Chapter 4

REMINISCENCES

I. Introduction

James C. Oldham*

To many of us, Rolf Valtin has been a shining example of what is best in labor arbitration, and he has been a splendid mentor. He was for me, both in the steel industry, and in becoming a member of this excellent Academy, for which I will always be grateful. Rolf's career has encompassed far more than we will have time to talk about. He has been one of the nation's leading arbitrators for many years, especially in five fields—steel, auto, coal, parcel delivery, and atomic energy. In the steel industry, Rolf spent many years as the Bethlehem Umpire and he also served the Steelworkers on the Campaign Conduct Administrative Committee.

Before turning to that extensive work as an experienced arbitrator, we thought it would be interesting for you to hear about how Rolf got into the business of labor arbitration in the first place, how he made his way forward, and where he falls on the spectrum of arbitral philosophies that Dick Mittenthal has written about—the spectrum running from George Taylor to J. Noble Braden. As we shall see, George Taylor played a key part in Rolf's career, and perhaps we'll discover whether the Taylor philosophy took hold with Rolf or not.

But even before hearing about those early days, let us examine for at least a bit Rolf's personal background. Rolf is, as most of you know, wonderfully, intractably modest, and because he resists the spotlight so strongly, it was like pulling teeth to get him to talk about himself personally. But I was able to glean a few details.

Rolf came to the United States as a teenager. He was brought up in the city of Hamburg, in northern Germany, the child of an Aryan

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father and a 75 percent Jewish mother. By the Nürmberg laws, her three sons were 37 ½ percent Jewish—not enough to become Holocaust victims, but enough to be destined for second-class citizenship (e.g., not being permitted to sing in the school choir and not being eligible for civil service jobs or officer ranks in the armed forces). Rolf's mother left her husband and took her three sons (ages 15, 13, and 12) to the United States in September 1938—a year before the beginning of World War II and two months before Kristallnacht.

II. COFFEE LOUNGE CHAT

ROLF VALTIN*

Jim Oldham: How was it possible for your mother to make that shift to America in 1938?

Rolf Valtin: My family is deeply indebted to the American Quakers. Our immigration to the United States was sponsored by two Quaker couples from the Philadelphia area. Even Hitler refugees could not obtain a visa for immigration to the United States without two people to guarantee that the sponsored immigrants would not become economic burdens on their new country. The sponsorship of these two families led to four years on full scholarship at a Quaker prep school near Philadelphia, and then to another Quaker education institution in the Philadelphia area, Swarthmore College. My first year there was made possible by generous Quaker financial aid. As to the last three college years and a year spent in graduate school, another indebtedness is to be acknowledged: to the country that provided me with the benefits of the GI Bill.

Jim Oldham: Tell us about your experiences in World War II.

Rolf Valtin: I was drafted into the U.S. Army in July 1943. The Army took advantage of my knowledge of German, training me on the organization of the German Army, the translation of military documents, and the interrogation of prisoners of war (POWs).

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After completing the training, I was assigned to the intelligence section of the headquarters company of the 16th Infantry Regiment of the 1st Infantry Division (The Big Red One). The Division had participated in the landings in North Africa (1942) and Sicily (1943) and was then shipped to England for extensive training for the Normandy invasion. I joined the 16th Infantry Regiment in southern England in April 1944 and served with it from D-Day (at Omaha Beach) through VE Day (in what was then Czechoslovakia). The Division to the right of the First Division on D-Day was the 29th. Dallas Jones, with us here today, was a member of that Division.

Jim Oldham: But back now to the GI Bill and Swarthmore: Rolf, was that where you figured out what your future career would be?

Rolf Valtin: One of my professors at Swarthmore College was Frank Pierson. He was an alumnus of the War Labor Board. His course in Labor Economics was my introduction to the field. But his importance in my life went well beyond that. When I consulted him on graduate school, he came down on the University of Pennsylvania as the place that had George Taylor. The advice was deservedly succinct and could not have been more valuable.

Jim Oldham: Tell us a little about your Professor, George Taylor.

