for labor cases	12/10/2023 2:39 PM
5	I do for all virtual hearings, rarely otherwise.	12/9/2023 6:23 PM
6	MPPAA cases, Employment cases	12/4/2023 8:56 PM
7	in all employment cases and in labor cases heard by video	11/29/2023 5:47 PM
8	Rarely in labor cases; routinely in other types of cases.	11/29/2023 4:33 PM
9	only on request of the parties	11/29/2023 2:38 PM
10	Did during Covid.	11/29/2023 12:29 PM
11	Always for Employment arbitration cases occasionally for labor arbitration cases	11/29/2023 12:20 PM
12	Only at the request of either party	11/29/2023 11:42 AM

13	On request of parties; rarely.	11/14/2023 11:56 AM
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Q18 Do you issue subpoenas for a witness to appear upon request of a party without waiting to see if there is an objection from the other party?

Answered: 224 Skipped: 8

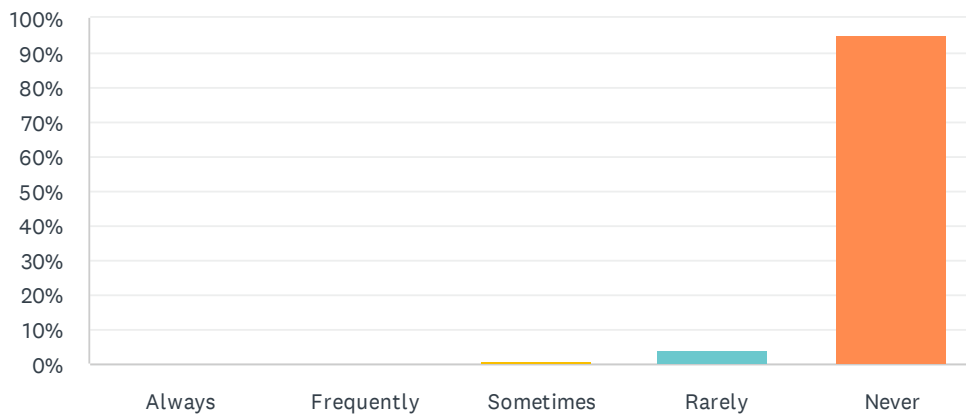


ANSWER CHOICES	RESPONSES
Always	43.75% 98
Frequently	21.88% 49
Sometimes	12.95% 29
Rarely	8.93% 20
Never	12.50% 28
TOTAL	224

#	OTHER (PLEASE SPECIFY)	DATE
1	I just tell requesting parties to sign my name and serve the subpoena while copying the other party to indicate that if they object to the subpoena they can move to quash it.	12/14/2023 3:09 PM
2	Lawyers issue subpoenas and are allowed to sign my name	12/13/2023 3:22 PM
3	Required by California law to issue subpoenas on request signed but otherwise blank.	12/10/2023 2:40 PM
4	Won't sign them in blank. And I insist the other party be notified.	12/6/2023 11:30 AM
5	Objections are addressed via conference call or Executive Session before commencement of hearing.	11/29/2023 9:19 PM
6	But I forward the issued subpoena to the other party, even if they were not copied on the request	11/29/2023 5:07 PM
7	will grant subpoena as long as opposition informed of for whom before I sign subpoena	11/29/2023 2:58 PM
8	Always allowed time for party objection(s)	11/29/2023 11:50 AM
9	I send the signed subpoena to all parties.	11/29/2023 11:48 AM
10	Upon request of either party	11/29/2023 11:42 AM
11	Required by California law to issue subpoenas on request signed but otherwise blank.	11/14/2023 11:56 AM

Q19 Has a subpoena issued by you been challenged in court?

Answered: 221 Skipped: 11

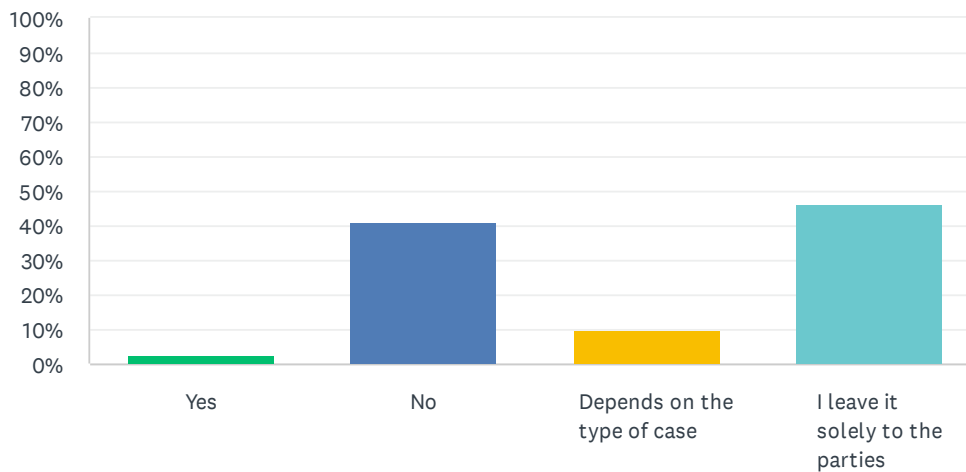


ANSWER CHOICES	RESPONSES
Always	0.00% 0
Frequently	0.00% 0
Sometimes	0.90% 2
Rarely	4.07% 9
Never	95.02% 210
TOTAL	221

#	OTHER (PLEASE SPECIFY)	DATE
1	Not that I know of.	12/12/2023 10:00 PM
2	If so, I am not aware of it.	12/11/2023 4:14 PM
3	Not that I'm aware.	12/10/2023 2:40 PM
4	My order to produce documents was challenged	12/9/2023 3:48 PM
5	Only once in 45 years that I know of.	12/6/2023 11:30 AM
6	No knowledge of any	12/1/2023 6:06 PM
7	to my knowledge	12/1/2023 3:22 PM
8	I have no idea	11/29/2023 9:34 PM
9	Maybe one or two; not sure	11/29/2023 5:32 PM
10	To the best of my knowledge, never	11/29/2023 5:07 PM
11	Not that I know of	11/29/2023 1:26 PM
12	Not that I'm aware.	11/14/2023 11:56 AM

Q20 Do you require a stenographic record of the hearing?

Answered: 208 Skipped: 24

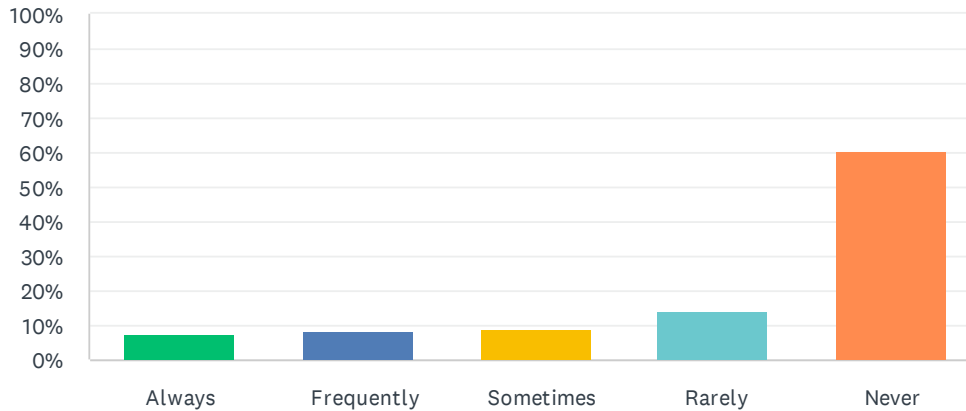


ANSWER CHOICES	RESPONSES
Yes	2.88% 6
No	40.87% 85
Depends on the type of case	10.10% 21
I leave it solely to the parties	46.15% 96
TOTAL	208

#	OTHER (PLEASE SPECIFY)	DATE
1	required for 2+ days of hearing	12/22/2023 11:23 AM
2	I express a strong preference for a reporter in discharge or multi-day cases	12/14/2023 6:32 PM
3	I am leaning toward requiring it for virtual hearings	12/9/2023 6:53 PM
4	I have found that taping can be useful. I also use Windows H in my word processor to supplement my manual notes	12/6/2023 11:42 AM
5	Never before the last two years. Since then, I have developed a medical condition which precludes me taking notes effectively.	12/4/2023 11:27 AM
6	Very uncommon	11/29/2023 3:17 PM
7	I strongly recommend it	11/29/2023 2:55 PM
8	helpful especially in credibility case	11/29/2023 1:51 PM
9	Whether or not there is a transcript, I record all hearings exclusively for my own use.	11/29/2023 12:04 PM
10	I will request it for multi-day cases but not require it	11/29/2023 12:02 PM
11	Increasingly I suggest it	11/29/2023 12:01 PM
12	Reporters are the norm in California; I do make it clear that I prefer to have a reporter present.	11/14/2023 12:09 PM

Q21 If the hearing is conducted on a remote meeting platform such as zoom, do you use its recording feature if the parties have not provided a stenographic record?

Answered: 197 Skipped: 35



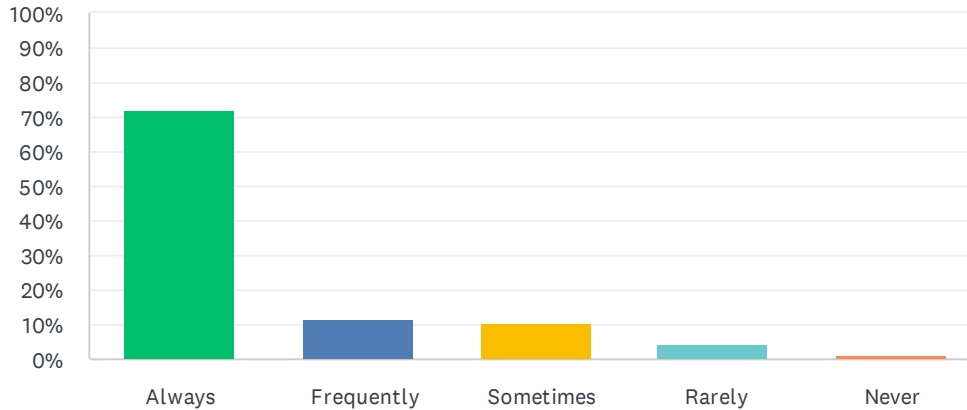
ANSWER CHOICES	RESPONSES
Always	7.61% 15
Frequently	8.63% 17
Sometimes	9.14% 18
Rarely	14.21% 28
Never	60.41% 119
TOTAL	197

#	OTHER (PLEASE SPECIFY)	DATE
1	note: all my cases are on Zoom	12/14/2023 3:38 PM
2	No, but I've thought about doing so, and might start.	12/12/2023 10:08 PM
3	Always use reporter on Zoom except for expedited cases.	12/11/2023 2:25 PM
4	But I will in the future	12/9/2023 6:53 PM
5	Rely on notes	12/9/2023 3:34 PM
6	Never had a zoom hearing and I have had a lot where the parties did not also have a stenographic record created	12/9/2023 3:21 PM
7	Only with mutual agreement of the parties.	12/8/2023 5:27 PM
8	I don't do remote hearings.	12/5/2023 11:22 AM
9	I use my own personal recorder to record the hearing.	12/4/2023 1:51 PM
10	in my bio and elsewhere, I informed the parties that I require a transcript due to a medical condition.	12/4/2023 11:27 AM
11	After obtaining agreement by the Parties to record	11/30/2023 5:03 PM
12	Only with consent	11/29/2023 6:14 PM

13	I always have a stenographic record, so no.	11/29/2023 5:38 PM
14	Only if requested by the parties	11/29/2023 5:32 PM
15	If i can, I do.	11/29/2023 4:44 PM
16	Once at the joint request of the parties	11/29/2023 12:27 PM
17	Only if the parties close orally, then I record oral closings.	11/29/2023 12:01 PM
18	Only if the Parties request it	11/29/2023 11:45 AM
19	If asked.	11/26/2023 1:54 PM

Q22 If both parties request bifurcation of arbitrability from the merits, do you grant this request?

Answered: 206 Skipped: 26

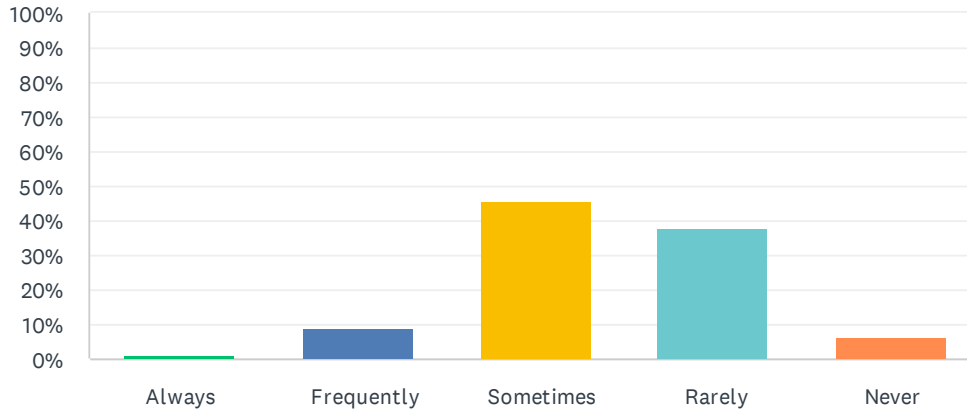


ANSWER CHOICES	RESPONSES
Always	72.33% 149
Frequently	11.65% 24
Sometimes	10.68% 22
Rarely	4.37% 9
Never	0.97% 2
TOTAL	206

#	OTHER (PLEASE SPECIFY)	DATE
1	When you say bifurcation do you mean having hearings separately or dividing proof on arbitrability first and then going to merits. I almost always allow full hearing on both but bifurcate presentation not into separate hearings	12/9/2023 3:21 PM
2	But I will discuss it with them, and, if efficiency and fairness would be facilitated by not bifurcating, I will press the issue. Also, please note that parties do not always mean separate proceedings when they request bifurcation. There is widespread misunderstanding, especially among non-atty advocates.	12/3/2023 4:50 PM
3	If CBA allows	12/1/2023 3:52 PM
4	Has only occurred once or twice.	12/1/2023 2:57 PM
5	Question not clear	11/29/2023 3:17 PM
6	But I try to talk them into proceeding to the merits in the same hearing after making their arbitrability arguments and they usually do.	11/29/2023 12:06 PM

Q23 If only one-party requests bifurcation of arbitrability from the merits, do you grant this request?

Answered: 194 Skipped: 38



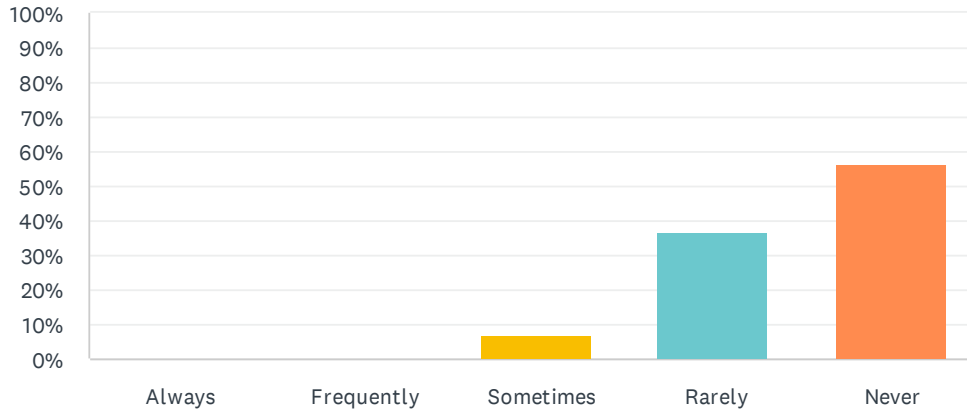
ANSWER CHOICES	RESPONSES
Always	1.03% 2
Frequently	8.76% 17
Sometimes	45.88% 89
Rarely	38.14% 74
Never	6.19% 12
TOTAL	194

#	OTHER (PLEASE SPECIFY)	DATE
1	very likely	12/14/2023 3:38 PM
2	it depends - i typically rule on the issue and dont have freqesncy	12/13/2023 1:49 PM
3	I would have a conference call with parties to resolve the bifurcation issue.	12/11/2023 10:34 AM
4	Will do a Zoom conference to discuss and resolve.	12/6/2023 11:42 AM
5	conference call to resolve	12/4/2023 9:03 PM
6	If requested for the first time at the hearing I would not grant bifurcation if the other side wished to proceed on the merits as well. If requested in advance, I would consider bifurcation.	12/4/2023 1:51 PM
7	See above	12/1/2023 2:57 PM
8	Hear entire case. If lack of arbitrability mis found, I never reach consideration of the case merits. If arbitrability is found, then I proceed to decide the case on its merits.	12/1/2023 12:25 AM
9	Will seek a mutual agreement. If unsuccessful to obtain a mutual agreement, will not grant the request	11/30/2023 5:03 PM
10	Have not had that situation	11/30/2023 10:34 AM
11	Threshold and merits heard, with arbitrarily addressed first.	11/29/2023 9:31 PM
12	I'm not sure if that has ever happened	11/29/2023 5:38 PM

13	Depends on the reason for the bifurcation request	11/29/2023 4:35 PM
14	Depends on basis for request	11/29/2023 4:18 PM
15	Only if both aspects are addressed in the same hearing day	11/29/2023 2:55 PM
16	decision will depend on the issues	11/29/2023 2:46 PM
17	I would require a response from the other party before deciding	11/29/2023 2:40 PM
18	after arguments	11/29/2023 2:39 PM
19	I also try to convince them to forward	11/29/2023 12:06 PM
20	Depends on specific circumstances	11/29/2023 12:04 PM
21	If the party making the request makes cogent arguments	11/29/2023 12:01 PM
22	Depending on the circumstances of the request.	11/29/2023 11:58 AM
23	I ask opposing party for their position and proceed accordingly.	11/14/2023 12:09 PM

Q24 Have you ever conducted a weapons search or had armed security at the hearing?

