appellate procedure for reviewing decisions of local arbitrators by an International Arbitration Board.

I rather think the fact that such an appellate procedure exists will be news to many of you—at least I have found it so in recent years. Even arbitrators are not fully aware of that fact, even though the procedure has been operative for more than 70 years. I will not take time to say more about this because that is the function of the next two speakers.

THE APPELLATE PROCESS IN THE INTERNATIONAL ARBITRATION AGREEMENT BETWEEN THE AMERICAN NEWSPAPER PUBLISHERS ASSOCIATION AND THE INTERNATIONAL PRINTING PRESSMEN

MR. JOHN S. MCLELLAN: It is both a humbling and a perilous task to address such a group of the distinction in the field of labor arbitration as the National Academy of Arbitrators, particularly on any subject dealing with or related to the arbitral process. In the time allotted to me today, I shall address myself to a rather unique facet of the comprehensive arbitration contractual scheme between the American Newspaper Publishers Association and the International Printing Pressmen's Union.

Unlike most labor unions and industries, the Pressmen and the newspaper publishers have, for more than three quarters of a century, maintained industrial peace in relation to that industry and to the pressrooms operated by members of the Pressmen's Union through the successive execution of arbitration agreements providing not only for the disposition through arbitration of conventional grievances, but further for the arbitration of disputes respecting terms of renewal contracts.

To realize that three quarters of a century ago an industry and a labor union were contractually committed to the principle of arbitration in all aspects of their relationship, including disputes relative to new contract terms, is to know the distinctive quality of the leadership of both the union and the industry, reflecting a crusading or certainly, at least, a reforming streak. As you know, until the very recent past, most industries and unions viewed arbitration of new contract terms with a jaundiced eye; and except for the Pressmen and the Amalgamated Streetcar Workers, this concept was a stranger to the collective bargaining relationships generally prevalent in the United States.

The International Arbitration Agreement actually had its genesis in an 18th century document drafted in San Francisco which spelled out, before the turn of the century, that disputes regarding a new scale of wages and working conditions to be contained in a renewal contract would be subject to negotiation and conciliation; but if an accord was not reached, then the disputes that remained would be submitted to final and binding arbitration. From that platform evolved the first International Arbitration Agreement which tried, in a few hundred words, to lay down permanent rules for the government of an industry and the union. And it was in this document that the appellate procedure with which I shall primarily concern myself today was first introduced.

The Appellate Procedures of the I.A.A.

The present and past International Arbitration Agreements have provided that when either party to a local arbitration desires to appeal to the International Arbitration Board created by the agreement, they may do so upon appropriate notice and specification of points upon which they base their appeal. The international board itself is the creature of this same instrument, and its membership consists of three members of the board of directors of the International Pressmen, three members of the special standing committee of the American Newspaper Publishers Association, and a seventh and disinterested member selected by lot from a permanent panel of impartial arbitrators previously agreed upon by members of the international board—that is to say, the union and industry members of the international board.

It has been the good fortune of the union and the industry to have available the services of distinguished jurists such as the late Learned Hand, outstanding lawyers of the caliber of the Honorable Lloyd K. Garrison, and many members of the National Academy of Arbitrators who have served at various times as members of the International Arbitration Board and as chairman of that board in particular cases—gentlemen such as Ralph Seward, Patrick Fisher, Harry Platt, Sylvester Garrett, to name a few that occur to me at the moment, and also a few before whom I have pending cases.

Curiosity is often expressed at the notion of an appellate board.

This procedure has been sometimes criticized as affording the losing party two bites at the apple. Moreover, it has been argued that the appellate procedure has a built-in delay in a process in which a speedy resolution of an issue is highly desirable. But to appreciate the rationale of the appellate facet of the International Arbitration Agreement, it is necessary to look to the time and circumstances of its origin, to the novel nature of the arbitral concept at the turn of the century, to both industry and labor, and to the natural fears of submitting the economic destiny of a newspaper or the members of a labor union to an arbitrator for a binding disposition. And, too, after having drafted what the parties conceived to be a viable instrument, they had the vision to know that the viability must not become an unbearable straitjacket as a consequence of a happenstance of a local arbitration solution which was at odds with the interests of the arbitrating parties and the national interests of the union and the industry. So, against this backdrop, the international board and the appellate process was introduced as the terminal step in the International Arbitration Agreement.

The appeal itself is very much like an appeal from the findings of a district court to a court of appeals. Put differently, the appeal is not de novo and is a limited appeal. For example, the International Arbitration Agreement explicity provides that the international board may not take evidence and, consequently, hears and determines the appeal upon the record made before the local arbitrator. The scope of review by the international board is not explicitly prescribed and has been the subject of both argument and decision by that board. Since the International Arbitration Agreements are for five years' duration, the parties have relied upon the arbitrators to make the old words meaningful in the light of current times and events. And so it was with the scope of the international board's appellate authority.

In the early days, probably an informal appellate conference operated to adjust any inequities which flowed from a local award. But as the decisional law developed and the institution of international arbitration became just that, it was for the international board itself to finally define what the parties intended to accomplish by creating a board with review functions. In doing so, the international board noted that the agreement was brought into existence when there were few experienced labor arbitrators in

the country; that the parties were apprehensive with respect to the familiarity of local arbitrators with the processes, traditions, and structures peculiar to the newspaper industry; and that the parties intended, therefore, to commit to the international board in appeal cases general appellate powers to review and correct any manifest errors committed by local arbitrators and local arbitration boards.

