



Labor and Employment Law Seminar

**2026
LAS VEGAS**

**WAGE, LABOR, AND WORKFORCE
OPERATIONS:**

**GRIEVANCE HANDLING:
BUILDING A SOLID CASE FOR
ARBITRATION**



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**WAGE, LABOR, AND WORKFORCE OPERATIONS:
GRIEVANCE HANDLING:
BUILDING A SOLID CASE
FOR ARBITRATION**

SO WHY ARE WE HERE?

The goal of any good investigation and disciplinary process is to:

❖ Collect all the facts necessary to make an informed decision

❖ Create a reliable and predictable decision matrix

❖ Prove to an outsider that the Company's decision was not arbitrary

❖ Create a case that can withstand a legal challenge



Agenda

- “Just Cause” – The Heart of the Grievance
- Investigation Techniques and Best Practices
- Common Mistakes to Avoid
- Why Did The Arbitrator Rule Against The Employer?



“JUST CAUSE” – THE HEART OF THE GRIEVANCE

The 7 Tests of Just Cause

- **Forewarning / Notice:** Was the employee adequately warned of the rule and consequences for violating the rule? Rules and penalties must be clear and communicated in advance, barring extreme offenses.
- **Reasonable Rule:** Was the rule reasonably related to safe and efficient business operations? Rules must serve a legitimate business purpose.
- **Investigation:** Did management investigate before disciplining? Facts must be gathered prior to issuing a punishment.
- **Fair Investigation:** Was the investigation fair and objective? The inquiry must be unbiased, offering the employee a chance to speak.
- **Substantial Proof:** Did the investigation produce substantial evidence of guilt? Employers need credible proof rather than hearsay.
- **Equal Treatment:** Were penalties applied evenhandedly and without discrimination? Management cannot arbitrarily single out individual workers.
- **Proportional Discipline:** Was the penalty related to the offense and past record? Punishments must fit the infraction, considering past performance and context.

Test 1: Notice of the Rule (and Consequences)

Was the employee adequately warned, in advance, of the rule and consequences for violating the rule (barring extreme offenses)?

What Arbitrators Look For

- Rule was posted, shared, and distributed
 - Employee had time to review the rule, received a copy they could take home, or could access a copy at any time
- Employee signed acknowledgement of receipt of the rule.
- Prohibited conduct was clearly stated
- Penalty was clearly stated

Red Flags

- Handbook was never signed or policy manual was never distributed.
 - Written proof or it didn't happen
- Specific rule was omitted from the handbook.
- Rule was supervisor specific
 - Each supervisor had a different rule
 - Rule lived only in supervisor's head

Test 2: Reasonable Rule

Was the rule reasonably related to safe and efficient business operations? Rules must serve a legitimate business purpose.

What Arbitrators Look For

- Serves a legitimate business purpose
- Supports safety, efficiency, attendance, appropriate conduct or expected performance
- Clearly communicated to employees

Red Flags

- Vague or confusing rules
- No business purpose or arbitrary rule
- Contradictory rules
- Selective or inconsistent enforcement
- Contradicts past practice**

Test 3: Did Management Investigate Before Disciplining Employee?

Did the Company, before administering discipline to an employee, make an effort to discover whether the employee did in fact violate or disobey a rule or order of management?

What Arbitrators Look For

- Did the employee get his chance to tell you his side of the story?
- Was the investigation completed before the discipline was decided upon?
- Were all relevant witnesses interviewed?

Red Flags

- Rush to judgement
- Never talked to the accused
- Didn't follow up with other identified witnesses?
- Investigator had a pre-determined outcome in mind.

Test 4: Was There A Fair And Objective Investigation?

Was the investigation fair and objective? The inquiry must be unbiased, offering the employee a chance to speak.

