

Filing of Grievances and Decisions to Appeal:

With respect to precedence, a party's assessment of whether to arbitrate a case looks largely to an assessment of the likelihood of success

- The VLRB has developed a body of VLRB precedent over the years
- It provides some guidance but is not an exhaustive or only factor
 - Precedent may be lacking as to a particular issue
 - Precedent may be lacking due to unique facts and circumstances in which the majority of discharge or discipline cases arise
 - Precedent may be lacking because disciplinary challenges were not assessed in their isolation but as part of other issues and so no body of law exists to offer guidance as to a particular issue
 - Precedent may be lacking fear motivates individuals to agree to settlement in a less than desirable manner to avoid the risk of litigation
 - Precedent may be lacking because there is little analysis as to a particular issue that was ancillary to the larger question in which the grievance arose
- Traditional arbitration also contains a body of precedence which though not binding, provides more guidance than has been developed in VT because it draws on labor experiences across the country in every context imaginable – How Arbitration Works
- With respect to whether or not to seek review of a decision rendered in a VLRB grievance, in terms of a willingness to seek review by the Supreme Court, the decision to do so may be guided by a number of factors beyond agreement or disagreement with a VLRB decision, including financial resources, political happenings, interest in a particular matter, and overall knowledge

Costs

- The approximate cost of \$1500 for a VLRB hearing versus \$4516 for an FMCS hearing are numbers that do not appear to take into account certain present and/or future potential costs and does not include the cost of a remedy hearing which in a win makes the approximate VLRB cost \$3000 versus \$4516
- VLRB cost of \$1500
 - does not take into account the growing number of unionized employees in the State of Vermont and the additional work the VLRB will be called upon to do as these employees are added or the staff or resources that may be needed to meet an increased demand for their services
 - does not include costs to the State of the current unwieldy and litigious process of formalized litigation that has developed over the years, specifically
 - it does not include the costs of the attorneys processing the cases, their administrative staff, and the time of state workers taken out of work for depositions
 - does not include the cost of a remedy hearing for resolution of the remedy
- Difference between traditional arbitration and VLRB arbitration litigation
 - Arbitration is an alternative dispute resolution process that is designed to be a substitute for litigation

- In the VSEA/State relationship before VLRB, arbitration has become litigation with all its attendant costs which are not figured in the identified \$1500 average VLRB cost
- There are attendant costs associated with the different procedures that result from the discovery tools allowed by the 2 processes:
 - VLRB Arbitration litigation mirrors civil litigation and involves: admissions, interrogatories, depositions, requests for production of documents and access to premises
 - Cost of responding to admissions
 - Cost of responding to interrogatories
 - Cost of preparing for and conducting depositions
 - \$250-650 per dep
 - Traditional Arbitration involves: requests for production of documents
 - which derive from the parties rights under the NLRA or similar state statute to receive information necessary and relevant to the processing of grievances
 - refusal or non-compliance may involve recourse to the arbitrator to issue subpoenas or to the appropriate Labor Board for a ULP

Speed

- VLRB's average processing speed of 278 days contrasts with the FMCS average of 333 days from panel request to issuing of a decision however this is a national average that does not take into account certain factors which may contribute to lengthier processing times:
 - Sometimes parties request second panels, this number does not indicate whether a first or second panel is involved
 - Parties' CBAs often have defined time for requesting arbitration and supplying a panel which may be very short (5-15 days) which require that they obtain a panel well before they have obtained sufficient information for a full analysis of the grievance, i.e. before a party has truly decided whether it will proceed on the case or not
 - It does not take into account situations where parties mutually decide to use a previously-appointed arbitrator from a case they settled to resolve a newly-arisen dispute
 - It does not take into account cases selected through other means: AAA, mutually negotiated standing panels or rosters, a mutually-agreed upon arbitrator, recourse to a state established panel of arbitrators
 - Other factors driving speed:
 - Press of business: numerous obligations that employer, employee, union contend with on daily basis that may prolong scheduling of cases
 - Calendaring issues, availability of advocates and arbitrators to hear cases
 - Sophistication of parties' knowledge of processes
 - Contentiousness of parties' relationship
- Differences in Processing of Cases: VLRB versus Traditional Arbitration

Differences in Processing of Cases: VLRB versus Traditional Arbitration

VLRB	TRADITIONAL ARBITRATION
<p>File Step IV Grievance Pleading</p> <ul style="list-style-type: none"> • Attorney time • Administrative assistant time • Pleading in quadruplet • Copy to opposing side <p>Opposing party files response: 20 days</p> <ul style="list-style-type: none"> • Attorney time • Administrative assistant time • Certificate to VLRB <p>Possible Status Conference</p> <ul style="list-style-type: none"> • Attorney time • VLRB time <p>File Discovery Request and Certificate</p> <ul style="list-style-type: none"> • Attorney time • Certificate to VLRB <p>Respond to Discovery Request</p> <ul style="list-style-type: none"> • Attorney time • Administrative assistant time • Staff time: interviews, document retrieval, etc. <p>Motions/Disputes over discovery</p> <ul style="list-style-type: none"> • Attorney time • Administrative assistant time • VLRB time • Board Hearing possibility <p>Depositions scheduling and execution</p> <ul style="list-style-type: none"> • Attorney time • Administrative assistant time • Staff time: interviews, document retrieval, etc. • Removal of employees from work • Cost of court reporter and/or other 	<p>Arbitrator Selection</p> <ul style="list-style-type: none"> • Mutual agreement – Attorney time • Panel request: returned w/in 1 day – Administrative Assistant time • Arbitrator research – Attorney time • Letter to arbitrator advising of selection and requesting dates • Scheduling of hearing <p>Request for information</p> <ul style="list-style-type: none"> • Attorney time; via letter to opposing counsel <p>Dispute over information</p> <ul style="list-style-type: none"> • Request subpoena from arbitrator; turnaround time 1 day • Continued failure to comply, unfair labor practice charge • Attorney time <p>Respond to Discovery Request</p> <ul style="list-style-type: none"> • Attorney time • Administrative assistant time • Staff time: interviews, document retrieval, etc.
<p>Hearing on Merits</p> <ul style="list-style-type: none"> • VLRB time • Attorney time • Witnesses' time 	<p>Hearing on Merits</p> <ul style="list-style-type: none"> • Arbitrator time • Attorney time • Witnesses' time
<p>Briefing</p> <ul style="list-style-type: none"> • Attorney time 	<p>Briefing</p> <ul style="list-style-type: none"> • Attorney time
<p>Remedy (if applicable)</p> <ul style="list-style-type: none"> • Discovery and formulation of remedy demand • Board hearing • Attorney time 	<p>Remedy (if applicable)</p> <ul style="list-style-type: none"> • Discovery and formulation of remedy demand • Attorney time

