

WORKPLACE DISPUTE RESOLUTION
(aka "The Course With No Cell Phones")

PROF. PETER FEUILLE

FALL 2008

LIR Room 43
Wagner Education Center, ILIR
(Ground Floor, LIR Bldg.)

Tuesdays, 2:00 – 5:00 p.m.

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- ❖ **We cannot have our class meetings interrupted by cell phones, pagers, beepers, etc. Please leave these devices elsewhere, or else turn them off before class meetings (off means completely off, not changing the setting to vibrate mode). No texting, either.**
- ❖ **Similarly, we cannot have constructive class meetings while students use their laptops to check email, conduct other business, cruise the Internet, etc. If this behavior occurs, laptops will not be allowed in class.**
- ❖ **Please--no food consumption in class. Beverages are fine. Thanks.**
- ❖ ***If you cannot comply with these requirements, I invite you to enroll in another course.***

SYLLABUS

(also available in the "Courses" section at <http://www.ilir.uiuc.edu>)

Course Overview

In this course we will examine:

- (1) Many kinds of workplace disputes and how they are handled and resolved in both union and nonunion workplaces;
- (2) The design, operation, and impact of different kinds of workplace dispute resolution (DR) procedures (such as mediation, arbitration, peer review, and various alternatives);
- (3) The DR perspectives of employers, employees, unions, DR professionals, and the government (i.e., DR public policy); and
- (4) We will develop professional expertise, including DR decision skills and DR advocacy skills.

As this description implies, we will emphasize formal over informal dispute resolution. By semester's end we will have a good understanding of many tools of the workplace DR trade.

There are no formal prerequisites for this course. However, you must be aware of your own values and preferences regarding employment relationships and workplace disputes, and how these preferences influence your conclusions about the course material.

Meeting, Reading, and Writing Assignments

Readings. The weekly reading assignments which follow are only a small slice of the material available on workplace dispute resolution. I have also listed items for "further reading" so that you can pursue additional information on various topics.

Textbooks. Copies of Norman Brand, ed., *How ADR Works*, Washington, D.C.: BNA, 2002; and David Dilts, *Cases in Collective Bargaining and Industrial Relations*, **11th ed.**, Homewood, IL: McGraw-Hill/Irwin, 2007, are available for purchase in the Illini Union Bookstore. The other reading assignments are available online via the "electronic reserves" link on the ILIR Library website (www.library.uiuc.edu/irx). Once you reach the site and click on the e-reserve link, the e-reserve readings will be available under course names/numbers (LIR 543).

You will see that the Brand book exhibits the following characteristics: (1) It is quite long (1,100+ pages), (2) it is written primarily by attorneys and addresses mediation and arbitration as alternatives to litigation, and (3) I often have assigned chapters from it in large bunches. Don't let these characteristics overwhelm you. As you will see, the chapters are written by practitioners based on their experiences (as mediators, arbitrators, union advocates, management advocates, etc.), and the authors demonstrate a very applied focus on how to process and resolve workplace disputes. These authors' perspectives will help you understand there is no "one best way" to handle all disputes. More generally, this book will do a very good job of helping you understand the actual operation of mediation and arbitration processes, be a valuable resource for your four in-class DR simulations, and be an even more valuable resource if you engage in WDR work after you graduate.

I have stopped using a book that I assigned for more than 20 years: Frank Elkouri and Edna A. Elkouri, *How Arbitration Works*, 6th ed., Washington, D.C.: BNA, 2003. This book is often referred to as "the Bible" of labor arbitration, and it is the most widely used reference source for that kind of arbitration. If you want more information about labor arbitration, and/or believe you may engage in that kind of work after you graduate, I strongly recommend you add that book to your professional library.

Class attendance. We hold class meetings to enhance your learning. Therefore, class attendance is necessary. Absences will be factored into your course participation grade. I always appreciate advance notice when students must miss a class.