Rolf Valtin: The War Labor Board of World War II had the double role of handling disputes so as to avert strikes and stabilizing wages so as to avert run-away inflation. Taylor had been the Board's Vice Chairman and Chairman, and he had in other capacities risen to prominence in our field. His lectures were heavily sprinkled with tales of his experiences, causing his students to be riveted with fascination and to become thoroughly motivated to pursue a career in collective bargaining, whether directly or in government service or in academia. He was unsurpassed when he gave descriptions from first-hand knowledge of the functioning of government and of collective bargaining and of the two enterprises vis-a-vis each other. He kept coming back to acceptability as the *sine qua non* in a democratic society. And Taylor's lectures did not end with the ringing of the bell marking the end of the period: he invariably became surrounded at the lectern by a cluster of people for prolonged Q & A sessions.

By the way, Walter Gershenfeld was a classmate in graduate school. He equally admired Taylor; he was intellectually superior to me; but I was the better softball player. (There were weekly softball games in the suburbs of Philadelphia in the summers of the mid-1950s. Among the other players were Eli Rock and Lew Gill.)

Jim Oldham: I take it that George Taylor inspired you to become a labor arbitrator?

Rolf Valtin: I came out of my graduate work under Taylor with a burning desire to become an arbitrator. Taylor's advice on how to break in was to get into circulation with those who select arbitrators. This led to a job as Tribunal Clerk with the American Arbitration Association for about a year, and to four years as a mediator at the Philadelphia office of the Federal Mediation and Conciliation Service.

I should not leave the impression that it was alone for lofty reasons involving the betterment of civilization that I wanted to become an arbitrator. There came a point in one of Taylor's lectures when he told us that the charge in his practice with Allan Dash and Bill Simkin was $50 a day. All sorts of materialistic visions came to the fore when I heard that and compared it to the $35 a week my wife was making as an editorial assistant for a publishing house and to the $100 a month I was receiving for living expenses under the GI Bill.

Jim Oldham: Did you like being a mediator?

Rolf Valtin: My assessment of the mediation job with FMCS goes off in two directions. On the one hand, it was a job akin to that of a fireman—intensive work efforts sandwiched between long intervals of mere monitoring and minimal administrative duties. The inactive part of the job is not a good thing for an energetic young buck. But, on the other hand, the job put one at the bargaining table—i.e., at the place where the collective-bargaining agreement is being formed and where obstacles to a meeting of the minds must be dealt with. In this dimension, the job could not help but be a golden opportunity for learning: about the subject matters making up the agreement, about the sensitivity of one or another area of subject matter for one party or the other, about the feasibility of horse trades in some areas and the lack of it in others, and about the importance of the fact that time and again it is obstinate people rather than intrinsic issue difficulties that create the barriers to agreement-reaching. Not many in their late twenties have been given such a wonderful chance to learn about collective bargaining.

Jim Oldham: The industry that many of us associate with your career is steel. What got you started so early as a steel arbitrator?

Rolf Valtin: The difficulty of breaking-in has been experienced by many would-be arbitrators. In my case, the process began and

ended in one fell swoop: I got a call from Ralph Seward, asking whether I might be interested in becoming his assistant under the Bethlehem-USWA umpireship. Accepting the post meant full-time arbitration work on a salaried basis. It also meant sharing offices with Ralph Seward—making him constantly accessible for discussion of cases, critiques of opinion drafts, and innumerable pieces of practical and philosophical insights. Seward was superb and wholly giving in all of these areas. No one in this audience in their right mind would have said no to the offer. I reported to Ralph for my first day of duty in early October 1956. It was an historic day: Don Larson was pitching his perfect game against the Dodgers in the World Series.

Jim Oldham: What was arbitration in the American steel industry like in those days?

Rolf Valtin: The 1950s and 1960s were the heyday of steel arbitration. Huge volumes of grievances were being arbitrated; the law of the shop in steel was being expansively developed; the Steelworkers hired Pike & Fisher to produce reference volumes covering steel arbitration decisions—the equivalent of the Steelworkers' own BNA service; and Dave Feller was in the Supreme Court arguing the trilogy cases. Under the system put in place by the Steelworkers and the steel companies, arbitration was on a companywide basis and was headed by a permanent arbitrator per company. The "big three" steel companies in the 1950s and 1960s were US Steel, Bethlehem, and Republic, and the "big three" umpires were Syl Garrett, Ralph Seward, and Harry Platt. I was among a dozen or so who came up under the tutelage of one or another of them. Proud of the heritage, we are among those who became the second generation of arbitrators. We are now on our way out. My esteemed cohort up here is a good example of a representative of the third generation of arbitrators.