Answered: 203 Skipped: 29



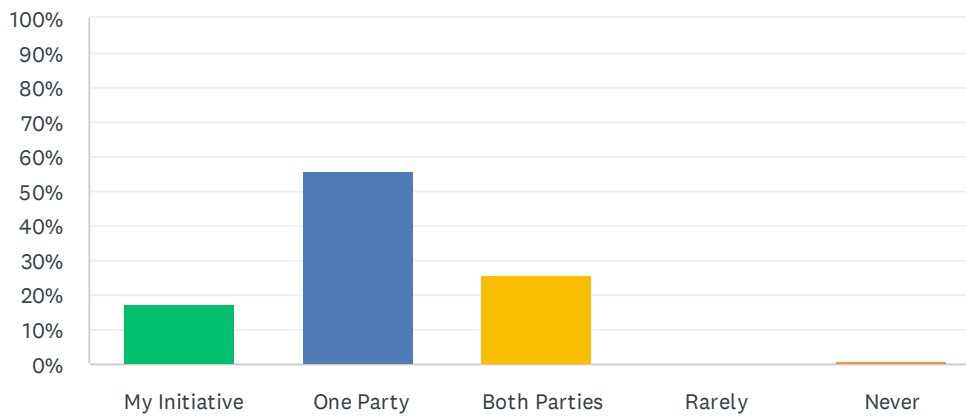
ANSWER CHOICES	RESPONSES
Always	0.00% 0
Frequently	0.00% 0
Sometimes	6.90% 14
Rarely	36.95% 75
Never	56.16% 114
TOTAL	203

#	OTHER (PLEASE SPECIFY)	DATE
1	I would if I felt necessary but have not	12/16/2023 12:08 PM
2	If there is a concern about I will use a hearing venue with a metal detector or Zoom.	12/14/2023 6:32 PM
3	95% of my cases are in Canada	12/14/2023 3:38 PM
4	On one occasion, where the grievant had been discharged for making statements about shooting someone or blowing something up, the company arranged to have a security guard meet the grievant at the plant and escort him to the hearing room. I cannot recall if security remained in our outside the room during the hearing.	12/11/2023 4:35 PM
5	Once in 35 years	12/11/2023 2:25 PM
6	Leave it to the parties, mainly. Acting on reasonable suspicion.	12/6/2023 11:42 AM
7	I would if I felt necessary but have not	12/6/2023 10:14 AM
8	There are two questions here. I have never conducted a weapons search. I HAVE had armed security a few times.	12/3/2023 4:50 PM
9	if one party arranged for it	12/1/2023 6:15 PM
10	I have had armed security provided by the employer	12/1/2023 3:33 PM
11	Have held hearings at facilities where magnetometers are used to gain entrance. Also, have had armed security nearby, but never actually in the hearing room itself.	12/1/2023 12:25 AM

12	On just one occasion, was informed prior to the hearing in a side-bar discussion with both representatives that the grievant might be armed. Since there was no security present, with the consent of the Parties, moved hearing to a Postal facility that did have security located 70 miles away.	11/30/2023 5:03 PM
13	But a few parties have done so	11/29/2023 5:38 PM
14	Once in 30 years of practice	11/29/2023 5:32 PM
15	have had security but not armed	11/29/2023 3:58 PM
16	Once in eleven years	11/29/2023 2:55 PM
17	Armed security arranged by a party	11/29/2023 1:34 PM
18	I once had an employer seek to have the Grievant searched before the hearing	11/29/2023 12:06 PM
19	Yes, on less than 5 occasions (in 47 years) and only upon request of one of the parties.	11/29/2023 11:58 AM
20	twice, at the request of one or both parties	11/29/2023 11:56 AM
21	I have not provided for it - party initiated and very rare	11/29/2023 11:45 AM
22	Both at arbitrations and at board and commission meetings.	11/14/2023 12:09 PM

Q25 If yes, was this at your initiative or by one or both of the parties?

Answered: 93 Skipped: 139



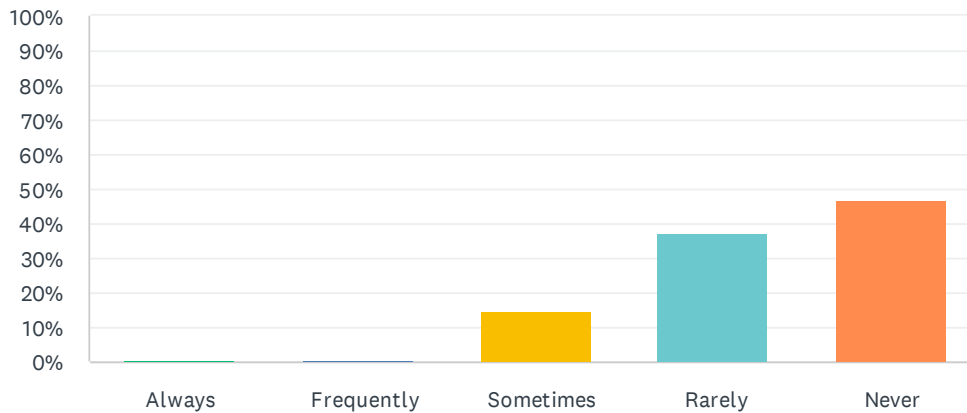
ANSWER CHOICES	RESPONSES
My Initiative	17.20% 16
One Party	55.91% 52
Both Parties	25.81% 24
Rarely	0.00% 0
Never	1.08% 1
TOTAL	93

#	OTHER (PLEASE SPECIFY)	DATE
1	See answer to question #24.	12/11/2023 4:35 PM
2	Not splicable	12/9/2023 3:21 PM
3	Or both parties or one.	12/6/2023 11:42 AM
4	NA	12/5/2023 5:01 PM
5	NA	12/5/2023 3:50 PM
6	Sometimes both parties, sometimes one party, with an objection from the other, so that a ruling or compromise approach had to be developed.	12/3/2023 4:50 PM
7	After being informed of the possible situation by both Parties, it was my suggestion to move the hearing to another facility that housed security.	11/30/2023 5:03 PM
8	All of the above	11/29/2023 9:39 PM
9	NA	11/29/2023 8:30 PM
10	gun threat	11/29/2023 2:46 PM
11	If safety is an issue, I will hold the hearing in a public building, like a courthouse, that requires entrants to go through a metal detector	11/29/2023 2:12 PM
12	N.A.	11/29/2023 1:15 PM
13	A few times at one party's initiative, a few by both parties.	11/29/2023 1:12 PM

14	sometimes one, sometimes both	11/29/2023 12:50 PM
15	N/A since I have not done so.	11/29/2023 12:24 PM
16	One party and my initiative has happened too.	11/29/2023 12:09 PM
17	Never have done so	11/29/2023 11:43 AM
18	How else would security be there????	11/14/2023 12:09 PM

Q26 Have you or the parties purposely selected a hearing venue where security, (e.g., metal detectors, armed guards), already existed because of security concerns?

Answered: 203 Skipped: 29

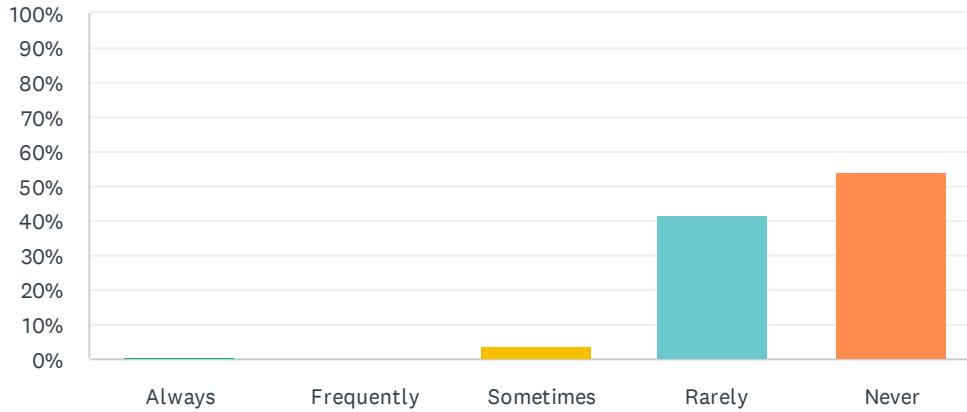


ANSWER CHOICES	RESPONSES	
Always	0.49%	1
Frequently	0.49%	1
Sometimes	14.78%	30
Rarely	37.44%	76
Never	46.80%	95
TOTAL		203

#	OTHER (PLEASE SPECIFY)	DATE
1	not to my knowledge	12/1/2023 6:15 PM
2	Just once - see answers to questions 24 and 25.	11/30/2023 5:03 PM
3	NA	11/29/2023 8:30 PM
4	I have not; don't know if the parties have	11/29/2023 5:38 PM
5	When a hearing was held in a highly secured prison, this was an automatic requirement imposed by the employer.	11/29/2023 1:36 PM
6	IRS and some postal hearings.	11/29/2023 12:29 PM
7	It the venue is a prison or a courthouse	11/29/2023 12:01 PM
8	Hearings which are held in prison facilities.	11/29/2023 11:52 AM
9	This answer is limited to those cases raising security concerns.	11/29/2023 11:45 AM

Q27 Have you had a concern for your physical safety while conducting a hearing?

Answered: 207 Skipped: 25

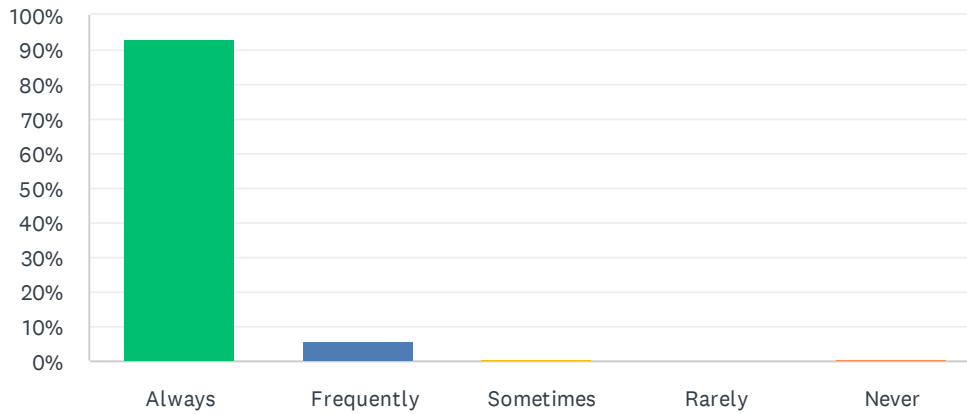


ANSWER CHOICES	RESPONSES
Always	0.48% 1
Frequently	0.00% 0
Sometimes	3.86% 8
Rarely	41.55% 86
Never	54.11% 112
TOTAL	207

#	OTHER (PLEASE SPECIFY)	DATE
1	I have stepped between advocates to prevent fistfights. (coal)	12/9/2023 6:53 PM
2	Once in 45 years	12/6/2023 11:42 AM
3	NA	11/29/2023 8:30 PM
4	I found out in one case that I should have been, but protective measures had been taken without my knowledge.	11/29/2023 1:03 PM
5	I have been more aware in recent years of irate losing Grievants possibly coming to my home.	11/29/2023 12:06 PM

Q28 If both parties request sequestration (not of the grievant or technical advisor/party representative) do you grant it?

Answered: 208 Skipped: 24

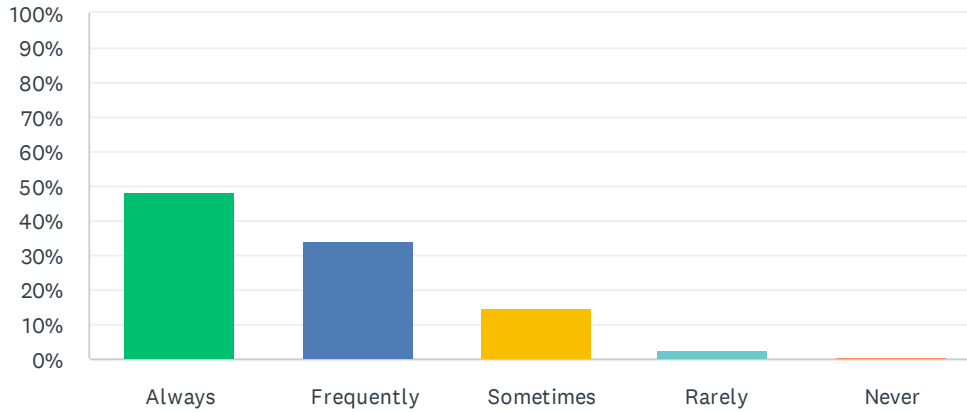


ANSWER CHOICES	RESPONSES
Always	93.27% 194
Frequently	5.77% 12
Sometimes	0.48% 1
Rarely	0.00% 0
Never	0.48% 1
TOTAL	208

#	OTHER (PLEASE SPECIFY)	DATE
1	Please note the proper request is for exclusion, not sequestration	12/14/2023 9:41 PM
2	I try to convince them to not do it. But they are in best position at the beginning of he hearing to weigh the benefits and burdens.	12/6/2023 11:42 AM
3	I am answering in the context of order to exclude witnesses	12/2/2023 7:49 PM
4	Please note, witnesses are excluded, not sequestered. I learned this from a Judge 65 years ago when he advised that a sequestered witness must be provided living arrangements and food. e	11/29/2023 4:27 PM
5	I tell the parties I believe transparency of the process is more important than the possibility of tainted testimony, but I accede to their request if they disagree	11/29/2023 12:30 PM

Q29 If only one party requests sequestration (not grievant(s) or technical advisor/party representative), do you grant it?

Answered: 206 Skipped: 26

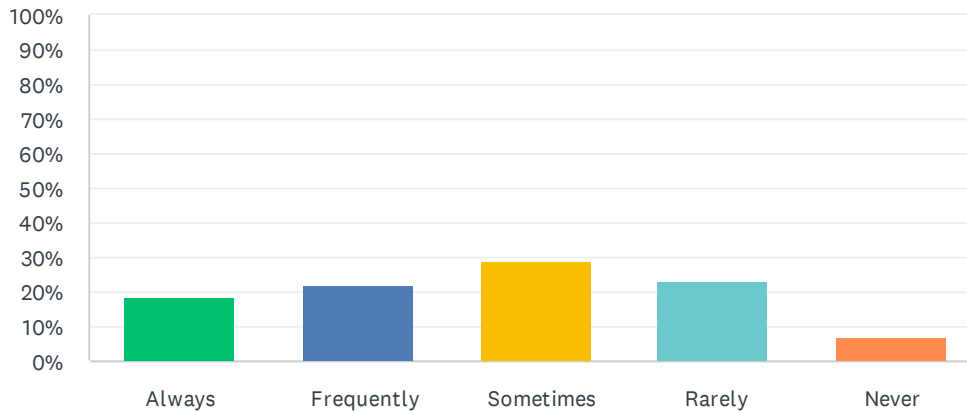


ANSWER CHOICES	RESPONSES
Always	48.54% 100
Frequently	33.98% 70
Sometimes	14.56% 30
Rarely	2.43% 5
Never	0.49% 1
TOTAL	206

#	OTHER (PLEASE SPECIFY)	DATE
1	Generally not an issue. If one requests the other acquiesces.	12/9/2023 6:53 PM
2	See above. Will confder with tghe parties.	12/6/2023 11:42 AM
3	depends on the grounds one of the Parties state an objection	11/30/2023 5:03 PM
4	I would require a response from the other party before deciding	11/29/2023 2:40 PM
5	after arguments	11/29/2023 2:39 PM
6	If a a basic issue turns on witness credibility.	11/29/2023 1:45 PM
7	See above	11/29/2023 12:30 PM
8	Depends on the other party's position; I listen and decide.	11/14/2023 12:09 PM

Q30 If witnesses are sequestered, after their testimony, do you continue to keep them sequestered during the testimony of other witnesses?

Answered: 188 Skipped: 44



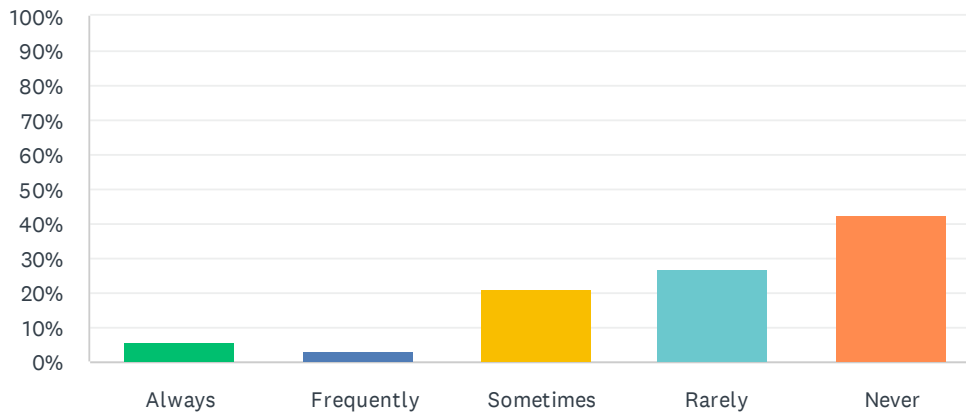
ANSWER CHOICES	RESPONSES
Always	18.62% 35
Frequently	22.34% 42
Sometimes	28.72% 54
Rarely	23.40% 44
Never	6.91% 13
TOTAL	188

#	OTHER (PLEASE SPECIFY)	DATE
1	Only if their rep says they will not be recalled and other party does not object	12/16/2023 12:08 PM
2	Depends on what the parties prefer	12/14/2023 8:01 PM
3	I would if the witness may be used on rebuttal or surrebuttal.	12/14/2023 6:32 PM
4	Only if possible rebuttal or adverse witnesses- I ask at conclusion of a witness' testimony whether they may be recalled	12/14/2023 3:57 PM
5	Admonished not to discuss his/her testimony with anyone.	12/14/2023 3:18 PM
6	NA	12/13/2023 2:23 PM
7	Continued presence means they cannot be recalled.	12/12/2023 7:32 PM
8	It depends on whether the witness might testify again.	12/11/2023 4:35 PM
9	Not unless a party requests it	12/11/2023 2:25 PM
10	Only when the parties are uncertain as to whether this witness will be recalled	12/10/2023 2:53 PM
11	Unless they acknowledge they cannot be recalled for any purpose	12/10/2023 2:32 PM
12	Yes, If they are likely to be recalled on rebuttal.	12/9/2023 6:53 PM
13	Only if their rep says they will not be recalled and other party does not object	12/6/2023 10:14 AM

14	if they are learners and will not be rebuttal witnesses	12/4/2023 9:03 PM
15	Unless party waives	12/1/2023 3:52 PM
16	Rarely happens.	12/1/2023 2:57 PM
17	Only if they may give rebuttal evidence	11/30/2023 5:06 PM
18	These witnesses are then excused and told to leave the hearing. If informed of the possibility of being recalled, they return to being sequestered.	11/30/2023 5:03 PM
19	Depends on whether it is desired and if there is an objection	11/30/2023 3:09 PM
20	Absent a representation they will not be recalled on rebuttal.	11/29/2023 9:31 PM
21	They usually are excused unless also serving as resource person.	11/29/2023 6:14 PM
22	a) if requested, b) if they don't remain sequestered, I may bar them from testifying on rebuttal (announced to parties in advance - or imposed by their request)	11/29/2023 5:32 PM
23	Yes, unless both sides have waived recalling that witness	11/29/2023 4:44 PM
24	Yes, if requested by one or both parties	11/29/2023 4:35 PM
25	Only if there's a chance they'll be called in rebuttal	11/29/2023 4:18 PM
26	they are warned	11/29/2023 3:58 PM
27	If redirect evidence is likely	11/29/2023 3:17 PM
28	I instruct them not to speak to other witnesses about the case	11/29/2023 2:55 PM
29	It would depend on whether they might be recalled	11/29/2023 2:40 PM
30	unless requested	11/29/2023 1:51 PM
31	I tell witnesses not to discuss the case with anyone until the record is closed	11/29/2023 1:45 PM
32	I tell parties that if they remain in hearing, they will not be permitted to return to the stand	11/29/2023 1:24 PM
33	It depends. I advise the parties that they will lose the advantage of sequestration when it comes to my credibility determination if the witness remains and then is recalled.	11/29/2023 1:15 PM
34	But always tell the parties that if the witness returns, cannot testify again.	11/29/2023 12:47 PM
35	if requested	11/29/2023 12:40 PM
36	Depends on the likelihood of them being recalled as a rebuttal witness—if they probably will be called to rebut, they stay out after their testimony	11/29/2023 12:24 PM
37	Unless the parties they can still be called on rebuttal.	11/29/2023 12:06 PM
38	Most often they return to work. I advise them they are not to discuss their testimony until they are certain hearing is complete.	11/29/2023 12:04 PM
39	It's up to the parties	11/29/2023 12:02 PM
40	If it is possible that they will be recalled to testify	11/29/2023 12:01 PM
41	When the sequestered witness may be recalled.	11/29/2023 11:58 AM
42	I would like it up to the parties.	11/29/2023 11:54 AM
43	Only if they may be recalled	11/29/2023 11:47 AM
44	If they are subject to recall or if there are factors concerning claimed intimidation or privacy	11/29/2023 11:45 AM
45	This happens very rarely.	11/14/2023 12:09 PM

Q31 If a non-party participant in the hearing process seeks to have private counsel attend or participate in the hearing process, do you allow it when at least one of the parties object?

