

Arbitration and How to Deal With Union/Employee Issues

COUNSEL'S CORNER

By: Kenneth J. Finger,
Carl L. Finger and
Daniel S. Finger,
Finger & Finger, Chief Counsel,
Building & Realty Institute (BRI)



WHITE PLAINS — In a recent article we discussed the issue of a troublesome employee and how an employer can prepare itself to deal with this situation.

The article discussed the concept of progressive discipline and the importance of a "paper trail." We left off at the end with a note that we would discuss arbitrations in the future. This article will be the first in a series of articles regarding arbitration.

Arbitration is a voluntary contractual agreement by parties to resolve their disputes without going to a court and within the context of a mechanism that they themselves select. It can generally be much faster than litigation and substantially less expensive, both in terms of legal and other fees.

A Key Agreement

However, it should be noted that with arbitration, the parties pay the arbitrator. It involves the parties agreeing to submit their disputes to an impartial party for determination which determination is generally final and binding. The Building and Realty Institute's (BRI's) Collective Bargaining Agreement with Local 32-BJ Service Employees International Union (SEIU) contains just such a clause. We hope to provide the reader with the benefit of our experience, having collectively engaged in many arbitrations over the years.

Generally, arbitrations are a mechanism used by the union, on behalf of an employee, to challenge action (or inaction) by an employer. While occasionally an employer might want to use the arbitration procedure, that is rare and is not the subject of this article. An agreement to arbitrate can be limited or broad. The arbitration clause in the Local 32-BJ contract bears review and we will set it forth. We ask that the reader keep this clause in mind now and in regard to any future articles. The following is the relevant clause in the BRI-Local 32-BJ Collective Bargaining Agreement:

Arbitration, Discipline, Discharge and Eviction

A. Arbitration

1. Any dispute, controversy or grievance arising under the agreement between the parties or between any Employer or Employer-member of the Association (BRI) and the Union or any of its members shall first be submitted in writing by the party claiming to be aggrieved to the other within 45 days for discharges or suspensions and

120 days for other grievances except for fund delinquencies. Fund delinquencies must be brought within six years of their occurrence.

a. Step 1 — Within 10 days of notice of the grievance the business representative of the Union and the Employer, or its representative, shall meet to discuss a resolution of the grievance. If no agreement is reached at this step, the parties may simultaneously proceed to step 2 and step 3.

b. Step 2 — The parties shall make their best efforts to schedule meetings on the first Tuesday of each month between representatives of the BRI and the Union, for the purpose of discussing resolutions of grievances that have not been resolved at Step 1. Nothing herein shall preclude either party from submitting a grievance that has not been resolved at Step 1 to arbitration under Step 3.

c. Step 3 — Either party may within 30 days of Step 1 submit the grievance to a contract arbitrator who shall be appointed from a rotating panel of arbitrators agreed to by the Union and the BRI. The Arbitrators shall be Bernard Young, Amy Itzla, Ron Betso and Martin Ellenberg. The Union shall, to the extent practicable, provide an expeditious process for administering arbitrations, including for rotation of appointments among the panel of arbitrators, and shall provide quarterly information on said rotation to the BRI. The arbitrator shall be empowered to hear the dispute and make a final decision therein, binding upon the parties, in accordance with the laws of New York State. Successor or additional arbitrators shall be appointed by mutual agreement of the Union and the BRI. In the event of the removal, death or resignation of an arbitrator, a successor or temporary substitute shall be chosen by the Union and the BRI.

2. Failure to follow these time limits shall be deemed a waiver of the grievance.

More Detail

3. No more than one adjournment per party shall be granted by the arbitrator without consent of the opposing party. In the event of a default by any of the parties hereto in appearing before the designated arbitrator, after written notice, the arbitrator is hereby authorized to render a decision upon the testimony of the party appearing. The parties waive the provision of Section 7506(a) of the Civil Practice Law and Rules. The Employer

or the Union shall bear any expense caused by its nonappearance at one or more scheduled arbitration hearings, as long as sufficient and adequate notice has been served on them.

4. Subdivision (d) of Paragraph Fourth is a part hereof as if fully set forth herein.

5. An employee shall not be penalized or discriminated against for attending, when re-

quired, arbitrations, hearings or other matters pursuant to the Union constitution. Any grievant attending grievance meetings or arbitrations shall be paid their regularly scheduled hours during such attendance. When such need for the employee's attendance ends, the employee shall return to complete his/her regularly scheduled work day.

B. Discipline, Discharge & Eviction

1. No employee who has completed his trial period shall be discharged, dispossessed or evicted without good and just cause, and then only in compliance with this paragraph.

2. In the event of a discharge, the Employer shall

give notice in writing in accordance with his expressed intent that the services of an employee are not desirable setting forth the reasons.

3. The Employer waives its rights under Section 713 of the Real Property Actions and Proceedings Law of New York in so far as it shall apply to Superintendents, Janitors or other persons occupying or possessing premises as part of their compensation or remuneration for or incidental to their employment until the issue of good and just cause has been decided. The Employer shall not remove from the premises any of the personal belongings of the said employee, until the issue of good and just

Continued on page 9

Builders, Remodelers

Membership in The BRI Could Be
The Best Investment You Ever Made.
Just ask the 1,700 Members of
The Building & Realty Institute (BRI).

A Statewide Political
Action Committee
with Clout
Supporting candidates
who support industry
objectives

The Oldest and Largest
Industry Force
Members include
Homebuilders,
Remodelers,
Service Trades and
Professionals

Educational Programs
on Bread &
Butter Topics.
More Than
70 seminars and
conferences
in 2006

"Growth" AD
Campaigns to Shape
Public Opinion

Litigating for Land Use
and Housing Issues
\$150,000+ spent in
achieving landmark legal
decisions in N.Y.S.

Big Savings on N.Y.S.
Workers' Compensation
Over \$5 million in annual
dividends to 1,000+ members

The BRI is supported by an annual budget of \$825,000. It has a professional staff of 10, including consultants and a distinguished board of directors—the BRI works for you on building and realty issues that affect your bottom line. The association has top flight consultants and legal/legislative/engineering experts on land-use, community planning, sub-division approval, building codes, affordable housing and state regulatory agencies. Consultants are based in Albany working for positive state legislation.

Yes, I am interested in a membership investment in the BRI, a building and realty industry and professional association with over 60 years of growth, service and performance. Please send an application.

Name _____ Title _____
Company _____
Address _____ City, State, Zip _____

Building and Realty Institute (BRI)

80 Business Park Drive, Suite 309, Armonk, NY 10504
(914) 273-0730 • Fax: (914) 273-7051

Members of: Urban Land Institute, Washington, D.C. • N.Y. State Business Council, Albany, N.Y.