

Arbitrator selection process



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Drass**

There are several tasks that the parties must work through whenever a new contract is negotiated. One of these tasks is selecting arbitrators to serve on our panels in each NALC region. As explained last month in this space, there are three types of arbitration that make up our system for hearing arbitration cases at the regional level: expedited, regular and impasse arbitration panels. All three panels must be negotiated in every region around the country.

Every aspect of creating arbitration panels is done jointly. The National Agreement provides for the existing arbitration panels to continue serving for up to six months after a contract is agreed to through ratification or by an arbitration award. In this

case, the clock started ticking on March 8, when the 2019-2023 National Agreement was ratified by the membership.

The new panels of arbitrators will start hearing cases in September, but we schedule arbitration hearings 90 days in advance nationwide. This means that we will be scheduling cases in July for the new panels to hear in September. That usually does not leave much time to complete the selection process. That was especially true this time.

I have been involved at every level of the arbitrator selection process at some point during my career. I have served as an advocate offering opinions on arbitrators who were on the current panels in my region, as a national business agent selecting arbitrators to serve on the Region 8 panels, and in my current position overseeing the process for the country. I can report that this round of selecting arbitrators was like no other I have seen in my career.

Arbitrator selection has always been a contentious and challenging process. Each side wants what it wants as far as which arbitrators to select, and neither side can have that. It is natural for there to be talk of not retaining certain arbitrators on any given panel. One side will say it does not want Arbitrator A. The other side will say, “If that is the case, then I do not want Arbitrator B.” This conversation goes back and forth until there is no panel left. Normally, both sides decide to accept some arbitrators whom they do not particularly like in exchange for keeping arbitrators they do like, and the panels either remain the same or have very little change. This time was very different.

We anticipated what was coming, so the parties at Headquarters agreed to perform this task in an orderly fashion.

- **Step 1:** We asked the parties at the NALC regional/USPS area level to meet and decide which arbitrators they were

willing to retain. We had a total of 150 arbitrators on the panels nationwide—just 52 were retained. This kind of turnover is unprecedented.

- **Step 2:** We agreed to the number of arbitrators that would serve on each panel. This usually is another contentious point. USPS at the regional level will want a smaller panel, whereas NALC will want a larger panel so that we can resolve our grievances as soon as possible. We looked at each region realistically and decided to create a total of 214 arbitrator panels to serve the country. In arriving at this number, we considered the number of cases currently pending arbitration and the fact that several arbitrators had resigned from our current panels without being replaced. As reported last month, we agreed to increase the number of expedited arbitrator panels from 38 to 60. We also increased the number of regular arbitrator panels from 112 to 154 and agreed, as we have done in the past, to ask all of the regular panel arbitrators to serve as impasse arbitrators as well.
- **Step 3:** We asked the regional/area parties to meet over the course of a few weeks and attempt to create panels by filling the slots we agreed to in each region. The parties did remarkably well with this. After the regional/area parties finished these meetings, we filled the few remaining slots where the regional/area parties could not reach agreement. We then sent out offer letters to all of our potential arbitrators. Once an arbitrator receives an offer letter, he or she either accepts or declines the offer and sends back the answer. Many arbitrators receive offer letters asking them to serve on panels in several different regions. Some either do not want to travel as far as they are being asked to do, or simply cannot accommodate the number of days per month they would have to commit to, so they decline certain offers.
- **Step 4:** By the time all of the offers were returned, the pool of arbitrators had declined 45 offers around the country, so we repeated Step 3 above to finalize our panels.

I want to take this opportunity to thank all of the national business agents, regional administrative assistants, regional grievance assistants and advocates around the country for all of their input, research and efforts to complete the task of creating arbitration panels in their regions under these unique circumstances. Everyone did a great job!

Arbitrators have the final say with respect to our grievances, which is why arbitrator selection is so important. I will make this prediction: When negotiations for the 2023 National Agreement are finished and we get back to selecting arbitrators again, both sides will have arbitrators on their panel that they like and some that they do not like. I just hope that the parties then do not choose the nuclear option to fill the panels, as was done this time.