Past Practice

In general, a past practice is not covered in the contract but, over time, has come to be accepted as an employment condition. To cite "past practice," these four elements must be present:

- ✓ **A Clear and Consistent Course of Conduct:** The practice has to be normal activity. A "past practice" is not a vague activity or an occasional lapse in the usual way of doing business.
- ✓ **Activity Over a Reasonable Duration:** The phrase "reasonable duration" is subjective and indefinite. Arbitrators decide – on a case-by-case basis – whether a practice has gone on "long enough" to be considered a condition of employment. One or two occurrences a year won't be considered consistent over a reasonable duration. However, the same activity repeated once a week for five years might be.
- ✓ **Full Knowledge:** Both parties, management and the union, must know the practice exists. This does not have to be officially stated or recognized, but it does have to be verified.
- ✓ **The Contract Is Silent or Ambiguous:** When the contract is silent on the activity, the practice may be considered to be an implied term of the contract if all of the above elements are present. Where contract language is vague or ambiguous, it is implied the two parties intended the activity to be covered by the contract. Arbitrators look to the past practice to determine the intent of the contract.

In addition, the union must demonstrate that harm was done to affected employees by management's changing the practice.