What Arbitrators Look For

- Neutral investigator – no prior knowledge or involvement in the incident?
- Un-biased investigator – no personal preferences to any individual involved in the investigation
- Were all relevant witnesses interviewed, including ones that support the accused's version of events?
- Did the employee get his chance to tell you his side of the story, and did the investigation look into the employee's story for corroboration?
- Exculpatory evidence reviewed and documented.

Red Flags

- Supervisor who reported the incident also conducted the investigation
- Individual in employee's chain of command influenced the investigation
- Notes were selective, incomplete or absent.
- Employee's request to bring his union representative with him was denied (Weingarten Rights)

Test 5: Proof/Substantial Evidence?

Did the investigation produce substantial evidence of the employee's guilt (of the violation the employee was charged with)?

What Arbitrators Look For

- Direct evidence: video, documents, witness statements.
- Evidence that survives cross-examination.
- Corroboration from more than one source.

Red Flags

- One supervisor's uncorroborated account
- Hearsay report from someone who didn't witness event
- Lack of documented evidence
- No interview notes

Test 6: Equal Treatment

Were similarly situated employees disciplined the same way?

What Arbitrators Look For

- Other similarly situated employees (same offense) received the same level of discipline.
- Is enforcement history well documented?
- Are there credible comparators?

Red Flags

- Disparate Treatment: One employee warned, another terminated.
- Favorites received lighter discipline.
- No records show consistent enforcement.

Test 7: Proportionate Discipline?

Was the degree of discipline administered by the company in a particular case reasonably related to (a) the seriousness of the employee's proven offense and (b) the record of the employee in his service with the company?

What Arbitrators Look For

- Penalties proportionate to the offense
- Prior discipline and record considered
- Progressive discipline applied first
- Comparable employees treated similarly

Red Flags

- Immediate termination for minor first offense
- No prior warnings despite a pattern of behavior
- Harsh discipline or termination while others receive coachings or verbal warnings
- Penalties inconsistent with past practice



OTHER TYPES OF GRIEVANCES

Other Types of Grievances

Group/Unit/Association

- A grievance filed on behalf of multiple employees across a department, shift, or work group who have all been harmed in the exact same way by a management action.
- Examples:
 - Employer miscalculated the shift premium for Sunday work
 - Employer isn't following the seniority list when assigning overtime

Contract Interpretation

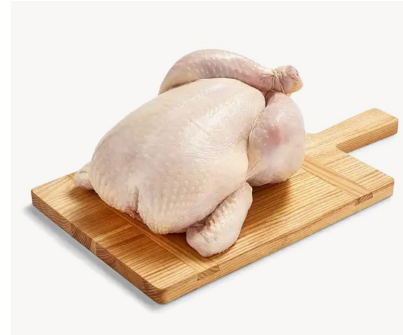
- A formal complaint initiated directly by the labor union (rather than a specific worker) asserting that management's action or failure to act violates the overall CBA, or a specific term therein.
- Examples:
 - Misinterpreting seniority clause
 - Pyramiding of overtime or additional incentive pay.

Employer Grievances

- A grievance filed by management against the union or its leadership for allegedly violating responsibilities or terms outlined in the collective bargaining agreement.
- Examples:
 - Illegal work slowdowns
 - Wildcat strikes

Understanding Latent Ambiguity

Contract says: “Employee shall be responsible for assigned chicken while at work.” What does the word “Chicken” mean?



Contract Interpretation Grievances – Axioms of Interpretation

Look at the text of the document

- **Plain Meaning Rule**
 - Dictionary definition
- **Read the contract as a whole**
 - e.g. Article 22 just uses the word “day”, while Article 6 defines a “day” as any 8-hour work period
- **Rule Against Surplussage**
 - E.g. Union’s interpretation would render a word to be redundant, or meaningless (e.g. use “cook” in sec. 1(a) and “chef” in Sec. 1(c), presumption is they are different positions)
- **Rule Against Absurdity/Nonsense**
 - Interpretation produces an illogical, nonsensical or contradictory outcome (e.g. union’s interpretation would require employer to reimburse the employee at 127% of the original value of damaged item)
- **Ejusdem Generis ("Of the same kind")**: When a general catch-all phrase follows a list of specific items, the general phrase is limited to things similar to the specific items
 - E.g. “seniority would govern “layoffs, transfers, or other adjustment of personnel” did not apply to the allocation of overtime.
 - E.g. “accidents, surgeries and other illnesses” did not cover routine doctor visits.
- **Expressio Unius est Exclusio Alterius ("The expression of one thing is the exclusion of another")**
 - E.g. use the phrase “prescription sunglasses” the presumption is the exclusion of regular sunglasses was intentional

