CHAPTER 1

PRESIDENTIAL ADDRESS: THE FUTURE OF LABOR ARBITRATION: PROBLEMS, PROSPECTS, AND OPPORTUNITIES

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Introduction

I am a conventional labor arbitrator cast from the traditional mold. I grew up professionally in the old school and remain comfortable within its warm and familiar confines. I like to think of myself as being either among the youngest of the old-line arbitrators or among the oldest of the new arbitrators.

Despite my level of comfort with the traditional model of labor arbitration, I am confronted by an undeniable reality. My friends, the labor and employee relations world as we have known it is changing and changing dramatically. A telling example of the extent and nature of the change we are experiencing is provided by the devolution of the academic disciplines of labor relations and labor law.

As a long-time professor of industrial relations, in the last decade I have watched my discipline contort, transmorgify, and wither into a new form I barely recognize. I think the following example aptly explains what I mean. At one time at the University of Iowa, our Department of Industrial Relations boasted about twenty faculty members teaching a wide array of courses in labor relations, labor law, dispute resolution, and personnel management. Today, these traditional industrial and labor relations topics have all but disappeared from the school of business administration curriculum. There remain only four industrial relations types on our faculty, and as we retire we are not being replaced.

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The industrial relations department I helped build no longer is an entity; it is a subgroup within a department of management and organizations. Representatives of new courses that were recently added to our curriculum indicate the changes that are taking place: leadership and teams; organizational design, change, and transformation; total quality and continuous improvement; negotiation and persuasion (and this is not labor negotiations); and managerial decisionmaking and problem solving.

When I retire in the not too distant future, arbitration will probably be dropped from the curriculum or perhaps be replaced by a more broadly focused course in alternative dispute-resolution methods. While this is an example of what is occurring in only one university, I believe it is representative of a national trend. I note, for example, that at the University of Wisconsin, for years the citadel of labor economics, institutional labor economists are no longer graduated, and at the New York State School of Industrial and Labor Relations at Cornell I am told that the faculty has made many curriculum and course changes and is seriously considering dropping labor history as a course.

The point here is a simple but highly symbolic one. In earlier decades labor relations was an important academic discipline in our schools of business, schools of public administration, and schools of law, not to mention special schools of industrial relations. Today industrial relations programs are evaporating at an accelerating pace. Even where the programs remain in place, the focus is different. Where we previously had labor law professors, today we have law professors who teach labor law, and more frequently they are called professors of employment law. In schools of business, industrial relations professors call themselves professors of human resources management, negotiations, or conflict resolution.

In a few years the products of these schools will not understand the system of labor relations we have come to know and cherish. They will have little or no perspective from which to develop an understanding of the impact collective bargaining has had on the American economy, American workers, and the American sense of what constitutes fair play in the workplace. Neither will those future leaders of industry and government have an understanding of the seminal role labor arbitration has played in affecting the labor relations psyche of our industrial

and government sectors. Equally important is the fact that the professors of tomorrow will be products of these new curricula, and they will in turn reinforce the differences I speak of.

Today fast becomes yesterday and tomorrow is quick to become today. The future of labor arbitration is now. It is today. It is not tomorrow. We cannot postpone for a moment engaging and beginning to resolve the important issues that the future presents for our profession and the National Academy of Arbitrators. These matters are the topic of my remarks today.

The Prior Perspectives

In 1978 the American Arbitration Association published a volume entitled *The Future of Arbitration.*[1] Included in that book was an article by President-Elect David Feller entitled "The Impact of External Law Upon Labor Arbitration." In that piece, Dave offered the following cogent observation:

> Any speculation about the future of labor arbitration in America must begin, although perhaps not end, with speculation as to the role of the collective bargaining agreement in the total system of industrial governance. There is sometimes a tendency to regard labor arbitration as a thing apart, a disembodied freely floating process, whose characteristics and fate are somehow determined independently of the process which gives rise to it and which, in my view, must ultimately determine its future. Labor arbitration is treated as an independent variable with a future of its own, rather than as a totally dependent process.

Like Feller, I believe that we cannot speculate about the future of labor arbitration without an understanding of the status of collective bargaining, the law, and the economic system and structure from which they are derived.

After tracing the history of collective bargaining and arbitration, Feller concluded that arbitration should stay within its traditional realm of resolving disputes under collective bargaining agreements. It must be remembered that Feller spoke in 1978. Nevertheless, today many arbitrators still find convincing Dave's strong counsel against arbitral ventures into the labyrinthine maze of external law and the like.