Steel arbitration in the 1950s and 1960s was the best possible training ground for apprentice arbitrators. To begin with, there was lots of it—generated by a powerful and militant union constantly pushing against the outer limits of reasonable agreement applications and an equally powerful industry not disposed to roll over and having ample resources to cope with huge arbitration dockets. The hearings were generally civilized and were frequently followed by tripartite evening social engagements with a free flow of alcoholic beverages, but the parties kept being ambivalent as to whether to be tough with each other or to go to a relationship of trust and accommodation.

Jim Oldham: Were you able to keep up with the caseload?

Rolf Valtin: The downside of the persistently high volume of arbitration was twofold: grievance procedures choked with undone cases and arbitrators endlessly behind in getting their cases decided. Three-day hearings encompassing 10–12 cases were commonplace. I remember an Atlantic City dinner for all the steel arbitrators, hosted by union officials as part of the events of the Steelworkers' biannual convention. Ralph Seward, called upon to say a few words, recounted how he had stood at the balcony of his hotel room and observed the movement of the ocean waves: "one after another, relentlessly and interminably, quite like grievances in the steel industry." And I also remember the occasion in 1959 when cheers went up to mark the wondrous event of being caught up, so as not to owe a single decision to any plant. But it took the Steelworkers' 116-day strike, in which arbitration was at a standstill, to bring it about!

Jim Oldham: Besides a steady volume of cases, what other advantages were there in your early steel arbitration experience?

Rolf Valtin: The second big advantage of apprenticing in the steel industry came from exposure to a great variety of issues. The complexity of the making and shaping of steel is mirrored in the complexity of the steel collective bargaining agreements. There is virtually no issue under collective bargaining that does not arise under steel collective bargaining. And, together with the wide range of issues, all of the issues arising in the steel collective-bargaining relationship are potential issues to be arbitrated. In steel, nothing is removed from arbitral jurisdiction. In autos, to give a contrasting example, the whole area of production standards—how fast the assembly line is to run with how many people manning it—is set aside for determination by negotiations whose terminal point is the right to strike. The steel counterparts to the auto production standards are the standards under the safety-and-health provisions and under the provisions governing incentive pay. Both of these areas are wholly subject to arbitration.

The third great benefit that came to us as apprentice arbitrators in steel lay in the fact that we were in effect granted tenure. There were, of course, some casualties. On the whole, however, we, along with our mentors, were kept aboard for many years. And for this, expressions of admiration are in order—as Dick Mittenthal acknowledged in his fireside chat a few years ago—to a handful of people on both sides who understood the political dynamics in any given situation and found the way to overcome the belligerent

voices raised against the arbitrator in a particular case or series of cases.

In sum, what I want gratefully to acknowledge is that we who wanted to become arbitrators were hugely privileged to have been launched in steel. As graduates of the steel school, we could go forward with confidence that we had attained the competence to handle any issue in any industry.

Jim Oldham: Unfortunately that is mostly history, as much of that work is now gone. But your career has not been limited to steel. Tell us about your work in the auto industry.

Rolf Valtin: By the late 1960s, arbitration as the terminal point of the grievance procedure had existed in the American automobile industry for some 25–30 years. The system at each of the "big three" automakers—General Motors, Ford, and Chrysler—called for the appointment of a single arbitrator to handle all the cases referred to arbitration. Each of these arbitrators was called the Umpire. This title was usually contrasted to the title of Chairman. Chairman was associated with the tripartitism and mediatory approach followed in such old-line industries as textiles and the needle trades, and Umpire connoted the narrow role of calling strikes and balls. But it was an overworked distinction. As I would learn in succeeding first-generation arbitrators, the manner of their functioning depended far more on who they were than on the title under which they served.

Jim Oldham: Whose footsteps as the GM/UAW Umpire did you follow?