Contract Interpretation Grievances – Axioms of Interpretation

Looking beyond the words on the page

- Parol (“Outside”) Evidence
 - Bargaining history (e.g. Rejected proposals; bargaining notes, etc)
 - Signed the wrong version of the contract
 - Typographical/scrivener’s error
 - Mutual mistake
- External law, statute or document
 - E.g. Why did we use the phrase “uniformed service member” not “soldier” or “fall protection harness” v. “rope” (USERRA, OSHA, etc)
- Prior arbitration awards
- Gap Fillers
 - Past Practice (“this is how we have always done it”)
 - Must be a clear and *consistent* course of conduct
 - The conduct must have been *repeated* over a reasonable period of time
 - Conduct was known and *mutually accepted* by both Union and Employer
 - Cannot modify or override clear contract language to the contrary.
 - Everyone else in the industry uses this word in this manner (“runner,” “back,” “floater”, etc.)



INVESTIGATION TECHNIQUES AND BEST PRACTICES

Facts & Evidence To Collect Or Compile

Timeline of Events

- Recreate the chronology
- Capture dates, times, locations
- Identify who present for each event
- Identify documents that should exist for each event
- Spot gaps and inconsistencies

Witness Statements

- Collect all relevant statements
- Interview notes (signed Weingarten waivers)
- Compare corroborating and conflicting accounts
- Assess credibility and bias

Supporting Documents

- Emails and written communications
- Video and surveillance records
- Attendance and time records
- Prior discipline and reviews
- ** Signed Handbook Acknowledgements; prior trainings; etc.**

Interview Notes : Best Practices

- ❑ **Record The Basics:** Date, time, location, and attendees (note if union rep is present or include signed *Weingarten* waiver).
- ❑ **Flag Key Testimony:** Mark critical admissions, denials, and pivots.
- ❑ **Capture Direct Quotes:** Record admissions (“that’s been the rule for years”), denials (“I never left my register”), "I don’t know," and "I don't remember."
- ❑ **No Impressions Or Speculation:** Keep notes factual; exclude conclusions..
- ❑ **Create An Outline Of Questions In Advance:** Make sure you hit all the points that are critical to the investigation .
- ❑ **Consider A Note-Taker:** Dedicated notes give weight to the interview, difficult to ask the questions and document the answers if you are thinking about another question that the original question elicited.
- ❑ **Record Any Documents Or Individuals Referenced:** record if you showed the employee a piece of evidence (e.g. surveillance video); specifically flag any witnesses or written evidence referenced for follow up/further investigation
- ❑ **Note Any Final Expectations/Communications:** confirm thorough interview (“anything you wish to add”/ “is there anything else you feel we need to discuss that we didn’t cover”); expected follow up (“we will follow up with you in a few days” or “I will be waiting for your e-mail attaching the text messages you referenced”); expectations of confidentiality.

Obtain a signed employee statement when possible — it strengthens the evidentiary record.

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Interview Logistics



Format Options

- In-person interviews are the standard
- Telephone works when needed
- Video fits distance or safety



Location Considerations

- Avoid supervisor offices
- Choose neutral, private spaces
- Away from department can ease anxiety



Language Access

- Use qualified, neutral translators
- Do not use coworkers



Weingarten Rights

Union employees may have a representative in interviews that could lead to discipline. Non-union employees generally do not.



