

San Francisco

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GRSM50
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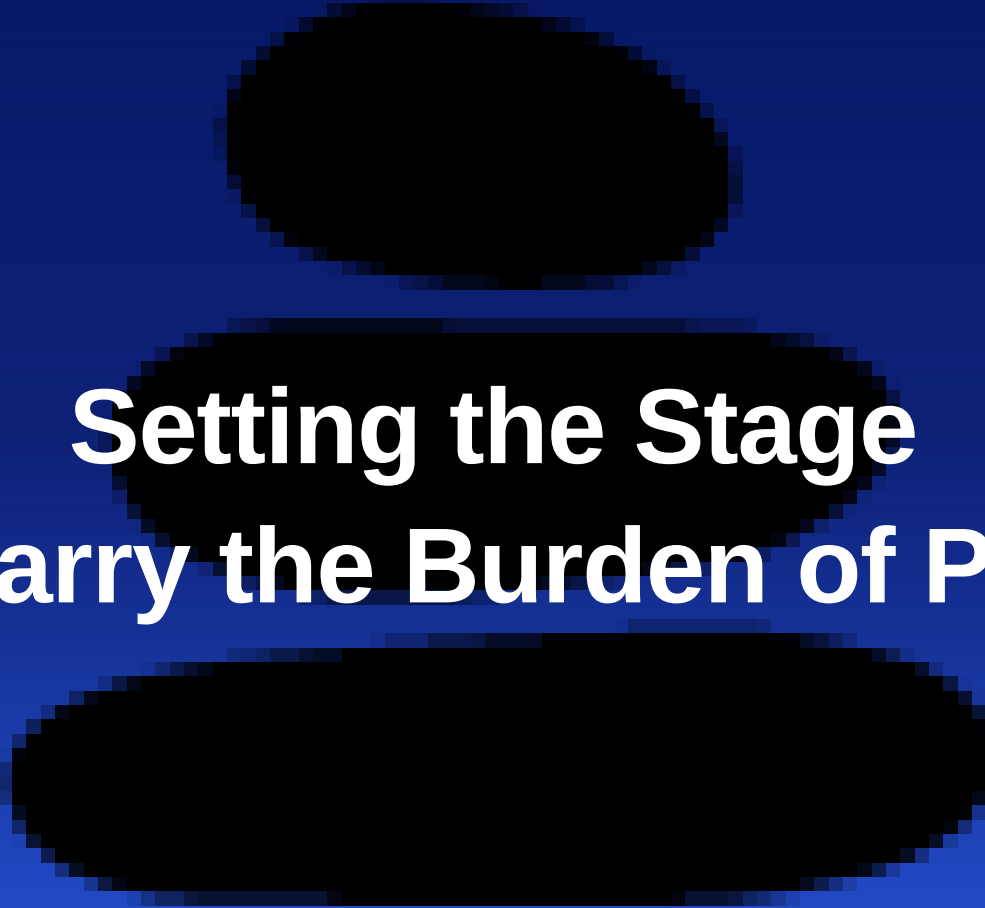
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Discipline in the Bargaining Unit Context & Arbitration Strategy

Topics of Discussion

- Burden of Proof
- Investigation
- Weingarten Rights
- Error-Free Discipline
- Preparing for Arbitration
- What the Arbitrator Cares About
- Closing Brief vs. Live Argument



Setting the Stage to Carry the Burden of Proof

Investigation

- **Primary target of union counsel**
- **Interview every relevant witness, and follow up if new information surfaces**
- **Firsthand beats secondhand: get signed, contemporaneous statements in the witness's own words**
- **Be consistent with policy, and with how you've handled similar misconduct before**



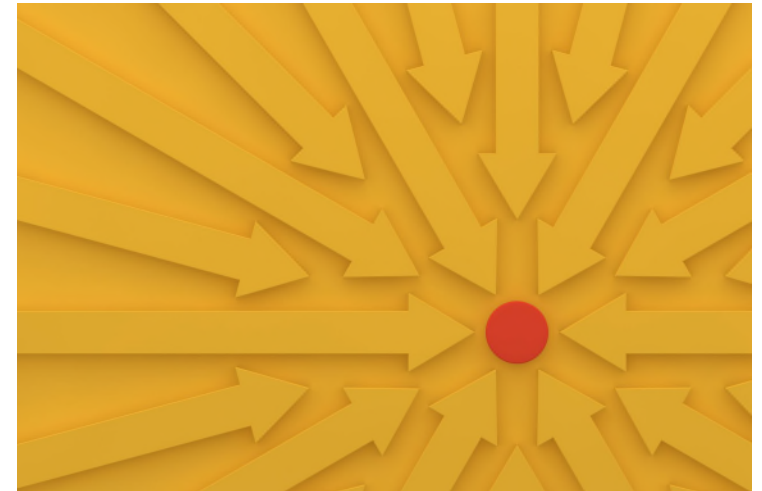
Weingarten Rights

- 1. An employee may request a union representative for an interview they reasonably believe could lead to discipline**
- 2. If employee decides to proceed without a representative—document it!**
- 3. The representative's role is limited**
 - Not for purposes of advocacy
 - Document questions or comments by union representative

Error-Free Discipline

Where Warnings & Term Letters Go Wrong

- The discipline or termination letter is the most critical exhibit and your case depends on it
- Citing the wrong policy
- Reasons that don't match what was actually investigated or discussed with the employee
- To specify or not to specify, two schools of thought
- Wrong dates, names, or prior-discipline references – small errors an arbitrator will notice





Preparing for & Winning at Arbitration

Preparing for Arbitration

- **Pro-employee forum with unpredictable outcomes; assess merits and potential settlement options**
- **Identify early briefing opportunities for procedural disputes**
- **RFIs/Exhibits: ensure all exhibits you plan to use have been produced**
- **Witness preparation is essential for direct and cross examination – preparation *always* pays off**



What the Arbitrator Cares About

Fairness – *above all else*

Proportionality

Longevity of Service

Progressive Discipline

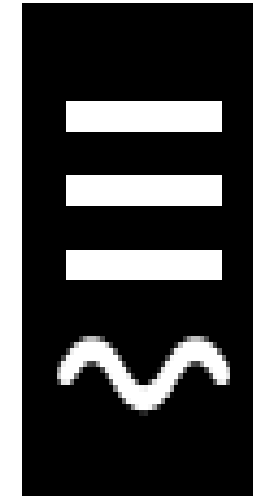
Consideration of Lesser Options



Closing Brief vs. Live Argument

Why We Always Prepare a Closing Brief

- A live closing happens right after testimony ends – fast, but with no time to reflect
- A brief lets you align your argument with the actual transcript and answer every point the union raised
- It allows the arbitrator to quote your brief in the decision



Questions?