Answered: 182 Skipped: 50



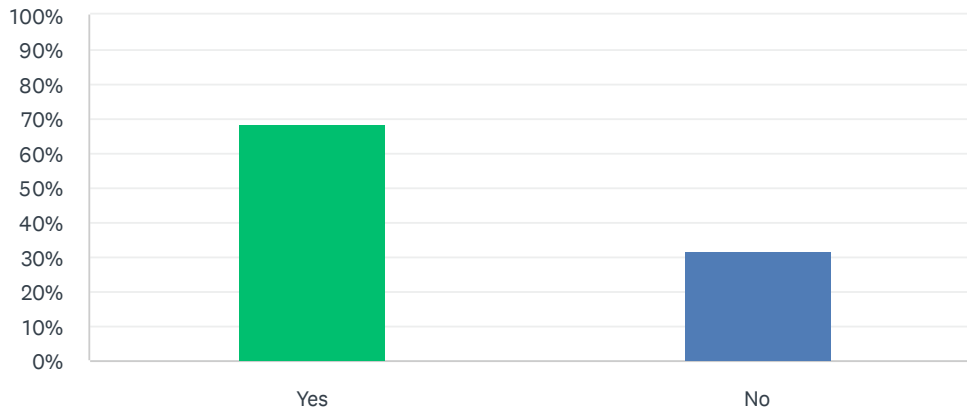
ANSWER CHOICES	RESPONSES
Always	6.04% 11
Frequently	3.30% 6
Sometimes	20.88% 38
Rarely	26.92% 49
Never	42.86% 78
TOTAL	182

#	OTHER (PLEASE SPECIFY)	DATE
1	This described event has never occurred at my hearings	12/18/2023 5:00 PM
2	attend - yes I permit it. Participate, no.	12/17/2023 5:36 PM
3	Has never come up	12/14/2023 8:01 PM
4	It has never happened in my experience.	12/14/2023 6:32 PM
5	I would attempt to secure the opposing party's consent by mediating with the parties in a side bar.	12/14/2023 6:18 PM
6	Attend, not participate	12/14/2023 4:29 PM
7	attend maybe, participate no	12/14/2023 3:38 PM
8	Hasn't arisen, but would not allow it.	12/12/2023 7:32 PM
9	I had one case where the union agreed the grievant could use his own attorney to represent him rather than the union. The union remained in the hearing as an observer.	12/11/2023 4:35 PM
10	N/A	12/11/2023 10:34 AM
11	Only as an observer not as a participant in any manner	12/10/2023 2:32 PM
12	it's never come up - it would depend	12/9/2023 6:13 AM

13	Unless it's a public employer hearing, which are open to the public in my state	12/4/2023 1:37 PM
14	Many of my case are public sector and p[en] to the public. Do not permit private counsel to participate unless both parties agree .	12/4/2023 1:31 PM
15	Again, two questions. Attendance by private counsel is different from participation. I sometimes have allowed the former, never the latter.	12/3/2023 4:50 PM
16	has never happened	12/3/2023 1:42 PM
17	only allowed to attend but not to participate	12/1/2023 3:33 PM
18	Never happened.	12/1/2023 2:57 PM
19	attend - not participate	11/30/2023 4:22 PM
20	Has not ocured	11/30/2023 4:04 PM
21	does not happen	11/30/2023 4:04 PM
22	It has not occurred	11/30/2023 10:34 AM
23	Never has happened	11/30/2023 1:36 AM
24	Only if a waiver is signed and if the union maintains representation	11/29/2023 9:39 PM
25	I have allowed but instructed the private counsel to be an observor only in the hearing but can counsel client during breaks.	11/29/2023 7:27 PM
26	I think it has only come up once	11/29/2023 5:38 PM
27	I don't recall an instance, but it might depend on circumstances	11/29/2023 5:32 PM
28	HAVE NOT ENCOUNTERED THIS ISSUE	11/29/2023 4:53 PM
29	never has occurred	11/29/2023 4:08 PM
30	Depends on reasons	11/29/2023 3:17 PM
31	Never been asked	11/29/2023 2:55 PM
32	depends on the issues	11/29/2023 2:46 PM
33	This has never happened to me	11/29/2023 2:40 PM
34	With the understanding that private counsel is there as an observer	11/29/2023 1:34 PM
35	Never had it arise	11/29/2023 1:24 PM
36	I would only allow it when that person is grievant's private counsel, but that person cannot participate in the hearing, only observe.	11/29/2023 1:15 PM
37	Depends on possible scope of witness' testimony	11/29/2023 1:12 PM
38	can only attend, not participate	11/29/2023 12:40 PM
39	Private counsel for a grievant may attend, but not actively participate in the hearing (beyond questions of potential priviges)	11/29/2023 12:30 PM
40	I try to get the objecting party to relent. Typically, I allow private counsel in as an observer, not a participant.i	11/29/2023 12:04 PM
41	Only happens in police cases and when a witness is also under investigation	11/29/2023 12:02 PM
42	no such experience	11/29/2023 12:01 PM
43	Only where there is a statutory requirement to permit public attendance.	11/29/2023 12:01 PM
44	Participate over objection - no; private counsel - yes if there are pending civil or criminal charges, etc.	11/29/2023 11:45 AM

Q32 Hearsay; Please read all five questions before answering. Before today, were you aware that AAA Labor Arbitration Rules permit hearsay affidavits? Rule 28 states that "The arbitrator may receive and consider the evidence of witnesses by affidavit giving it only such weight as the arbitrator deems proper after consideration of any object made to its admission."

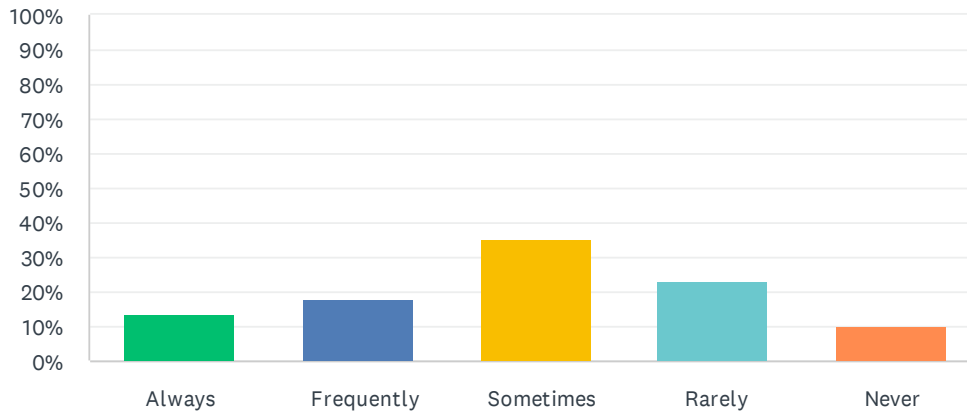
Answered: 206 Skipped: 26



ANSWER CHOICES	RESPONSES	
Yes	68.45%	141
No	31.55%	65
TOTAL		206

Q33 If a case is under AAA administration or Rules, would Rule 28 make it more likely for you to admit evidence by affidavit?

Answered: 181 Skipped: 51



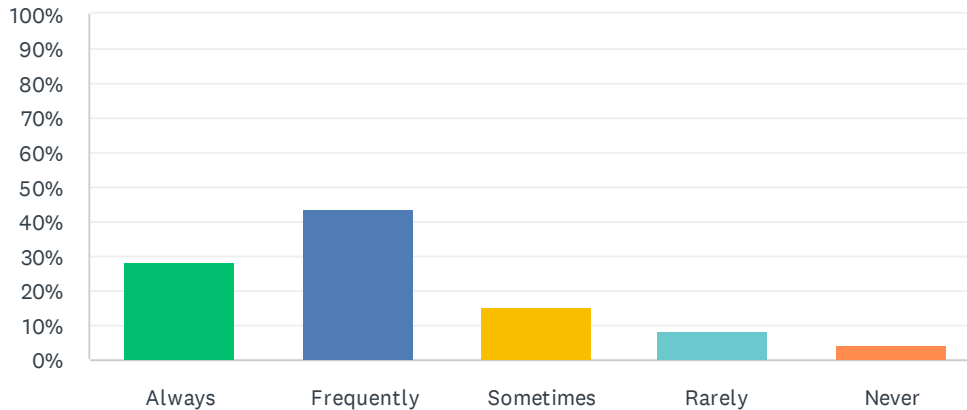
ANSWER CHOICES	RESPONSES	
Always	13.81%	25
Frequently	17.68%	32
Sometimes	35.36%	64
Rarely	23.20%	42
Never	9.94%	18
TOTAL		181

#	OTHER (PLEASE SPECIFY)	DATE
1	It would depend on the context	12/18/2023 5:00 PM
2	Never do AAA cases	12/14/2023 5:23 PM
3	Rule 28 doesn't make it more or less likely that I would admit an affidavit. I would admit it in any context, though as stated in response to question 34, it will have little weight.	12/14/2023 4:12 PM
4	Depends on the issue and nature of the affidavit (relevancy).	12/11/2023 4:13 PM
5	Not AAA panel member	12/11/2023 2:30 PM
6	Possibly	12/11/2023 10:34 AM
7	Not more or less likely	12/10/2023 2:53 PM
8	No effect. I would probably always admit it and then give indicators of the weight based upon any factors presented going towards weight	12/9/2023 3:21 PM
9	perhaps; I tend to let in relevant hearsay evidence with other indicias of reliability, and then weigh it all & abide by the legal residuum rule. follow the	12/9/2023 6:13 AM
10	It's a factor I might weigh.	12/6/2023 11:42 AM
11	If by admit, you mean admit but as hearsay, then frequently, provided there is appropriate foundation	12/4/2023 10:30 PM
12	I have had few AAA administered cases	12/4/2023 7:34 PM

13	If I know, it will be given a little or no wait. I will also inform the parties when I admit it.	12/4/2023 11:27 AM
14	Only if it is a corroborating affidavit of live testimony of another witness.	12/1/2023 12:25 AM
15	No. I would follow it is all cases	11/30/2023 10:34 AM
16	I admit hearsay and tell the parties I will likely give it zero weight	11/29/2023 5:54 PM
17	I likely would admit it anyway FWIW	11/29/2023 5:38 PM
18	Will do so if it is the parties' practice and/or agreement that I do so	11/29/2023 5:32 PM
19	Doctor testimony in fitness for work cases	11/29/2023 4:08 PM
20	N/A	11/29/2023 3:10 PM
21	It depends on the basis for any objection	11/29/2023 2:40 PM
22	do not do those cases	11/29/2023 2:39 PM
23	not an AAA arboitrator	11/29/2023 1:51 PM
24	Not applicable in Canada	11/29/2023 1:41 PM
25	Objection to form of question: I "may" receive it, which means it's my discretion, which means the AAA has nothing to do with it	11/29/2023 1:24 PM
26	Don't do any AAA cases	11/29/2023 1:12 PM
27	Probably depending on foundation for the affidavit	11/29/2023 12:50 PM
28	Not a factor - see below	11/29/2023 12:30 PM
29	When both parties agree, always	11/29/2023 12:06 PM
30	Depends	11/29/2023 12:06 PM
31	Assuming the hearsay is arguably relelvant	11/29/2023 12:04 PM
32	Not a AAA panelist	11/29/2023 12:01 PM
33	Only if neither party objects	11/29/2023 12:01 PM
34	Whether the case is administered by AAA, it is not the rule that controls my decision, but the relevance of the affidavit to the final decision.	11/29/2023 11:58 AM
35	canadian - no application to this	11/29/2023 11:48 AM
36	Would admit subject to weight in most cases	11/29/2023 11:45 AM

Q34 Do you admit hearsay evidence, including documents, with a caveat to the effect that although it is being admitted, you recognize its hearsay nature and will consider that when weighing the evidence in its entire context?

Answered: 201 Skipped: 31



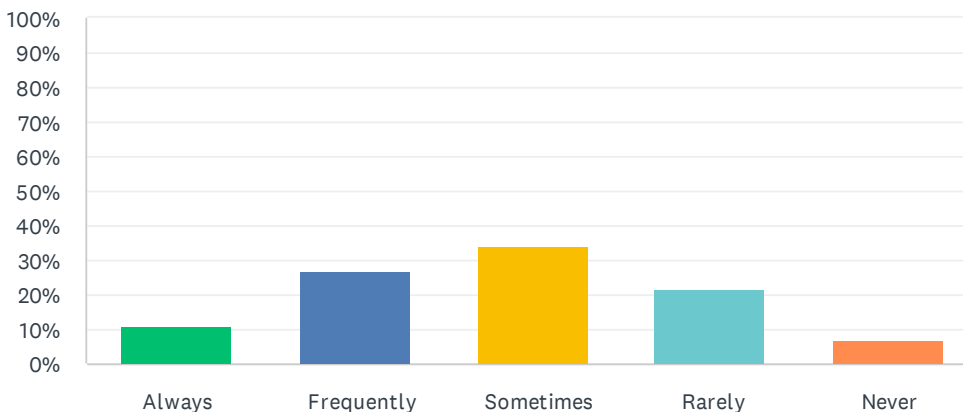
ANSWER CHOICES	RESPONSES
Always	28.36% 57
Frequently	43.78% 88
Sometimes	15.42% 31
Rarely	8.46% 17
Never	3.98% 8
TOTAL	201

#	OTHER (PLEASE SPECIFY)	DATE
1	In almost all situations, I admit hearsay with they caveat is that I give it virtually no weight other than perhaps corroboration, and if the testimony is important to their case, they need to bring a witness.	12/14/2023 4:12 PM
2	That is the laziest thing an arbitrator can say. It is unfair to the parties because they have no idea for what it is being considered.	12/14/2023 3:57 PM
3	I will not admit hearsay evidence if that is the only evidence to prove a material issue. I will admit hearsay evidence to buttress other, non-hearsay evidence on a material issue or when it is a peripheral issue.	12/11/2023 4:35 PM
4	see text in previous box	12/9/2023 6:13 AM
5	If hearsay is received, it's received as hearsay only	12/4/2023 10:30 PM
6	I add that evidence may have been offered for a non-hearsay purpose, i.e., not to prove the truth of the facts asserted	12/1/2023 3:33 PM
7	Only if it is a corroborating evidence of live testimony or evidence properly introduced through another live witness.	12/1/2023 12:25 AM
8	Residuum rule utilized.	11/29/2023 9:31 PM

9	See 33 above	11/29/2023 5:54 PM
10	My rule is to state that unless other, authoritative evidence is present to corroborate the hearsay evidence, then the hearsay is disregarded.	11/29/2023 1:45 PM
11	I give the parties more direction; I NEVER "take it for what it's worth"	11/29/2023 1:24 PM
12	Depends on level of hearsay. If first level, almost always.	11/29/2023 1:12 PM
13	Saying "I will admit it for what it is worth" is a disservice to the party. AN arbitrator should rule on the evidence and not leave them guessing.	11/29/2023 12:34 PM
14	I apply recognized hearsay exceptions, particularly admitting other than for the truth of the matter asserted.	11/29/2023 12:06 PM
15	Assuming the hearsay is arguably relevant	11/29/2023 12:04 PM

Q35 Are you more likely to admit hearsay evidence if the absent witness is someone a party is reasonably reluctant to call, such as a customer, inmate, vendor, patient, etc.?