Other Interlopers

Spouses, relatives, attorneys, and witnesses may ask to attend. Know your rights and obligations before agreeing.



Set The Stage

- Explain the purpose
- Set expectations
- Address retaliation and confidentiality
- Outline process and timeline.

Confidentiality: What You Can — and Cannot — Promise



Legally Required Confidentiality

Some records — medical, children's, security — require confidentiality by law.



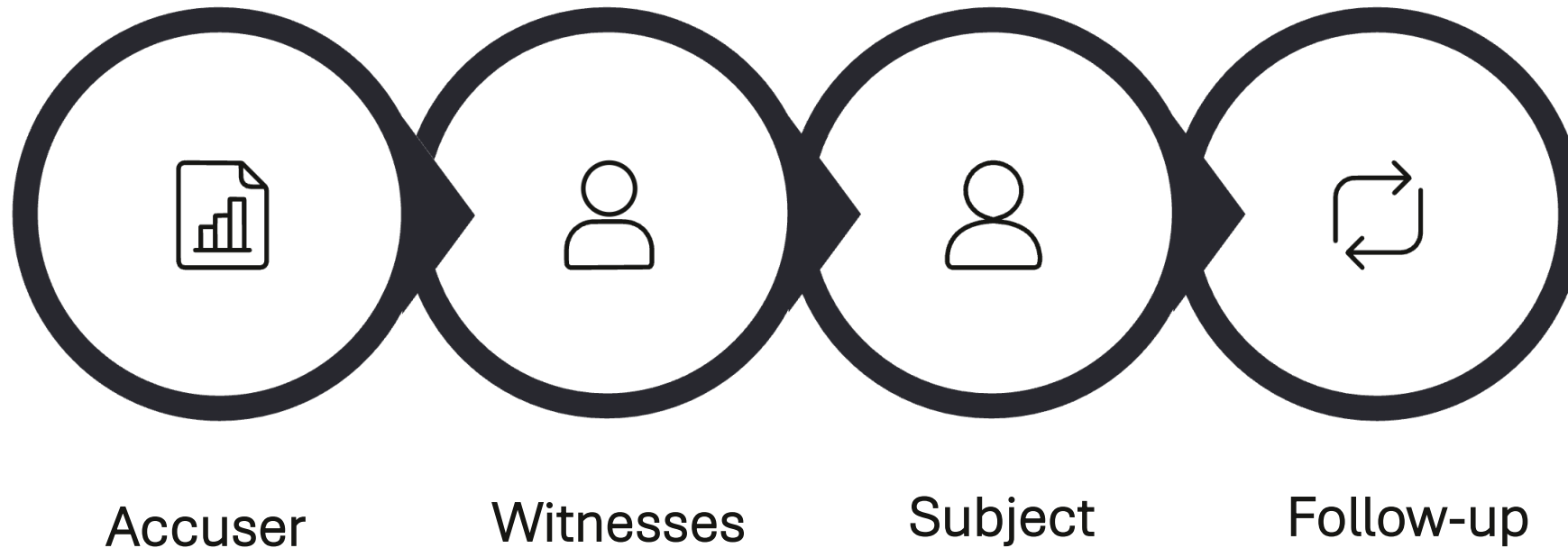
Limited Gag During Investigation

Restrict communication only for a specific, legitimate reason — to protect witnesses, prevent evidence spoliation, prevent fabrication, or prevent a cover-up.



Blanket confidentiality without justification may violate Section 7 rights under the NLRA.

Order of Interviews



Standard order: accuser, witnesses, then subject. This tests the subject's account against evidence. Use a different order only when needed.

Critical Questions to Ask Interviewees

For Every Witness

1. Interview preparation
2. Consulted anyone beforehand?
3. Why come forward now?
4. Relevant documents?
5. Other witnesses to speak with?
6. Anything else we should know?
7. Ask for written statement

For the Subject

1. Confirm rule awareness and timing
2. Probe denials for seriousness or misinterpretation
3. Use open-ended questions: **who, what, when, where, why, and how** and then go to specifics
4. Identify potential additional witnesses and exculpatory evidence.
5. Anything else you wish to add?

