

School Board Hearing Common Format

- I. Open the record—establish spokespersons and identify witnesses.
- II. Union spokespersons open with overview of case (opening statement).
- III. District spokesperson often opens, but can reserve opening until union concludes its case.
- IV. Union presents its evidence.
 - A. Call witnesses (witness sworn in)
 1. Direct examination
 2. Cross-examination
 3. Redirect
 4. Recross
 - B. Introduce documents and other exhibits
 - C. Union “rests.”
- V. District spokesperson opening statement (if reserved in Item III, above.)
- VI. District puts on its case
 - A. Call witnesses (witness sworn in)
 1. Direct examination
 2. Cross-examination
 3. Redirect
 4. Recross
 - B. Introduce documents and other exhibits
 - C. District “rests.”
- VII. Union “rebuttal”—counter District's case with further witnesses and/or evidence.
- VIII. District “rebuttal”—counter union’s rebuttal.
- IX. Union’s closing argument
- XI. District’s closing argument

****NOTE:** When employer carries burden of proof (e.g., discipline/termination grievances), the employer must go first

Opening Statement checklist **(for School Board Level Hearings and** **Arbitrations)**

A GOOD OPENING STATEMENT:

- Gives description of the district and the bargaining unit
- Gives employment background of grievant and other pertinent information
- States the action which gave rise to the grievance
- States the issues to be decided
- Identifies the entitlements (contract provisions; laws; practices; etc.)
- Explains what you intend to prove and evidence you will introduce
- Summarizes
- States the remedy

A GOOD OPENING STATEMENT ALSO....

- Is honest
- Is interesting
- Is informative – spelling out each and every element of your case, explaining theory, and facts
- Is logically sequenced
- Is unaffected (simple words)
- Is persuasive
- Raises your weak points to minimize their impact
- Is addressed to the arbitrator
- Is written (and read – optional) with copies for the arbitrator and employer
- Does not attack the credibility of the district's witnesses
- Includes FACTS not OPINION
- Claims nothing that cannot be proved
- Does not distract the arbitrator (clothes; nail polish; jewelry)

*SERVES AS A ROADMAP FOR THE SUPERINTENDENT,
SCHOOL BOARD HEARING OFFICER, and/or*

*ARBITRATOR AND CREATES THAT IMPORTANT FIRST
IMPRESSION*

UNION'S OPENING STATEMENT

The grievance that is before you today is a Level two (2) grievance on behalf of Ms. Jones brought by the Caesar Rodney Education Association (CREA). Today's hearing will also serve as Step three (3) of the complaint procedure in the 2002-2003 Instructional Handbook. The Union and Ms Jones are grieving a violation of Article XXIII, (Protection of Employees, Students, and Property) sections A & D of the 2001-2004 collective bargaining agreement between CREA and the Caesar Rodney (CR) School District. A copy of the relevant language is enclosed in your folder.

Ms. Jones, the grievant, has been a teacher in the CR school district going on 10 years. Ms Jones is a Special Education Teacher. During her time in the CR District, she has educated students at Frear Elementary, Caesar Rodney High School, and currently works at Postlethwait Middle School.

As in any school district, the protection and safety of students, teachers, and administrators is very important. Students, teachers, parents, community members, state organizations & agencies, and all other parties of interest expect that a school building will be a safe environment. In short, it is vital that an educator is working in a hazardous free work place. The events that give rise to the grievance before you are those involving protection, safety, process, and working conditions.

On December 11, 2002, Ms. Jones and Viviane Hunt, another Special Education Teacher at Postlethwait Middle School (PMS), got into a verbal altercation with allegations of bodily touching. The altercation involved Viviane's request of the removal of two (2) students from Ms Jones's classroom. When Ms Jones reported

the altercation and allegation of assault to Susan Whitaker (Principal at PMS) and Michael Noel (Assistant Principal at PMS), she did not receive support. Specifically, in response to Ms Jones' allegations, the aforementioned Administrators simply informed Ms Jones that her students would be returned to her classroom and questioned the reason that Viviane would remove students from Ms Jones's classroom.

In addition, it is the Union's contention that the School Board first became aware of the above mentioned altercation and bodily touching allegations when Ms Jones submitted the Step 2 complaint procedure to your office on January 7, 2003. Thus, your notification of the altercation and assault allegation came from Ms Jones and was eleven (11) working days after the incident.