Rolf Valtin: By the late 1960s, the GM-UAW umpireship had changed hands eight times. Harry Millis of Millis & Montgomery fame was the first Umpire. He was followed by George Taylor, who left prematurely because war-time Washington demanded his services. And there then came a series of successors who occupied the office with varying duration. They were: Allan Dash, Ralph Seward, Gabe Alexander, Saul Wallen, Nate Feinsinger, and Abner Brodie (who was a Feinsinger colleague at the University of Wisconsin Law School). With the possible exception of Brodie, all were members of the first generation of arbitrators.

Jim Oldham: How did the umpireship fall to you?

Rolf Valtin: My appointment as the GM-UAW Umpire in 1969 resulted from the parties' decision that, given the fact that the GM employees hired during World War II were retiring and the GM workforce was becoming correspondingly younger, the time had come to bring in a second-generation arbitrator. Many a first-

generation arbitrator would have been glad to land the post, and virtually all among them, in their late fifties and early sixties, were still at the height of their power. But they were foreclosed by the accident of the relative youth of the GM workforce. It could be said that I became the beneficiary of the rankest sort of age discrimination.

Jim Oldham: How long did you last as a young, upstart GM/UAW Umpire?

Rolf Valtin: The GM-UAW umpireship was my full-time occupation for six years—through three 2-year contracts. In the pre-hire talks, I gathered that GM would have been glad to commit to a contract of longer duration but that the UAW would have none of it—perhaps because, as I subsequently learned, the firing of GM-UAW Umpires had been exclusively by the UAW.

The firing was sometimes done with genuine regret. I assume that no one will be offended if I re-tell the story Ralph Seward told me as part of his observation that "you're not a pro until you've been fired." Walter Reuther, rather than merely transmit a message of nonrenewal, paid Ralph a visit, praised him for the quality of his opinions, allowed that he (Reuther) was not faulting him for his decisions in a number of recent, unusually explosive cases, but said that he could no longer withstand the heat he was getting from too many Local presidents. As George Taylor used to say in class: "Arbitrators (or government officials) are expendable, but the system (the program) is not."

Jim Oldham: What kind of relationship did GM and the UAW have?

Rolf Valtin: In the late 1960s, GM was still the world's dominant automaker, and foreign competition in the US market was still in its infancy. The parties' relationship reflected this. After Reuther's death in a plane crash, the first agreement-renewal negotiations under Leonard Woodcock as UAW President were attended by a bad strike and much bitterness. The UAW treated GM as a ruthless and exploitative behemoth, to be dealt with by constant exhibits of antagonism. Arbitration hearings repeatedly saw arrogant stances and outbursts of slashing attacks. GM was the only place at which I ever encountered cases involving the physical destruction of machinery as the means for wringing concessions from management on working conditions. They became known, deservedly enough, as sabotage cases.

Jim Oldham: But then in that kind of an atmosphere, one wonders how the arbitration system kept from spinning out of control.

Rolf Valtin: GM bargaining-unit employees in the late 1960s numbered 450,000. Fifty arbitration cases a year relative to such a size of an organized workforce is an astounding achievement. It did not come about because GM employees were reluctant to file grievances, or because GM strove to be a magnanimous employer, or because sweetness and light prevailed in the lower steps of the grievance procedure. It came about because the parties, recognizing that their arbitration system would fall of its own weight if the cases headed for arbitration were not coldly scrutinized for their merits, established a so-called Umpire Staff on each side with instructions to allow only "good" cases to go forward and to resolve all other cases at their level. Reuther, knowing that the objective would fail if the members of the UAW Umpire Staff held elective office, made them appointed officials answerable to the president.

Jim Oldham: You have mentioned to me a part of the UAW system called the Public Review Board. Tell us about that Board.