Making Credibility Determinations

When accounts conflict, the investigator must make principled credibility judgments based on observable facts, not instinct. Consider each factor and **document your reasoning.**



Memory & Recollection

Clear on core facts (even if vague on details)? Account is internally consistent and plausible?



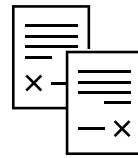
Bias & Motive

What is subject's stake in outcome (incentive to lie)? Also ensure no internal pressure, preconceived notions/judgments, or predetermined outcome.



Corroboration

Does evidence support the account? Is the statement backed up by other accounts?



Inconsistency

Compare current and prior statements.



Demeanor & Responsiveness

Evasive or selective answers? Body language? Nervousness or fidgeting?

Effective Written Warnings

A written warning should read like a police report — just the facts, written clearly and without hostility.

What Every Warning Must Include

01

Short intro: employee & context

03

Violated CBA section, rule, or policy

05

Type and extent of disciplinary action

07

Follow-up actions and dates (if not termination)

02

Specific problem/infraction

04

Relevant facts (time, place, events, witnesses)

06

Warning of consequences if no improvement



Grievance Procedure Compliance

- Follow every grievance step in order
- Meet all filing and response deadlines (or confirm extensions in writing)
- Document each step and response in writing
- Confirm proper notice was given at each stage
- Assert any defenses (e.g. timeliness) at each step
- Failure to comply may waive your rights



Grievance Hearing Preparation: Documents To Gather

Personnel & Policy Records

- Personnel file with all historical discipline
- Employee Handbook + signed acknowledgment of receipt
- Specific policies/procedures violated
- Code of ethics / organization chart
- Performance evaluations

Attendance & Incident Records

- Attendance records supporting points issued
- Time clock or sign-in records
- Incident reports
- Surveillance video or other physical evidence
- Emails and communications

Grievance Procedure Documents

- Employee's written statement / due process interview notes
- Witness notes and written statements (supervisor, co-workers, guests)
- The grievance itself
- Notes from Step 1 meeting (if held)
- Notes from Board of Adjustment meeting

Best Practices

- Have a separate note taker whenever possible
- Never skip talking to an identified witness because you are in a rush to terminate employee
- Create a procedural checklist to ensure that each stage of the investigation and grievance procedure is handled.
- Create an index (or implement uniform naming conventions) so you can ensure that all necessary evidence is included in the file with a quick glance.
 - Examples:
 - “2026.10.16 – Notes (H.R.) of Witness Interview (A. Kheel)”
 - “2026.10.16 – Notes (H.R.) of Investigatory Interview (D. Dornak)
 - “2026.10.10 - Supporting Document - Text Messages between A. Kheel and D. Dornak”
 - “2026.10.23 – Grievance No. 12345 (D. Dornak)”



COMMON MISTAKES TO AVOID

Mistake 1: Taking Witness Statements at Face Value

Corroborate every statement before using it for discipline.

The Mistake

Supervisors trust the first account and act too fast.

At the Hearing

Cross-examination shows the witness heard it secondhand. The statement carries little weight.

The Fix

Interview witnesses separately. Compare accounts. Confirm direct knowledge and corroboration.



One uncorroborated statement is a starting point, not a case.

Mistake 2: Ignoring Damaging Facts

Address weaknesses early, or the union will frame the story.

The Mistake

Management highlights only the best facts and ignores the rest.
Weak points get minimized during the investigation.

At the Hearing

The union produces a supervisor email. Management knew, did nothing, and has no answer.

The Fix

Run a red team first. Find the worst facts and prepare responses.



The union sees the same record. Find the damaging facts first.

Mistake 3: Don't Delay Preserving Evidence

Secure video, emails, and files as soon as the issue arises. Don't wait until the grievance is filed.

