Admission of Exhibits

In practice, the parties often stipulate to the admission of many exhibits in a pre-hearing conference with the Board Executive Director, resulting in the Board admitting the stipulated exhibits into evidence without objection by the other party. This results in a substantial savings of time at the evidentiary hearing.

If the parties do not stipulate to the admission of a particular exhibit, an exhibit is offered into evidence by the proponent of the exhibit: 1) showing the exhibit to the witness, 2) laying the foundation for its admission which usually involves the witness identifying the exhibit and stating that he or she has previously seen it, and 3) moving for its admission. The other party either will indicate there is no objection to the admission of the exhibit or will object to its admission. If the party opposes the admission of the exhibit, the party must state the specific grounds for objection. The proponent of the exhibit then should make an offer of proof - i.e., indicate the substance and relevance of the evidence. If the offer of admission or the objection is not withdrawn, the Board Chairperson then rules on whether to admit the exhibit.

In practice, the Board rarely has to deal with issues concerning the authentication of documents; it generally is undisputed that the exhibit which is being offered into evidence is what the witness claims it to be. Instead, disputed issues before the Board on admission of exhibits generally turn on whether the exhibit is relevant, or whether the exhibit is the "best evidence".

The determination of whether an exhibit is relevant is guided by the standards concerning relevance discussed in the next section. The Board often in practice has admitted exhibits and indicated to the parties that the Board will weigh the probative value of the exhibit. In such cases, the weight which the Board gives the exhibit generally is reflected ultimately in the Board's written Findings of Fact, Opinion and Order in the case.

The determination whether an exhibit is the "best evidence" in Board hearings often involves a written statement on an incident prepared by a person who is able to testify in the case about the incident. In such cases, the Board often finds the "best evidence" to be the person's live testimony and may not allow the written statement into evidence. However, the Board may allow the written statement into evidence if:

a) the witness testifies that the written statement is a full and accurate account of the incident, and time is saved by not having the witness testify to what already is contained in the statement;

b) the written statement is used to impeach the testimony of the witness;

c) the statement is offered for the limited purpose of establishing that management relied on it in disciplining an employee; or

d) the statement concerns a matter about which the witness once had knowledge, but the witness now has insufficient recollection to testify fully and accurately, and the statement was prepared by the witness when the matter was fresh in the witness' memory.