Answered: 191 Skipped: 41



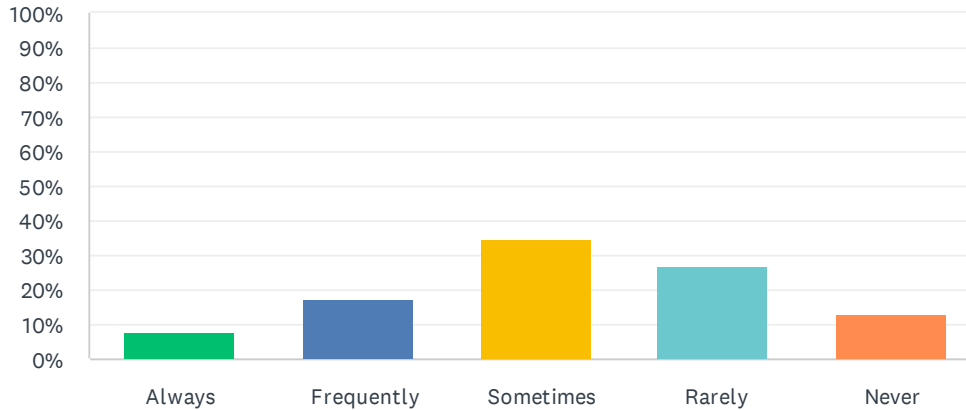
ANSWER CHOICES	RESPONSES	
Always	10.99%	21
Frequently	26.70%	51
Sometimes	34.03%	65
Rarely	21.47%	41
Never	6.81%	13
TOTAL		191

#	OTHER (PLEASE SPECIFY)	DATE
1	I would admit it regardless of the explanation. I might give it a little more weight if there is a credible explanation for the witnesses unavailability.	12/14/2023 4:12 PM
2	Though I do not believe I have had this arise, if it did, would depend on the situation. For example, I would more likely admit evidence from a patient or inmate or someone who cannot physically attend the hearing.	12/11/2023 4:35 PM
3	Would depend on the reason for not wanting to call witness to testify. Would require the party to make an offer of proof regarding about what the witness will be testifying. After following those steps will make my decison.	12/11/2023 2:30 PM
4	I rarely refuse to accept hearsay evidence, but always accept with the caveat of Q 34.	12/9/2023 6:53 PM
5	I always admit it. The question is of what weight to give it	12/9/2023 3:21 PM
6	I admit hearsay but not double hearsay	12/6/2023 10:14 AM
7	No, that reasoning won't affect whether the hearsay is received. It either meets foundational requirements or it doesn't	12/4/2023 10:30 PM
8	I generally admit hearsay evidence whether the absent witness is a reluctant party or not. Being a reluctant party does not make it more likely that I will admit the evidence.	12/4/2023 1:51 PM
9	Do not remember ti happening	12/1/2023 2:57 PM

10	I have allowed reluctant witnesses to testify remotely. Also, in cases involving alleged inappropriate conduct with a child, I have allowed the child to testify with the grievant in an adjacent room outfitted with remote video/audio reception.	12/1/2023 12:25 AM
11	See 33 above	11/29/2023 5:54 PM
12	I'm pretty likely to admit it anyway FWIW	11/29/2023 5:38 PM
13	It depends very much on the witness's relationship to the parties and the relationship of their testimony to the dispute	11/29/2023 5:32 PM
14	It depends on the situation	11/29/2023 2:40 PM
15	See above	11/29/2023 1:45 PM
16	This question seems to confuse admission with weight. If we're talking admission, it's likely I'll admit it. If we're talking weight, I will speak to the parties about probative value to better understand the absence and its impact on due process	11/29/2023 1:24 PM
17	Not a factor. See answer to 34.	11/29/2023 1:12 PM
18	NA I always admit with a disclaimer as to weight	11/29/2023 1:11 PM
19	Evidence is evidence. Witness unavailability is not witness reluctance.	11/29/2023 12:34 PM
20	Hearsay on a material issue always comes into evidence as above	11/29/2023 12:30 PM
21	Depends also on whether specific contract language addresses the issue.	11/29/2023 12:06 PM
22	Assuming the hearsay is arguably relevant	11/29/2023 12:04 PM
23	Only inmates and patients if there's an objection. Will always allow if other party does not object.	11/29/2023 12:02 PM
24	Don't know without more info	11/29/2023 12:01 PM
25	The reason for absence from the hearing often weighs in on admission of hearsay evidence..	11/29/2023 11:58 AM

Q36 Do you admit hearsay evidence in cases involving allegations of criminal, immoral, or reprehensible misconduct?

Answered: 190 Skipped: 42



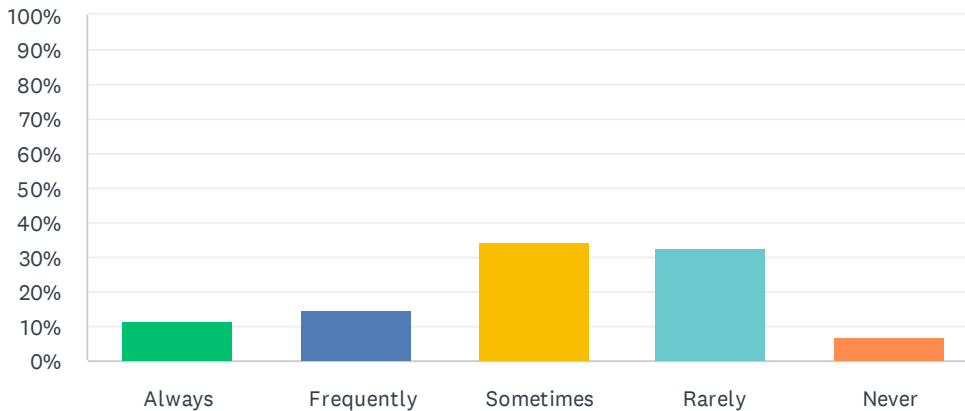
ANSWER CHOICES	RESPONSES	
Always	7.89%	15
Frequently	17.37%	33
Sometimes	34.74%	66
Rarely	26.84%	51
Never	13.16%	25
TOTAL		190

#	OTHER (PLEASE SPECIFY)	DATE
1	It is admitted but given zero weight just like any hearsay absent an exception to the hearsay rule.	12/14/2023 6:18 PM
2	The nature of the allegations does not change what is admissible evidence	12/14/2023 3:57 PM
3	not because of nature of case	12/13/2023 1:49 PM
4	Understood in most police cases that that will happen	12/10/2023 2:07 PM
5	I do not recall such a circumstance. If it happened, probably not.	12/9/2023 6:53 PM
6	Same as before. Issue is weight not admittance.	12/9/2023 3:21 PM
7	But usually it's cumulative. And I may admit it not as "hearsay" for the truth of the matter asserted, but to show at least there was a reasonable investigation, etc.	12/6/2023 11:42 AM
8	Allegations are irrelevant - if it's hearsay, it's hearsay, and if there's sufficient foundation, then it is received . . . as hearsay	12/4/2023 10:30 PM
9	Always, but I would never base an outcome of a case solely on the hearsay if it was uncorroborated by more reliable evidence	12/4/2023 1:51 PM
10	hearsay evidence may corroborate direct evidence	12/1/2023 3:33 PM
11	Do not remember ti happening	12/1/2023 2:57 PM
12	Only if it has been subject to cross examination in another forum.	12/1/2023 12:25 AM

13	giving it the weight in my discretion it deserves	11/30/2023 5:03 PM
14	It depends on the facts and the evidence.	11/30/2023 2:23 AM
15	See 33 above	11/29/2023 5:54 PM
16	If admitted at all, it is with the caveat that it is hearsay, I'm allowing the parties their day in court, but I recognize the employer's heavy burden, the unreliability of hearsay, the right to cross-examine, etc.	11/29/2023 5:32 PM
17	Not if it goes to the crux of the issue	11/29/2023 4:56 PM
18	Depends on how close the evidence is to the ultimate question.	11/29/2023 4:44 PM
19	I have not had this particular issue arise in one of my cases	11/29/2023 2:40 PM
20	see above	11/29/2023 1:45 PM
21	Again, admission or weight? what are we talking about here?	11/29/2023 1:24 PM
22	Not a factor. See answer to 34.	11/29/2023 1:12 PM
23	Difficult question to answer because it depends on the nature of the hearsay evidence	11/29/2023 1:03 PM
24	Rules of evidence do not change based upon the allegation.	11/29/2023 12:34 PM
25	Probably will be admitted, but unlikely to be given enough weight to meet the "convincing" evidence required on such allegations	11/29/2023 12:30 PM
26	Has never arisen	11/29/2023 12:27 PM
27	Not for the truth of the matter asserted.	11/29/2023 12:06 PM
28	Assuming the hearsay is arguably relevant	11/29/2023 12:04 PM
29	But it hasn't come up	11/29/2023 12:01 PM
30	Official Documents.	11/29/2023 11:58 AM

Q37 The next set of questions, 37-45, regards the evidentiary standard in discharge cases. In a discipline grievance, the employer wants to admit evidence of post-discipline misconduct (or the union wants to admit evidence of post-discipline good behavior.) Do you admit such evidence? (The next question will ask about weight.)

Answered: 200 Skipped: 32



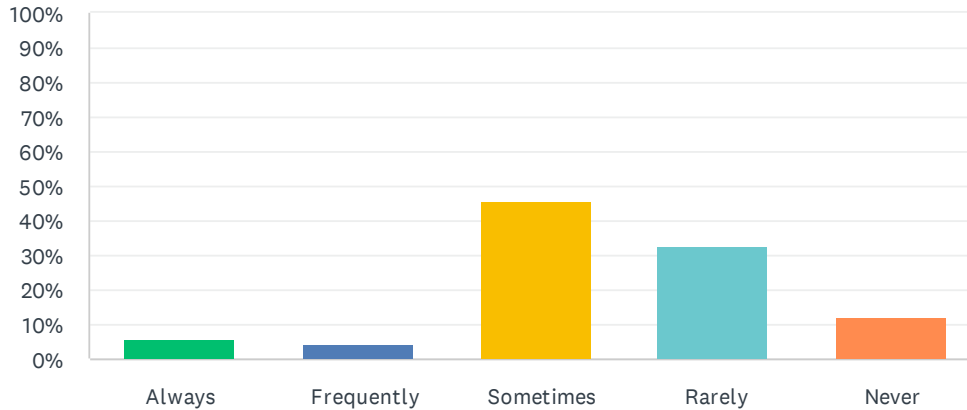
ANSWER CHOICES	RESPONSES
Always	11.50% 23
Frequently	15.00% 30
Sometimes	34.00% 68
Rarely	32.50% 65
Never	7.00% 14
TOTAL	200

#	OTHER (PLEASE SPECIFY)	DATE
1	Fist question is doesn the other party object to the testimony and, if so, why. Ask the proferring party the purpose of the testimony and what pobative value the tesimony would have.	12/11/2023 2:30 PM
2	"I went to AA." "I found Jesus." Psychologist says he has recovered. Or, the Grievant dumped a slurpee on a prospective witness two days before the hearing.	12/6/2023 11:42 AM
3	I would admit unless the other party objects, in which case I probably would not admit	12/4/2023 1:51 PM
4	Only as to remedy	12/4/2023 1:37 PM
5	Again, two questions. For misconduct, it may go to the propriety of reinstatement. For good behavior, especially regarding attendance, it also may relate to reinstatement, but for different reasons	12/3/2023 4:50 PM
6	goes toward remedy	12/1/2023 6:15 PM
7	evidence may bear on suitability of reinstatement as a remedy	12/1/2023 3:33 PM
8	Only if the post-disciplinary conduct has a direct nexus to the case being heard. If no direct	12/1/2023 12:25 AM

	nexus is shown, the evidence is not admitted.	
9	May be relevant to remedy	11/30/2023 4:22 PM
10	Only as to remedy, if that.	11/29/2023 7:27 PM
11	If thus question refers to other acts engaged in by the employee after the discipline leading to the grievance filing, I tend not to admit the evidence since it may be the subject of a separate proceeding. The subsequent good behavior of an employee grieving discipline may be admitted if linked to a finding that the discipline imposed by management had a deterrent value.	11/29/2023 6:14 PM
12	"It depends" esp on the relationship of the post-discipline conduct to the offense	11/29/2023 5:32 PM
13	as to remedy	11/29/2023 4:07 PM
14	depends on the facts - drug rehab evidence is admitted	11/29/2023 2:46 PM
15	That Depends	11/29/2023 1:43 PM
16	what is the relevance of the proffer? NEVER to prove the charged misconduct. maybe to address remedial issues.	11/29/2023 1:24 PM
17	Generally limited to remedial issues	11/29/2023 1:03 PM
18	I want both sides to have had the opportunity to fully present their case.	11/29/2023 12:24 PM
19	Depends on relevance	11/29/2023 12:04 PM

Q38 Assuming you admit such evidence, do you give it probative value when determining the level of discipline that has been imposed?

Answered: 197 Skipped: 35

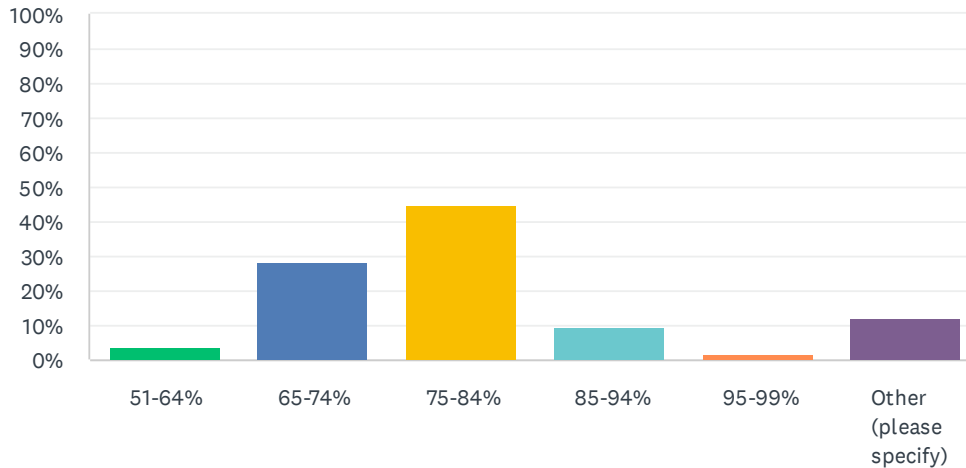


ANSWER CHOICES	RESPONSES
Always	5.58% 11
Frequently	4.06% 8
Sometimes	45.69% 90
Rarely	32.49% 64
Never	12.18% 24
TOTAL	197

#	OTHER (PLEASE SPECIFY)	DATE
1	I may give it weight when deciding whether an employee should be RTW in a discharge case.	12/14/2023 4:12 PM
2	How can the value of evidence be relevant to the level of discipline?	12/14/2023 3:25 PM
3	Again, as I said it would depend upon what probative value I conclude it might have after hearing the parties positions and arguments	12/11/2023 2:30 PM
4	It depends on the total record.	12/6/2023 11:42 AM
5	NOT for determination of facts upon which the discipline was based	12/3/2023 4:50 PM
6	May be relevant to remedy	11/30/2023 4:22 PM
7	Admitted only for remedy purposes	11/30/2023 10:34 AM
8	Again, depending on the relationship of the post-discipline conduct to the offense	11/29/2023 5:32 PM
9	if I admit it, I give it weight. Period.	11/29/2023 1:24 PM
10	except on remedial issues where it can weigh heavily	11/29/2023 1:03 PM

Q39 If "preponderance of evidence" is expressed as 50.01% and "beyond all doubt" as 100%, how would you characterize the "clear and convincing" standard of proof as a percentage?

Answered: 206 Skipped: 26



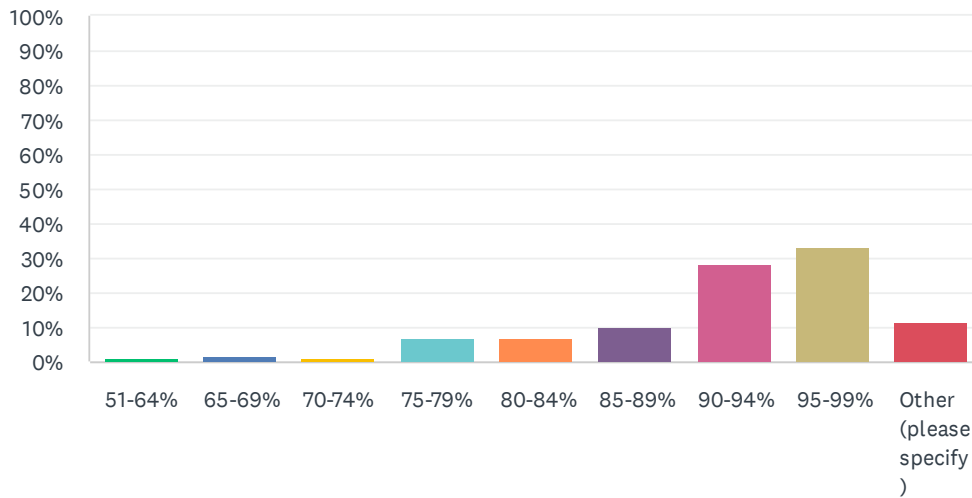
ANSWER CHOICES	RESPONSES	
51-64%	3.88%	8
65-74%	28.64%	59
75-84%	44.66%	92
85-94%	9.22%	19
95-99%	1.46%	3
Other (please specify)	12.14%	25
TOTAL		206

#	OTHER (PLEASE SPECIFY)	DATE
1	Enough evidence	12/14/2023 3:57 PM
2	When the question has been posed, I've always just said clear and convincing means somewhere between preponderance and beyond a reasonable doubt. I can't recall ever seeing a CBA or other controlling document which said "beyond ANY doubt."	12/14/2023 3:25 PM
3	I do not think of it in percentage terms	12/13/2023 1:49 PM
4	After closing of proofs, am I convinced?	12/9/2023 3:23 PM
5	65-80%	12/9/2023 6:13 AM
6	I never use this standard	12/4/2023 9:28 PM
7	B	12/4/2023 11:27 AM
8	Don't use. Unless in CBA	12/1/2023 3:52 PM
9	I do not put a percentage on it	11/30/2023 1:36 AM
10	I don't think about it this way	11/29/2023 5:32 PM

11	I tend not to use clear and convincing as a standard.	11/29/2023 4:44 PM
12	??? not relevent to arbitration	11/29/2023 4:26 PM
13	have not had a case with clean and convincing language	11/29/2023 4:08 PM
14	Preponderance in all cases	11/29/2023 3:17 PM
15	good question - cant quantify it	11/29/2023 2:46 PM
16	I would characterize it as an arbitral construct that I reject. The standard is "just cause" unless the parties agree otherwise.	11/29/2023 1:24 PM
17	It depends on the nature of the misconduct. The necessary amount is sufficient to convince me clearly of the matter in dispute.	11/29/2023 1:15 PM
18	Have never used clear& convincing and have never thought of it as %	11/29/2023 1:12 PM
19	I have always resisted the approach of assigning percentages to standards of proof.	11/29/2023 12:35 PM
20	It is not a percentage	11/29/2023 12:34 PM
21	Can't express as a percentage- my formulation is "substantially more likely that the grievant committed the offense alleged than that the grievant did not"	11/29/2023 12:30 PM
22	convince me (the arbitrator)	11/29/2023 12:17 PM
23	I can't answer this question given how it is phrased	11/29/2023 12:06 PM
24	I sort of use "preponderance," but it really comes down to what I think the facts are. Some situations require more evidence than others o I think	11/29/2023 12:04 PM
25	But I never describe burden of proof in my decisions	11/29/2023 12:01 PM

Q40 If "preponderance of evidence" is expressed as 50.01% and "beyond all doubt" as 100%, how would you characterize the "beyond a reasonable doubt" standard of proof as a percentage?

