ble"—and that, even without an objection by the union to the initial question, the question by the company was improper, and I should have sustained the later objection. Even though there was no objection at the time to the question, the company should not have been permitted to test credibility in that manner, thereby opening up all the doors that the parties by express agreement had agreed would remain shut.

There is a lesson in that, and it makes an appropriate closing note:

1. Hindsight is always better. That is why professors are always smarter than practitioners. (My wife, the professor, wrote that part.)
2. Never eat at a place called Mom's, play cards with a guy named Pops, or arbitrate with a fellow named Zack.
3. There will always be plenty of work for other arbitrators as long as there are plenty of people like me willing to keep on making mistakes.

II. ARBITRAL CRAFTSMANSHIP AND COMPETENCE

ROGER I. ABRAMS*
DENNIS R. NOLAN**

Introduction

The labor arbitrator's primary responsibility is to serve the parties by resolving their dispute.[1] They want the arbitrator to produce an award that is final and binding. Most arbitrators successfully accomplish that duty. Only a few awards are brought to court for review, and only a small portion of those are set aside. Many more awards fail to end the dispute. Instead of litigation they produce requests for clarification, further grievances and arbitrations, or ill feelings between the employer and the union.

---

*Member, National Academy of Arbitrators; Dean and Professor of Law, Nova University Law Center, Fort Lauderdale, Florida.

**Member, National Academy of Arbitrators; Professor of Law, George Washington University, Washington, D.C. This article is a substantially abridged version of the original presentation. The complete paper will be published as a law review article in 1989.

[1]*See generally* Kaden, *Judges and Arbitrators: Observations on the Scope of Judicial Review*, 80 Col. L. Rev. 267 (1980); Abrams, *The Integrity of the Arbitral Process*, 76 Mich. L. Rev. 231 (1977); St. Antoine, *Judicial Review of Labor Arbitration Awards: A Second Look at* Enterprise Wheel *and Its Progeny*, 75 Mich. L. Rev. 1137 (1977).

While some of the court challenges to arbitration awards involve asserted conflicts with law or public policy, most stem from poor arbitral craftsmanship. Some opinions drift far from the terms of the agreement; others fail to answer the questions posed or answer questions that were not asked; still others are written with such indifference or carelessness as to be contradictory or incomprehensible. In each of these cases, poorly crafted awards virtually invite the losing party to contest the outcome in court or to resist it by a form of labor relations guerilla warfare.

Most of these postaward disputes could be avoided if arbitrators wrote their decisions to foster finality. The way in which an opinion is written is almost as important as the award itself, for a losing party will accept the result only if convinced of the opinion's legitimacy. Good craftsmanship bespeaks legitimacy by indicating the decision maker's intelligence, objectivity, logic, and careful attention to the facts and arguments presented.

The task of producing a final and binding award has at least three levels. At a bare minimum the award must be impervious to legal attack. The prevailing party should be able to get the award enforced, if need be, and the losing party should be unable to get it modified or overturned. This is the easiest of the arbitrator's challenges, because, as the Supreme Court held in the *Steelworkers Trilogy*, the prevailing party need only show that the award "draws its essence" from the collective bargaining agreement rather than dispensing the arbitrator's "own brand of industrial justice."[2] The arbitrator also must avoid conflict with public policy,[3] but this requirement is hardly burdensome, especially after the Supreme Court's recent decision in *Misco*,

---

[2]*Steelworkers v. Enterprise Wheel & Car Corp.*, 363 U.S. 593, 597, 46 LRRM 2423 (1960). In a more colorful opinion, Judge Richard Posner described the Supreme Court's wording as "curious, but canonical," and offered his own formulation, which would require judicial enforcement of an award unless the arbitrator was dispensing "qadi justice." *Miller Brewing Co. v. Brewery Workers Local 9*, 739 F.2d 1159, 1162–1163, 116 LRRM 3130 (7th Cir. 1984).