Class meeting and writing assignments. For our class meetings to be productive, it will be necessary for you to perform the required assignments **prior to** each meeting and for you to be willing to participate in class. In particular, for each assigned case, you must prepare a brief (i.e., one or two paragraphs) typed decision and analysis of each case as if you were the decision maker according to the instructions (these will be handed in and collected by the Instructor). Your professional practice exercises (PPEs) will be longer, carry more weight, and also handed in on the assigned date. Please pay careful attention to the important information below about your writing assignments. **Please note that your first PPE assignment is due at our third class meeting (September 9).**

Evaluation

I will determine your grade in the following manner:

Nine professional practice exercises	60% (6.67% each)
Final examination	30%
Discussion and participation, including short case analyses, during class meetings	10%

1. During the semester you will prepare numerous written **short case analyses**, many of them from the Dilts casebook. In each of these cases you will play the role of an advocate or an arbitrator or mediator. For each assigned case, please prepare a brief (one or two paragraph) summary of your decision/assignment. These are to be typed, short (a paragraph or two, limited to one page, single-spaced), and handed in on the assigned dates. These cases will not be returned. (The Dilts casebook contains numerous other cases which you might find interesting.)
2. During the semester you will participate in nine **professional practice exercise** assignments (PPEs). Most of these PPE assignments will require you to prepare a paper. These will ask you to assume the role of an advocate or dispute resolver in a particular dispute and describe and justify your actions/advocacy/decision. To ensure a level playing field, the following rules apply to these PPE papers. **PLEASE READ THESE RULES BEFORE YOU PREPARE EACH OF YOUR PAPERS, ESP. YOUR FIRST ONE.**
 - a. These PPE papers must be typed double-space, with one-inch margins, using at least a 12 point font (you are reading 12 point font now; the font style is your choice, and a proportional font allows more words per page), and printed—with page numbers—in a readable fashion. These papers must have a separate title page with the pertinent identifying information (your name, course name, assignment, date, etc.), and they absolutely cannot have more than four pages of text ("text" includes appendices, tables, etc.). A sixth page may be attached for any references you cite, and you may cite whatever scholarly or applied references (including cases) you find helpful. Please do not put these papers in folders or binders (stapled in the upper left corner is preferred). *PPE papers that fall short on **any** of these preparation dimensions (e.g., single-spaced, more than four pages of text, using a less-than-12-point font, printed on old dot matrix printer, etc.) will be returned with a "D" grade.* **Please carefully prepare and proof your papers so you do not receive such a grade (this means, for instance, that printing your paper two minutes before class is a risky practice).**
 - b. These PPE papers must be submitted in hard copy, at the beginning of our class session, on the day they are due. If you cannot be in class on a due date, you can give the paper to me in advance, mail it to me in hard copy (so that it arrives before class), or have a classmate bring it to class. Please keep in mind that you assume the risk of nondelivery. *E-mailed, faxed, or late papers **will not be accepted regardless of reason, which means a grade of "F" on that assignment.*** **Please submit your papers on time so you do not receive such a grade.**
 - c. Because of the possibility of schedule changes, I must reserve the right to change the due date for any PPE paper.

- d. PPE preparation tips: (1) Read the instructions carefully and then do what they ask. Do not transform the stated assignment into something else. (2) Read the facts of the case carefully and use them accurately: Do not assume facts not in the case, do not ignore facts that are in the case, and do not transform facts beyond their face value. (3) Use the course materials as analytical resources whenever appropriate. (4) Complete each assignment based on your business-like analysis of the pertinent information, not on your emotional reaction to the disputants' positions expressed in the case.
 - e. The quality of your writing, along with the appearance of your paper, is as important as the content of your writing. In general, prepare each paper as you would produce a report to your division manager or a brief to a judge. You would not turn in a sloppy paper to them. Why would you do so in class?
 - f. I will return your PPE papers on a timely basis, usually the next class period.
 - g. I call your special attention to four DR simulations in which you will participate as part of these PPE assignments. As you can see in more detail below, you will participate (during class time) in a grievance arbitration hearing on September 23, and in three mediation conferences on October 28, November 11, and December 2. Your participation in each of these simulations is necessary to complete these four PPEs. Nonparticipation, **regardless of reason**, will result in a grade of "F" on that assignment.
3. A **final examination** will be held during the final exam week. This closed-book exam will review the course material via a series of questions, which will be a mix of essay, short answer, and case questions. You will have some choice among questions.
 4. Please note that I really do not like incompletes. Neither should you.