Answered: 205 Skipped: 27



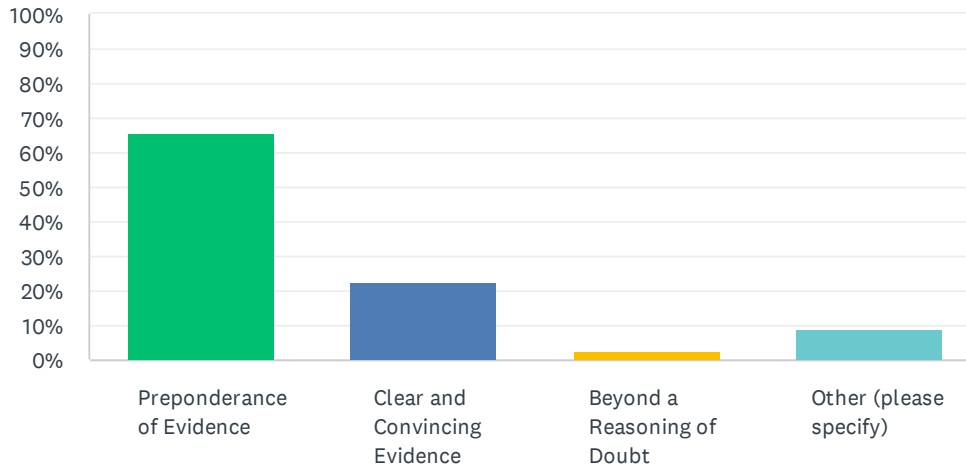
ANSWER CHOICES	RESPONSES
51-64%	0.98% 2
65-69%	1.46% 3
70-74%	0.98% 2
75-79%	6.83% 14
80-84%	6.83% 14
85-89%	9.76% 20
90-94%	28.29% 58
95-99%	33.17% 68
Other (please specify)	11.71% 24
TOTAL	205

#	OTHER (PLEASE SPECIFY)	DATE
1	It is not quantifiable	12/14/2023 3:57 PM
2	Same answer as to question 39.	12/14/2023 3:25 PM
3	Never use this standard	12/10/2023 2:32 PM
4	81-95%	12/9/2023 6:13 AM
5	Don't use	12/4/2023 9:28 PM
6	I never use that standard	12/4/2023 5:45 PM
7	never thought about it - never applied it	12/2/2023 1:07 PM

8	See above	12/1/2023 3:52 PM
9	I do not put a percentage in play	11/30/2023 1:36 AM
10	I don't think about it this way	11/29/2023 5:32 PM
11	??? again not relevent to arbitration	11/29/2023 4:26 PM
12	have not had a case with beyond a resonable doubt language	11/29/2023 4:08 PM
13	Same	11/29/2023 3:17 PM
14	BRD not to be used in labor arbitration unless required by CBA	11/29/2023 3:04 PM
15	good question	11/29/2023 2:46 PM
16	See above. It's not a criminal proceeding, it's a contractual one, and the contract governs. See, Trilogy	11/29/2023 1:24 PM
17	See answer to 39.	11/29/2023 1:12 PM
18	See above item 39.	11/29/2023 12:35 PM
19	Jury instructions do not define B.R.D. standard. The juror or trier of fact is presumed reasonable. Regardless, this standard does not apply in civil or quasi-civil litigation like labor arb. We are not criminal court judges.	11/29/2023 12:34 PM
20	100% (beyond all doubt does not exist in this life)	11/29/2023 12:31 PM
21	I would never apply this standard in a civil matter such as labor arbitration unless the CBA required it	11/29/2023 12:30 PM
22	I can't answer this question given how it is phrased	11/29/2023 12:06 PM
23	Quantification makes no sense to me	11/29/2023 12:04 PM
24	See prior answer	11/29/2023 12:01 PM

Q41 In discharge cases where the nature of the violation charged is not criminal, immoral, or reprehensible misconduct impinging the character of the grievant, what standard of proof do you apply?

Answered: 206 Skipped: 26



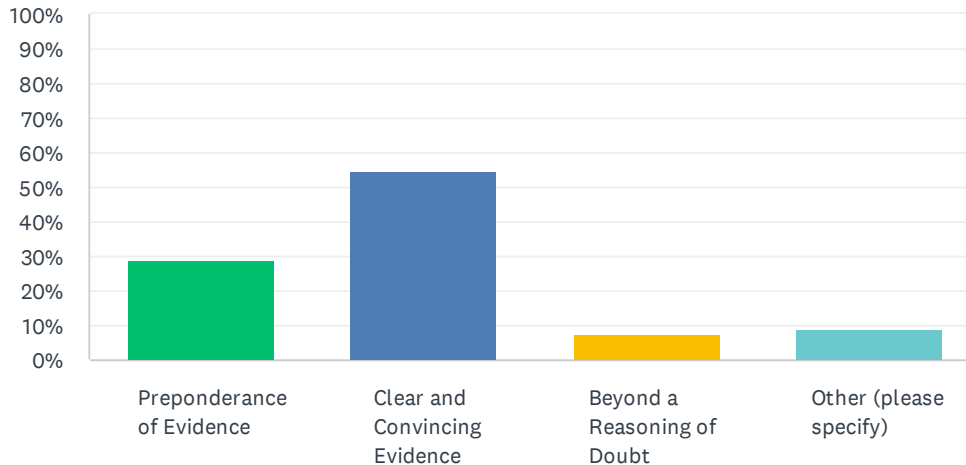
ANSWER CHOICES	RESPONSES	
Preponderance of Evidence	66.02%	136
Clear and Convincing Evidence	22.82%	47
Beyond a Reasoning of Doubt	2.43%	5
Other (please specify)	8.74%	18
TOTAL		206

#	OTHER (PLEASE SPECIFY)	DATE
1	depends on CBA or what is presented to me	12/17/2023 7:27 PM
2	Just cause	12/14/2023 8:01 PM
3	Preponderance, unless the parties use a different standard.	12/14/2023 4:00 PM
4	Just cause	12/14/2023 3:31 PM
5	Often dictated by statute or reg	12/14/2023 3:20 PM
6	Preponderance unless the Agreement provides otherwise	12/9/2023 6:53 PM
7	Depends on whether contract mandates a specific standard. If not, then preponderance	12/4/2023 10:30 PM
8	Balance of probabilities	12/2/2023 7:49 PM
9	balance of probabilities	11/29/2023 3:58 PM
10	just cause, sufficient cause, proper cause. whatever the contract says	11/29/2023 1:24 PM
11	Sufficient to convince me under all the circumstances of the case. There is no graduated meter in my navel that I consult for the level of conviction that I have reached.	11/29/2023 1:15 PM
12	The standard is definitely higher than preponderance. But beyond that statement, the standard is that the evidence must be sufficiently strong to in fundamental fairness move me to take some action.	11/29/2023 12:35 PM

13	Unless the CBA or industry practice specifies, I try to stay away from the specific standards.	11/29/2023 12:29 PM
14	I don't espouse a particular burden of proof in my awards unless the CBA requires it	11/29/2023 12:06 PM
15	See #39	11/29/2023 12:04 PM
16	See prior answers	11/29/2023 12:01 PM
17	what does "a reasoning of doubt" mean?	11/29/2023 11:56 AM
18	Preponderance unless statute/agreement imposes different standard	11/29/2023 11:45 AM

Q42 In discharging cases where the nature of the violation charged is criminal, immoral, reprehensible misconduct, what standard of proof do you apply?

Answered: 207 Skipped: 25



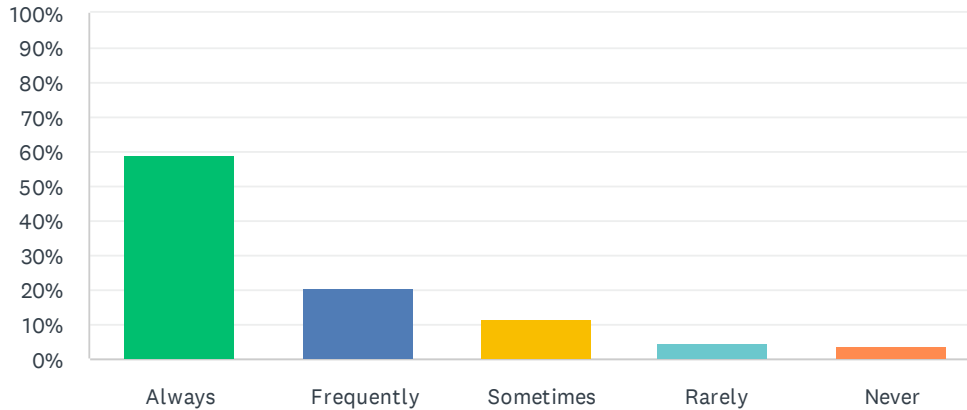
ANSWER CHOICES	RESPONSES
Preponderance of Evidence	28.99% 60
Clear and Convincing Evidence	54.59% 113
Beyond a Reasoning of Doubt	7.25% 15
Other (please specify)	9.18% 19
TOTAL	207

#	OTHER (PLEASE SPECIFY)	DATE
1	depends on what is presented to me or CBA	12/17/2023 7:27 PM
2	I apply the standard of proof that the parties use.	12/14/2023 4:00 PM
3	Just Cause	12/14/2023 3:31 PM
4	Clear and convincing evidence unless the parties have agreed to something else.	12/14/2023 3:25 PM
5	Clear and Convincing unless the Agreement provides otherwise.	12/9/2023 6:53 PM
6	Depends on whether contract mandates a specific standard. If not, then preponderance. Also depends on whether employee is being charged of an actual crime, in which case the elements of the crime may require a "beyond" standard	12/4/2023 10:30 PM
7	It depends but never beyond a reasonable doubt standard.	12/3/2023 1:42 PM
8	balance of probabilities	12/2/2023 7:49 PM
9	I don't use a label unless the parties depend on it regularly but do require stricter than baseline preponderance of the evidence to sustain the characterization of the offense as criminal, immoral, or reprehensible, and to sustain the level of punishment. So my practice is probably what others label "clear and convincing"	11/29/2023 5:32 PM
10	balance of probabilities based on clear & convincing evidence	11/29/2023 3:58 PM
11	i have not had such a case	11/29/2023 2:40 PM

12	see above	11/29/2023 1:24 PM
13	clear and convincing only if criminal charge	11/29/2023 12:40 PM
14	See above item 41.	11/29/2023 12:35 PM
15	See the above answer	11/29/2023 12:29 PM
16	See my answer to 41	11/29/2023 12:06 PM
17	See #39	11/29/2023 12:04 PM
18	See prior answers	11/29/2023 12:01 PM
19	Depends on the case - sometimes preponderance; sometimes clear and convincing	11/29/2023 11:45 AM

Q43 When a party interposes an affirmative defense such as "disparate treatment", does the burden of proof on the issue switch to that party?

Answered: 203 Skipped: 29



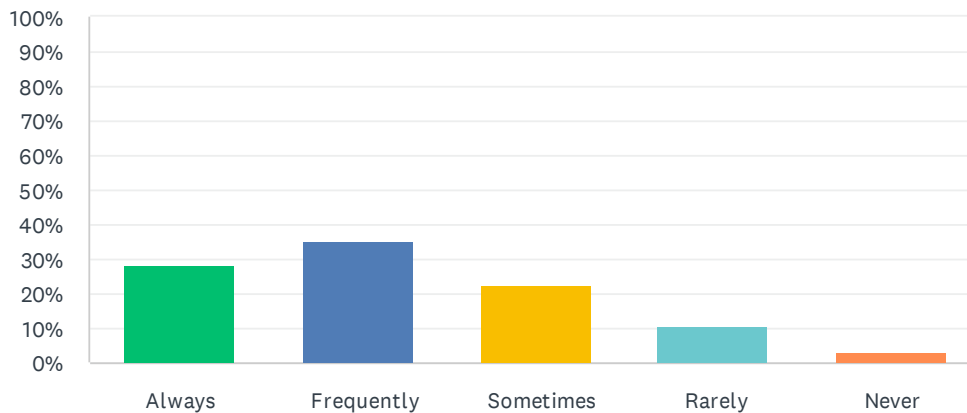
ANSWER CHOICES	RESPONSES
Always	59.11% 120
Frequently	20.69% 42
Sometimes	11.82% 24
Rarely	4.93% 10
Never	3.45% 7
TOTAL	203

#	OTHER (PLEASE SPECIFY)	DATE
1	In discipline/discharge cases the burden of going forward with adducing evidence to support the claim is the claimants as well as the the burden to prove the employer engaged in disparate treatment of the grievant.	12/11/2023 2:30 PM
2	Still need proof of the wrongdoing, then burden shifts to party alleging disparate treatment	12/9/2023 3:23 PM
3	frequently or almost always as to "proof on *that* issue; but claims and counterclaims are often closely interrelated a/o flip sides of each other, so there may not be a clear line and it just becomes a matter of weighing the whole shebang as best you can.	12/9/2023 6:13 AM
4	the burden of production definitely switches, but the employer may have the burden of proving lack of disparate treatment if more likely to be in possession of the relevant facts	11/29/2023 5:32 PM
5	The Federal sector is an exception	11/29/2023 4:44 PM
6	I don't worry about burden of proof; I evaluate the evidence.	11/29/2023 4:35 PM
7	on the issue of disparate treatment only	11/29/2023 4:08 PM
8	NA	11/29/2023 3:17 PM
9	don't understand the question	11/29/2023 2:46 PM
10	if it is a true affirmative defense, yes. If it is uneven enforcement of a rule the party has only a burden of production and the employer still must prove proper administration.	11/29/2023 12:31 PM
11	Question unclear	11/29/2023 11:43 AM

12	On that point only.	11/14/2023 12:09 PM
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Q44 On cross-examination, an advocate asks a question about a matter not addressed in the scope of direct examination. The other advocate objects as the question being beyond the scope of the direct. Do you overrule the objection?

Answered: 203 Skipped: 29



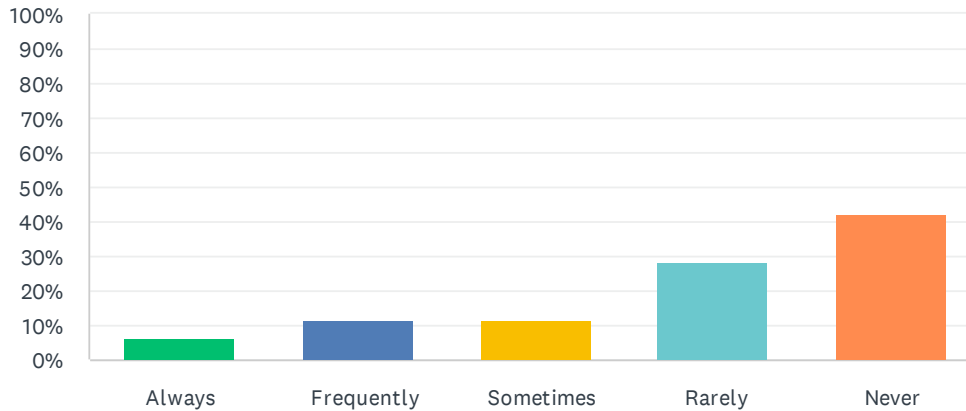
ANSWER CHOICES	RESPONSES	
Always	28.57%	58
Frequently	35.47%	72
Sometimes	22.66%	46
Rarely	10.34%	21
Never	2.96%	6
TOTAL		203

#	OTHER (PLEASE SPECIFY)	DATE
1	unless that party also called the witness, I always allow	12/22/2023 11:23 AM
2	Direct does not limit cross.	12/14/2023 3:57 PM
3	Canadian practice is different	12/14/2023 3:38 PM
4	I remind the parties that we are not bound by the rules of evidence in grievance arbitration proceedings unless the parties' CBA provides otherwise.	12/11/2023 2:30 PM
5	If I find the question relevant	12/6/2023 10:14 AM
6	No such objection exists in Canada	12/2/2023 7:49 PM
7	Obviates the need to recall the witness at a later time	12/1/2023 3:33 PM
8	I indicate the choice is either allowing the testimony to come in during cross-examination now or I'll sustain the objection and allow the party to call the witness as its own witness during its rebuttal.	12/1/2023 12:25 AM
9	The objection is valid but the adversary could call the witness as his/her own.	11/29/2023 6:14 PM
10	How the issue arises again makes a difference, and how the matter relates to the dispute. If the question could appropriately be asked on rebuttal, I may allow it "in the interest of time and	11/29/2023 5:32 PM

	expediency" - other times, I just say they can be called in the cross examining party's case or rebuttal	
11	Always, provided the question is otherwise relevant to the inquiry	11/29/2023 3:58 PM
12	Is an issue or relevance	11/29/2023 3:17 PM
13	will allow issues of character or credibility in cross where relevant	11/29/2023 2:46 PM
14	but I might disallow the question on relevance grounds	11/29/2023 1:24 PM
15	subject to relevancy	11/29/2023 12:34 PM
16	Scope does not apply in arbitration	11/29/2023 12:31 PM
17	However I explain that if the cross-examiner gains an advantage by asking leading questions to what is essentially his or her witness on these new areas and opposing counsel objects to the leading questions, I will require direct questions regarding the new areas.	11/29/2023 12:06 PM
18	Not Always. But a proffer of relevance is often required.	11/29/2023 11:58 AM
19	To be clear the answer is I allow the answer - the question is do I overrule the objection (i.e., NOT sustain it)	11/29/2023 11:45 AM
20	Opposing party has the opportunity to follow-up on redirect or re-cross.	11/14/2023 12:09 PM

Q45 Do you limit the number of recross or redirect examinations (not the number of questions, but rather the number of times the parties switch back-and-forth asking questions)?

Answered: 205 Skipped: 27



ANSWER CHOICES	RESPONSES
Always	6.34% 13
Frequently	11.71% 24
Sometimes	11.71% 24
Rarely	28.29% 58
Never	41.95% 86
TOTAL	205

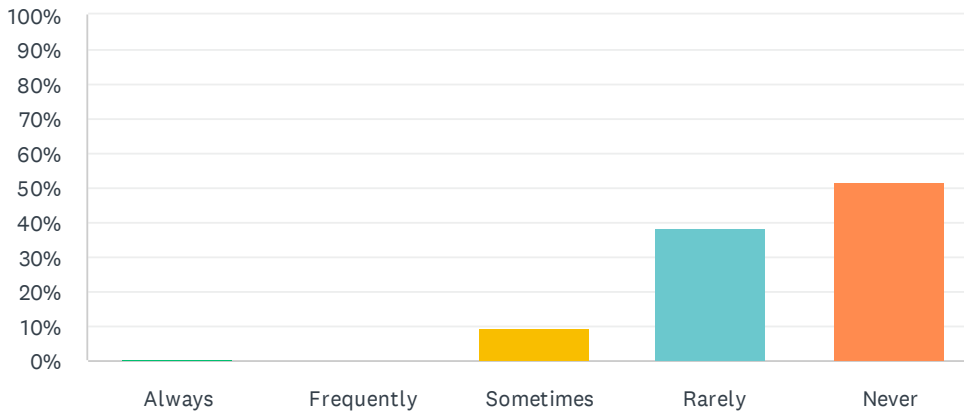
#	OTHER (PLEASE SPECIFY)	DATE
1	Canadian practice is far more limited. Discretionary; I am more open in the 2 or 3 American cases I do annually.	12/14/2023 3:38 PM
2	I have had to shut it down once or twice, but the Parties rarely abuse it.	12/9/2023 6:13 AM
3	Do not remember ti happening	12/1/2023 2:57 PM
4	I will allow the back-and-forth as long as it is not repetitive testimony. If repetitive, it is not allowed.	12/1/2023 12:25 AM
5	But if a dead horse is being beaten, I invite them to stop! And certainly don't allow "beyond the scope" questions to creep in.	11/29/2023 5:32 PM
6	Either you preside or you don't	11/29/2023 3:17 PM
7	Never been an issue	11/29/2023 1:11 PM
8	I may say this area has been adequately covered so let's move on.	11/29/2023 12:06 PM
9	Although I may get to the point where I point out the question has already been asked twice before	11/29/2023 12:04 PM
10	Now that you mention it, I might try this!	11/29/2023 12:02 PM
11	While allowed to a controlled level, to me it is more important that the parties be allowed the	11/29/2023 11:58 AM

opportunity to fully express their positions. If I sense that one or either party is attempting to get in "the last word or persuasive argument", I cut the back and forth quickly.