There is some dispute over the "essence" standard. The Sixth Circuit has enumerated four situations in which an award would fail to "draw its essence" from the agreement: (1) when it "conflicts with express terms of the . . . agreement"; (2) when it "imposes additional requirements that are not expressly provided in the agreement"; (3) when it is "without rational support or cannot be rationally derived from the terms of the agreement"; and (4) when it is "based on general considerations of fairness and equity instead of the precise terms of the agreement." *National Gypsum Co. v. Steelworkers Local 135*, 793 F.2d 759, 766, 123 LRRM 2015 (6th Cir. 1986). These are hardly subtle traps for the conscientious arbitrator.

[3]*W. R. Grace & Co. v. Rubber Workers Local 759*, 461 U.S. 757, 113 LRRM 2461 (1983).

Inc.[4] Although most courts will struggle "long and hard to arrive at a decision upholding [an] arbitration award,"[5] several awards every year fail to meet even these minimal standards.[6]

At the next level, the arbitrator must strive to write an award that will actually *deter* legal challenges. This is harder because, in addition to those who sincerely believe that a court will overturn a disappointing award, some losing parties refuse to comply with an award (or challenge it in court) simply to delay its implementation. Some losers are willing to contest even the perfect award. The courts have given prevailing parties a new weapon, however, by imposing sanctions on those who frivolously, baselessly, or vexatiously challenge solid awards. In *Dreis & Krump Mfg. v. Machinists*,[7] for example, the Seventh Circuit awarded attorney's fees to the respondent union in compensation for the employer's frivolous challenge to an arbitration award. Speaking for the court, Judge Richard Posner bluntly reprimanded litigious parties to arbitrations:

> A company dissatisfied with the decisions of labor arbitrators need not include an arbitration clause in its collective bargaining con-

---

[4]*Paperworkers v. Misco*, 56 USLW 4011, 126 LRRM 3113 (1987). In *Misco* the Court reaffirmed its policy of judicial abstention in arbitration cases. "[A]s long as the arbitrator is even arguably construing or applying the contract and acting within the scope of his authority, that a court is convinced he committed serious error does not suffice to overturn his decision." 126 LRRM at 3117. With regard to the public policy objections, the Court reaffirmed the *W.R. Grace* standard that only a "well-defined and dominant" public policy, ascertained "by reference to the laws and legal precedents and not from general considerations of supposed public interests," is sufficient to set aside a contrary arbitration award. *See also Northwest Airlines v. Air Line Pilots*, 808 F.2d 76, 83, 124 LRRM 2300 (D.C. Cir. 1987).

[5]*Utility Workers Local 369 v. Boston Edison Co.*, 752 F.2d 1, 5, 118 LRRM 2234 (1st Cir. 1984).

[6]Many of the decisions came to our attention through legal challenges. Several of the courts faced with those awards practiced an overzealous style of judicial review, inconsistent with the Supreme Court standards set in the *Steelworkers Trilogy*. We do not suggest that the flaws the courts discovered justify vacation or modification of the awards. To the contrary, we share the view of the Supreme Court and of most professional commentators that the courts have only the most limited role to play in evaluating arbitration awards. The recurrent pattern of judicial overreaching is admirably discussed in Edwards, *Judicial Review of Labor Arbitration Awards: The Clash Between the Public Policy Exception and the Duty to Bargain*, 64 Chi.[-]Kent L. Rev. 3 (1988); Heinsz, *Judicial Review of Labor Arbitration Awards: The* Enterprise Wheel *Goes Around and Around*, 52 Mo. L. Rev. 243 (1987); Jones, *"His Own Brand of Industrial Justice": The Stalking Horse of Judicial Review of Labor Arbitration*, 30 UCLA L. Rev. 881, 884 (1983); Note, *Arbitration After Communications Workers: A Diminished Role*, 100 Harv. L. Rev. 1307 (1987). We trust that lower courts will retreat to a more limited role after reading the Supreme Court's strong warning against judicial interference in its *Misco* decision, *supra* note 4. *But see S.D. Warren Co. v. Paperworkers Local 1069*, ___ F.2d ___, 128 LRRM 2432 (1st Cir. 1988). We use these reported decisions only to guide arbitrators toward writing decisions which would preclude review even by the most intrusive court applying the most stringent standard.

[7]802 F.2d 247, 123 LRRM 2654 (7th Cir. 1986).

