

LABOR ARBITRATION INSTITUTE

**Labor Law and  
Labor Arbitration**

Friday

**May 14, 2010**

**St. Louis**

KNOWLEDGE  
RESULTS  
CHALLENGE  
STRATEGY

CHALLENGE  
STRATEGY

# Labor Law & Labor Arbitration

Save money on training, work smarter back at the office or shop, and stay up-to-date.

We welcome you to St. Louis to learn the latest developments in labor law and labor arbitration.

The faculty members are among the top labor arbitrators in the country. They draw upon their years of experience and give a real-world and sophisticated approach to every subject.

There is always more to learn, skills to acquire, and arbitrators to consult. This spring, St. Louis will have it all.

## Agenda

7:15-8:00 a.m.

**Registration & Continental Breakfast**

8:00-8:30 a.m.

**Understanding Arbitrators and the Grievance Process**

When you start to interview a witness, what do you tell them about the process and your client's position? Or, during settlement talks, do you withhold certain information as a strategy toward winning? Do you make your opening statement after hearing the other side's case-in-chief? Which definition of just cause makes your case easier to argue, and still fit within the arbitrator's philosophy? These points and more will be discussed.

*Arb. Jeff Jacobs*

8:30-10:00 a.m.

**Discipline & Discharge: Cases from 2009 and 2010**

Using actual cases, the arbitrators explain the principles and rules that apply in these cases: workplace threats, computer misuse, sexual harassment, off-duty misconduct, subpar performance and other hot areas of discipline/discharge.

*Arbs. Jacobs, Rohlik & Suardi*

10:00-10:15 a.m. **Break**

10:15-10:45 a.m.

**Insubordination**

The three elements are straightforward (order, refusal, notice of consequences), but there are many other factors to consider: workplace culture, supervisor-grievant relationship, contrary contract provisions, and the employee's job description. All of these can change the answer in an insubordination case.

*Arb. Mark Suardi*

10:45-11:15 a.m.

**Job Performance**

These cases can arise as a discipline or non-discipline matter. And the dispute can involve time studies, quality of work, and progressive counseling, to more ambiguous matters such as job neglect. An explanation of the principles that apply and the most likely resolution.

*Arb. Jeff Jacobs*

11:15 a.m.-12:00 Noon

**The Arbitrator as Umpire**

Arbitrators are similar to and different from judges and juries. For example, in arbitration, all evidence is admitted into the record and all arguments are heard as if it were a trial, but an arbitration hearing is also like an appellate court in which the arbitrator can ask questions. There is also a significant difference between an arbitrator ascertaining the facts, and the jury finding the truth. In fact, some arbitrators don't even consider burden of proof. And you cannot call up a judge or labor arbitrator and ask how they would decide your case. However, you could choose an arbitrator who will take you and the other side out in the hall. Those arbitrators can and often do subtly suggest how they will rule. These advocacy topics and more will be addressed.

*Panel*

12:00-1:00 p.m. **Lunch (on your own)**

1:00-1:45 p.m.

**Discipline & Discharge: Advanced Issues**

Many cases involve more than a single offense and mitigation factors. There are the cases in which procedural

## Location & Registration Information

The conference will be held at the Sheraton Clayton Plaza Hotel in St. Louis, MO. The Sheraton is ideal for business and leisure travel. There are several shopping and restaurant, plus entertainment, options within an 8-block radius of the hotel.

You will also be minutes from the world-famous attractions, such as the Gateway Arch (Jefferson National Expansion Memorial) and Major League Baseball.

The hotel has been redesigned from top to bottom, with a contemporary look and a comfortable feel to all of its guest rooms. The hotel is also easy to reach, whether driving or flying-in. For more information, please visit the hotel's website, [www.sheratonclaytonhotel.com](http://www.sheratonclaytonhotel.com)

The conference tuition of \$295 includes admission to all sessions, course materials (CD & workbook), and all breaks. You can save \$50 if you register before February 26, 2010. See the registration form or visit us online at [www.laborarb.com](http://www.laborarb.com)

due process leads to a different outcome. Or the contract has a disciplinary ladder that can lead to more than one result. Or the grievant's case is complicated by another proceeding, such as worker comp, potential FMLA claim, or even an earlier grievance that is still pending. In this session, the arbitrators discuss actual cases and the principles which they use to resolve the cases.

*Panel: Arbs. Jacobs, Suardi & Rohlik*

**1:45-2:30 p.m.**

### ■ **Contract Law: Applying the Rules of Construction**

Knowing the principles of contract law is indispensable to any contract interpretation case. A fast-paced discussion of the most important principles.

*Arb. Joseph Rohlik*

**2:30-2:45 p.m. Break**

**2:45-3:15 p.m.**

### ■ **Past Practice**

The Past Practice doctrine and the elements are well-established, but learn about three over-riding arguments: is the management interest stronger than the employee benefit or working condition? Is the change management seeking major or minor? And the biggest factor: is the practice a prescribed or present way of doing business.