Perhaps the most comprehensive contemporary work on the future of collective bargaining is that of Kochan, Katz, and

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[1] Feller, *The Impact of External Law Upon Arbitration,* in The Future of Labor Arbitration in America (American Arbitration Ass'n, 1976), 83, at 83.

McKersie published in 1986 and entitled *The Transformation of American Industrial Relations.*[2] Central to the theme of that book was an analysis of: (1) the decline of what the authors labeled the "New Deal Industrial Relations Model" and (2) the rise of new forms of bargaining and nonbargaining models. The authors emphasized the various labor-management cooperation models and focused on the decline of unionism. Tom Kochan continued that theme in a paper presented at the 1986 Annual Meeting of this Academy, where he addressed the future of collective bargaining and its implications for labor arbitration.[3] Although forward looking and thought-provoking, Kochan acknowledged that his "look to the future was intended only to frame, rather than resolve the debate."[4] He first traced the history of the New Deal collective bargaining model, spoke to the reasons for its demise, and discussed the growth of the "quality of work life" and labor-management cooperation movements, which he characterized as the nonunion alternative model of employee relations. He observed as follows:

> The overriding conclusion from our research on the changes that have been taking place in industrial relations within unionized relationships is that it will be extremely difficult to return to the principles and practices that lent stability to the New Deal system in the pre-1980s.[5]

With regard to the practice of labor arbitration, Kochan observed that, although the traditional collective bargaining structure from which arbitration sprang has been seriously eroded, arbitration caseloads have not diminished commensurately.[6] This plateauing of arbitral activity appears to have continued to the present day, and it may be that a diminution of caseloads of traditional arbitration will begin to occur in the very near future.

Kochan concluded his analysis by projecting two possible scenarios for arbitration in the future. The first scenario assumes a continuation in the decline of union membership, accompanied by an increase in the intensity of union-management conflict. If

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[2]Kochan, Katz, & McKersie, The Transformation of American Industrial Relations (Basic Books, 1986).

[3]Kochan, *Labor Arbitration and Collective Bargaining in the 1990s: An Economic Analysis,* in Arbitration 1986, Proceedings of the 39th Annual Meeting, National Academy of Arbitrators, ed. Gershenfeld (BNA Books, 1987), 44.

[4]*Id.* at 45.

[5]*Id.* at 54.

[6]*Id.* at 58.

this scenario obtains, he projects a "slow erosion in the demand for arbitration" and a "decline in its centrality and contribution to the performance of our industrial relations system." He visualizes the role of labor arbitrators in this context as akin to assisting in the rearranging chairs on the deck of the Titanic.[7]

His second scenario contemplates a continued proliferation and eventual institutionalization of integrative employer-union efforts. If this scenario obtains, Kochan foresees some potential for growth in traditional grievance arbitration. However, he predicts a much more substantial increase in the demand for other, less traditional forms of neutral conflict resolution/problem solving assistance.

Although my specific views of these matters may differ somewhat from those expressed by Feller, Kochan, Katz, and McKersie, I do not find myself in strong disagreement with the general thrust of their remarks. Nevertheless, these previous perspectives on collective bargaining and the role of labor arbitration do not address all of the key dynamics shaping the current reality and the future of our profession. Some fourteen years have passed since Feller's 1978 paper and it is over six years since Kochan's research was carried out. I think the smoke has cleared somewhat since then. Accordingly, my discourse will begin where the work of Kochan, Feller, and the others stopped.

Economic, Social, and Cultural Changes

Those in our profession who lament the past and wish for its return (and in some ways I count myself among that group) are in for a great disappointment. A look to the past and assessment of the present reinforces this perception.

Union membership reached its peak in 1954–55 when (depending on what data you cite) anywhere from 27 percent to 35 percent of the American labor force was unionized. In that same year (1955) two other very significant events occurred.

First, the merger of the AFL and CIO formally ended organized labor's internecine conflict and perhaps portended the high water mark of its influence and importance. The major manufacturing industries in this country were solidly unionized. Organized labor's role as a key player in our economy appeared secure.