Information Sources

- The LIR Library has a first-rate collection of printed materials in this area, including arbitration award reporting services (the Bureau of National Affairs' *Labor Arbitration Reports* is the best known), numerous journals that report relevant research (including the *Dispute Resolution Journal* (formerly the *Arbitration Journal*)), the annual *Proceedings* of the National Academy of Arbitrators, and many other journals and books.
- The Law Library has a very useful collection of pertinent legal and alternative dispute resolution (ADR) materials. The Law Library also provides access to the LEXIS-NEXIS and WESTLAW online reporting services, including judicial decisions and arbitration awards.

There are a number of general ADR websites that provide a lot of useful information and references to other sources. Some of them are:

- The Mediation Information and Resource Center's (MIRC) website (<http://mediate.com/>) contains a huge amount of information about mediation and ADR, including an "articles" section, a "locate a mediator" section, and the addresses of many other ADR websites.
- The ADR Resources (ADRR) site (<http://adrr.com/>) provides essays on ADR subjects and a large number of links to other ADR sites.
- The Colorado Conflict Resolution Consortium (at the University of Colorado) offers extensive DR materials at its site (<http://www.crinfor.org>).

- A professor at Willamette University provides a “Recent Developments in Dispute Resolution” email reporting service at dis-res@willamette.edu (with full text available at <http://www.willamette.edu/law/wlo/dis-res>).
- The Center for Information Technology and Dispute Resolution at the University of Massachusetts, Amherst has a site devoted to online DR (<http://www.odr.info>).
- The Ohio State Journal on Dispute Resolution is published by the OSU Law School and is available online (<http://www.acs.ohio-state.edu/units/law/jdr>).

Many of the ADR service providers, membership organizations, and regulatory agencies have their own websites:

- The American Arbitration Association is a very well-established ADR service provider, and it has useful information, esp. about the mediation and arbitration rules it uses, available on its website at <http://www.adr.org/>.
- The CPR Institute for Dispute Resolution has actively promoted ADR use in the corporate world. Its website contains a lot of useful information (<http://www.cpradr.org/>).
- The National Academy of Arbitrators (NAA) is the primary professional association of labor and employment arbitrators (<http://www.naarb.org/>).
- In 2000 the Association for Conflict Resolution (www.acresolution.org) was formed by the merger of the Society of Professionals in Dispute Resolution, the Academy of Family Mediators, and the Conflict Resolution Education Network.
- Two federal agencies are key players in the WDR arena: The Equal Employment Opportunity Commission and the Federal Mediation and Conciliation Service. Their websites contain a wide variety of pertinent information about the services they provide and disputes they process (<http://www.eeoc.gov/> and <http://www.fmcs.gov/>).

It is not surprising that enterprising organizations are now offering DR services over the Net. Several such services are:

- <http://www.squaretrade.com/> provides mediation services to buyers and sellers who have disagreements arising from online transactions (e.g., squaretrade has a link to eBay buyer-seller disputes). Similarly, <http://www.net-arb.com/> provides arbitration services in disputes arising from e-commerce transactions.
- <http://www.cybersettle.com/> provides online negotiation services in which disputing parties can submit “blind” offers without such offers being revealed to the other side, and the site software determines if the offers are close enough that a settlement occurs. If the dispute is not resolved via negotiations, other providers, such as <http://www.onlineresolution.com> and <http://www.webmediate.com> offer access to mediation and arbitration services. Some of these providers offer only online services, while others provide online and offline (or face-to-face) services.