Rolf Valtin: The effective functioning of the UAW Umpire Staff—leading to a multitude of withdrawn grievances and thus to disappointed grievants upset with their union—is to be understood as having been accompanied by the existence of the UAW's Public Review Board. This body, established by Reuther in 1957, serves as the mechanism by which institutional UAW actions can be challenged by adversely affected UAW members. It provides a safety valve, ensuring the protection of the democratic rights flowing from UAW membership—among them, manifestly, the right not to have grievances arbitrarily withdrawn. The Public Review Board, moreover, an estimable body that has included eminent Academy members, was long chaired by the venerable Monsignor George Higgins, and is currently chaired by Ted St. Antoine. I think the co-existence of the Umpire Staff and the Public Review Board is to be regarded as an admirable state of affairs safeguarding against both runaway caseloads in arbitration and highhandedness in bringing the number of cases to be arbitrated down to manageable proportions.

Jim Oldham: What comes to mind by way of decisions under the GM-UAW Agreement?

Rolf Valtin: As was bound to happen in the early 1970s, I had to decide a discharge case involving the use of amphetamines. The case arose at a plant (GM's Los Angeles plant) at which the established penalty for the use of alcohol at the plant was a 30-day suspension. Drugs in those days meant amphetamines and marijuana. The company's defense of the discharge penalty in the case

at hand was twofold: (1) the seriousness of debilitation when at work, and (2) the illegality of the possession and use of amphetamines and marijuana. I overrode the second point on the grounds that it was not for the company to act as a law enforcer. And I granted the first point but insisted that amphetamines and marijuana were to be likened to alcohol (specifically saying that alcohol is also a drug) and that it followed that a 30-day suspension rather than discharge was the appropriate penalty in the case at hand. I mention the case because I have long seen it as an example of how a rule, sound enough when issued, may have to be modified in the light of changing times. The comparability to alcohol was relied upon at a time when the drug scene meant amphetamines and marijuana. I doubt the validity of the point once the drug scene meant crack and heroin.

A famous Taylor decision was the so-called "head and shoulders" decision. Convinced that the parties under their compromise seniority language would encounter endless uncertainties in determining whether a junior applicant for a vacant job was sufficiently superior relative to a senior applicant to be made the successful bidder, Taylor laid down the rule that the junior employee had to possess competence "head and shoulders" above that of the senior employee. It was a phrase readily understood by all concerned—Taylor's very objective—but it came into being in search of good policy rather than in pursuit of the dictates of agreement language. Seward personified the latter approach. His decisions were driven by the most disciplined sort of search for logical deductions to be drawn from what the parties appeared to have agreed to. Taylor saw the grievance procedure as the forum for continued bargaining, believing that the genuine acceptance by both parties of the terms of employment was the key to productive plant life.

It is frequently said that arbitrators are not a homogeneous group. Nothing illustrates the point better than the fact that Taylor and Seward—both among the stalwarts in the development of arbitration as the terminal point in the grievance procedure—had differing views on the proper functioning of arbitration. And who is to say that the one or the other better served the parties or was more faithful to the cause of arbitration? Each played to his strength and neither could have done what the other did. But they were together in their belief in collective bargaining as a cornerstone in an industrial democratic society and in arbitration as part of it.

Jim Oldham: One more major industry has figured prominently in your arbitration career—coal. Tell us about your work with the BCOA and the UMWA.

Rolf Valtin: Bituminous coal, also known as soft coal, is mined in various parts of the country, including Alabama in the south and Utah and Wyoming in the west, but mostly in Pennsylvania, Ohio, West Virginia, Virginia, Kentucky, Indiana, and Illinois. The miners became unionized workers long before the enabling legislation of the Wagner Act. Their powerful leader for nearly five decades was John L. Lewis. He was famous for his extravagant oratory and for the bitterness with which he attacked coal operators and government officials, including the President of the United States. His death in the late 1960s brought fierce fights among rivals seeking to succeed him and thus brought turbulent labor relations in the bituminous coal industry. Endless re-arbitrations of the same issues and strikes over issues routinely referred to the grievance procedure elsewhere in American industry were commonplace.

This was the context in which the negotiations for a successor agreement took place in 1974. The negotiating arm for the owners was the BCOA—the Bituminous Coal Operators Association. Starting in 1975, Joseph Brennan, whose father had been a UMWA District President in eastern Pennsylvania, headed the BCOA. Arnold Miller, a West Virginia coal miner disabled with the black-lung disease and nonetheless still a heavy smoker, led the UMWA. He had run as a reform candidate against Tony Boyle. Boyle was later convicted for his involvement in the murder of Joseph Yablonski, a District President from the Pittsburgh area who had challenged Boyle for the UMWA presidency. Yablonski's lawyer son, Chip, was an active reformer and an important Miller lieutenant when Miller took over as UMWA President. (Rich Trumka, who had yet to put in his five years at a coal mine, which is a constitutional requirement for becoming President of the UMWA, was a young lawyer working out of UMWA headquarters.)