As put in the *Charleston Newspaper Agency Corporation* case,[1] by Chairman Harry Platt, this grant of appellate authority may be fairly analogized with that authority exercised by federal circuit courts in reviewing decisions of district judges in nonjury cases; for under this standard, the entire record, findings, and conclusions of the local arbitration tribunal are to be reviewed to determine whether the local tribunal's findings and conclusions are clearly erroneous or the result of an erroneous view or misapplication of the agreement.

Thus, the international board adopted the clearly erroneous test provided in the Federal Rules of Civil Procedure as the test it would employ in appeals, which determination serves to strip of persuasiveness the "two bites at the apple" argument. In so doing, the board reserved only as a basis for reversal a case where the board was clearly persuaded, after a review of the entire evidence, that a mistake had been made. Obviously the board was referring to a mistake of some dimensions.

Aside from serving the extremely important function which I have just described, the appellate board has served another purpose. First of all, the decision of local and international boards of arbitration are reported in services maintained by the American Newspaper Publishers Association and a similar service of the International Printing Pressmen's Union. A substantial body of principles has been developed through the empirical process of decision-making in the 75 years that the international board has functioned.

Early in its history, in the 1926 *San Francisco Newspaper Publishers* case, and again in the *Chicago Newspaper Publishers Association* case,[2] the international board noted:

"The decisions and opinions of the international board of final

[1] 43 LA 1233.
[2] ANPA *Bulletin*, June 20, 1931.

> jurisdiction may be considered authorities and precedents upon questions of identical similarity to those passed upon [by local board] and should have great weight in succeeding arbitrations. They should be certainly followed by local boards if the circumstances of the local case do not differ from those in the authorities cited. Thus, unlike ordinary arbitrations where the awards of other arbitrators are generally suggestive and may be disregarded at will, the parties here agreed to a type of procedure by the nature of which local boards are required to pay attention to what the superior tribunal has done and to follow the superior tribunal upon principles which are applicable to a factual situation previously considered and decided by the appellate board." [3]

Thus, local arbitrators are bound to apply to the facts before them the principles decided by the appellate board in other cases. This has served a number of purposes:

1. Local boards have guidance from the appellate tribunal, tending to assure decisional uniformity.

2. Bargaining parties have guidance from the appellate board, and knowing in advance the views of the appellate board upon a particular issue, a solution at the bargaining table is substantially encouraged, for the parties know that if they arbitrate, and the international board adheres to its past point of view, what the result of that arbitration is likely to be. The collective bargaining conclusions without arbitration which flow from this aspect of the appellate process are a cutting argument against the necessary delay entailed in any judicial or quasi-judicial system which provides for an appeal.

On balance, it would seem that this union and this industry, who entered into an arbitration agreement which challenged fundamental economic assumptions at the time it was entered into and which at that time had no parallel whatsoever, devised an instrument which served the common interest of the parties in industrial peace.

I would add only one word. After the enactment of Section 301 of the Labor Management Relations Act in 1947, permitting the enforcement of collective bargaining contracts through 301 actions, and particularly after the *Lincoln Mills* [4] decision permitting the enforcement of grievance-type arbitration agreements, it

[3] See, for example, David Cole in *Newspaper Publishers Association of Philadelphia*, 12 LA 449.

[4] 353 U.S. 448, 40 LRRM 2113 (1957).

was argued successfully by at least two employers that agreements to arbitrate future contract terms were outside the scope of Section 301 and were unenforceable in the U.S. courts. Subsequent federal appellate courts have taken a different view and have more recently held that new contract term arbitration agreements are, indeed, enforceable under Section 301.

But the significant thing to me is that no publisher or affiliate of the Printing Pressmen's Union which had executed the International Arbitration Agreement ever defaulted upon his commitment to arbitration, and thus no lawsuit was ever brought or required by the union against the industry, or vice versa. This, I think is a tribute to both the integrity and the commitment of the newspaper industry and the Printing Pressmen's Union, who represent the pressroom employees of that industry, to the rule of reason and, therefore, to industrial harmony.

INTERNATIONAL APPELLATE ARBITRATION

MR. EDGAR A. ZINGMAN: When Harry told me the order of the program today, I thought that finally I had brought about a change and had gotten ahead of John, but there was a switch in the plans and I find myself, at John McLellan's request, last on the program and outmaneuvered again, which is my experience continuously. I suppose the best thing I can do to reward those of you who have persisted this long is not to read my paper, but just to make a few brief remarks. That's what I intend to do.

As Harry indicated, I am pretty much in disagreement with all of the comments and suggestions that we have here some wonderful instrument of industrial relations and labor peace. To capsulize it, international appellate arbitration between the American Newspaper Publishers Association and the International Printing Pressmen and Assistants Union, in my judgment, is overcostly, time-wasting, and unproductive. Having said that, I'll try to give you a few brief details and my conclusions.

To begin with, if the object of labor arbitration in any way is expeditious and economical disposition of the labor dispute, international appellate arbitration is the antithesis of it. The average appellate case, based on the study I've been able to get into, is two and a half to three and a half years to the final decision from the time that the initial grievance or contract dispute could