12	when is it repetitive; redirect should cover new or additional information	11/13/2023 2:44 PM
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Q46 Remedial Damages Assume a collective bargaining agreement provides that each party will split the costs of the arbitrator and bear its own expenses. There is no statutory basis to vary the provision. If the parties have stipulated that the issues include the question "what shall the remedy be?" and one party has brought a frivolous grievance or engaged in egregious misconduct, would you award costs or attorney fees at the request of the other party?

Answered: 187 Skipped: 45



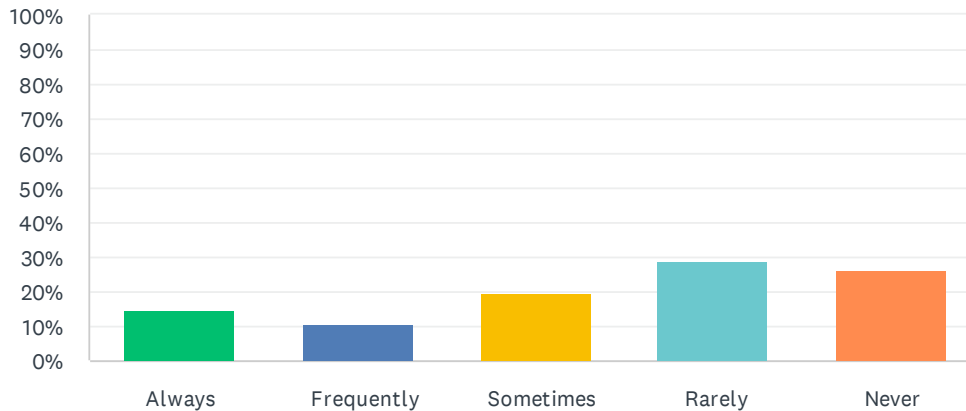
ANSWER CHOICES	RESPONSES
Always	0.53% 1
Frequently	0.00% 0
Sometimes	9.63% 18
Rarely	38.50% 72
Never	51.34% 96
TOTAL	187

#	OTHER (PLEASE SPECIFY)	DATE
1	I have rarely heard such a complaint	12/22/2023 12:06 PM
2	It depends	12/14/2023 4:27 PM
3	except in American cases where that jurisdiction is specifically granted	12/14/2023 3:45 PM
4	I've only done that about a half dozen times in my career.	12/14/2023 3:39 PM
5	I've not seen frivolous grievances.	12/14/2023 3:26 PM
6	Has not arisen, and I don't know.	12/12/2023 7:51 PM
7	I would only do so in cases where the party's conduct was far outside the norm.	12/11/2023 4:42 PM
8	Unless it was a established that the parties had such a practice	12/10/2023 3:00 PM
9	I have only shifted costs when 1 party seeks to cancels a hearing over objection, and the	12/9/2023 6:29 AM

	Parties agree to accept that shifting of costs to reach agreement on resetting.	
10	If the prevailing party has requested atty fees, I allow a supplemental request.	12/5/2023 9:08 AM
11	Never, unless the contract provides for such an award.	12/3/2023 4:55 PM
12	Only in situations involving a "professional" grievant, meaning the grievant has brought a string of frivolous grievances or has engaged in repetitive egregious misconduct. In situations in which I am the contract arbitrator, unions have used my awards as a basis to deny representation in future frivolous grievances or repetitive grievances by a member.	12/1/2023 1:09 AM
13	It would have to be quite extreme.	11/30/2023 3:13 PM
14	I'd request briefing by the parties.	11/30/2023 2:23 AM
15	Federal cases, for sure. Statute allows if requestec	11/29/2023 7:32 PM
16	Assuming you mean egregious misconduct in processing the grievance in arbitration. But the question is What shall the remedy be for the original contract violation, so costs and fees don't seem appropriate to remedy post-incident misbehavior	11/29/2023 5:49 PM
17	It hasn't come up, and I'm torn between "rarely" and "never"	11/29/2023 5:43 PM
18	Quite uncommon. Never do it if not asked to.	11/29/2023 3:26 PM
19	In this jurisdiction, cost awards are not made	11/29/2023 2:52 PM
20	I would do so in employment arbitrations, where I have authority to impose sanctions..	11/29/2023 1:23 PM
21	If CBA allows me to do so	11/29/2023 1:14 PM
22	It depends on the degree of the frivolousness or egregiousness	11/29/2023 12:44 PM
23	only came up once in 20 years and it was denied.	11/29/2023 12:38 PM
24	I might SpotHero cost of an unnecessary extra hearing if a party requested it, especially if we show up and a key witness is not available so we need another hearing.	11/29/2023 12:21 PM
25	Has never happened. Not sure if I have the authority outside of statute or CBA provision allowing costs or attorney fees.	11/29/2023 12:16 PM
26	No unless the cba allows.	11/29/2023 12:10 PM
27	Have never done it	11/29/2023 12:08 PM
28	never happened in my practice	11/29/2023 12:02 PM
29	Never if the agreement requires a splitting of fees/expenses or bearing own attorneys fees/costs.	11/29/2023 11:49 AM
30	Not my job.	11/14/2023 12:15 PM

Q47 Assume the parties have stipulated that the issues include the question "What shall the remedy be?". Do you believe you have the authority to fashion a remedy that includes consequential damages, excluding express fringe and other benefits contained in the collective bargaining agreement?

Answered: 192 Skipped: 40



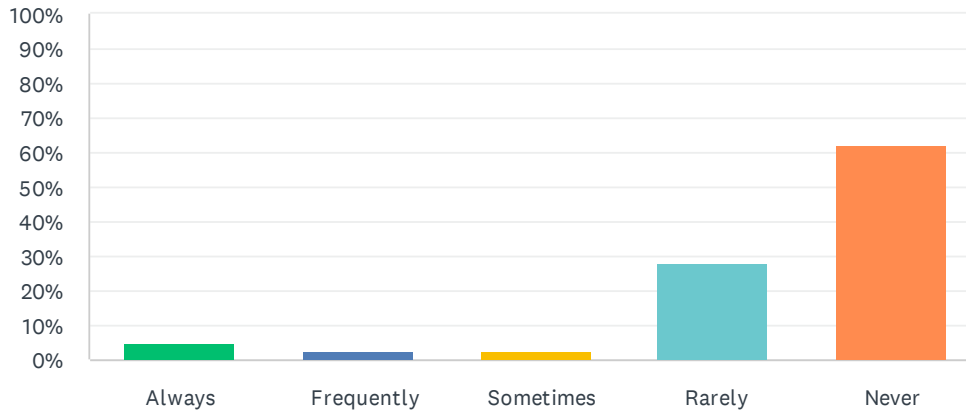
ANSWER CHOICES	RESPONSES	
Always	14.58%	28
Frequently	10.42%	20
Sometimes	19.27%	37
Rarely	29.17%	56
Never	26.56%	51
TOTAL		192

#	OTHER (PLEASE SPECIFY)	DATE
1	I have the authority	12/14/2023 3:35 PM
2	Not unless the CBA explicitly grants the arbitrator that authority.	12/11/2023 2:53 PM
3	I understand the law is changing on this - I havent encountered it before, but would likely be amenable to applying consequential damages if there were solid factual and legal grounds for it.	12/9/2023 6:29 AM
4	I retain jurisdiction over questions of remedy. Remand to parties and retain juriwdiction as to the meanign aned appklication of the awardif any (I get a stipulation typically). I tell them to look at Hill & Sinicropi Remedies in Arbitration 2nd Ed. Rarely comes up.	12/6/2023 11:51 AM
5	Authority as to any remedy based in contract	12/4/2023 10:36 PM
6	I do not believe that I have ever awarded consequential damages in resolving a grievance under a CBA	12/1/2023 3:42 PM
7	Do not remember it happening	12/1/2023 3:03 PM
8	It depends on the CBA	11/30/2023 2:23 AM

9	Increasingly possible, and it depends on the parties' history	11/29/2023 5:49 PM
10	There would have to be contractual language supporting it	11/29/2023 5:43 PM
11	Assuming no contractual limitation	11/29/2023 4:53 PM
12	I will award interest if requested	11/29/2023 4:18 PM
13	Either the parties argue the issue or they don't. If raised I may go further.	11/29/2023 3:26 PM
14	I have the authority but would rarely make such and award	11/29/2023 1:53 PM
15	The question is unclear. It appears to combine two different elements.	11/29/2023 1:43 PM
16	not unless the parties have a history of such. With about 85 years of modern arbitral history, it's hardly the time for an arbitrator to announce to the parties a novel remedial scheme never a part of the labor model	11/29/2023 1:34 PM
17	See Hadley v. Baxendale.	11/29/2023 1:23 PM
18	Unless the contract contains otherwise limiting language	11/29/2023 12:44 PM
19	I have the authority but I rarely use it	11/29/2023 11:59 AM
20	I do not understand the question.	11/29/2023 11:57 AM
21	Unless some law requires it - NLRB deferral case; EEO claim; etc.	11/29/2023 11:49 AM
22	I have the authority but would not do it.	11/15/2023 5:58 PM
23	if are direct and foreseeable	11/13/2023 2:55 PM

Q48 Assume the parties have stipulated that the issues include the question "What shall the remedy be?" Do you believe you have the authority to fashion a remedy to include punitive damages as requested by the prevailing party?

Answered: 192 Skipped: 40



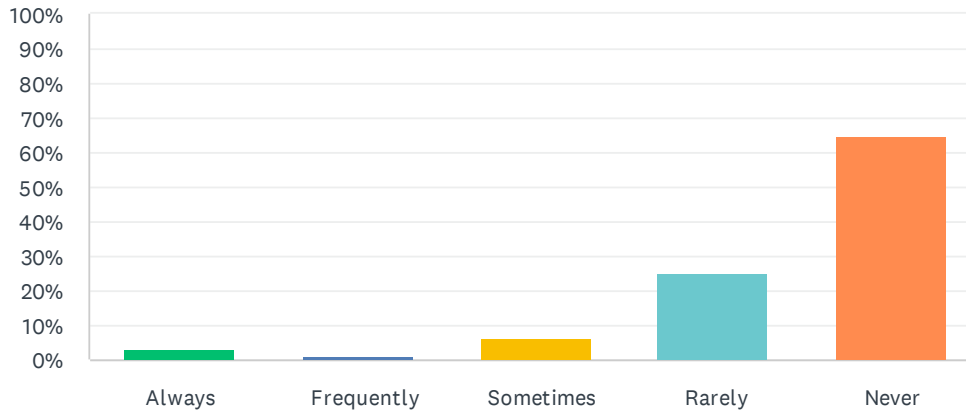
ANSWER CHOICES	RESPONSES
Always	4.69% 9
Frequently	2.60% 5
Sometimes	2.60% 5
Rarely	28.13% 54
Never	61.98% 119
TOTAL	192

#	OTHER (PLEASE SPECIFY)	DATE
1	depends on what is presented	12/17/2023 7:30 PM
2	Depends on the contract language	12/14/2023 8:10 PM
3	I would be guided by the language in the cba and applicable case law.	12/14/2023 4:12 PM
4	I have the authority	12/14/2023 3:35 PM
5	Same answer as I gave to the preceding question.	12/11/2023 2:53 PM
6	Unless it is established that there is such a practice between these parties	12/10/2023 3:00 PM
7	If the whole thing was frivolous, I might entertain it.	12/6/2023 11:51 AM
8	Authority, yes. Would I? No	12/4/2023 10:36 PM
9	Never faced the issue.	12/1/2023 3:03 PM
10	It depends on the CBA.	11/30/2023 2:23 AM
11	Absent express contract language so providing.	11/29/2023 9:38 PM
12	Only if the party has repeatedly and purposefully ignored prior arbitration awards	11/29/2023 9:22 PM

13	Theoretically, in the case where there is no compensatory contractual remedy, and the losing party's misconduct has been grave - haven't done it yet	11/29/2023 5:49 PM
14	There would have to be contractual language supporting it	11/29/2023 5:43 PM
15	see next question (49)	11/29/2023 4:18 PM
16	If constitutionnal issue argued. Yes I may.	11/29/2023 3:26 PM
17	I have the authority but would rarely use it	11/29/2023 1:53 PM
18	What do you consider punitive damages to be?	11/29/2023 1:51 PM
19	Doing so would be a public policy violation under NYS law.	11/29/2023 1:23 PM
20	I would not identify them as "punitive" although I'm sure the Employer would look at them as being punitive. The violation would have to be particularly egregious.	11/29/2023 12:44 PM
21	rarely been asked	11/29/2023 12:02 PM
22	not, unless the agreement clearly allows it	11/29/2023 11:59 AM

Q49 The Union is a prevailing party (not a federal sector case) and did not ask for interest as part of an economic or make whole remedy, do you award interest?

Answered: 198 Skipped: 34



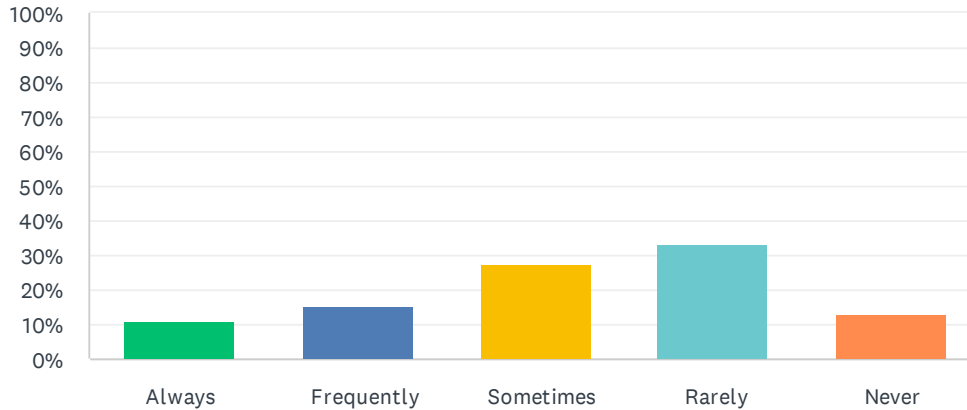
ANSWER CHOICES	RESPONSES
Always	3.03% 6
Frequently	1.01% 2
Sometimes	6.06% 12
Rarely	25.25% 50
Never	64.65% 128
TOTAL	198

#	OTHER (PLEASE SPECIFY)	DATE
1	Don't ask for it then not awarded	12/14/2023 4:27 PM
2	Generally no, but there may be a persuasive argument presented.	12/14/2023 4:12 PM
3	only if that is there normal practice	12/13/2023 1:54 PM
4	If they ask for it. Otherwise, see Question 47.	12/6/2023 11:51 AM
5	Not unless express in the contract	12/4/2023 10:36 PM
6	Typically I just award a generic "make whole" remedy, and leave calculation to parties	12/2/2023 7:57 PM
7	If it is proven the Employer has stalled setting a hearing date for an extraordinary lengthy period of time, yes.	12/1/2023 1:09 AM
8	but thinking about it	11/30/2023 4:42 PM
9	Only if the employer fails to implement the award after 30 days, then I use state's post award interest retro to date of award.	11/30/2023 5:34 AM
10	Only if there is supporting contractual language	11/29/2023 5:43 PM
11	Ia provided for in Legislation in all jurisdictions.	11/29/2023 3:26 PM
12	traditionally not awarded, so if not requested and the other party has no reason for objecting, I	11/29/2023 1:34 PM

	would not order. When it's requested, I sometimes grant it.	
13	post-award interest	11/29/2023 12:51 PM
14	I don't see it as appropriate for the arbitrator to make Union's arguments for it. If I award "make whole" remedies and the Union is "asleeps" regarding what should be included, I let it stand. Otherwise, it becomes a possible never-ending "slippery slope," and I don't see that a part of the neutral's role.	11/29/2023 12:44 PM
15	Though I am rethinking that issue	11/29/2023 12:31 PM
16	Not unless the party unduly delayed the proceedings	11/29/2023 12:21 PM
17	Unless required by law or provision of the agreement	11/29/2023 11:49 AM

Q50 The Union is a prevailing party and did ask for interest as part of an economic or back-pay remedy. Do you award interest?