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[7] *Id.*

The second development occurring in 1955 would not bode well for organized labor and the process of collective bargaining. In that year for the first time in history white collar workers outnumbered blue collar workers. Although no one paid much attention to this phenomenon, it signaled the beginning of a long-term decline in the manufacturing sector and a concomitant increase in the importance of the service sector. The cracks in the foundation of the New Deal model being worked by change were imperceptibly small 35 years ago. Nevertheless, they were there.

On the surface all continued to look rosy for a number of years. For at least three decades after World War II, America's manufacturing might (where the core of organized labor's strength existed) was without parallel or challenge. By most measures it had its own way. American business was the largest and the best in the world, and second best in the world was American business overseas. We were the only game in town. American firms charged what they wanted, and their prices were limited only by what the market could bear. American industry was able to get away with providing the goods and the services it chose to offer since nobody else offered viable substitutes. We were product and service oligopolists who controlled the world market.

That condition permitted American businesses to allow American unions to prosper. Both organizations benefited. The old-line New Deal labor relations model worked and worked well. Arbitration likewise prospered because arbitration was part of the system, enhancing its stability and its strength.

A look back to 1955 from the vantage point of 1992 confirms that the past is gone. It no longer exists because the conditions that created it have changed drastically. The prospects of a return to 1955 levels of organization and the 1955 style collective bargaining, as the result of the operation of cyclical forces, are at best dim and realistically nil. Consequently, the continued viability of the New Deal model of labor relations as a comprehensive paradigm for employee relations and employer-employee dispute resolution processes must be seriously questioned.

In the last decade or two, American industry has looked to the global marketplace and assessed its relative strengths and weaknesses. When seriously challenged, American industry has switched to areas where the challenges were less demanding.

Initially that was not considered a problem. Besides it made good economic sense because it reinforced the view that the law of comparative advantage worked.

Thus, when a steel company found return on investment lacking in steel-making but better in oil exploration, production, and distribution, it made good sense to change. The problem with this phenomenon insofar as labor relations and union growth are concerned is that the bulk of this shaking out/downsizing process transpired in industries where union strength was the greatest. In the 1980s, when corporate reorganizations, takeovers, and mergers produced large scale displacements of workers, the unions that represesnted those workers were unable to stop the change. Instead they found themselves fighting what amounted to rear-guard actions in an attempt to cushion the blow of plant closings and workforce reductions.

Moreover, where employment growth occurred, serious impediments to effective organization of those workers existed. The jobs growth realized by smaller companies, in high tech and service industries, in rural and suburban areas, and in the South and Southwest, did not provide the same type of fertile ground encountered by organized labor in the 1930s and 1940s in the mass manufacturing sector of our economy. In addition, the large numbers of women, nonwhites, and young workers who constitute the majority of these new employees present American unions with substantial organizing challenges.

The changes we have seen over the last three decades seemed to have occurred gradually but, when looked at collectively and retrospectively, are indeed very dramatic. Perhaps a few examples will help make the point. Remember the first Iacocca revolution in the early 1980s? In a desperate move to pull itself back from the brink of extinction, Chrysler downsized by some 75,000 workers. We see this same phenomenon repeatedly today. General Motors, once the icon of the American and world auto industry, has engaged in a seemingly endless sequence of downsizing efforts that will leave it a significantly smaller (it will reduce its size by a number much larger than Chrysler), albeit likely more competitive, entity. I recently read in *Forbes* that during World War II Bethlehem Steel employed 250,000 people and produced one Victory ship per day. Today we know the condition of that once proud, seemingly imperishable company.

The impact of this groundswell of change on organized labor is all too evident. Recently I spoke to an international union

president who told me his union numbered 1.2 million members in the early 1980s. Today it has a membership of less than 400,000 and is losing members at the rate of 3,900 per month. Still he swears that his union is larger than the Steelworkers. The Teamsters, which was over 2 million strong a few years ago, has lost 700,000 members in the past decade and numbers around 1.5 million today.

In a recent article Professors LaLonde and Meltzer estimate that, during the years from 1953 through 1989, private sector union membership actually fell from 35 percent to 12 percent of the workforce, a decrease from 14.8 million to 10.5 million today.[8] This marked decline has been offset to some extent by the union membership growth experienced in the public sector. Nevertheless, the net effect, at best, has been a plateauing of total union membership and, at worst, an absolute decline with no real significant prospects of a turnaround in the foreseeable future.