Important Course Information

Academic integrity. The "Academic Integrity-All Students" policy in the *Code of Policies and Regulations Applying to All Students* applies in this course. Maintaining academic integrity should be a top priority for each of you. Violations of academic integrity will result in appropriate penalties; these may include a grade of "F" in the course.

Disability status. Students with disabilities who require reasonable accommodations to participate in this course should see me at the beginning of the semester.

August 26 (week 1)

**The Employment Relationship; Employment Contracts; Fair/Unfair Treatment at Work;
Employee Voice in the Workplace: Internal and External**

- 1.*E Denise M. Rousseau, *Psychological Contracts in Organizations: Understanding Written and Unwritten Agreements*. Thousand Oaks, CA: Sage Publications, 1995, Chapter 5. (0-8039-7105-2).

*E means this item is available via e-reserve. See the e-reserve instructions for accessing non-reserve, non-text readings.

2. Richard B. Freeman and Joel Rogers, *What Workers Want*. Ithaca, NY: Cornell University Press, 1999 (in-class handout ("handout")).
3. Peter Feuille, "A Classification of Workplace Dispute Resolution Procedures" (handout)
4. Peter Feuille, "Fair Treatment in the Workplace: The Non-Promotion Case" (handout).

September 2 (week 2)

Individual Remedial Voice:

**Grievances and Grievance Procedures in the Nonunion Workplace;
Factfinding/Investigations in Workplace Disputes: What Really Happened?**

- 1.*E Alexander Colvin, "The Dual Transformation of Workplace Dispute Resolution," unpublished paper, 2002.
- 2.*E U. S. General Accounting Office, *Employment Discrimination: Most Private-Sector Employers Use Alternative Dispute Resolution*, GAO/HEHS-95-150, July 1995.
- 3.*E U. S. General Accounting Office, *Alternative Dispute Resolution: Employers' Experiences with ADR in the Workplace*, GAO/GGD-97-157, August 1997.
- 4.*E Antone Aboud, "Conducting a Fair Investigation," *Dispute Resolution Journal*, 59, 4 (November 2004-January 2005), 16-21.
- 5.*E Peter Feuille, "Finding Facts and Writing Reports in Workplace Disputes" (handout).
- 6.*E Libby Bishop and David I. Levine, "Computer-Mediated Communication As Employee Voice: A Case Study," *Industrial and Labor Relations Review*, 52, 2 (January 1999), 213-233. . Prepare a brief (1-2 paragraph) typed description and justification of how effectively the computer-mediated communication methods analyzed here provided "voice" to TekCo employees. This case analysis will be handed in, according to the case analysis instructions in the front of this Syllabus. Please note that this same instruction applies to the short case analyses during the remained of the semester. As a result, I will not repeat this instruction in subsequent weeks.
7. Handout for item 3 next week.
8. Handout for item 4 next week.

September 9 (week 3)

Collective Remedial Voice:

Grievances and Grievance Procedures in the Unionized Workplace

1. Freeman and Rogers, Chapter 4.
- 2.*E David Lewin and Richard B. Peterson, “Behavioral Outcomes of Grievance Activity,” *Industrial Relations*, 38, 4 (October 1999), 554-576. (0019-8676)
3. Hilgert and Dilts, 10th ed., Case 40. You are the Centrex Corp. plant manager. The HR manager determined that Calvin Marshall is not entitled to replacement tools (at Company expense, which would be about \$400) or to pay for the five hours of lost work time (about \$110). The Union filed a grievance on Marshall's behalf, which the HR manager denied. The Union has appealed the grievance to you (the final pre-arbitration step of the grievance procedure). You met with the HR manager and with the Union representatives, and they provided you with the information in the case. The HR manager has recommended that you deny the grievance in its entirety. The Union offered to settle the grievance by having the company replace the tools at Company expense, and in return the Union would drop its demand for five hours of pay for Marshall. What is your response, and why? See item 6 in September 2 for preparation instructions.
- ❖ 4. **Professional Practice Exercise I:** Dilts, 11th ed., Case 73 (including handout). You are Esther/Edward Collins, the Human Resources Manager at the Company's Evansville plant. This reporting pay grievance has reached the desk of Plant Manager Kendra/Ken Federline in the grievance procedure (GP) and remains unresolved – the Union insists the grievance be granted, the Company has denied the grievance. Federline is meeting with the Union on September 10 to discuss this grievance. You have all of the relevant information about the circumstances involved in this grievance. She has asked you for assistance in how she should respond to the Union. In particular, she wants two things. First, give her as much information as you can provide about the reasons why the Company has denied this grievance, including how the Company has responded to Union arguments (expressed in the case) why the Company should grant the grievance. Second, she also asked you for your proposal(s) and justifications for how you believe the Company should respond to this grievance (i.e., grant the grievance in full, grant it in part, or deny it, and why). Write her a memo containing this information. (Your memo will be read only by Federline; she will not give it to the Union.) If the grievance is not resolved at this step, the next step in the grievance procedure is arbitration, and the Union has promised it will take this matter to arbitration if necessary. Please follow the PPE preparation instructions on pp. 3-4 of the Syllabus instead of normal memo-writing conventions (e.g., use double-spacing instead of single-spacing, etc.).
5. Handout for item 7 next week.

September 16 (week 4)

**Grievance Arbitration in Unionized Workplaces (“Labor Arbitration”):
Advocates, Arbitrators and Their Selection, Hearings, Evidence, Briefs, Awards,
Remedies;
Grievance Arbitration Issues, Decision Criteria, and Decisions**

1. Brand, ed., *How Arbitration Works*, Chapters 29, 34, 35, 36, 39, 40, 41
- 2.*E Richard Block and Jack Stieber, "The Impact of Attorneys and Arbitrators on Arbitration Awards," *Industrial and Labor Relations Review*, 40, 4 (July 1987), 543-555. (0019-7939)
3. Peter Feuille, "Selected Dimensions of Advocacy in Grievance Arbitration" (handout)
4. Peter Feuille, "Selected Features of Employee Discipline Under the Just Cause Standard as Enforced Via Grievance Arbitration" (handout)
- 5.*E Carroll R. Daugherty, excerpts from Award in Enterprise Wire Co., 46 LA 359, 362-365 (1966), ILIR reprint.
6. Hilgert and Dilts, 11th ed., Case 57. You are the Union advocate in this case. This grievance has been referred to arbitration, and you have reached the arbitrator selection phase of the process. Describe how you would select an arbitrator in this case (what selection criteria would you use?, what information would you collect on potential candidates?, how would you collect this information?, etc.), keeping in mind that arbitrator information acquisition is a costly process (in time and money). Also keep in mind that the Employer advocate has an equal voice in the selection process. Assume that you have worked with the Employer advocate previously and have a constructive working relationship, that the contractual grievance procedure provides that the parties may select an arbitrator by mutual agreement, and if that is not possible the parties will request a panel of seven arbitrators from the Federal Mediation and Conciliation Service (www.fmcs.gov) and then take turns striking names from the panel until one name remains. (Some of the readings below may be helpful.)
- ❖ 7. **Professional Practice Exercise II:** You are the Union advocate in Dilts, 11th ed., Case 56 (including the handout supplement), which has been referred to arbitration. Assume that the arbitrator has been selected and a hearing date scheduled. You need to prepare your case prior to the hearing. Describe and justify the case you will present at the hearing on behalf of your client (Mr. S). What "theory of the case" will you present? What witnesses is the Company likely to call? How will you cross-examine them? What witnesses will you call on behalf of the Grievant, and what will you ask them on direct examination? What documents will you submit? What remedy will you propose to the arbitrator? Keep in mind that the Employer will present its case first at the hearing.
8. PPE III handout