Answered: 190 Skipped: 42



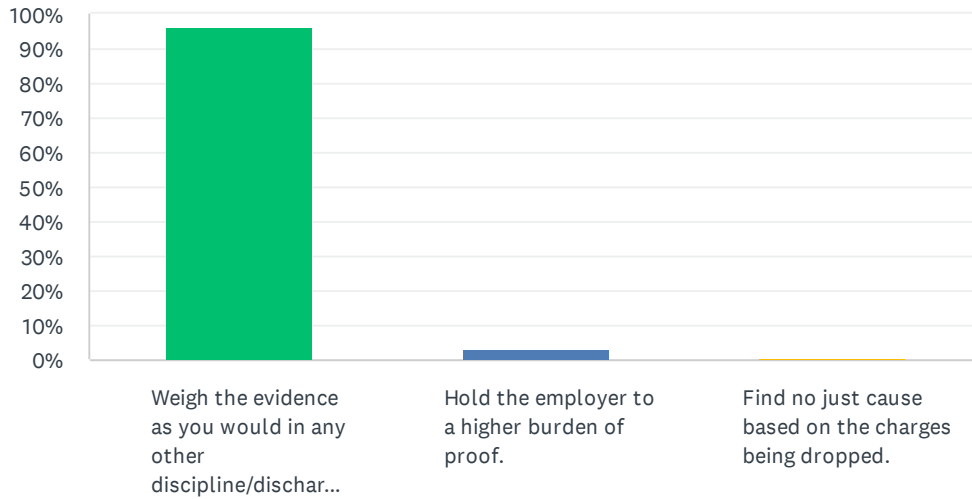
ANSWER CHOICES	RESPONSES	
Always	11.05%	21
Frequently	15.26%	29
Sometimes	27.37%	52
Rarely	33.16%	63
Never	13.16%	25
TOTAL		190

#	OTHER (PLEASE SPECIFY)	DATE
1	Probably.	12/14/2023 4:12 PM
2	again, depends on practice. generally no interest in labor cases	12/13/2023 1:54 PM
3	Not unless the CBA explicitly grants the arbitrator that authority.	12/11/2023 2:53 PM
4	Not where the CBA prohibits such award	12/9/2023 12:57 PM
5	It's not been raised but I think I would	12/6/2023 10:17 AM
6	Not unless express in the contract	12/4/2023 10:36 PM
7	If this is a Federal Case, the answer is never	12/1/2023 6:57 PM
8	Never had it happen.	12/1/2023 3:03 PM
9	If it is proven the Employer has stalled setting a hearing date for an extraordinary lengthy period of time, yes.	12/1/2023 1:09 AM
10	If provided for by statute or contract language.	11/29/2023 9:38 PM
11	Only to the extent that management unreasonably delayed participation in the grievance and/or arbitration proceedings.	11/29/2023 6:27 PM
12	more likely to do so when inflation rates are high	11/29/2023 5:59 PM
13	Depends on parties' (or industry) practice	11/29/2023 5:49 PM

14	There would have to be contractual language	11/29/2023 5:43 PM
15	Provided the request is made early enough that the employer has an opportunity to object	11/29/2023 4:53 PM
16	post-award interest	11/29/2023 12:51 PM
17	I would only consider interest if the grievance explicitly requested it and the Union put the employer on notice at the hearing that interest would be requested so the issue could be fully briefed	11/29/2023 12:38 PM
18	Assuming the request is justified and not simply a fishing expedition	11/29/2023 12:36 PM
19	Never, absent CBA or statutory authority	11/29/2023 12:16 PM
20	But haven't done it	11/29/2023 12:08 PM
21	Unless required by law or provision of the agreement	11/29/2023 11:49 AM
22	I quote Regulation Alleyne: "No reason to ignore reason."	11/14/2023 12:15 PM

Q51 EFFECT OF LAW. Assume a grievant was discharged for conduct that also resulted in criminal charges against him or her. Before the arbitration hearing, the criminal charges are dropped by the prosecutor. Do you:

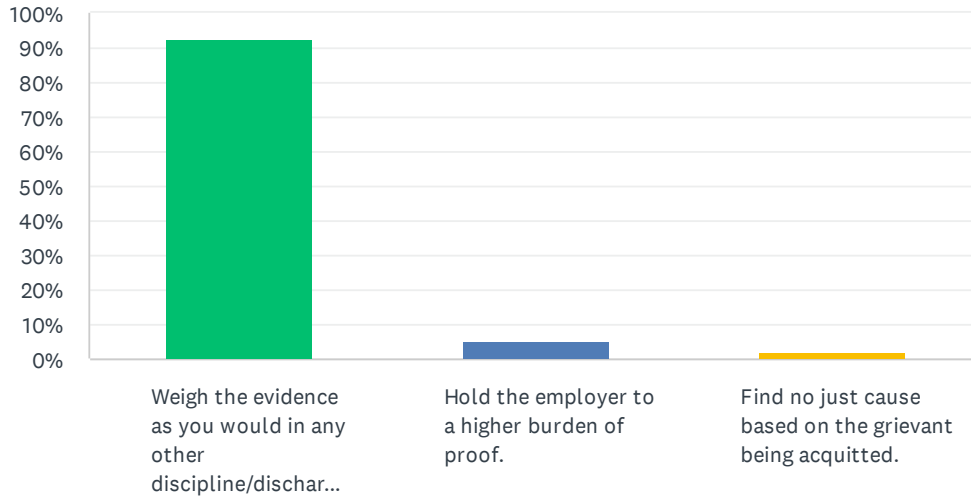
Answered: 202 Skipped: 30



ANSWER CHOICES	RESPONSES	
Weigh the evidence as you would in any other discipline/discharge case.	96.53%	195
Hold the employer to a higher burden of proof.	2.97%	6
Find no just cause based on the charges being dropped.	0.50%	1
TOTAL		202

Q52 Same question, except that instead of the charges being dropped, the case goes to trial and the grievant is acquitted. Do you:

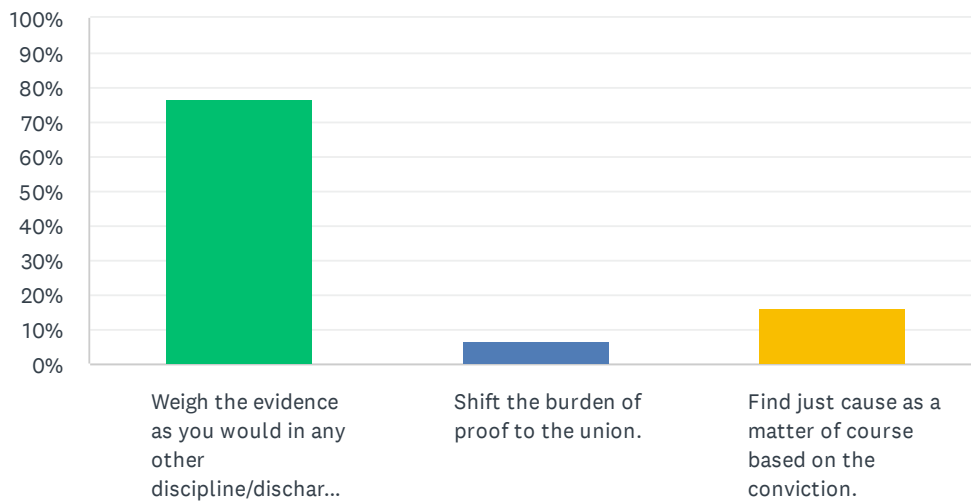
Answered: 200 Skipped: 32



ANSWER CHOICES	RESPONSES	
Weigh the evidence as you would in any other discipline/discharge case.	92.50%	185
Hold the employer to a higher burden of proof.	5.50%	11
Find no just cause based on the grievant being acquitted.	2.00%	4
TOTAL		200

Q53 Same question, except that the grievant is convicted. What effect?

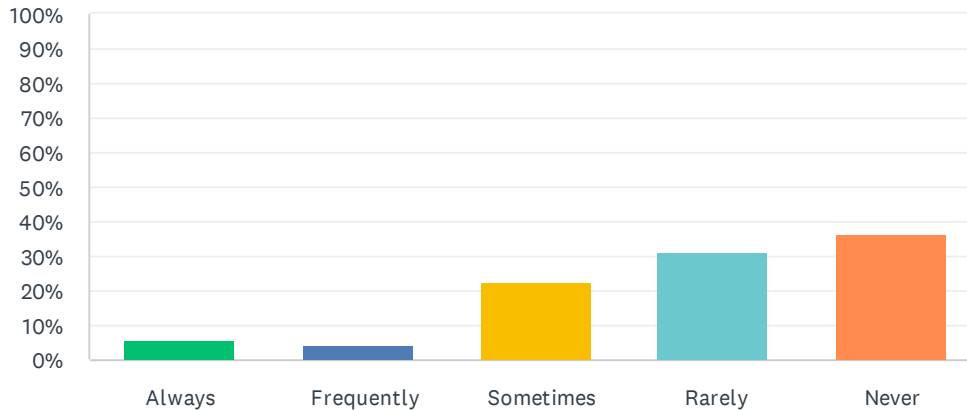
Answered: 199 Skipped: 33



ANSWER CHOICES	RESPONSES	
Weigh the evidence as you would in any other discipline/discharge case.	76.88%	153
Shift the burden of proof to the union.	7.04%	14
Find just cause as a matter of course based on the conviction.	16.08%	32
TOTAL		199

Q54 Assume grievant was fired for conduct that the employer argues could have resulted in criminal charges, but in which charges were never brought. In your decision, do you consider whether the conduct violated a criminal law?

Answered: 192 Skipped: 40



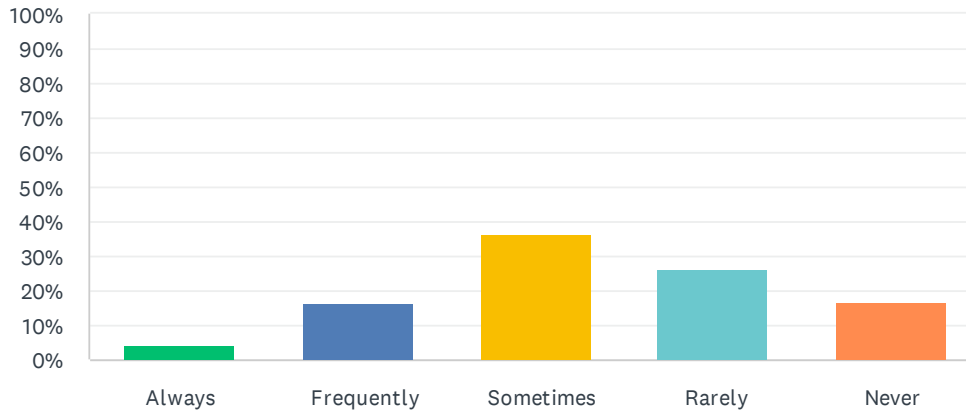
ANSWER CHOICES	RESPONSES
Always	5.73% 11
Frequently	4.17% 8
Sometimes	22.40% 43
Rarely	31.25% 60
Never	36.46% 70
TOTAL	192

#	OTHER (PLEASE SPECIFY)	DATE
1	depends on language in Labor Agreement.	12/22/2023 12:06 PM
2	depends on what is presented	12/17/2023 7:30 PM
3	If they are cited as grounds for the discharge	12/14/2023 4:34 PM
4	It's arbitration not criminal court. Not for a	12/14/2023 4:27 PM
5	I can't recall this ever coming up except in peace officer discharge cases and in those, counsel always either agree the charged conduct could be a crime if proved or they agree to brief that issue.	12/14/2023 3:39 PM
6	Only if the employer's stated reason/testimony is that its decision to terminate, rather than impose a lessser level of discipline was because the conduct was also criminal	12/11/2023 2:53 PM
7	I wont sustain discipline based on misconduct that was not charged, although I could imagine a case where I would consider it as part of my consideration of the gravity of the charged misconduct.ever other charges the employer did press.	12/9/2023 6:29 AM
8	Never had the issue.	12/1/2023 3:03 PM
9	Depends on the CBA language. If the CBA language cites criminal activity or morale turpitude	12/1/2023 1:09 AM

	as a cause for discharge, yes.	
10	Never happened	11/30/2023 1:40 AM
11	Depends - if there is a work rule that prohibits criminal conduct in so many words, I think I have to	11/29/2023 5:49 PM
12	Never argued before me.	11/29/2023 4:37 PM
13	When obvious.	11/29/2023 3:26 PM
14	This and previous questions omit an important point: it's not the criminal charges necessarily are immaterial, it's just that the answer depends on the circumstances of the case	11/29/2023 1:34 PM
15	NO	11/29/2023 1:32 PM
16	If the conduct was relevant to the employment relationship.	11/29/2023 1:23 PM
17	in law enforcement cases	11/29/2023 12:51 PM
18	Only if the Employer argues the conduct created public l'll repute for the Employer	11/29/2023 12:21 PM
19	I can't answer because of the way this question is phrased	11/29/2023 12:15 PM
20	Seems relevant only if the employer is a police department.	11/29/2023 12:12 PM

Q55 In a contract interpretation case, if you believe that a literal interpretation of the contract language would result in a harsh or unfair result, would you apply a contract-interpretation doctrine such as "the law abhors a forfeiture" to avoid the harsh or unfair result?

Answered: 192 Skipped: 40



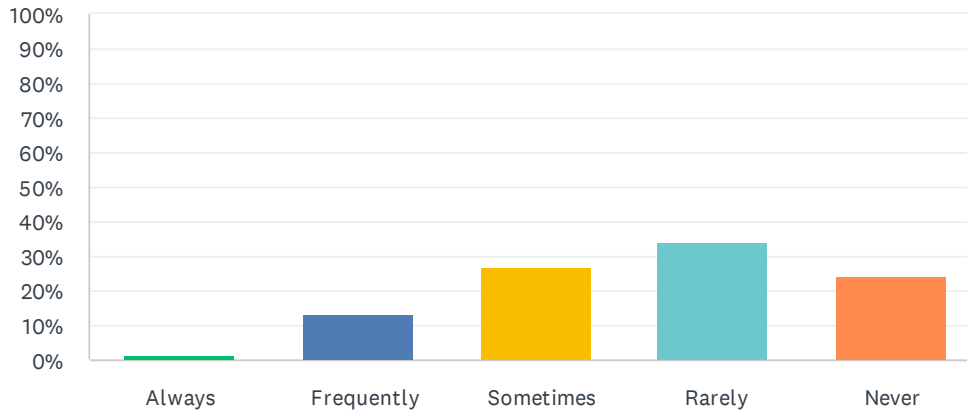
ANSWER CHOICES	RESPONSES
Always	4.17% 8
Frequently	16.15% 31
Sometimes	36.46% 70
Rarely	26.56% 51
Never	16.67% 32
TOTAL	192

#	OTHER (PLEASE SPECIFY)	DATE
1	need to find out what is presented	12/17/2023 7:30 PM
2	doctrine unknown to a Canadian or at least I have never heard it argued	12/14/2023 3:45 PM
3	not sure	12/13/2023 1:54 PM
4	I'd probably cite to the doctrine of avoiding patently "harsh, absurd results" unless the specific problem was that a literal interpretation leaves a vacuum.	12/9/2023 6:29 AM
5	I would look at the total record and see if it applies. ambiguity, bargaining history, etc.	12/6/2023 11:51 AM
6	The parties either knew or should have known the literal, clear meaning of the terms to which they agreed. The CBA language means what it says and says what it means.	12/1/2023 1:09 AM
7	could the parties have intended such a result?--would be my approach	11/30/2023 4:42 PM
8	If the language is truly unambiguous, with no reasonable alternative intent ascertainable, then the results reached cannot dictate the interpretive finding.	11/29/2023 6:27 PM
9	Yes, but not using the forfeiture line - instead, the parties would not have intended a literal reading leading to such a result (with emphasis on whatever bargaining history I have been given, prior application of the language, etc.)	11/29/2023 5:49 PM

10	I have not been faced with this issue	11/29/2023 2:45 PM
11	Are we mixing metaphors? In an interpretation case, I apply the language as I find it to be intended. If it's "harsh" or "unfair," that's the parties' problem, not mine.	11/29/2023 1:34 PM
12	It depends. . . .	11/29/2023 1:23 PM
13	Other equitable principles may apply.	11/29/2023 12:47 PM
14	No body asked me for my opinion of what is "harsh." Only to read the contract.	11/29/2023 12:41 PM
15	The contract says what it says. Not our job to reform the contract to what we think is the better result.	11/29/2023 12:26 PM
16	Can depend on bargaining history	11/29/2023 12:16 PM
17	Can't answer this without more specificity	11/29/2023 12:15 PM

Q56 If the doctrine "the law abhors a forfeiture" is raised as an argument in an arbitrability procedural challenge to a clear defect in the processing of a grievance, do you apply it?

Answered: 185 Skipped: 47



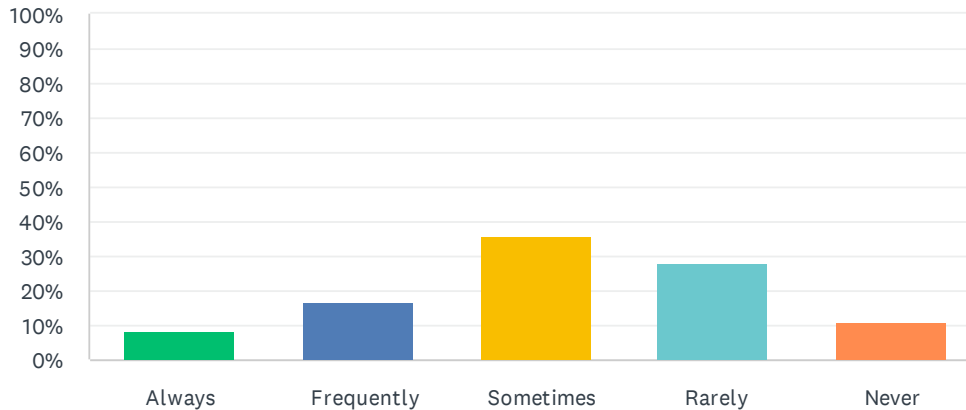
ANSWER CHOICES	RESPONSES
Always	1.62% 3
Frequently	12.97% 24
Sometimes	27.03% 50
Rarely	34.05% 63
Never	24.32% 45
TOTAL	185

#	OTHER (PLEASE SPECIFY)	DATE
1	I doubt I would I apply doctrine unless there was something tag onto in the evidence.	12/22/2023 12:06 PM
2	No one has ever raised this argument	12/18/2023 9:31 AM
3	need to find out what is presented	12/17/2023 7:30 PM
4	That particular principle rarely comes up for me. If it were relevant and helpful, I wouldnt rule out using it.	12/9/2023 6:29 AM
5	Never happened	12/1/2023 3:03 PM
6	Depends on the gacts. E.g., different results if a time limit is missed by a day or if missed by six months.	12/1/2023 1:09 AM
7	If something mitigates the defect, I'll use that, but not "the law abhors a forfeiture" - we are not "the law"	11/29/2023 5:49 PM
8	Never been argued before me	11/29/2023 4:37 PM
9	never been asked	11/29/2023 2:56 PM
10	Never raised	11/29/2023 1:45 PM
11	I will consider it if raised, always, which is a different question than whether it will prove controlling.	11/29/2023 1:34 PM

12	But I do apply the presumption of arbitrability which gets you to a similar place	11/29/2023 1:03 PM
13	It depends on how "small" the defect is and/or if the contract gives any assistance regarding the presumption of arbitrability.	11/29/2023 12:44 PM
14	Depends on the precise language of the CBA - if the language requires forfeiture, I follow it	11/29/2023 12:38 PM
15	Would need more specificity but in most cases my answer would be never, or the timeline in a grievance procedure would have no meaning	11/29/2023 12:15 PM
16	i do not understand this question.	11/29/2023 12:12 PM
17	Depends on what is argued	11/29/2023 12:08 PM
18	never cane yo	11/29/2023 12:02 PM

Q57 Assume the CBA is silent or ambiguous on the issue before you, and that principles of contract construction (e.g., extrinsic evidence, past practice, and bargaining history) are not helpful. Would you apply the doctrine of implied covenant of good faith and fair dealing?

