

FACT FINDING AND ARBITRATION

T. Zane Reeves, PhD
Fall Semester, 2014
Public Administration 590

COURSE OVERVIEW

This course is an overview of the dispute resolution techniques, methodology, and principles in fact finding and arbitration. Thus, the first half of the course focuses on fact finding as an investigative process, with particular emphasis on uses of fact finding investigations in the workplace. Fact finding may be applied in situations where an employee is suspected of wrongdoing as well as in non-accusative problem-solving issues. Students will learn to analyze evidence and documentation in order to properly reach findings and conclusions of fact before making recommendations for decision making. Students will have the opportunity to develop their fact finding skills in a variety of case study examples and self-assessment exercises.

The second half of the course will focus on the practice of labor and employment arbitration as well as the role played by arbitrators in resolving disputes that cannot or will not be resolved through mediation, negotiation, facilitation or other dispute resolution techniques. As such, arbitration builds on the skills developed in fact finding. Students will learn to utilize findings and conclusions of fact in preparing a final and binding arbitration award. This will be applied in disputes involving employee and employer rights, contract disputes, interest conflict, and bargaining unit and union representation matters.

REQUIRED READINGS

T. Zane Reeves, *Preparing the Evidence-based Report (PER)*, 2014 (available on Ereserves)
T. Zane Reeves, *Arbitrators and Arbitration (A&A)*, 2013 (available on Ereserves)

AGENDA

August 30: Course Overview and Syllabus

- Concepts and terminology
- Approach and expectations
- Course objectives

September 6: Analyzing Evidence & Preparing to Investigate

- Varieties of fact finding
- Fact finding skills
- Evidence, facts, and conclusions
- Separating beliefs from facts
- Enhancing fact finder credibility

Trust in character and competence
 Clarity of investigative purpose
 Performing as a third-party neutral
 “Trouble in Lobo Land”
Complete #1, 2, & 3 self-assessment exercises on p. 26
Read: *PER*, pp. 1-26

September 13: Choosing the Right Investigator & Crafting the Skillful Interview

Preparing and reviewing evidence
 Preparing an investigative strategy
 Preparing interview questions
 Attentive listening
 Interview documentation
 Emotional interviews
 Interview due process
Read: *PER*, pp. 27-64
Complete three self-assessment exercises on p. 39 or
Complete three Self-assessment exercises on p. 64

September 20: Finding Facts & Inferring facts from evidence

Opinions and facts
 Biases in fact finding
 In-class group exercise, self-assessment question #1 on p. 84
Read: *PER*, pp. 65-88
Complete #1 & 2 self-assessment questions on p. 76
Complete #1 self-assessment exercise on p. 88

September 27: When facts don't add up & jumping to conclusions

Accusatory investigations
 Determining just cause facts
 Witness reliability and memory
 Determining truthfulness
 Witness credibility
Read: *PER*, pp. 89-123
Complete self-assessment exercises #1 & #2 on p. 104
Complete self-assessment exercise #1 on p. 123

October 4: Making recommendations & writing persuasively

To recommend or not to recommend?
 Rationale for recommendations
 Fact finding report writing
 Re-writing reports
 Timeliness issues
Read: *PER*, pp. 124-148
Complete self-assessment exercise #2 on p.132
Complete both self-assessment exercises on p. 148

October 11: Investigating gender discrimination

Gender prejudice in communication
 Conducting a sexual harassment investigation
 Investigations based on reasonable suspicion
 Fact finding during an emergency suspension
 Read: *PER*, pp. 149-178

Complete both self-assessment exercises on p.178

October 18: The Problem-solving investigation

Investigative problem-solving
 “Food fight in Phoenix”
 In-class exercise, “Food fight in Phoenix”
 Read: *PER*, pp. 179-186

Complete two self-assessment exercises on p. 186

October 25: Arbitrators and arbitration

Arbitrator’s role in arbitrating disputes
 Splitting the baby
 Rights Arbitration & Tests of just cause
 “Constructive” discipline
 Douglas factors in determining disciplinary penalties
 In-class discussion of case studies
 Read: *A&A*, pp. 1-59

Complete case studies, pp. 53-59

November 1: Disciplinary arbitration: Substandard performance issues

Rights arbitration & performance standards
 “Progressive discipline” principles
 In-class discussion of case studies
 Read: *A&A*, 60-94

Complete case studies, pp. 63-94

November 8: Rights arbitration & contract interpretation

Primacy of clear and unambiguous language
 Contrary workplace practices
 Language by which to grieve
 Read: *A&A*, pp. 95-110

Complete two self-assessment exercises on p.110

November 15: Arbitration in representation disputes

Appropriate bargaining units
 Community of interest
 Determining who is a “supervisor”
 Read: *A&A*, pp. 111-149

Complete self-assessment exercises on p. 149

November 29: UNM Thanksgiving holiday

December 6: Interpretive principles in Interest arbitration

Ability to pay

Marketplace competition

Employee recruitment & retention

Final-offer arbitration

Read: A&A, pp. 150-167

Complete four discussion questions on p. 165

December 13: The Suspension of Nurse Kevin (film)

Read: A&A, pp. 168-174

Based on your reading, decide as the Arbitrator which of the three possible decisions you will find and your thought process for doing so.

GRADE DETERMINATION

Students will be eligible to earn one of the following grades, based on level of commitment and productivity:

- A+ Truly outstanding performance on all self-assessment exercises and through insightful participation in classroom discussion. No more than 3 absences/tardies.
- A Excellent contribution on all self-assessment exercises and solid participation in classroom discussion. No more than 3 absences/tardies.
- A- Excellent contribution on most self-assessment exercises and consistent participation in classroom discussion. No more than 3 absences/tardies.
- B+ Excellent contribution on a majority of self-assessment exercises and through consistent participation in classroom discussion. No more than 4 absences/tardies.
- B Solid contribution on a majority of self-assessment exercises and through consistent participation in classroom discussion and on final paper. No more than 5 absences/tardies.
- B- Solid contribution on at least half of self-assessment exercises and through participation in classroom discussion. No more than 6 absences/tardies.
- C Unacceptable level of performance on most self-assessment exercises and inconsistent participation in classroom discussion. More than 7 absences/tardies.

For purposes of grading, the following factors will be weighed in the final grade:

Self-assessment answers (timeliness)	30%
Self-assessment answers (content)	40%
Class participation & contribution	30%

Answers to Self-assessment questions are due **no later than 9 a.m.** on the dates indicated and must be sent via email to the instructor. Answers must be lucid, cogent and thoughtful. Do not answer in outline or bullet formats. These are essay answers and

should include references to assigned readings, unassigned outside readings, and relevant examples from your own experience as well as definition of all terminology and concepts. All research citations should be cited in a References section following each answer. You can reach me at tzane@unm.edu or following class to schedule appointments.