> tracts, but having agreed to include such a clause it will not be permitted to nullify the advantages to the union by spinning out the arbitral process unconscionably through the filing of meritless suits and appeals. For such conduct the law authorizes sanctions that this court will not hesitate to impose. . . .
>
> Mounting federal caseloads and growing public dissatisfaction with the costs and delays of litigation have made it imperative that the federal courts impose sanctions on persons and firms that abuse their right of access to these courts. The rules, whether statutory or judge-made, designed to discourage groundless litigation are being and will continue to be enforced in this circuit to the hilt—as a recital of opinions published by this court since the first of the year imposing sanctions for groundless litigation should make clear. . . . Lawyers practicing in the Seventh Circuit, take heed![8]

Even more recently, the First Circuit denounced the "exasperating frequency" of suits to vacate arbitration decisions and awarded double costs to the respondent union.[9]

Nevertheless, in order to demonstrate the baselessness of a loser's challenge, the prevailing party needs the support of an opinion which provides the putative challenger no legal "handle" on which to base a challenge. To meet this test, more is required in the decision than a basis in the agreement and a result consistent with public policy. The opinion must, in addition, be clear, orderly, reasoned, and complete. It must also, of course, avoid stupid results.

At the third and highest level, the arbitrator should strive to produce an award which makes the decision final and binding between the parties themselves. It is too much to expect that awards will convince the losers that they were wrong; human nature makes that virtually impossible. It is not too much, however, to seek to convince the losers that they have had their "day in court" before a competent neutral, and that the neutral rendered a fair award. To do this, arbitrators must show consideration of the loser's arguments and must fully answer all issues. It is just as important that they must write decisions that communicate their reasoning in a comprehensible, forceful, and persuasive manner.

---

[8]*Id.* at 255–56. An exasperated Judge Posner later ordered an appellant's counsel to pay all litigation expenses, including attorney's fees, in *Hill v. Norfolk & W. Ry. Co.*, 814 F.2d 1192, 1200, 124 LRRM 3057 (7th Cir. 1987) (Counsel has "wasted our time and his adversary's money unpardonably by misrepresenting the standard of federal judicial review of arbitration decisions.").

[9]*Posadas de Puerto Rico Assocs. v. Asociacion de Empleados de Casino de Puerto Rico*, 821 F.2d 60, 61, 63, 125 LRRM 3137 (1st Cir. 1987).

With due care every arbitrator can produce awards that are final and binding on all three levels. Our purpose in this paper is to show how arbitrators should craft their opinions to reach this end. We first describe and illustrate the most common failings of arbitral craftsmanship. In our conclusion we posit certain guidelines which, if followed, almost guarantee production of a final and binding award.

The Sins of Arbitrators

That many arbitrators occasionally (and some, frequently) fail to accomplish the simple task of rendering a final and binding award is all too apparent, as a review of reported court cases and even the most limited conversation with experienced advocates reveals. Why this should be so is hard to determine. A few arbitrators are simply incompetent, but one would expect the market to respond to their incompetence by dispensing with their services. Others, particularly those most acceptable to labor and management, are simply too busy to write careful, thoughtful awards. Still others find opinion writing "largely drudgery," to use Charles Rehmus's phrase.[10] If so, they should remember that they are "hired hands," obliged to do a good day's work for a full day's pay.[11]

Whatever the reasons, the ways in which arbitrators fail to deliver final and binding awards are numerous. For the sake of clarity we have grouped them into four categories:

1. ignoring or deliberately contradicting the controlling collective bargaining agreement,
2. directing or condoning a breach of law or public policy,
3. failing to render a complete award, and
4. exceeding the authority given the arbitrator by the agreement or the submission.

We treat each of these in turn.

Ignoring or Deliberately Contradicting the Controlling Collective Bargaining Agreement

By far the most common of arbitral sins is departure from the bounds of the collective bargaining agreement. The arbitrator's

---

[10]*Writing the Opinion*, in Arbitration in Practice, ed. Arnold Zack (Ithaca: ILR Pr., 1984), 209.