I think of my own experience at Uniroyal. The first umpire at Uniroyal over 40 years ago was Willard Wirtz. In those days the company's name was U.S. Rubber. It employed more than 80,000 workers at over 20 factories and had 35,000 union members in the bargaining unit. When I became the last umpire of this unified company now called Uniroyal in the early 1980s, it had approximately 20,000 employees with only 3,500 in the bargaining unit at only about 6 factory locations. Today, it is a divided company with its plastics division being sold off, and it is in various stages of bankruptcy, chapter 7 and chapter 11; its tire division has merged first with B.F. Goodrich and then with Michelin, the French tire giant.

As I stated earlier, the growth in U.S. private sector employment in the last decade has not taken place among the major, "blue chip" Fortune 500 firms. In fact, large employers have experienced a real loss of employment. This means that collective bargaining today is less centralized, less focused on traditional goals, and less significant as a factor in determining the direction of the American economy and the economic health and well-being of American workers.

We are in the throes of a third industrial revolution. The employer-employee relationship is in a state of turmoil. Long-

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[8]LaLonde & Meltzer, *Hard Times for Unions: Another Look at the Significance of Employer Illegalities*, 58 U. Chi. L. Rev. 953 (1991).

term employment with a single firm has become increasingly rare. This employment instability has impacted the American family, local communities, and the very fabric of our society. All of these changes significantly affect collective bargaining and, *per force*, arbitration.

A growing and significant number of American workers today are no longer imbued with the traditional European immigrant values upon which old-line unionism was founded. It is a 1990s game we are playing today: 1950s style unionism and collective bargaining and 1950s style dispute resolution do not always provide effective responses to the challenges we face.

At this point I would be remiss if I did not consider the work of Harvard economist Robert Reich. In his 1991 book *The Work of Nations—Preparing Ourselves for 21st Century Capitalism*,[9] Reich provides a cogent and articulate description of the events of the past decade and an apt speculation as to what will transpire in the future.

Reich tells us that American firms are now globally focused, highly flexible entities and are no longer the plodding manufacturing monoliths of the past. In effect, they are job shops which have greatly reduced the lead time for product development and manufacture and have compressed the life cycles of their products. They locate facilities and manufacture goods wherever labor and other factors of production are the most advantageous. Thus, with regard to the domestic employment picture, the comparative levels of education and skills of workers in different regions of the United States, as well as other countries of the world, and workers' ability and willingness to maintain high levels of productivity become the critical determinants of where the good jobs will be located.

It no longer matters whether a company is foreign owned or American owned. What matters is where the firm's production, distribution, and other facilities are located. American companies may locate new facilities in Mexico, Germany, Korea, or Japan, and companies from those countries may choose to manufacture their products in the United States, employing American workers. Historic geopolitical boundaries mean little to these globally focused firms. This is the essence of globalization.

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[9]Reich, The Work of Nations: Preparing Ourselves for 21st Century Capitalism (Knopf, 1991).

Within this radically altered competitive environment, unions face substantial new challenges. Consistent with my earlier observations, the jobs that are domiciled in the United States, especially the new ones, typically are placed outside the Rust Belt strongholds of organized labor. The workers who fill these jobs are culturally diverse. Many of them are women. Most have little or no prior positive exposure to labor unions, and few have any understanding of the benefits collective bargaining has produced for American workers over the years.

When these employees are successfully organized, their representative unions find themselves faced with an entirely new set of challenges and issues springing from the global nature of the competitive environment of the employer. Thus, for example, traditional devices for securing fair compensation and job security often take a back seat to joint employer-union efforts to find and maintain a competitive edge in order to achieve the traditional goals of organized labor by ensuring the viability of the employer in the global marketplace. It was this very concern that led to what many perceive as the demise of pattern bargaining in the construction and agricultural machinery manufacturing industry which transpired in the current Caterpillar-UAW negotiations.

Any student of labor-management relations and union behavior will recall that union structure and characteristics are determined by employers. Unions organize workers that companies employ; they do not organize the unemployed. Thus, the employer picks the union members. In addition, the union's effectiveness is based upon its ability to match the company's market strength. If the union cannot do this, it will wither away. Thus, for the union to maintain its strength, it must likewise become international or global, but at this point there is little evidence of that. Moreover, if it does occur, the multicultural-multinational characteristics of both management and labor do not ensure that the collective bargaining and arbitration institutions as we have known them will be the modus operandi.

