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

have gone to issue. This is not entirely the fault of the appellate procedure; the local arbitration procedure takes a substantial term of time, but the appellate procedure, obviously, adds to that.

Second, the appellate procedure is, notwithstanding John's suggestion that it is not, purely an opportunity for a second bite. Under the same green sheet, we have tripartite local arbitration. The green sheet quite specifically provides that in local arbitration following upon the local hearing, the tripartite board shall meet.

First, the parties' representatives on the board are to meet separately and to attempt to arrive at a result. If they are unsuccessful, which is what happens much of the time, then they are to call in the chairman of the local panel who then brings about a majority decision. As John suggested, all the evidence clearly indicates that when the arbitration procedures were adopted, some 70+ years ago, there was a great deal of trepidation and fear on the part of the parties about putting their faith into the hands of so-called impartial men and neutrals.

Of course now, with the professionalism of the Academy, we need no longer have such fears. Notwithstanding any present justification for such fears, I submit that if the neutral, the impartial chairman, is going to engage in grievous error, is going to make mistakes of one kind or another, the tripartite local procedure gives ample opportunity for dealing with those mistakes.

The usual practice, after the meeting of the local board, is for the parties to go their separate ways. The impartial chairman then reviews the record and subsequently convenes the members of the board and hands them his proposed award and tentative draft opinion sustaining the award. The parties immediately go into separate rooms, call their attorneys on the phone, and whatever attorneys are involved have the opportunity to confer with their clients and advise them what is wrong or right about the proposed award. Then the members of the board have full opportunity to go back and to try to prevail upon the impartial chairman to change his award or to point out any error.

I submit, that within the parameters of arbitration, that ought to be enough opportunity to get your message across and to get a

decision. But that is not the case. Under the green sheet, there is unrestricted right of appeal. Any party may appeal an award of arbitration. Notwithstanding anything John has suggested to you about stare decisis, about rules of decision, about the international appellate board serving as something like a circuit court of appeals in the federal system, there is just no authority for that proposition. Unfortunately, the green sheet does not set up any standards of review, does not provide that the international appellate tribunal is in any way a body with authority for the long run to set precedent or anything like that.

We have urged local boards of arbitration, where it served our purposes, to follow particular decisions and standards of decision of other local boards or of the international board in particular cases. I listened with some interest to Tom Adair talking about the standards of decision in wage cases and intercity comparisons. I say "interest" because if you're in the South and you are representing a union which deals with a southern publisher, why of course you argue 100 intercity comparisons, getting a fairly good load of northern industrial cities to up-weight your consideration. But in other cases you'll argue some other standard, and the standards are totally variable in these appeals, let alone in the local board.

There are no criteria set forth in the green sheet for right to appeal. There are no criteria set forth for establishing standards of appeal. There are no criteria for review.

Now, as John has pointed out, various international board chairmen have attempted to establish such criteria for review, and he has pointed out that Harry Platt, who has served probably in more of these cases than anyone else, has enunciated a doctrine of manifest error—clear error—as a standard of review. That doctrine has been stated many times, but it takes little sophistry to state the doctrine and then find manifest error where you want it and then bring about a reversal. And, as I said at one point in my paper, when you're stating manifest error as a subject for review, what are you stating? If manifest error is not a basis for reversal, then nothing is. That's the very minimum. But it doesn't help very much because the parties have failed to give the chairman any guidelines.

What it comes down to is that you have a second chance; as a result of that second chance, you have delay, and you have sub-

stantial additional expense. And the question must be raised: What have you gained as a result of this?

In preparation for this meeting, I have reviewed a substantial number of the decisions of the international board of review, and I find that, by and large, the international board has not tended to disturb substantially the awards of local boards of arbitration in this industry. That, for me, substantiates my initial conclusion—that the delay and the additional expense is not justified. The experience has been that there just are not, on any substantial justifiable basis, the kinds of errors that, in my judgment, justify the delay and expense.

I submit that if appellate arbitration is going to have any value, then the parties should sit down, as they are presently doing, and they should consider just what it is that they want to achieve through appellate arbitration. Then they should carefully spell out at least procedural guidelines for the international appeals panels and probably some substantive standards of review.

If they don't do that, I will continue to be not particularly happy with the kind of bootstrap operation that we've had with various international chairmen trying to develop standards of review by citing earlier decisions which cite earlier decisions which, somewhat surprisingly in most cases, all seem to have been decided by the same man who is citing them as authority.

Having said that, and having really leaned upon your patience and courtesy in staying this long, I thank you for the opportunity of being here.