September 23 (week 5)

**Labor Arbitration in Practice:
Discipline, Discharge, and Just Cause in an Actual Arbitration**

1. Brand, Chapters 43, 44, 45
- ❖ 2. **Professional Practice Exercise III:** This PPE consists of two parts:
 - a. **PPE III-A: Students will participate in an arbitration simulation during the September 23 class period.** On September 16 I will assign class members to union, employer, and arbitrator roles in a grievance arbitration proceeding, and supply you with information about the dispute. You will use the September 23 class period to present your case as you would in an actual arbitration hearing.
 - b. **PPE III-B:** Each student will write an analysis of her/his September 23 arbitration experience in your PPE III-B paper. **This paper is due in class on September 30.** Your paper should analyze the processes used by you and your team during the arbitration hearing, including your opening statement, your presentation of evidence, your direct examination of your witnesses, your cross-examination of the other party's witnesses, and your closing argument. In addition, you should conclude with a prediction of how you believe the arbitrator would rule in this dispute, and explain the reasons for your prediction. Feel free to use any materials from the assigned or supplementary readings to enhance the quality of your analysis.

September 30 (week 6)

**Grievance Arbitration and Public Policy in Union and Nonunion Workplaces;
Grievance Arbitration Without A Union (“Employment Arbitration”)**

- ❖ 1. **Professional Practice Exercise III-B:** Your PPE III-B paper is due, as described in the September 23 assignment page.
- 2. The 1960 Steelworkers Trilogy (note in item 6 how to find these decisions):
 - (a) *United Steelworkers v. American Manufacturing*, 363 U.S. 564.
 - (b) *United Steelworkers v. Warrior and Gulf Navigation*, 363 U.S. 574.
 - (c) *United Steelworkers v. Enterprise Wheel and Car*, 363 U.S. 593.
- 3. *Alexander v. Gardner-Denver Co.*, 415 U.S. 36 (1974).
- 4. *Gilmer v. Interstate/Johnson Lane Corp.*, 500 U.S. 20 (1991).
- 5. *Circuit City Stores, Inc. v. Adams*, 532 U.S. 105 (2001).
- 6. *Wright v. Universal Maritime Service Corp.*, 525 U.S. 70 (1998). None of these court decisions are in your readings packet. Instead, they are available at <http://www.findlaw.com/casecode/supreme.html> (and via several other websites).
- 7. Freeman and Rogers, chap. 6 (handout)
- 8. Brand, Chapters 28, 32, 33, 38, 42, 51
- 9. Dilts, 11th ed., Case 63. You are the Arbitrator in this case. Write a brief (1-2 paragraph) summary of your award for this case. You are arbitrating this case under a collective bargaining agreement. How much ADA discrimination caselaw did you use in your decision? (Ignore the contractual reference to the Kansas Act Against Discrimination and the Family Leave Act.)

October 7 (week 7)

Employment Arbitration

1. Brand, Chapters 28, 32, 38
- 2.*E Theodore Eisenberg and Elizabeth Hill, "Arbitration and Litigation of Employment Claims: An Empirical Comparison," *Dispute Resolution Journal*, 58, 4 (November 2003-January 2004), 44-55.
- 3.*E Michael Delikat and Morris M. Kleiner, "An Empirical Study of Dispute Resolution Mechanisms: Where Do Plaintiffs Better Vindicate Their Rights?," *Dispute Resolution Journal*, 58, 4 (November 2003-January 2004), 56-58, 85.
- 4.*E Alexander J.S. Colvin, "Empirical Research on Employment Arbitration: Clarity Amidst the Sound and Fury?," *Employee Rights and Employment Policy Journal*, 11, 2 (2007), 405-447, esp. 412-434.
- 5.*E You are the expert on how to pursue discrimination claims. Based on your interpretation of reading assignments 2-4, briefly (1-2 paragraphs) explain whether you would advise a grievant with an individual discrimination grievance in a nonunion workplace to pursue her/his claim (1) via employment arbitration (assume it is available to them via their employer's policies and is administered by AAA's arbitration rules (see next paragraph)), or (2) via the filing of a discrimination charge with the US EEOC followed, if necessary, by litigation in court? Why? Assume that this grievant was terminated from an \$85,000 job, is convinced the termination was discriminatory, has not yet found other employment (s/he was terminated two weeks ago), and that s/he would be represented by experienced and competent counsel in either venue.