The emergence of the new global playing field and the increasing diversity of the American workforce are the most wide sweeping and dramatic of the recent changes in the contemporary labor relations scene. More finite but of great importance is the shift in the legal framework for employer-employee relations that has manifested itself in recent years. This trend began almost 30 years ago but is now reaching its maturity.

Legal and Legislative Changes

The labor laws underpinning the New Deal model of unionism and collective bargaining are based upon group rights and the achievement of workplace equity and justice through concerted action. This legislative approach found its basis in Keynsian economics and the belief that the best way to ensure economic growth is to provide workers with a vehicle whereby they can secure and protect their earning (and spending) capacity.

Since 1964 virtually all significant federal employment-related legislation in the United States has centered on the protection of the rights of individual workers. Given the fact that, by and large, Keynsian economists are rare in academia today and the Chicago School composes the critical mass of economic thought, the resulting legislation is not surprising. The economics of Milton Friedman, et al. undergird this philosophy. Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act and, more recently, the Americans with Disabilities Act and the Civil Rights Act of 1991 were primarily the result of the problems and concerns arising from the increasing diversity of the American workforce. The Occupational Safety and Health Act and the Employment Retirement and Income Security Act resulted from congressional determinations that effective protection of worker safety and health and preservation of worker pensions required affirmative legislation designed to serve those ends. On the horizon is the prospect of state legislation modeled after the Uniform Employment Termination Act recently promulgated by the National Conference of Commissioners on Uniform State Laws.

These statutory guarantees of individual employment rights did not purposely exclude unions from the role of worker advocate and champion they have traditionally served under the New Deal/NLRA model of labor relations. Nevertheless, the assertion and enforcement of these statutory rights, for the most part, occur within the context of administrative agency proceedings and in federal or state court, rather than in the forum of collective bargaining. Consequently, the status of unions as the sole and even solitary defenders of employee interests and the role of collective action diminish somewhat as the focus shifts in the direction of individual employment rights.

In fact, the move toward statutory guarantees of individual employment rights has at times greatly complicated the task of unions. The difficulty unions can experience in reconciling seniority systems with the demands of affirmative action and the desire to remedy past discrimination is an obvious illustration of this phenomenon. In the same manner there can be little doubt that effective handling of a sexual harassment or a reverse discrimination matter, pitting bargaining unit members of the opposite gender, different race, or another color against one another, places a representative union in a most difficult position. Finally, the specter of duty of fair representation suits has undoubtedly at times obliged many unions to arbitrate grievances brought by protected group members which otherwise might have been withdrawn or settled.

The economic, social, and cultural changes I noted earlier, coupled with the increasing diversity of the American workforce and the continuing emphasis on guaranteeing individual employee rights by statute, present many substantial challenges to unions and the collective bargaining process, without presenting many real opportunities for growth. Thus, the troubled state of the American labor movement and the seemingly listless nature of the institution of collective bargaining is not surprising. One final matter remains to be addressed before I turn to the impact these factors have had and/or will have on arbitration.

The Intrusion of Public Law into the Private System of Labor Arbitration

Under the traditional view which springs from the *Lincoln Mills/Steelworkers Trilogy*[10] body of law and section 203(d) of the Labor Management Relations Act of 1947, labor arbitration is deemed a private dispute-resolution system that functions best when insulated from outside influences, most particularly from the influence of judicial review of the merits of arbitration awards. It is the prospect of the havoc that could be wreaked by widening the opening of judicial encroachment on arbitral turf that has propelled most of the long-standing external law debate in our profession.

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[10]*Textile Workers v. Lincoln Mills*, 353 U.S. 448, 40 LRRM 2113 (1957); *Steelworkers v. American Mfg. Co.*, 363 U.S. 564, 46 LRRM 2414 (1960); *Steelworkers v. Warrior & Gulf Navigation Co.*, 363 U.S. 574, 46 LRRM 2416 (1960); *Steelworkers v. Enterprise Wheel & Car Corp.*, 363 U.S. 593, 46 LRRM 2423 (1960).

Like the other features of the New Deal model landscape that have changed so drastically in recent years, I am convinced that the battle to protect labor arbitration and labor arbitrators from the mine field of public law is all but over. I believe that battle has been lost. The National Labor Relations Board has made clear its expectation that labor arbitrators, when confronted with questions of unfair labor practice law, will address those public law issues and attempt to comport their contractual-based rulings with Board policy and relevant law. The much analyzed *W.R. Grace/Misco*[11] public policy exception compels labor arbitrators and advocates alike to keep an attentive eye on reconciling the contractual resolutions with the rules of conduct and societal expectations embraced in the statutes, government regulations, and case law relevant to a particular industry, individual, or dispute.