[11]Stark, *Arbitration Decision Writing: Why Arbitrators Err*, 38 Arb. J. No. 2, 30, 32 (1983).

office is a creature of contract: the arbitrator has only the authority given by that contract. Collective agreements typically limit arbitrators to "interpretation or application" of the agreement, and prohibit them from "adding to, subtracting from, or modifying" its terms.[12] It should be obvious to every arbitrator that a well-crafted award must, at the very least, comply with the express terms of the document it purports to interpret. It is therefore astonishing how often arbitrators either ignore or contradict the agreement, or give the impression that they are doing so.

Some of the departures from the agreement involve procedural provisions. Consider the case reported as *Electrical Workers v. WGN of Colorado.*[13] The agreement established a tripartite arbitration board and provided that "[t]he majority decision of the Arbitration Board shall be final and binding on both parties." Despite this provision, the neutral arbitrator in a discharge case failed to ask the partisan arbitrators to discuss the case, to review his opinion, or to approve or disapprove his award. Instead, he issued an award on his own. The union challenged the award, and the court predictably ruled that a decision signed by the neutral alone could not be a "majority" decision. The court remanded the case to the tripartite board for compliance with the agreement's procedure. Presumably on remand the employer's arbitrator joined the neutral's decision sustaining the discharge, but the arbitrator's failure to comply with the agreement's terms delayed the rendering of a final and binding award by many months and imposed significant costs on both parties.

Just as serious is the failure to apply an agreement's substantive provisions. In one Missouri case, for example, an agreement contained a common provision terminating an employee who has had three consecutive working days of unreported absence. The arbitrator found that the employee had violated the "three-day no-report" rule but reinstated him because he had committed only a "technical" violation. The U.S. district court vacated the award because the arbitrator "was not authorized to determine whether the contractually mandated discharge was an appropriate penalty"; thus, his award failed to "draw its essence from the collective bargaining agreement."[14]

---

[12]Even if the parties neglect to specify the arbitrator's bounds, those limits should be clear from the nature of the task and the origin of the appointment.

[13]615 F. Supp. 64 (D. Colo. 1985).

[14]*Ballwin-Washington, Inc. v. Machinists Dist. 9*, 615 F. Supp. 865, 870 (E.D. Mo. 1985).

These are hardly unique cases. On the contrary, departure from contractual requirements is the most frequent basis for judicial interference with arbitration awards. After the *Steelworkers Trilogy* lower federal courts needed a peg on which to hang decisions modifying or overturning awards, and an arbitrator's failure or refusal to follow the agreement provides a convenient one. In the last few years federal courts have had to address awards in which an arbitrator modified a penalty despite a provision prohibiting him from doing so,[15] rendered an award contrary to the meaning of a vacation provision he admitted was unambiguous,[16] and failed to follow the clear terms of a "last chance" agreement.[17] Perhaps an even greater tragedy is that decisions such as these call into question the entire arbitral enterprise: if arbitrators cannot be trusted with so basic a task as following the written terms of a contract, why should employers or unions turn over their disputes to them?

Directing or Condoning a Breach of Law or Public Policy

In its recent *Misco* decision, the Supreme Court severely limited the use of "public policy" notions to challenge arbitration awards. Without expressly limiting the public policy exception to cases in which an award violated positive law, the Court indicated that public policy means more than a judge's own beliefs as to the proper outcome of the dispute. The only situations in which a court may deny enforcement on this basis, it said, were those in which the contract violates "some explicit public policy" that is "well defined and dominant"; the policy is to be "ascertained 'by reference to the laws and legal precedents and not from general considerations of supposed public interests.'"[18] Given this broad freedom from judicial review, it is surprising that some arbitrators issue awards in conflict with law or other "well defined and dominant" public policies.

---

[15]*Riceland Foods v. Carpenters Local 2381*, 737 F.2d 758, 116 LRRM 2948 (8th Cir. 1984); *St. Louis Theatrical Co. v. Stage Employees Local 6*, 715 F.2d 405, 114 LRRM 2097 (8th Cir. 1983).

[16]*Machinists Dist. 72 v. Teter Tool & Die*, 630 F. Supp. 732, 736, 121 LRRM 3270 (N.D. Ind. 1986).