School Board Chairperson, the two (2) issues before you today are:

- 1) Did the District violate Article XXIII, section A of the collective bargaining agreement regarding the protection of Ms Jones from unsafe working conditions ?

If so, what shall be the remedy ?

- 2) Did the District violate Article XXIII, section D of the collective bargaining agreement regarding notification to the Superintendent ?

If so, what shall be the remedy ?

The relevant part of the collective bargaining agreement is Article XXIII, sections A & D.

Article XXIII, Section A states:

“Employees shall not be required to work under unsafe or hazardous conditions or to perform tasks which endanger their health, safety or well-being.”

Article XXIII, Section D states:

“Employees shall immediately report cases of assault suffered by them in connection with their employment to their administrator or other immediate supervisor. Such notification shall be immediately forwarded to the Superintendent who shall assist the employee in any way possible, including acting as a liaison among the employee, police and courts.”

School Bod Chairperson, the following facts are undisputed:

- 1- An altercation between Ms. Jones and Viviane Hunt occurred on December 11, 2002.
- 2- The altercation involved bodily touching.
- 3- Susan Whitaker, Michael Noel, and the District have subsequently engaged in attempts to help resolve the issue between Ms Jones and Viviane. However, when Ms Jones initially informed her Administrators of the altercation and assault allegations, at a time when fear, anxiety, and tension were at their highest, she did not receive support from her Administrators.
- 4- You (Superintendent) received notification of the altercation and assault allegations by Ms Jones on January 7, 2003.

The remedy that we are seeking is for Ms Jones to be voluntarily transferred to another school building, beginning in the 2003-2004 school year, and any other remedy that will make the grievant whole. Ms Jones and the Union are also open to the possible option of a voluntary reassignment to the vacant 7th grade position in PMS.

UNION'S OPENING STATEMENT

The Woodbridge School District is located in the rural communities of Bridgeville and Greenwood, Delaware. The district employs approximately 139 teachers and 15 custodians. The teachers and custodians are represented by the Woodbridge Education Association (WEA).

Mrs. Personality, the grievant, has been a teacher in the Woodbridge school district for 20 years.

As in any school district, the education of students is very important. Students, teachers, parents, community members, state organizations & agencies, and all other parties of interest expect that students are educated by teachers with related credentials. In short, it is vital that educators are teaching in their areas of certification. The events that give rise to the grievance before you are those areas of certification.

On May 15, 2002, Mrs. Personality was verbally informed by her then high school principal, John Doe, that she would be working as an English as the Second Language (ESL) teacher beginning in the 2002-2003 school year. Mrs Personality received written confirmation of the aforementioned assignment from John Doe on June 7, 2002. There was one problem: Mrs Personality does not have a certification in the area of ESL. Mrs Personality is certified in 4 areas: Secondary Spanish, Secondary French, Elementary Spanish, and Elementary French.

The Delaware Department of Education (DOE) regulations and the collective bargaining agreement between the Woodbridge school district and the WEA both provide an avenue (i.e. Partial Teaching Assignment) in which a person can teach outside of their area of

certification. However, the above mentioned regulations and collective bargaining agreement also specify the parameters, conditions, and limitations regarding teaching outside of a person's area of certification.

Mr. Hearing Officer, the issue before you today is this:

Did the Woodbridge school district violate the collective bargaining agreement regarding the process and effects assigning Mrs. Personality to teach outside of her area of certification ?

If so, what shall be the remedy ?

The relevant part of the collective bargaining agreement is Article 7.1.3. Article 7.1.3 states:

“ In order to assure that teachers work within their areas of competence, teachers shall be assigned within the scope of their teaching certification and/or their minor fields of study. If a teacher must be scheduled outside her area of certification, a consultation with the principal will take place before final action. The teacher then will be notified promptly in writing of the reason for the change. The parties agree that no teacher shall be assigned to a teaching area or grade which will cause his/her certification or endorsement to, in any way lapse or require additional course work over and above normal renewal efforts. ”

The relevant section of the DOE regulations manual for certification is the “Glossary” and Chapter II, section C, Partial Teaching Assignment. These state in part:

- * Person holds a Delaware standard license a field other than that of the partial assignment
- * A partial teaching assignment is for no more than 2 periods a day
- * A person has at least 15 semester hours in the content area of the partial assignment
- * During the period a person is on a Limited Standard license (i.e. period of partial teaching assignment) all requirements for the standard license must be met

The union intends to prove through documentation that Mrs Personality's partial teaching assignment requires her to teach more than 2 periods a day. This schedule will not allow Mrs Personality to complete Delaware's requirement of teaching 3 out of 5 years in your area of certification. The union also will show that Mrs Personality's high school Spanish teacher position was posted and in essence placed her in a partial teaching assignment prior to consultation and receipt of any written information as per the contract. We intend to prove that the written confirmation/notification of Mrs Personality's assignment outside her area of certification also did not include the reason for the transfer of assignment, as per the contract.

Mr. Hearing Officer, you may hear that the district has a right assign Mrs Personality outside of her area of certification. However, the parameters, conditions, and limitations regarding teaching outside of a person's area of certification, to include teaching no more than 2 periods a day outside the area of certification, is the issue that brings you here today. Mr. Hearing Officer, you may also hear that Mrs Personality has a Master's degree in ESL. Though it is true that Mrs Personality has a Master's degree in ESL, she does not hold a Delaware teaching certification in ESL.

The remedy that we are seeking is that Mrs Personality be placed back into her high school position as a Spanish teacher as soon as practical.

List of Objections

Proper reasons for objecting to a question asked to a witness include:

Ambiguous, confusing, misleading, vague, unintelligible: the question is not clear and precise enough for the witness to properly answer.

Arguing the law: counsel is instructing the jury on the law.

Argumentative: the question makes an argument rather than asking a question.

Asked and answered: when the same attorney continues to ask the same question and they have already received an answer. Usually seen after direct, but not always.

Asking a question unrelated to an intelligent exercise of a peremptory challenge or challenge for cause: if opposing counsel asks such a question during voir dire (i.e. the jury selection process).

Asks the jury to prejudge the evidence: the jury cannot promise to vote a certain way, even if certain facts are proved.

Assumes facts not in evidence: the question assumes something as true for which no evidence has been shown.

Badgering: counsel is antagonizing the witness to provoke a response, either by asking questions without giving the witness an opportunity to answer or by openly mocking the witness.

Best evidence rule: requires that the original source of evidence is required, if available; for example, rather than asking a witness about the contents of a document, the actual document should be entered into evidence. A full original document should be introduced into evidence instead of a copy, but judges often allow copies if there is no dispute about authenticity. Some documents are exempt from hearsay rules of evidence.[5]

Beyond the scope: A question asked during cross-examination must be within the scope of direct, and so on.

Calls for a conclusion: the question asks for an opinion rather than facts.

Calls for speculation: 2 instances: 1-the question posed asks the witness to guess the answer rather than to rely on known facts. 2-if a witness does not know a fact to be true or not, but testifies about it anyway, this testimony would be objectionable as speculation.

Compound question: multiple questions asked together.

Counsel is testifying: this objection is sometimes used when counsel is "leading" or "argumentative" or "assumes facts not in evidence".

Foundation: the question relates to matters of which the witness's personal knowledge has not been established

Hearsay: An out of court statement used to prove the fact that the statement is being offered for. However, there are several exceptions to the rule against hearsay in most legal systems.[5]

Opinion/Incompetent: the witness is not qualified to answer the question.

Inflammatory: the question is intended to cause prejudice.

Irrelevant or immaterial: the question is not about the issues in the trial.

Leading question (direct examination only): the question suggests the answer to the witness. Leading questions are permitted if the attorney conducting the examination has received permission to treat the witness as a hostile witness. Leading questions are also permitted on cross-examination, as witnesses called by the opposing party are presumed hostile.

Misstates evidence / misquotes witness / improper characterization of evidence: this objection is often overruled, but can be used to signal a problem to witness, judge and jury.[6]

Narrative: the question asks the witness to relate a story rather than state specific facts. This objection is not always proper even when a question invites a narrative response, as narrative testimony may be required or preferred due to the circumstances of the case.

Privilege: the witness may be protected by law from answering the question.