The Mistake

Supervisors assume evidence will still be there. Video overwrites, emails get deleted, memories fade.

Hearing Impact

Video is missing. The arbitrator infers it helped the employee. Termination is overturned.

The Fix

Preserve video within 24 hours. Save emails, texts, logs, and statements immediately.



Lost evidence cannot help your case — and may hurt it.

Mistake 4: Facts Don't Match The Violation

Link each fact to the rule. Otherwise, the arbitrator will.

The Mistake

Management assumes the link is obvious. The letter names the rule and incident, but never connects them.

At the Hearing

The letter cites "Rule 14: Insubordination" but explains nothing. No order, no lawful basis, no nexus. Discipline overturned.

The Fix – 3- Part Template

State the rule. State the conduct. State the violation. If you can't, the charge isn't ready.



Citing a rule is not proving a violation.

Mistake 5: Too Many Allegations

Too many charges can weaken credibility and distract from your strongest claim.

The Mistake

Management piles on every possible violation. Too many charges often make the case weaker, arbitrators may start questioning the entire case instead of focusing on the best-proven allegation.

At The Hearing

Six charges filed. Four fail. The arbitrator doubts management's credibility and reduces the penalty. Weak charges also give the union ammunition to attack the strongest one.

The Fix

Rank charges by strength of evidence. Drop weak or marginal ones. Lead with your strongest charge and build the case around it.

How to Triage Charges

- Ask: can I prove this with documents or witnesses?
- Ask: does this charge add to or dilute the core case?
- Eliminate charges that rely solely on hearsay
- Eliminate charges where discipline was inconsistently applied
- Keep only charges you can prove by substantial evidence