[17]*Tootsie Roll Indus. v. Bakery Workers Local 1*, 832 F.2d 81, 126 LRRM 2700 (7th Cir. 1987); *Bakers Factory 326 v. ITT Continental Baking Co.*, 749 F.2d 350 (6th Cir. 1987).

[18]126 LRRM 3133, 3119, *quoting W. R. Grace & Co. v. Rubber Workers Local 759*, *supra* note 3, at 766 and *Muschany v. United States*, 324 U.S. 49, 66 (1945).

Many of these cases arise in the federal sector, where arbitrators must interpret and apply federal law.[19] Some arbitrators are not up to the demands of such a legalized arbitration system; others lack access to controlling authorities or are unwilling to spend the time to find and use them.[20] The uniform result of such failures is a challenge before the Federal Labor Relations Authority (FLRA) or the courts, and ultimate reversal or modification of the award. One recent study concluded that about 20 percent of all federal sector arbitration awards are appealed to the FLRA, and that about 17 percent of these are modified or set aside; conflict with law or regulation accounts for 95 percent of the reversals.[21]Many other federal sector awards, such as those involving removals from the federal service or reductions-in-grade based on unacceptable performance, may be appealed directly to the courts of appeals.[22]

For example, in *Devine v. Levin*,[23] the court of appeals set aside an award ignoring a statutory definition of supervisor that excluded the grievant from the bargaining unit and thus made her grievance inarbitrable. The FLRA has often set aside awards interfering with the employer's statutory management rights, such as the right to assign work.[24] Other decisions have been set aside for failure to comply with the specific requirements of the Back Pay Act[25] when ordering compensation to employees or when awarding attorney's fees to a prevailing employee.[26]

Arbitration awards contravening law or public policy also occur in the private sector. In *Carpenters Local 1478 v. Stevens*,[27] for example, the court vacated an award because the arbitrator failed to follow a prior determination of the National Labor

---

[19]5 U.S.C. §7122(a)(1) (1978) (a party may challenge an arbitration award before the FLRA on the ground that it is "contrary to any law, rule, or regulation"); *Cornelius v. Nutt*, 472 U.S. 648, 119 LRRM 2905 (1985). Many state and municipal laws impose similar requirements on public sector arbitrators.

[20]Nolan, *Federal Sector Labor Arbitration: Differences, Problems, Cures*, 14 Pepperdine L. Rev. 805 (1987).

[21]Frazier, *Federal Arbitration: The FLRA Perspective*, in Grievance Arbitration in the Federal Service, eds. D. Reischl and R. Smith (1987), 45, 46–47. *See also* Hardiman, *Role of the Federal Labor Relations Authority in Grievance Arbitration*, *id.* at 147.

[22]5 U.S.C. §7121(f) (1978).

[23]739 F.2d 1567 (Fed. Cir. 1984).

[24]5 U.S.C. §7106(a)(2)(B). *See, e.g., U.S. Naval Ordnance Station and Machinists Lodge 830*, 23 FLRA No. 88 (1986) and *Southwestern Power Admin. and Electrical Workers Local 1002*, 22 FLRA No. 48 (1986).

[25]5 U.S.C. §5596.

[26]See Hardiman, *supra* note 21, at 164–166.

[27]743 F.2d 1271, 117 LRRM 2023 (9th Cir. 1984). *See also Pacific Elec. Contractors Ass'n v. A.A. Elec.*, 583 F. Supp. 472, 476, 116 LRRM 2562 (D. Haw. 1984).

Relations Board on the question of the company's "alter ego" status. Other awards run afoul of local law. In *In re Hotel Da Vinci*,[28] for instance, an arbitrator misinterpreted the Puerto Rico Workmen's Accident Compensation Act in a way that would have required reversal of the award had he not stated an alternative basis for the decision that relied solely on the contract.