I have already spoken to the proliferation of statutory guarantees of individual employment rights that began with Title VII and is most recently evidenced by the Americans with Disabilities Act and the Civil Rights Act of 1991. It is virtually certain that these individual employee-focused statutes will work a further intrusion into our once insular world. As outlined by others at this conference, that prospect is made even more certain by the apparent change of heart taking place at the top levels of the federal judiciary and in Congress with regard to the suitability of the arbitral forum as a vehicle for achieving final adjudication of employer-employee disputes pertaining to individual statutory employment rights of workers.[12]

However well advised Feller's admonition that labor arbitration and labor arbitrators steer clear of the law may have been, it is obvious that the law is not steering clear of arbitration. In fact, it appears to be coming at arbitration head on. A prime example of this phenomenon is the decision by the National Conference of Commissioners on Uniform State Laws to incorporate binding arbitration as the adjudicative mechanism of choice under the Uniform Employment Termination Act. It also bears mention that the Commissioners chose to center the statutory protection afforded individual employees by the Act upon the

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[11]*W.R. Grace & Co. v. Rubber Workers Local 759*, 461 U.S. 757, 113 LRRM 2641 (1983); *Paperworkers v. Misco, Inc.*, 484 U.S. 29, 126 LRRM 3113 (1987).

[12]*Gilmer v. Interstate/Johnson Lane Corp.*, 111 S.Ct. 1647, 55 FEP Cases 1116 (1991).

standard of "good (just) cause" borrowed from the common law of the shop of labor arbitration.

The venerable quid pro quo-based view of labor arbitration as a substitute for the right to strike and the linchpin of the collective bargaining process during the life of the agreement is not irrelevant today. The core of our practice remains the arbitration of disputes arising under collective bargaining agreements. Nevertheless, the traditional model of labor arbitration no longer provides a complete explanation of the process or a comprehensive guide as to the direction individual arbitrators, the profession, and the Academy should take in the future. The public law dynamic is an important dimension of the future of labor arbitration that cannot be ignored.

Role of the National Academy of Arbitrators

Now comes the tough part. In the face of these tremendous changes, I do not believe that the Academy can simply stand by and pretend the world is the same as it was 20 or even 10 years ago. I believe it is incumbent upon the Academy to confront this new reality and to find ways to accommodate to it. Only by doing so can we ensure that our organization retains its role as the leader and conscience of the employment-related dispute-resolution profession.

I am a realist. Recommendations for change, particularly watershed change, are certain to draw fire and criticism. What I am about to suggest may be perceived by some as drastic, unwarranted, and not in the best interests of the Academy. On a personal level, I am acutely aware that because my strengths and the great bulk of my work lie in the more traditional, conventional side of the practice, the tack I will suggest may well be contrary to my own interests. However, because I am convinced the time for change is upon us, I must point to the direction I believe the Academy should consider taking.

The nature and form of labor arbitration is not determined by the National Academy of Arbitrators, the American Arbitration Association, the Federal Mediation and Conciliation Service, the National Mediation Board, or any other such organization. While there is a certain interdependency between these institutions and the parties they serve, the fact remains that the task of our profession has always been to provide the parties with the dispute-resolution services they need and desire. Ultimately it is

the parties or the constituencies we serve who will determine the nature of labor arbitration.

If the premises I have articulated are valid, and I believe they are, there can be no doubt that the process upon which our profession is built will and must change. You will recall, at the outset of my remarks, I stressed the new thrust of college curricula. Professors and graduates of these new management and law curricula think and act differently than the professors and students of our generation. They are preparing themselves for a new and different world. I believe we have no choice but to do the same.

The effects of external law, the basis for new law, the attitude of the courts, the global nature of industry, the demographic and geographical shifts in population, social, political, and economic change, workforce diversity, and differing value structures all predict that current institutions will undergo sweeping change. I believe arbitration is among those institutions.

We may even find ourselves no longer largely confined to a practice on the North American continent or within the confines of American (or Canadian) labor and employment law. The move toward internationalization of arbitration is already afoot. Today, representatives of European organizations actively seek information about our system of workplace dispute resolution and a number of Americans are active in Europe explaining and teaching our system. The predictable result of the globalization of industry is globalization of the workplace dispute-resolution profession. In the near-term future employer policies and even the practice of labor arbitration may not be limited by geopolitical boundaries.

