



Article 24 & Appendix M – Last Chance Agreements (LCAs)

**Q: What is a Last Chance Agreement (LCA)?
What am I agreeing to when I sign a Last
Chance Agreement?**

A: The LCA is a trade-off negotiated by the union and the agency. You keep your job, but agree if you violate the agreement you are automatically removed. The intention is to provide an employee one last chance to rehabilitate and remain on the job. The discharge/removal is held in abeyance during this time so that you can prove you can perform your job without violating policies and procedures.

“...the Employee receives an opportunity for rehabilitation and a penalty less than what other employees do and the Employer receives a promise of rehabilitation and the freedom to choose the next level of discipline for future infractions. Clearly, the Grievant chose to give up certain due process rights when he signed the agreement and he must now live with that decision.” Arbitration #412 Smith.

**Q: How does a Last Chance Agreement
relate to the Just Cause standard**

**normally required
in discipline per Article 24.01?**

A: Just Cause no longer applies. It is as if the Just Cause provision has been removed from the Collective Bargaining Agreement and replaced with the Last Chance Agreement. That is part of what the employee “gives up” in order to keep his/her job.

“The usual protections under the CBA and Article 24 are superfluous in the LCA context based upon the agreed upon language within the LCA. The fundamental principle of fairness and compliance with procedural and substantive prerequisite are eliminated or modified, if the parties’ language is unambiguous as to what “rights” the Grievant sacrificed to save his job.” Arbitration #921 Washington.

Q: How long do LCA's last?

A: The typical LCA is for two years. Sometimes the agency may agree to one year. Under provisions in Appendix M Drug-Free Workplace Policy a grievant may enter, under certain circumstances, an LCA lasting 5 or more years. The LCA is in full effect and enforceable through the last day of the agreement. In other words, violating the Last Chance Agreement within just a few days of the ending date of

the agreement will not mitigate the removal.

Q: What if I do not sign the LCA that is offered?

A: The decision is yours to make. If you don't sign the LCA management may remove you from employment. Your grievance will then be processed through the grievance procedure. Your case will be heard by the Discharge Review Committee, who will determine if your individual case has merit and will vote to take the grievance forward to arbitration or will determine that your case does not have merit and has no chance to succeed at arbitration. The Discharge Review Committee will most likely ask you or the Staff Representative if an LCA was offered and why you chose to turn it down.

Q: Can I argue disparate treatment?

A: No. Being on an LCA makes you different from other employees — you are no longer similarly situated to other employees. You cannot compare discipline given to other employees for similar violations.

“Assuming the claim of disparate treatment to be true, this would be a persuasive argument were it not for the Last Chance Agreement which created a situation of inequality by the parties' mutual consent.” Arbitration #412 Smith

Q: Can I argue I didn't receive notice?

A: No. By signing the agreement you have been given “notice” of violations for which you will be automatically removed.

“The last chance agreement is an agreement that is particularized to this Grievant at a time where the Grievant had pending a decision by the Employer to discharge him. This clearly establishes a duty upon the Grievant to be aware of (Rule 26.)” Arbitration #998 Murphy.

Q: Can I argue I didn't understand the LCA?

A: No. The LCA is represented as evidence. If it has your signature and the signature of the agency designee and the union was present when you signed it, the arbitrator assumes that everyone understands what is being agreed to.

“The facts in this case clearly reveal that the grievant entered into a Last Chance Agreement. It was signed off by the union; it was signed off by the grievant in the presence of the union and it was signed off by management at the same time. I found that the writing of the Last Chance Agreement and the contents therein are fair, just, and equitable and the grievant's complaint that its use was too draconian must fall on dea(f) ears.” Arbitration #1031 Feldman.

“Under this agreement, a removal (discharge) of the Grievant was held in abeyance, and the Grievant specifically agrees and understands that he must

strictly adhere to (the Employer's) policies and work rules in order to retain (his) position." Arbitration #1031 Feldman.

Q: When is a case involving a Last Chance Agreement taken to arbitration?

A: The only time a removal case could be taken to an arbitrator is if there is a factual question of whether or not the grievant genuinely committed a violation that would then put the LCA into play. If there is clear and convincing evidence that the grievant committed a violation covered under the LCA the case is not arbitrable.

Q: Why do Arbitrators not overturn Last Chance Agreements?

A: Because in collective bargaining that is what the parties have agreed to. The Last Chance Agreement is a special situation. If Arbitrators were to start modifying Last Chance Agreements the employer would not want to enter into them. Then we would lose one tool to protect a member's job.

"Once adopted by the parties, however, it becomes virtually impossible for any arbitrator to modify the terms agreed to by the parties and an individual grievant. The terms may be viewed as unreasonable, inequitable and excessive by the arbitrator. Regardless, an arbitrator must assume the parties and the Grievant were fully aware and cognizant of the ramifications attached to any signing." Arbitration #208 Pincus.

"However harsh the terms of the agreement may seem, they were agreed to by the Grievant, and the Arbitrator must defer." Arbitration #412 Smith

First of all, the agreement is written such that they are limited in their authority to modify the discipline.

"To a certain extent I agree with the Union that these are not actions in-and-of-themselves warranting termination...But a proven act of misconduct must be viewed in its context. The context here includes that this is not the Grievant's first offense and he was on a last chance agreement strictly limiting an arbitrator's authority to that of reviewing whether he violated the Last Chance Agreement and/or the rule. Having found that he broke the Last Chance Agreement when he violated the rule, I have no authority to modify the decision. For these reasons I must uphold his removal." Arbitration #961 Smith

Q: Is an LCA a negotiated "right"?

A: No (except in the case of Appendix M-Drug-Free Workplace Policy.) The agency must be willing to enter into an agreement. It is a mutual decision. There is no contractual language that says the agency must offer an LCA. Just because another employee was offered an LCA and signed it does not mean you have a right to be offered an LCA. It is a case-by-case decision. No rationale has to be provided.

Appendix M-Drug Free Workplace Policy is an exception. That language gives an employee who is found - on the first occasion – to be under the influence of drugs on duty, the opportunity to enter and complete a substance abuse program under the terms of a Last Chance agreement. That Last Chance agreement can be for five (5) or more years, depending on the circumstances.

REFERENCES:

Article 24.01; Appendix M

Arbitration #: 208; 412; 921; 961; 998;
1031

Revised 5/2018