

concludes. First, a transcript of the testimony is prepared. Lawyers for both sides then normally submit final arguments in the form of written briefs, which are usually due 30-60 days after the hearing. In particularly complex cases, there may be a second round of “reply” briefs. After the briefing is complete, the arbitrator issues a written decision, usually 30-90 days after receipt of the last brief. In all, it may take up to six months from the conclusion of the hearing until the issuance of a decision.

UNDER WHAT CIRCUMSTANCES WILL THE CASE BE SETTLED?

As with civil litigation, most arbitration cases settle. There is good reason for this. While settlement normally involves compromise by all parties, a negotiated resolution removes the risk inherent in having a stranger decide your dispute. In the case of disputes over money, a settlement will almost always mean that you are paid sooner. You and the WGAW attorney will discuss settlement at the beginning of the legal process and as the case progresses. Settlement can take place at any point in the process.

WHAT HAPPENS IF THE ARBITRATOR DECIDES IN MY FAVOR?

In most instances, companies promptly comply with the arbitrator’s award, including the payment of any damages. If the company doesn’t pay, the WGAW will go to court to turn the award into an enforceable court judgment. After the judgment is obtained, the Guild will take steps to enforce it. In unusual cases, a writer may wish to retain a specialized collection attorney to assist in the enforcement of the judgment.

WHAT PENALTIES DOES THE GUILD IMPOSE IF A COMPANY FAILS TO COMPLY WITH THE ARBITRATOR’S AWARD?

During collective bargaining, the Guild won the right to strike companies that fail to participate in the grievance and arbitration process. Thus, a company’s failure to comply with an arbitrator’s award will normally result in it being placed on the Guild’s Strike List. Once that happens, all WGA members are prohibited from working for or selling literary material to the struck company. The company will remain on the Strike List until it fully complies with the arbitration award.

WHAT HAPPENS IF WE LOSE THE ARBITRATION?

Arbitration decisions are binding on both sides. The Guild cannot go to court and re-try the case if we receive an unfavorable decision. Nor can the court nullify the arbitrator’s award, even if the judge thinks that the arbitrator was wrong or misunderstood the facts. The circumstances in which a court can overturn an arbitration award are exceedingly narrow—normally limited to where it can be shown that the arbitrator was biased or failed to decide the issue submitted to him.

CAN I GO TO COURT INSTEAD OF ARBITRATION?

In most cases, arbitration is an *exclusive* remedy—none of the parties has the right to take the dispute to court or to any other tribunal. There are, however, exceptions to this rule. MBA Article 12 gives writers the right to go to court to pursue certain types of claims concerning credits and compensation under their individual writing agreements. The scope of these exceptions is complex; you should discuss them with your Guild attorney if you think they might apply to your dispute.

The Legal Arbitration Process



**WRITERS
GUILD OF
AMERICA, WEST**

The Legal Arbitration Process

To: _____

Project: _____

Company: _____

Case No. _____

A claim involving your rights under the Guild's collective bargaining agreement (the "MBA") or your individual writing agreement has been submitted to arbitration. The WGAW has prepared this pamphlet to answer some questions you may have about the arbitration process.

_____ is the WGAW attorney who has been assigned to handle this case. She/he can be reached at (323) 782-4521 and will be glad to discuss any additional questions you may have about the case or the arbitration process.

WHAT IS A LEGAL ARBITRATION?

As a benefit to writers and companies alike, the Minimum Basic Agreement or "MBA" establishes an arbitration procedure for the binding resolution of disputes arising under its terms. Arbitration is similar to a civil trial. Instead of a judge or jury, a neutral arbitrator will be selected to hear and decide this dispute. Most MBA arbitrators have years of experience handling disputes under the Guild agreement.

WHO CHOOSES THE ARBITRATOR?

The arbitrator is usually selected by mutual agreement of the WGAW and the company from a list that appears in the MBA. If the parties are unable to agree, they use the "strike process," alternately crossing off names until a single arbitrator is left.

WILL I HAVE TO PAY FOR REPRESENTATION AT THE ARBITRATION?

A WGAW attorney will represent you free of charge during all phases of the arbitration. This service is funded by members' dues. If you choose to hire private counsel to supplement the work of Guild counsel, you will be responsible for payment of the private attorney's fees and costs.

HOW LONG WILL IT BE UNTIL THE HEARING?

The length of time it takes to bring a case to hearing varies. The hearing will be scheduled as soon as possible subject to several factors, including your schedule and the availability of the arbitrator, the WGAW attorney, and other parties and witnesses. It is common for an arbitrator's calendar to be fully booked six months or more in advance. In nearly all cases, however, the hearing takes place within 18 months of when the dispute is first referred to the Guild's Legal Department.

This compares favorably to the 3-5 years it takes for a civil case to reach trial in court.

WHAT HAPPENS DURING THE HEARING?

Arbitrations usually take place at the WGAW. They are similar to court trials, though less formal. Like a trial, the parties normally give opening statements to explain the case according to their perspective. They may also call and cross-examine witnesses. All testimony is given under oath and recorded by a court reporter.

DO I HAVE TO ATTEND THE HEARING?

It may be necessary for you to attend the hearing, but you should discuss this with the WGAW attorney handling the case.

WILL I MEET WITH THE GUILD ATTORNEY BEFORE THE HEARING?

Most likely, you and the Guild attorney will meet at least once before the hearing, especially if you will be called as a witness. Don't hesitate to call or e-mail the attorney at any time before the hearing if you have any questions about the case or the arbitration process.

WILL I BE CALLED TO TESTIFY?

The WGAW attorney handling the case will make that decision after discussing it with you. If you are called as a witness, the WGAW attorney will meet with you at least once to review and prepare for your testimony. In rare cases, the company may call a writer to testify.

WHEN DOES THE ARBITRATOR MAKE A DECISION?

The Guild takes great care in presenting legal arguments to the arbitrator after the hearing