



LABOR ARBITRATION INSTITUTE

# Labor Law and Labor Arbitration

Thursday, August 3, 2017

Dearborn, Michigan



register online

[www.laborarb.com](http://www.laborarb.com)

**CHALLENGE • STRATEGY • KNOWLEDGE • RESULTS**

# Labor Law & Labor Arbitration

Every August, a distinguished group of labor arbitrators give short lectures, engage in dynamic panel discussions, and answer audience questions on labor law and labor arbitration. This year, the faculty is again first-rate. They have decades of experience. And they enjoy teaching.

All of the material is geared for the labor and management advocate from mid-level to experienced. A number of attorneys also attend every year, along with their clients. In addition to a comprehensive workbook that you receive upon check-in, the various formats will keep your attention and might even inspire a new argument or approach for your own caseload.

We welcome you to the Edward Village Hotel (the former Hyatt Regency) in Dearborn. This hotel is located equal distance from downtown Detroit and DTW airport.

## Agenda

**7:15-8:00 a.m.**

**Registration & Continental Breakfast**

**8:00-8:30 a.m.**

**7 Popular Arguments to Reconsider**

At the hearing, parties are free to make any argument they wish. Weak arguments can be paired with strong arguments. Arbitration, however, is not a free-for-all. We present seven arguments that parties have used, and two distinguished labor arbitrators explain why you might want to reconsider them.

1. **Mgmt:** We knew what we needed to know, with the videotape, and the contract does not require an investigatory interview of the grievant.
2. **Mgmt:** The delay in issuing discipline may be long, but there is no harm to the union's case ("no harm, no foul").
3. **Union:** If the employer was serious about the alleged misconduct by the grievant, they would

have gone to the police.

4. **Mgmt:** When one's job is hanging in the balance, one has a motive to shade the truth.
5. **Union:** The employer is engaging in anti-union animus. If the grievant was not a union steward, the discipline would have been less.
6. **Both sides:** Did you see Mr./Madame Arbitrator how the witness's demeanor changed on the witness stand, when asked the critical question.
7. **Union:** The penalty of discharge is the equivalent of industrial capital punishment. No one should lose their job when the evidence just tips slightly against them . . . which is at the lowest burden (preponderance). "Clear and convincing" evidence is a slightly higher burden of proof and management (having the evidence, anyway) should meet it.

*Panel: Arbs. Ted St. Antoine & George Roumell*

**8:30-9:30 a.m.**

**Rules of Evidence**

Arbitrators are primarily fact-finders and the Rules of Evidence act as a partial gate. The panelists discuss a series of cases that raised these evidentiary issues; relevance, hearsay, circumstantial evidence, privilege and expert opinions.

*Panel: Arb. George Roumell, Ted St. Antoine, Kathryn VanDagens & Michael Falvo*

**9:30-10:00 a.m.**

**Understanding Arbitrability**

The parties contractually agree to follow the timelines. But if the parties occasionally waive them, or one party leads the other to expect otherwise, or there's an extenuating circumstance, a deadline may not mean drop dead. And as to substantive arbitrability, a dispute may not be arbitrable, such as when an LCA limits the arbitrator's authority. A new lecture on this important topic.

*Arb. Kathryn VanDagens*

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

**10:15-10:45 a.m.**

**Drugs in the Workplace**

How are employers dealing with drugs in the workplace, including the issue of marijuana? As attitudes and some state laws change, what can management and labor do? The parties argue over impairment, cut-off levels, medical marijuana and rehabilitation. A review of the current status and what labor arbitrators are doing.

*Arb. George Roumell*

## 10:45 a.m.-12:00 Noon

### Discipline & Discharge; Hot Issues

We start with a recent marijuana-use case, and move on to sexual harassment, off-duty misconduct, insubordination, subpar performance and workplace threats. The arbitrators rule as if they were the actual arbitrator in the case. The educational value comes in hearing their rationale. They discuss the evidence, the arbitral and legal principles, and the merits of the parties' arguments.

**Panel:** *Arbs. VanDagens, St. Antoine, Falvo & Roumell*

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

## 1:00-1:30 p.m.

### Absenteeism

Management's nightmare is the grievant who is a point away from discharge, and while driving to work, he rescues another driver who crashes her car. Or another employee carpools to work and the car breaks down. Without a working cellphone, both of these employees don't call in and are 4 hours late to work. These are the cases which go to arbitration. Experience demonstrates that not all absenteeism policies are upheld when challenged. What do arbitrators consider essential components to make a no-fault policy enforceable? If attendance policies are written into the CBA, when and how does "just cause" come into play? Can doctor's notes become the issue? And what happens when the operation (such as an airline) runs on punctuality?

**Arb. Michael Falvo**

## 1:30-2:15 p.m.

### Contract Interpretation

The Collective Bargaining Agreement is like any other contract, when it comes to the legal

principles and rules which arbitrators follow. (And unlike other contracts in key ways.) A primer on contract law, past practice, external law and specific labor relations issues.

**Arb. Ted St. Antoine**

## 2:15-3:15 p.m.

### Contract Law: Applying the Rules

We present actual cases to the panel for their individual ruling. Then, they discuss the contract law principle and its application in the case. The cases are close, so every argument by the parties counts.

**Panel:** *Arbs. St. Antoine, Falvo, Roumell & VanDagens*

## 3:15-3:30 p.m. Break

## 3:30-4:30 p.m.

### FMLA

No federal law has spawned more court and arbitration decisions. Stay up-to-date and know the pitfalls.

**Arb. George Roumell**

## 4:30 p.m. Adjournment



## Conference Information & Registration

**The conference will be held at the Edward Hotel in Dearborn. This is the former Hyatt Regency Dearborn, across from the Fairlane Town Center ([www.shopfairlane.com](http://www.shopfairlane.com)). Located mid-point between the airport and downtown Detroit, Edward Hotel has the amenities and comfort of Detroit's best hotels.**

**CLE and HRCI credit are available. Please indicate on the registration form and we will ensure that you receive certification.**

**We have two tuition rates, which helps us in the planning. If you register before April 28, the tuition rate is \$275. After April 28, the regular tuition rate of \$350 applies. Early registration is encouraged.**

## Registration Options

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

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Edward Hotel, 600 Town Center Dr, Dearborn MI 48126 • [www.hotel-dearborn.com](http://www.hotel-dearborn.com) • 313-592-3622

Name \_\_\_\_\_ Name \_\_\_\_\_

Title \_\_\_\_\_ Title \_\_\_\_\_

Email \_\_\_\_\_ Email \_\_\_\_\_

Organization \_\_\_\_\_

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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:** \$350.00 per registrant (if registering after April 28, 2017)  
\$275.00 per registrant (if registered before April 28, 2017)

### PAYMENT

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

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

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

Exp. Date: \_\_\_\_\_; Cardholder \_\_\_\_\_

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 INFORMATION

A block of sleeping rooms have been reserved for conference attendees at a group rate. When you contact the hotel, please indicate you are with the Labor Arbitration Institute conference in order to receive the group rate of \$109 (single or double). Please make your reservation as soon as possible. The group rate expires on July 13, 2017 or earlier, if the block is exhausted.

Please ask the reservations agent about the cancellation policy, if you feel your plans may change. The hotel requires 24 hour notice for cancellation without penalty.

### 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.*