Answered: 185 Skipped: 47



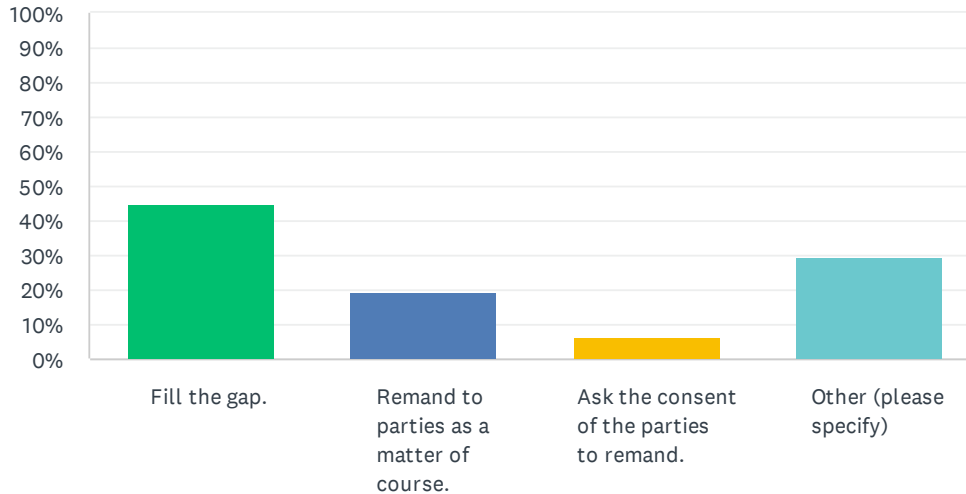
ANSWER CHOICES	RESPONSES	
Always	8.65%	16
Frequently	16.76%	31
Sometimes	35.68%	66
Rarely	28.11%	52
Never	10.81%	20
TOTAL		185

#	OTHER (PLEASE SPECIFY)	DATE
1	Possibly - depends on the particular facts of the case	12/14/2023 8:10 PM
2	The CBA presumably requires the greivance to assert a party has violated the CBA . If the evidence does not establish what the CBA requires should have been done in the circumstance being grieved then no violation can be found/concluded to have occurred.	12/11/2023 2:53 PM
3	The burden is on the moving party to prove intent, by any means available.	12/9/2023 7:14 PM
4	It sounds like it might be all that's left, so if helpfull and reasonable to apply it I would.	12/9/2023 6:29 AM
5	I would decide on the basis of burden of proof.	12/5/2023 5:55 PM
6	Never had a case where I would have to resort to the doctrine of implied covenant of good faith and fair dealing. It seems to me to be a stretch in deciding the grievance on this doctrine	12/1/2023 6:57 PM
7	I do not believe that I have ever used this concept in resolving a grievance under a CBA	12/1/2023 3:42 PM
8	It depends on the facts and evidence.	11/30/2023 2:23 AM
9	instead, I rely on the intent of the parties - Covenant of good faith implies that one party is acting to undermine the agreement, but for that you have to decide what the agreement is!	11/29/2023 5:49 PM
10	Never been argued before me	11/29/2023 4:37 PM

11	Very fact dependent	11/29/2023 4:24 PM
12	never had that situation	11/29/2023 2:56 PM
13	I have not been faced with this issue	11/29/2023 2:45 PM
14	Never raised	11/29/2023 1:45 PM
15	On my own motion? maybe. if raised by one of the parties, probably	11/29/2023 1:34 PM
16	This question cannot be answered, there are too many variables to consider	11/29/2023 1:03 PM
17	If possible I would use the abuse of discretion standard which is similar.	11/29/2023 12:41 PM
18	It depend on whether the CBA is silent or ambiguous and whether there is a zipper clause	11/29/2023 12:38 PM
19	Never had this happen.	11/29/2023 12:36 PM
20	If there is nothing else, have to decide the case	11/29/2023 12:16 PM
21	Can't answer without more specificity, such as is a party arguing this, and if so, how?	11/29/2023 12:15 PM
22	Always depends on the facts presented	11/29/2023 11:51 AM

Q58 Same assumption as above - neither the CBA itself nor principles of construction yield an answer. What would you do?

Answered: 193 Skipped: 39



ANSWER CHOICES	RESPONSES	
Fill the gap.	44.56%	86
Remand to parties as a matter of course.	19.69%	38
Ask the consent of the parties to remand.	6.22%	12
Other (please specify)	29.53%	57
TOTAL		193

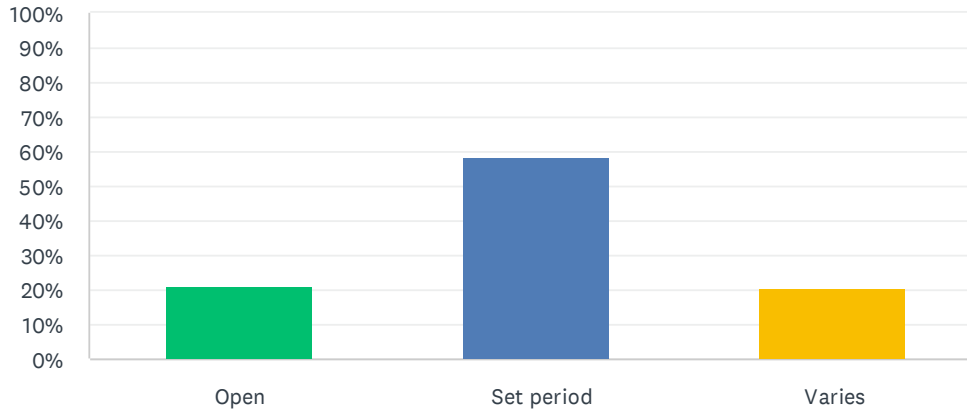
#	OTHER (PLEASE SPECIFY)	DATE
1	fill the gap, if doing so was clearly correct in my mind. Or perhaps give the parties, 30 days to resolve or I would resolve.	12/22/2023 12:06 PM
2	Most likely, but not exclusively, I would deny the grievance	12/18/2023 5:07 PM
3	Depends on the kind of issue - might direct parties to bargain.	12/18/2023 9:31 AM
4	There may be an industry standard that has to be considered.	12/17/2023 5:41 PM
5	Make the call	12/16/2023 12:15 PM
6	ek leave from the parties to decide issue.	12/14/2023 7:04 PM
7	It depends. Sometimes I consider what the parties might have agreed to if the issue had been raised in negotiations based on my 34 years as an advocate in labor negotiations.	12/14/2023 6:44 PM
8	I have never encountered this issue.	12/14/2023 5:23 PM
9	Apply the burden of proof	12/14/2023 4:34 PM
10	if there is no arguable contractual or statutory breach, the grievance fails, end of story	12/14/2023 3:45 PM
11	deny grievance	12/13/2023 5:21 PM
12	Find that the party with the burden of proof failed to meet that burden.	12/11/2023 4:42 PM
13	Deny the greivance for the reasons stated in the prior answer.	12/11/2023 2:53 PM

14	Ditto. If intent is not proven, the moving party loses.	12/9/2023 7:14 PM
15	Determine if the charging party has met its burden of proof.	12/9/2023 3:31 PM
16	Sometimes fill. Sometimes remand. And I just had one where they couldn't agree after remand, and I then declined to fill.	12/6/2023 11:51 AM
17	Decide on the basis of burden proof.	12/5/2023 5:55 PM
18	Need more facts to answer this	12/4/2023 5:49 PM
19	Accept the reasonable over the unreasonable; the probable over the improbable; the plausible over the implausible.	12/4/2023 5:19 PM
20	Whether I fill the gap depends on a variety of factors, but I never would remand	12/3/2023 4:55 PM
21	in Canada, the goal is to come up with the most likely interpretation in the circumstances	12/2/2023 7:57 PM
22	Depends	12/1/2023 3:56 PM
23	remand to parties for a specific period of time with the understanding that if they cannot resolve the issue, I am retaining jurisdiction to resolve the issue.	12/1/2023 3:42 PM
24	Give the parties 90 days to negotiate a resolution. If no resolution, would "fill the gap."	12/1/2023 1:09 AM
25	Interpret the contract as best as possible with reference to the parties' practice and the contract.	11/30/2023 4:48 PM
26	Decide against the party with the burden of proof	11/30/2023 4:27 PM
27	Discuss concerns with parties	11/30/2023 3:13 PM
28	I have not faced that but I lean toward remand	11/30/2023 10:40 AM
29	issue an award based on whatever evidence is before me	11/29/2023 9:22 PM
30	Do not recall such an instance.	11/29/2023 7:32 PM
31	The party grieving the application of such a toothless provision has not met its burden of proof.	11/29/2023 6:27 PM
32	Figure out who had the burden of proof & they lose.	11/29/2023 4:59 PM
33	I think I would probably deny the grievance. Management rights.	11/29/2023 4:53 PM
34	Do not know	11/29/2023 3:26 PM
35	never come up	11/29/2023 2:56 PM
36	never has occurred	11/29/2023 2:52 PM
37	Dismiss the grievance	11/29/2023 1:45 PM
38	I'd probably rule that the contract's silence leaves the matter to the employer's discretion under the Management Rights clause.	11/29/2023 1:23 PM
39	Fill the gap with an award that is limited in scope to the specifics of the case	11/29/2023 1:19 PM
40	try to mediate a solution	11/29/2023 1:01 PM
41	They hired me to interpret the contract so I do that given what little information it appears to impart from a reasonableness and good faith dealing of the parties I can construe.	11/29/2023 12:44 PM
42	None of the above. How is this a different question?	11/29/2023 12:41 PM
43	It depends on whether the CBA is silent or ambiguous and whether there is a zipper clause	11/29/2023 12:38 PM
44	My action would depend on my evaluation of the relationship, evidence in the record and knowledge of the advocates.	11/29/2023 12:36 PM
45	Deny the grievance. Burden of proof is on the union, and they have not met it.	11/29/2023 12:26 PM
46	find the moving party has not met its burden of proof	11/29/2023 12:20 PM
47	Find that the Union has not met the burden of persuasive.	11/29/2023 12:16 PM

48	Need more specifics	11/29/2023 12:15 PM
49	Fill the gap, while finding some way to ground my decision in the CBA language.	11/29/2023 12:12 PM
50	Decide the case on burden of proof.	11/29/2023 12:10 PM
51	dismiss the grievance	11/29/2023 12:07 PM
52	never happened	11/29/2023 12:02 PM
53	rule against the union for failing to meet its burden of proof	11/29/2023 12:00 PM
54	Depending on circumstances, remand or deny grievance.	11/29/2023 11:49 AM
55	Would depend on the facts of the case and perhaps discussions off the record with the Parties	11/29/2023 11:49 AM
56	Deny the grievance	11/15/2023 5:58 PM
57	scare them into settling	11/13/2023 10:02 PM

Q59 If you retain jurisdiction, do you usually do it for a set period or indefinitely?

Answered: 199 Skipped: 33

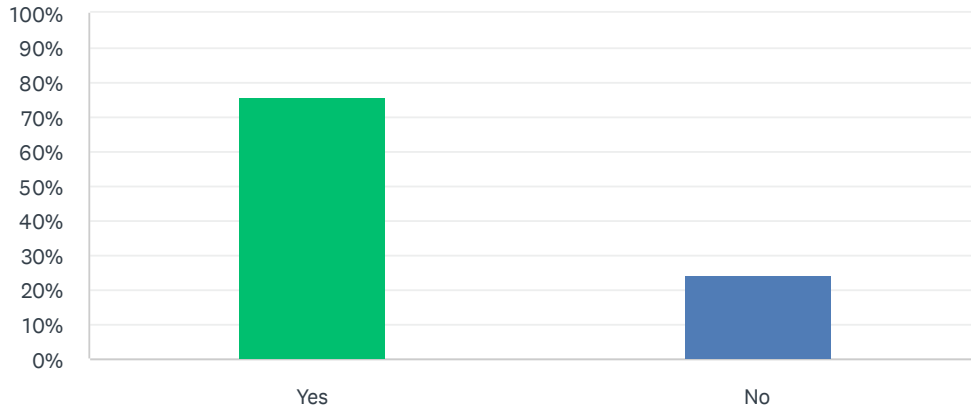


ANSWER CHOICES	RESPONSES
Open	21.11% 42
Set period	58.29% 116
Varies	20.60% 41
TOTAL	199

#	OTHER (PLEASE SPECIFY)	DATE
1	For set purpose, i.e. to help with implementation of Award	12/18/2023 9:32 AM
2	reasonable period of time	11/30/2023 5:13 PM
3	Set period subject to extension by agreement	11/29/2023 5:49 PM
4	Indefinite unless the parties stipulate to a limit	11/29/2023 5:43 PM
5	Set period subject to being extended if advised of a remedy problem	11/29/2023 4:55 PM
6	I only retain jurisdiction if both request.	11/29/2023 12:43 PM
7	A definite period within which it can be invoked, the indefinitely if time.y invoked	11/29/2023 12:40 PM
8	I retain remedial jurisdiction over this matter for sixty days from the date of this Award for the sole purpose of resolving any questions that may arise over application or interpretation of a remedy. Code of Professional Responsibility for Arbitrators of Labor-Management Disputes, Part 6, Section E. Elkouri & Elkouri, pp. 7-49 to 7-54. "It is widely accepted that an arbitrator may properly retain jurisdiction to resolve remedial problems that may arise in complying with the award." St. Antoine, p. 63.	11/29/2023 11:58 AM

Q60 If there is an economic or other remedy, do you typically remand it for the parties to resolve?

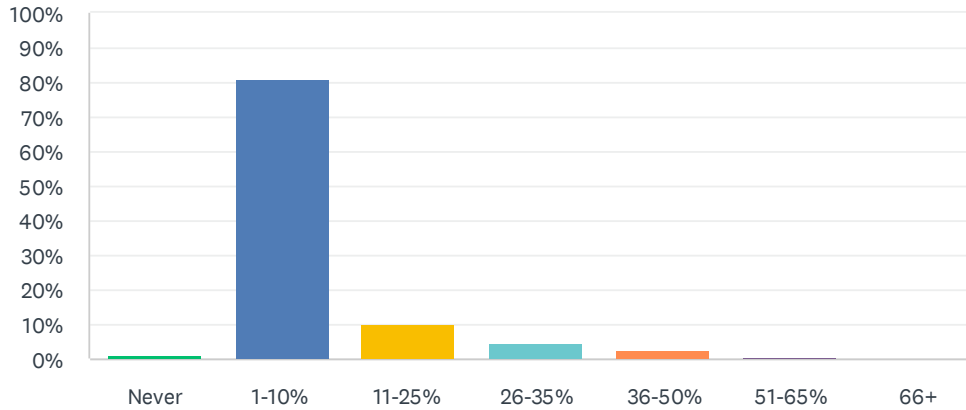
Answered: 202 Skipped: 30



ANSWER CHOICES		RESPONSES	
Yes		75.74%	153
No		24.26%	49
TOTAL			202

Q61 If yes, estimate how frequently have the parties come back to you to resolve an impasse?

Answered: 173 Skipped: 59

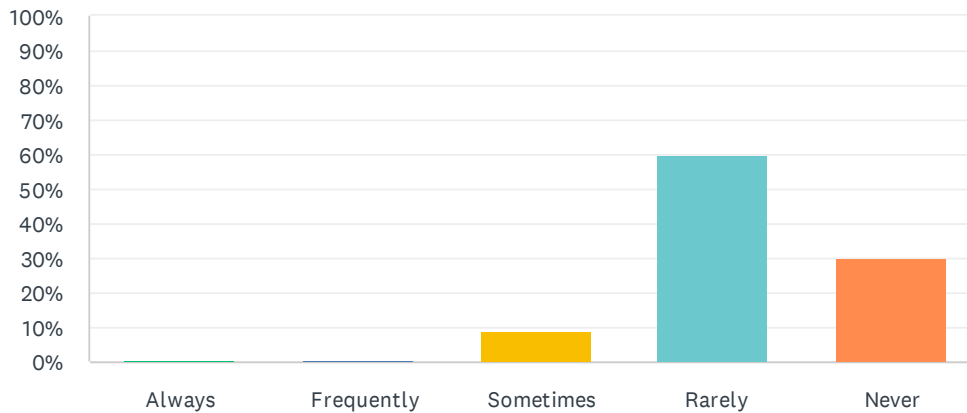


ANSWER CHOICES	RESPONSES
Never	1.16% 2
1-10%	80.92% 140
11-25%	9.83% 17
26-35%	4.62% 8
36-50%	2.89% 5
51-65%	0.58% 1
66+	0.00% 0
TOTAL	173

#	OTHER (PLEASE SPECIFY)	DATE
1	I answered no to question 60 because I don't "typically" remand the remedy but rather do so only when the remedy isn't obvious so my answer here should be considered in that light.	12/14/2023 3:45 PM
2	I have had cases where I did not remand but the parties have still come back to me for assistance with the remedy	12/4/2023 1:58 PM
3	In 60, above, "remand" is not the correct term here. I have never seen it used or argued. Did you mean retention of jurisdiction or issuance of an interim award? Was this survey written by someone familiar with LABOR arbitration?	12/3/2023 4:58 PM
4	Not applicable	11/29/2023 1:25 PM

Q62 In cases where you have not retained jurisdiction, has one party requested a substantive clarification or reconsideration over the objection of other party?

Answered: 193 Skipped: 39



ANSWER CHOICES	RESPONSES
Always	0.52% 1
Frequently	0.52% 1
Sometimes	8.81% 17
Rarely	60.10% 116
Never	30.05% 58
TOTAL	193

#	OTHER (PLEASE SPECIFY)	DATE
1	I don't recall this happening more than once or twice in 30 years.	12/22/2023 12:08 PM
2	Not applicable. If grievance is sustained, I retain jurisdiction where	12/9/2023 7:17 PM
3	I have had one case where I retained jurisdiction. Parties never contacted me and one challenged award in court and it was remanded to clarify the award.	12/9/2023 3:32 PM
4	Yes, on substantive clarification; No on reconsideration	12/5/2023 5:08 PM
5	I always retain jurisdiction over implementation of the award where a remedy is ordered.	12/1/2023 3:43 PM
6	Never happened	12/1/2023 3:04 PM
7	1 time	11/29/2023 4:25 PM
8	I always remain seized	11/29/2023 2:53 PM
9	I'm functus officio.	11/29/2023 1:25 PM
10	I believe it happened once several years ago	11/29/2023 1:20 PM
11	If one party objects, would not issue clarification.	11/29/2023 1:03 PM
12	I always retain jurisdiction.	11/29/2023 12:27 PM

13	But I would not consider it	11/29/2023 12:16 PM
14	I retain in all cases if there is a remedy	11/29/2023 12:00 PM