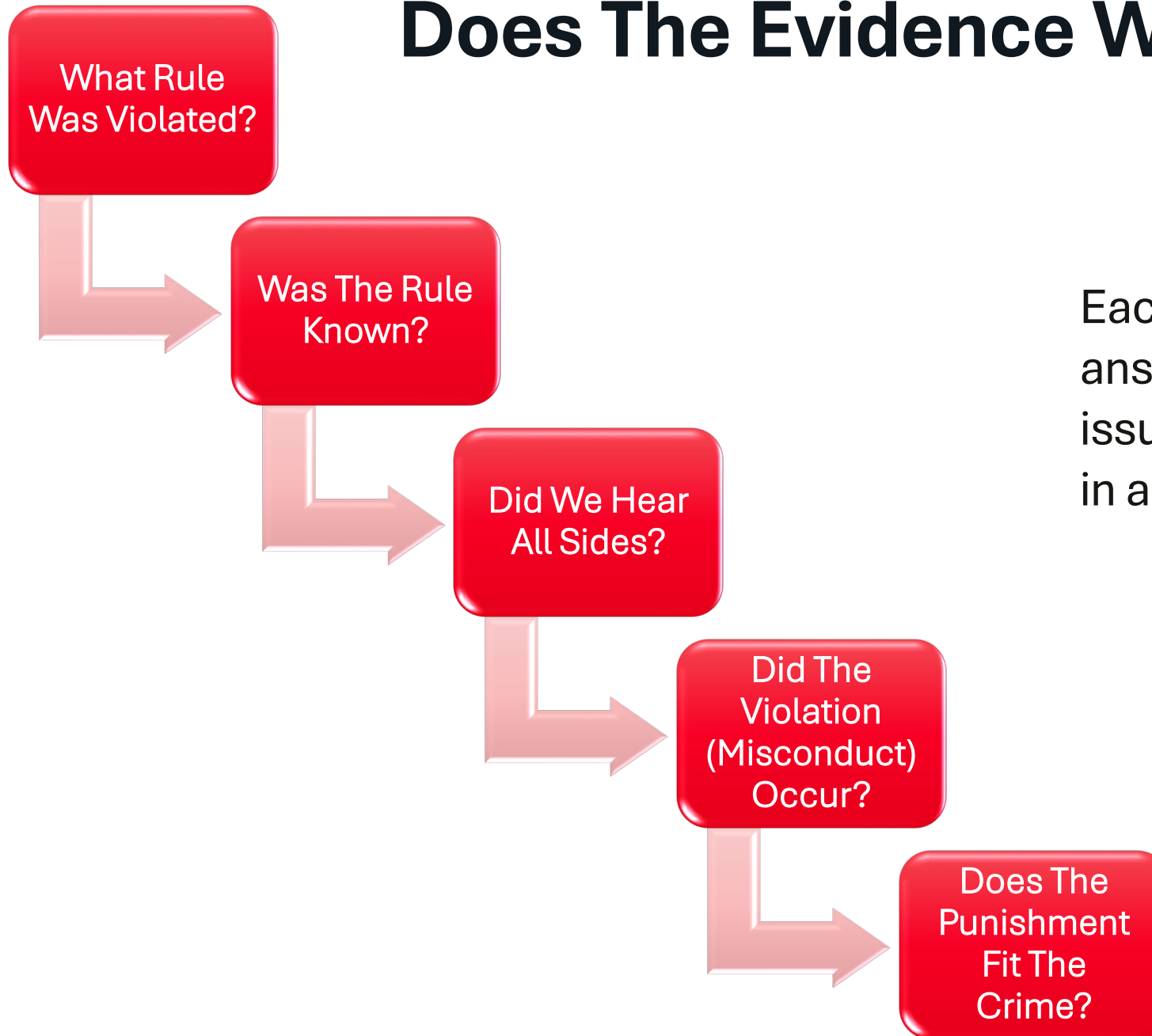
What Arbitrators Say

"When management files six charges and proves only two, the arbitrator is left wondering whether the two proven charges alone justify termination — and often they don't."

- Overcharging signals desperation, not strength.
- Every failed charge is a gift to the union.

 If you can't prove it, don't charge it. A focused, provable case beats a sprawling, weak one every time.

Does The Evidence Warrant Discipline?



Each step must be affirmatively answered before discipline is issued. Any gap invites challenge in arbitration.

Mistake 6: Denying Due Process

Without a pre-discipline interview and representation, the case can fail on procedure alone.

The Mistake

Supervisors skip the interview or deny representation to avoid conflict.

At The Hearing

Employee requested a steward. The arbitrator found a disciplinary meeting, a Weingarten violation, and overturned the termination.

The Fix

If unsure, treat it as disciplinary. Offer representation, conduct the interview, and document everything.



Even strong cases can lose on procedure. Due process is not a technicality.



**WHY DID THE ARBITRATOR RULE AGAINST THE
EMPLOYER?**

Why Did the Arbitrator Rule Against Us?

Understanding why arbitrators rule against management is the first step to winning next time. Recent decisions often reveal recurring patterns.



Procedural Failures

Missed deadlines, skipped steps, or *Weingarten* violations that invalidate the process.



Inconsistent Discipline

Different treatment for similar misconduct undermines the employer's credibility.



Insufficient Evidence

Hearsay, unverified statements, or facts not tied to a specific rule. Failure to preserve or document evidence.



Disproportionate Penalty

Termination imposed when a lesser form of discipline would have fit the offense.



Review recent decisions to identify jurisdiction-specific patterns before your next hearing.

When to Arbitrate — and When to Settle

Not every grievance should go to arbitration. Knowing when to fight — and when to fold — is part of winning.

Factors Favoring Arbitration

- Strong facts, clear documentation
- Precedent-setting issue
- Union position is legally or factually weak
- Principle at stake for management
- Employee dishonesty or serious misconduct
- Thorough procedural compliance

Factors Favoring Settlement

- Procedural gaps or shortcuts
- Unavailable or unreliable key witnesses
- Discipline inconsistent with past practice
- Penalty may be disproportionate
- Sympathetic employee circumstances
- Cost of arbitration outweighs outcome



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Questions?



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Thank you.