The American Arbitration Association's "Employment Arbitration Rules and Mediation Procedures" (available at <http://www.adr.org/> - click on "dispute resolution services" on the top of the homepage, click on the "arbitration & mediation" tab on the second page, click on "employment rules" on the third page, and click on "Employment Arbitration Rules and Mediation Procedures" located in the lower right portion of the fourth page).

October 14 (week 8)

**Mediation as a DR Process: Art, Science, or Both?
Mediation Process; Mediator Styles and Techniques**

1. Brand, Chapters 7, 8, 9, 10
2. Jeanne Brett, *et al.*, "Effectiveness of Mediation . . .," *Negotiation Journal*, 12, 3 (July 1996), (handout)
3. Peter Feuille, "The Mediation Process" (handout)
4. Mediator Classification Index in-class exercise
5. Peter Feuille, "Mediator Roles/Styles" (handout)
- ❖ **6. Professional Practice Exercise IV:** Dilts, Case 75. You are the Company's arbitration advocate in this case. The arbitration hearing is scheduled for six weeks from now. You have just received a phone call from the Union advocate proposing mediation of this grievance next week. You both have the same day available, your principals also are available, the Union has proposed using a mediator who is acceptable to you (and who is available), and the Union has proposed that the mediation costs be shared equally. If mediation occurs, a "hold harmless" provision will apply (nothing said or done during mediation can be used as evidence at arbitration if the mediation is unsuccessful in resolving the grievance). Your principals have said it's your call to decide whether or not to mediate. In PPE IV, you need to do the following: (1) Explain why you will or will not agree to participate in the mediation of this grievance. (2) If you decide to mediate, explain how far are you willing to move to reach an agreement with the Union to resolve this grievance, and why? As with other PPEs, the "why?" is the most important part of your analysis.

Suggestion: If you do some reading about the purpose and process of mediation before writing PPE IV, you will be able to write a better analysis.

October 21 (week 9)

**More on Mediator Styles and Techniques;
How Much Control?**

1. Brand, Chapters 12, 13, 14, 15
2. "Mediator Control Knob" (handout)
- 3.*E John M. Livingood, "Reframing and Its Uses," *Dispute Resolution Journal*, 57, 4 (November 2002-January 2003), 42-49.
4. James K. Hoenig, "Mediation in Sexual Harassment: Balancing the Sensitivities," *Dispute Resolution Journal*, 48, 4 (December 1993), 51-53. Write an analysis and assessment of the methods used by this mediator to resolve this dispute. As part of your assessment, give the mediator a letter grade (the usual A through F, plus/minus allowed) and justify your grade. Note: The assignment asks you to grade the mediator's behavior, not the behaviors of others involved in this dispute.
- ❖ 5. **Professional Practice Exercise V:** Jeff Kichaven, "When Mediators Cross the Line," 2006, <http://www.mediate.com/articles/kichavenJ5.cfm?nl=94>. (If this URL does not work, go to www.mediate.com, click on "articles," and scroll through the author list until you find the author's name.) The author of this article argues that the mediator in the dispute he describes was seriously incompetent and also unethical. In your paper explain why you agree or disagree with each of the author's assessments of this mediator's behavior. I emphasize that "why" is the key word in the previous sentence.
6. PPE VI handout

October 28 (week 10)