The Seventh Circuit affirmed a district court's finding that an arbitrator misapplied a clearly defined public policy when he enforced a company work rule prohibiting employees from reporting plant deficiencies directly to the U.S. Department of Agriculture.[29] That public policy required protecting the health and welfare of consumers from adulterated meat, which was threatened by the company's directive. The First Circuit found a similar conflict with public policy in *United States Postal Service v. Postal Workers*,[30] when an arbitrator reinstated an employee convicted of embezzling postal funds. According to the Court, his dishonesty precluded his return to work.[31]

No doubt the job of an arbitrator is made more difficult by having to consider laws and regulations as well as contractual provisions, but mere difficulty is no excuse for poor craftsmanship. An arbitrator who accepts a case involving legal considerations owes it to the parties to resolve the dispute accurately.

Failure to Render a Complete Award

The third arbitral sin is so obvious that it would not bear reiteration were there not so many instances of its commission. As surprising as it sounds, many arbitrators simply fail to answer the questions posed by the parties. Some answer other questions or none at all.[32] Others, faced with especially difficult decisions,

---

[28]797 F.2d 33, 35–36, 123 LRRM 3060 (1st Cir. 1986).

[29]*Meat Cutters Local P-1236 v. Jones Dairy Farm*, 680 F.2d 1142, 110 LRRM 2805 (7th Cir. 1982).

[30]736 F.2d 822, 116 LRRM 2870 (1st Cir. 1984).

[31]*Id.* at 825–826. The District of Columbia Circuit has recently ruled to the contrary, *U.S. Postal Serv. v. Letter Carriers*, 810 F.2d 1239, 124 LRRM 2644 (1987); the Supreme Court granted certiorari, apparently to resolve the conflict between the circuits on this issue, 56 USLW 3414 (Dec. 14, 1987), but later dismissed the writ of certiorari as improvidently granted. 56 USLW 4362 (Apr. 27, 1988). Judge Harry T. Edwards perceptively analyzed court cases such as these in his recent article *Judicial Review of Labor Arbitration Awards*, *supra* note 6.

[32]*E.g.*, *Young Radiator Co. v. Auto Workers Local 37*, 734 F.2d 321, 116 LRRM 2575 (7th Cir. 1984) (arbitrator never ruled on the central issue of the dispute).

sometimes remand the dispute to the parties for further negotiations, precisely what the parties sought to avoid by going to arbitration.

One clear example of this technique is *Buckeye Forge*,[33] decided in 1986. The parties had asked the arbitrator to determine whether the grievant was eligible for disability benefits, and stipulated that the matter was arbitrable and that the arbitrator was authorized to issue a conclusive award on the merits. Apparently troubled by conflicting medical opinions, however, the arbitrator ducked the issue and directed the parties to find a neutral doctor to resolve the dispute.[34]

A second example was addressed by the Seventh Circuit in *Young Radiator Co. v. Auto Workers Local 37*.[35] There the arbitrator reinstated an employee discharged for theft without making a finding on whether the grievant had committed the theft. This was the central issue on which resolution of the dispute depended.

An equally common error is the failure of the arbitrator to specify the required remedy or to provide for resolution of disputes over the remedy. Ambiguous awards obviously invite judicial review. In *State, County and Municipal Workers Local 1803 v. Walker County Medical Center*,[36] for example, the Eleventh Circuit remanded a case to the arbitrator to clarify his award reinstating a dischargee to a "suitable position." The hospital had discharged the grievant as an admissions clerk but reinstated her as a maid. Was this "suitable"? The arbitrator's choice of words left the dispute unsettled. Similarly, in *Hart v. Overseas National Airways*,[37] the arbitrator ordered the grievant "made whole," but failed to make essential findings of fact on issues raised at the hearing, such as the grievant's physical ability to perform certain job duties, which made his award too indefinite to be enforced.

Exceeding the Authority Given by the Agreement or the Submission

Arbitrators have only the authority the parties choose to give them, either in the contract or in a separate submission agree-

---

[33]87 LA 770 (J. Dworkin, 1986).
[34]*See also Kraft, Inc.*, 86 LA 882, 887 (Sabghir, 1986).
[35]*Supra* note 32.
[36]715 F.2d 1517, 1518, 114 LRRM 2986 (11th Cir. 1983).
[37]541 F.2d 386, 93 LRRM 2103 (3d Cir. 1976).

ment. Exceeding that authority (for example, by applying bases for decisions other than the agreement, if the agreement so limits the arbitrator, or by answering questions not posed by the parties) is a stated ground for judicial reversal or modification under both the Uniform Arbitration Act[38] and the U.S. Arbitration Act.[39] While many court opinions involving charges of "exceeding authority" are artfully drafted disagreements with the arbitrators' decisions or close questions of judgment about the extent of the arbitrator's legitimate authority,[40] others reflect clear overreaching by the arbitrator.