*Arb. Mark Suardi*

**3:15-4:30 p.m.**

### ■ **Contract Interpretation Cases**

One of the best ways to learn is to hear the facts of a case, and have the arbitrator explain their decision if they had been the arbitrator in that case. The arbitrator knows that in this setting, he has to be succinct and get to the heart of the case quickly. The cases we present to the panel are a wide range of contract cases, so the panel discusses the legal principles and rules, including the Past Practice doctrine.

*Panel: Arbs. Jacobs, Rohlik & Suardi*

**4:30 p.m. Adjournment**

## CLE & HR Credit

The Labor Arbitration Institute is an accredited CLE provider in several states. Please indicate on the registration form which state(s) you hold a license and we will notify you of the number of CLE credits awarded.

This program has been approved for 7 recertification credit hours toward PHR, SPHR and GPHR certification through the HR Certification Institute. For more information about certification or recertification, please visit the HRCI website at [www.hrci.org](http://www.hrci.org).



The use of this seal is not an endorsement by HR Certification Institute of the quality of the program. It means that this program has met HR Certification Institute's criteria to be pre-approved for recertification credit.

## More to Learn

The faculty members cover numerous legal and arbitral principles. But they do more than explain – they give advice on how to argue the legal and arbitral points.

Here are just two areas in which the arbitrators go in-depth and help us become better prepared.

### **Workplace Violence**

Zero-tolerance policies are common, but this does not mean you can skip the investigation, even when the participants admit to fighting, an obvious violation of the policy.

From an actual case, an arbitrator wished these questions had been asked by management during the investigation:

1. Who was the aggressor? A hard and fast rule on fighting does not mean that every person, even a hapless victim, must be discharged.
2. What was the basis for the altercation? Did one worker hurl a racial slur at the other, which would understandably lead to an altercation? There are triggering events which cause others to lose control. It does not justify their conduct but it may be a mitigating factor and a reason to reduce the discharge.
3. What would be the impact on the workplace if either or

both combatants went back to work? Could they be separated, so they would not have to work with each other? Would any co-workers be afraid?

### **Insubordination**

In the typical case, management has to prove up the 3 elements of insubordination: order, refusal, notice of consequences.

The tough cases usually involve some twist on one of the 3 elements. For example, in one case, the employer invited an outside group of trainers to work with the employees.

The grievant snorted, grunted and yawned during the orientation and then, acted disrespectfully toward the trainer. Management issued discipline to the grievant for insubordination.

The case went to arbitration, and the employer won because it had done three things: It had explained to the employees, in advance, 1) what the trainers were going to do and 2) that the trainers carried the authority of the plant manager and supervisors, and 3) employees were expected to follow their orders. According to the arbitrator, the employer's failure to prove the third element (inform the employee of the consequences for refusing) was not a sufficient reason to reduce the discipline.

Come to St. Louis and learn more!

## Registration Options

1. Register Online at [www.laborarb.com](http://www.laborarb.com)
2. Complete this form and mail to the Labor Arbitration Institute
3. Complete this form and fax to 507-645-2474

## Labor Law & Labor Arbitration

Friday, May 14, 2010

Sheraton Clayton Plaza • 7730 Bonhomme Ave. • St. Louis, MO 63105 • 314-863-0400  
[www.sheratonclaytonhotel.com](http://www.sheratonclaytonhotel.com)

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**Privacy Policy:** The email address you provide is only used by the Labor Arbitration Institute (LAI). LAI does not sell or share its email lists, or any customer lists.

**TUITION**            \$295.00 per registrant (if registering after February 26, 2010)  
                             \$245.00 per registrant (if registered before February 26, 2010)

### PAYMENT

Check Enclosed \$ \_\_\_\_\_

Credit Card Payment \$ \_\_\_\_\_

Card Number (VISA, MasterCard or American Express) \_\_\_\_\_

Exp. Date: \_\_\_\_\_ Cardholder Signature \_\_\_\_\_

Payment must accompany registration, unless other arrangements are made ahead. Please call the conference registrar at 507-663-1220 for details. Checks may be made payable to Labor Arbitration Institute.

### HOTEL ACCOMMODATIONS

A block of rooms has been reserved at the Sheraton Clayton Plaza, the site of the conference. Conference attendees and everyone in their party are entitled to a group rate of \$109.00 (single or double). Please make your reservation as early as possible by calling the hotel at (888) 337-1395. This special rate will expire on April 13, 2010 or earlier, if the room block is exhausted. We recommend that you make your reservation as soon as possible, and preferably before the early enrollment deadline of February 26, 2010.

### MISCELLANEOUS

I am an attorney and request information on CLE credits for the state of \_\_\_\_\_.

I cannot attend, but please send me information on future conferences.

### MAIL TO:

Labor Arbitration Institute  
205 South Water Street  
Northfield, MN 55057

*For more information, call 507-663-1220 or FAX number 507-645-2474*