The Options for the Academy

I need not further belabor the "change thing" that is the thesis of my thoughts here today. The point is a simple one. The Academy and its members have grown comfortable in a well defined, secure world where our members perform a familiar set of tasks in a familiar set of fora. Those of us who expect that status quo to constitute the whole of the future of labor arbitration will surely be disappointed.

This is not an unhappy state of affairs. Ours is not a profession in decline. Quite the opposite! If we respond properly to the changes, the future of labor arbitration indeed will be bright.

These changes provide a golden opportunity for the continued professional growth and economic security of Academy members, as well as a continuing role for the National Academy of Arbitrators as the leader of the employment-related dispute-resolution profession.

My concern is the Academy and the direction it takes in response to the challenges before it. If significant change is inevitable, I believe we have three choices:

1. We can remain the same and not alter our present posture and focus.
2. We can bifurcate our organization, bring within our fold and counting for purposes of election to the Academy employment-related dispute-resolution activity outside the sphere of what has been traditional labor arbitration.
3. We can expand the range of our formal jurisdiction to the full reach of employment-related arbitration.

Let me emphasize that the three options I posit do not contemplate a move outside the employer-employee dispute-resolution area. Our legitimate home is in the employment field and there it should remain.

Option 1: Remaining the Same

This is the most comfortable, and in the short run, the safest and most risk-free posture for the Academy. However, I do not believe it is the most viable. Forces external to the Academy will not permit us to remain unchanged. If we choose to do so in the face of accelerating change, we may be relegated to the "back bench" of the arbitration profession.

We have always been in the forefront of workplace dispute resolution. Our strength has always been that we speak of things relevant and instructive to practitioners. If, as the focus of employment arbitration expands beyond the traditional labor-management relations field, we choose not to embrace it, other organizations may very well fill the void by better serving the needs and interests of the advocates and the neutrals who choose to do this work. If this transpires, our membership will dwindle and atrophy, and our members may no longer be considered the outstanding neutrals in the field.

The members who remain in the Academy would be those who do so largely out of loyalty to the organization or out of

loyalty to those we serve in the traditional labor-management community. Those among this group of loyalists who work in the new arenas would surely also be obliged to seek and maintain membership in the ascendant organizations more attuned to changing times. That their primary commitment and devotion of energies would eventually gravitate to the ascendent dispute-resolution groups cannot be doubted. For all of these reasons I submit the status quo is not the most viable roadmap for the future.

Option 2: To Move Beyond Arbitration Into All Forms of Employment-Related Dispute Resolution

The second option for the Academy is the broadest in reach. Some would maintain that, because so many of our members now engage in mediation and related forms of nonarbitral dispute-resolution activity, it makes sense for the Academy to broaden its membership criteria in a manner that would permit election to the Academy to be based on the nontraditional forms of neutral work. I do not agree.

The core of the Academy has always been the arbitration of labor-management disputes arising under collective bargaining agreements. Although I advocate expanding the Academy's purview beyond this conventional forum, the consideration that must balance this perspective is the need to maintain the focus and identity of the Academy. The danger of our organization becoming "Spiderized," if we proceed along the path of change too precipitously and without careful deliberation, is substantial and must always serve as a counterweight to our desire to stay abreast and even ahead of the times.

I believe that, at least for the foreseeable future, the Academy should continue to utilize proven acceptability, as an arbitrator, among the community of labor and management advocates as the test for election to our ranks. In the same manner, as I have already made clear, I believe our principal focus should continue to be on the arbitration of labor-management contractual disputes that lies at the core of our profession. Our roots are strong. We must always remain true to them.

Option 3: Expansion of Our Formal Charter to Embrace the Full Range of Employment-Related Arbitration

Because we both share a vision of the importance of the changes looming on the near horizon, Howard Block and I

agreed to the creation of the ALDR Committee. Please note this is not an ADR Committee but an ALDR Committee. This week the members of the Academy have been informed of the Committee's report and its recommendation that, as an institution, the Academy should adopt a significantly broader role with respect to the arbitration of employment disputes that arise outside the context of collective bargaining agreements.