Perhaps the most egregious recent example of such overreaching is one arbitrator's attempt to monopolize all arbitration cases arising in the Social Security Administration (SSA) involving "official time," that is, the time spent by union officials on representational activities. The arbitrator issued three orders forbidding the SSA from taking any such cases before any other arbitrator.[41] The resulting litigation froze the grievance procedure on this question, as the parties fought over his power to issue such orders. The FLRA recently reversed his orders, in large part because of his patent conflict of interest; it noted that he stood to earn a lot of money from those cases if he heard them, but none at all if others did.[42] Other cases, while not so blatant or self-interested, clearly show arbitrators doing more than they have power to do.[43]

Conclusion

A suit brought to vacate an arbitration award, or failure to comply with one, challenges not only that award but the arbitration process itself. The parties intend that process to be final and binding, and it is so only when the award is respected rather than contested. To a significant degree arbitrators control whether

---

[38] 7 U.L.A. 1 (1985), published at 27 LA 909–912 (1956).

[39] 9 U.S.C. §§1–14, 201–208 (1982).

[40] *For example, see* Judge (now Justice) Kennedy's dissent in *Food & Commercial Workers Local 1119 v. United Mkts.*, 784 F.2d 1413, 1416–1417, 121 LRRM 3338 (9th Cir. 1986): "It is unfortunate that my respected colleagues do not seize upon the opportunity to demonstrate the arbitration system working at its best, rather than concluding the arbitrator departed so far from the norm that reversal is required."

[41] *American Fed'n of Gov't Employees and Social Security Admin.*, 29 FLRA No. 125 (1987), *reconsideration denied*, 30 FLRA No. 45 (1987).

[42] *Id.*

[43] *See, e.g., Television & Radio Artists v. Benton & Bowles*, 627 F. Supp. 682, 686–687 (S.D.N.Y. 1986) (portion of remedy exceeded contractual authority).

the process will be final and binding by the way they resolve the dispute and write the opinion.

The parties do not demand much of an arbitrator. At the 1982 meeting of the National Academy of Arbitrators, union representative Sam Camens concisely explained what a union seeks from the arbitrator, and his words apply equally well to the desires of management:

> What we are looking for is a decision that is factually and contractually sound, supported by an opinion that is understandable, that supports the decision, and that hopefully improves—but definitely does not worsen—the existing company-union, employer-employee relationships.[44]

Every arbitrator owes that much to the parties.

Craftsmanship is a fundamental aspect of the arbitrator's job. Poor decision making and sloppy opinion writing ill serve the parties. By following these simple guidelines—adhere to the contract, answer all questions posed by the parties and only those questions, address the parties' arguments, reason to a result, and draft an organized and clear opinion—the arbitrator can resolve the case the way the parties expected. Then and only then will the arbitrator's opinion be truly final and binding.

Comment—

ALEX ELSON*

I respond to this excellent paper in two ways. First, I make a few suggestions on how to reduce the length of opinions. Second, and more important, I want to deal with the general problem of arbitrator incompetence. Here are a few practical suggestions on how to cut the length of the opinion:

First, in most cases no purpose is served in copying the parties' contract at length. The parties are better acquainted with it than are arbitrators and have copies in their possession. Usually the dispute centers on one or two provisions of the agreement, and these provisions can be set out separately or in the dicussion

---

[44]Camens, *The Art of Opinion Writing*, in Arbitration 1982: Conduct of the Hearing, Proceedings of the 35th Annual Meeting, National Academy of Arbitrators, eds. James L. Stern and Barbara D. Dennis (Washington: BNA Books, 1983), at 81.

*Member, National Academy of Arbitrators, Chicago, Illinois; President, Research and Education Foundation, NAA.