Mediation in Practice I: Grievance Mediation in the Unionized Workplace

- 1.*E Peter Feuille, "Grievance Mediation," unpublished ms., 1999.
- 2.*E Stephen Goldberg, "How Interest-Based, Grievance Mediation Performs Over the Long Term," *Dispute Resolution Journal*, 59, 4 (November 2004-December 2005), 8-15.
- ❖ 3. **Professional Practice Exercise VI:** Dilts, Case 51. This exercise involves the mediation of this grievance under the collective bargaining agreement. You will participate either as an employer representative, a union representative, or a mediator. I will give you a handout on October 21 that contains additional information about this case, as well as your mediation assignment.

November 4 (week 11)

Mediation Processes, Mediator Ethics

1. Brand, Chapters 17, 18, 19, 20
 2. "Persistence in Mediation" (handout)
 3. Peter Feuille, "Mediator Ethics" (handout)
 4. Dilts, **11th** ed., Case 81. Write a brief description of how you would mediate this dispute. Be specific about how you would persuade the Union/grievant to settle, and how you would persuade the Company to settle. Assume that this grievance is scheduled for arbitration as stated in the case, and that it will be arbitrated if the parties do not resolve it by mutual agreement.
 5. PPE VII handout
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November 11 (week 12)

Mediation in Practice II

- 1.*E Sara Adler, "Strategies for a Successful Employment Mediation," 2000, <http://www.mediate.com/articles/sadler.cfm>.
- ❖ **2. Professional Practice Exercise VII:** The November 11 class period will be devoted to mediating a workplace dispute. You will be assigned roles as mediators, employers, or employees according to the handout you will receive on November 4. Your mediation goal will depend on your assigned role.

November 18 (week 13)

Mediator Qualities; Mediation Outcomes

1. Brand, chaps. 21, 22, 23
 - 2.*E Vivian Wiseman and Jean Poitras, "Mediation Within a Hierarchal Structure: How Can It Be Done Successfully?," *Conflict Resolution Quarterly*, 20, 1 (Fall 2002), 51-65 .
 - 3.*E Jeanne M. Brett, Mara Olekalns, Ray Friedman, Nathan Goates, Cameron Anderson, and Cara Cherry Lisco, "Sticks and Stones: Language, Face, and Online Dispute Resolution," *Academy of Management Journal*, 50, 1 (February 2007), 85-99. After reading this article about the resolution of eBay buyer-seller disputes (don't get bogged down in the statistics), in your written analysis briefly (in 1-2 paragraphs) explain why you favor or oppose the use of online mediation to resolve workplace disputes.
 - 4.*E John W. Cooley, "Defining the Ethical Limits of Acceptable Deception in Mediation," 2000, <http://www.mediate.com/articles/cooley1.cfm>.
 5. Fairness In Mediation (handout)
 6. PPE VIII handout
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December 2 (week 14)

Mediation in Practice III

- ❖ **1. Professional Practice Exercise VIII:** The December 2 class period will be devoted to mediating a different workplace dispute than the disputes you mediated earlier. Your mediation goal will depend on your assigned role in the handout you will receive on November 18.
- 2. PPE IX handout

December 9 (week 15)

Mediation Opportunities, Constraints Summary and Review

1. Brand, Chapter 5
2. Mediation: Concluding Comments (handout)
3. Workplace Disputing Summary and Overview (handout)
- ❖ **4. Professional Practice Exercise IX:** Write an analysis explaining the outcomes of your PPE VI, VII, and VIII mediation conferences this semester. You will receive a detailed PPE IX instruction sheet in class on December 2. You may want to compare and contrast your mediation experiences. You may want to take notes during your mediation conferences for use in this paper. Feel free to use any materials from the assigned or supplementary readings to enhance the quality of your analysis. You will have up to **seven** (instead of the usual four) pages of text for this paper.

December 15 (week 16)

Final Exam

Monday, December 15, 7-10 p.m.