The report leaves no doubt that the center of the Academy's activity and interest remains the arbitration of contractual disputes between unions and employers. However, it acknowledges the reality of the likely future growth in the arbitration of statutory-based individual employment rights disputes and other nontraditional forms of arbitration. In addition, the ALDR Committee has recommended that the Academy's Constitution be amended in certain ways that contemplate the fact that many of the members engage in forms of employment dispute resolution other than arbitration.

I commend Mike Beck and the members of that Committee for their outstanding efforts and endorse the Committee's majority final report and recommendations without reservation. I state emphatically my belief that, while we as an Academy must forever remain loyal to the roots of our profession in the traditional labor-management dispute-resolution field, we nevertheless must broaden our reach to embrace all forms of employment-related arbitration.

Stated simply, I do not believe we can allow the angst we feel regarding the problems of organized labor to immobilize us at this critical moment in the Academy's history. The forces that have led to decreased levels of collective bargaining activity and the current problems faced by organized labor are largely separate and apart from the dynamics effecting change in the employment dispute-resolution field. If we keep the traditional form of labor-management contractual arbitration as the nucleus of the Academy's attention while at the same time we deal adequately with the new dimensions and challenges of our work, we can continue to serve our traditional clients without ignoring the new parties and/or the old parties with new needs.

Successful achievement of this transition will require substantial work at the committee, Board of Governors, and membership levels. I advocate a measured approach to change, but one that is clear in direction and unswerving in its commitment.

The ALDR Committee's final report provides a framework for that effort. I suggest the time to begin the change process is now.

Conclusion

Much remains to be done. If the Academy decides to embark on the path the ALDR Committee has proposed, and which I endorse, a solid foundation for change and growth must be set in place. Our Constitution's statement of purpose must be amended to include arbitration of the full range of employment-related disputes we deem appropriate. Ethical standards must be set down to guide the conduct of our members who engage in the new variants of employment dispute-resolution work, including mediation. Finally, matters pertaining to the reach of the Legal Representation Fund with regard to these new areas of neutral work must be resolved.

Consistent with this broadened charter, when appropriate and when deemed to be of interest to our members and guests, the programs at the Annual Meeting and the Continuing Education Conference should address the new dimensions of the industrial and workplace world that will continue to shape and influence our work. However, the core focus of the Annual Meetings and Continuing Education Conferences should remain squarely on the arbitration of labor-management disputes under negotiated agreements.

I am aware that the future direction I advocate for the Academy will not meet with universal approval. Please know that my motivation springs from my loyalty to, and concern for, our Academy. It is that loyalty and the strength of my belief that the future of arbitration is upon us which compel me to speak.

Some will feel that my plea for change in the Academy is alarmist, that the concerns I raise are premature and are not based on current reality. The Academy's position at the apex of the labor dispute-resolution profession and the acceptance of our members is secure at present. Some will say: "If it ain't broke, don't fix it." The problem with this approach is that institutions are often broke and need fixing long before those who toil within their confines are aware of the problem.

We cannot wait for change to overtake us. We must put our organization and ourselves out in front of the change now sweeping the employee relations field. We must position the

Academy so that it, and we, are prepared to cope with the change we will see in the remainder of this century and into the next. Anticipating and confronting change is not an easy task. Nor is it without risk. However, at the same time the change that is occurring presents a tremendous opportunity for the Academy and its members to play a role in shaping the future of employment dispute resolution and ensuring that the mechanisms developed are as workable, fair, and affordable as the current system of labor arbitration.

In the early 1960s Pope John XXIII unexpectedly revolutionized a church that was entrenched in a tradition and a history of many centuries' duration. In the last two years we have watched with wonder as the Soviet Union dissolved, the Berlin Wall crumbled, and new countries sprang up all over Europe. These changes and others like them in recent years transpired with a rapidity that still defies comprehension. Thus, recent events in the world and within our own bailiwick teach us that change is certain. The only uncertainty is the rate and the precise direction of that change. We also know that change can be disruptive and painful and unsettling. However, we also know it is inevitable.

One of the primary crises facing our country today is the reluctance of those in leadership positions to forthrightly and selflessly confront new realities and lead the often difficult process of coping with change. I believe we are the leaders of the employment dispute-resolution profession. I believe we are duty-bound to step forward and lead the profession in dealing with the change that is shaping its future. Remember, today fast becomes yesterday and tomorrow is quick to become today. I urge my fellow members of the Academy to pick up the mantle of leadership and act assertively to ensure that our organization is capable of embracing and leading the change we are encountering. That is my charge to you.