The BCOA-UMWA agreement was a national agreement, but it had sub-units comprised either of UMWA districts or of multi-mine companies spanning several UMWA districts. Some of these sub-units had a panel of arbitrators; others had arbitration without structure. There was no national coordination of arbitration in the coal fields.

A central objective in the 1974 negotiations was to bring some order into the chaos of the industry's arbitration practices. The two chief problems that needed to be dealt with were: (1) the distrust

as to whether the local arbitrations were proceeding under even-handed administration, and (2) the lack of uniformity in arbitration outcomes on the same issues, and the attendant recourse by the loser to the expedient of placing the issue before another arbitrator—which expedient was repeated over and over again, so as to keep the issue from ever getting settled.

As the means for dealing with both of these problems, the parties created an overseeing body at the national level. They called it the Arbitration Review Board (ARB), and they established it as a 3-person board composed of a BCOA member, a UMWA member, and a so-named Chief Umpire.

Jim Oldham: You, I take it, were the first Chief Umpire. How did you get chosen?

Rolf Valtin: The FMCS had prepared a list of 25 potential appointees. The list was submitted to the parties for alternate strikings, until the list was whittled down to the three finalists. They were Ralph Seward, Dick Mittenthal, and myself. Each of us was interviewed in a session lasting about an hour and attended by some 7–8 representatives from each side sitting around a long conference table with humorless, if not hostile, faces. Dick and I had lunch while Ralph was being interviewed. He and I are now in our late seventies, and we think we are still competent to arbitrate. Ralph was then in his late sixties, but we judged that he was too old to stay in the running. Dick made this assessment: "If the Operators have the last pick, the job will go to me; and, if the Miners have the last pick, the job will go to you." I have no information, inside or otherwise, on how the parties reduced the short list from three to one.

Jim Oldham: What was the basic mission of the ARB?

Rolf Valtin: The first problem was the disjointed local administration of arbitration. The solution was to place the administration of the panels at the national level. As part of its responsibilities, the ARB thus became the equivalent of an AAA office—overseeing the selection of arbitrators to serve as panel members, laying down the ground rules affecting their tenure and their rotation as the "up" arbitrator, and taking all administrative steps necessary to leave the people in the coal fields confident that their arbitration system was being run in an unbiased manner, through the impartial and consistent enforcement of rules.

The second major problem was the absence of a system of precedent. The same issues kept getting arbitrated locally, over and over, with inconsistent results. To solve this problem, the

parties created an appeals right for the decisions of the local arbitrators (who became known as the Panel Arbitrators), and they charged the ARB with the responsibility of issuing precedent-setting rulings in these appeals cases.

Jim Oldham: This was a tripartite Board. Who served with you as the partisan members of the ARB?

Rolf Valtin: I know nothing about the process by which each party selected its ARB member. To my great fortune, each party came up with a person who had superior knowledge of the agreement, who had sound labor-management perspectives, and who stayed respectful of his counterpart in all our debates. The BCOA designee was Tom Waddinton, a veteran management spokesman from the eastern coal fields, and the UMWA designee was Bob Benedict, a man with some 20 years of service as a welder in the Illinois coal fields and with substantial experience as a Mine Committeeman and District Representative. Neither man was replaced in the 7-year existence of the ARB. Both agreed at the outset of the ARB operations to affix their signatures to each ARB decision without any showing as to whether, or as to the extent to which, they were concurring or dissenting. I think that the absence of dissenting opinions importantly enhanced the acceptability of the ARB decisions.

Jim Oldham: Was the ARB successful?

Rolf Valtin: As was to be expected, given the newness of the endeavor and the turbulence of the industry's labor relations in the mid-to-late 1970s, the ARB had mixed results. On the downside, the ARB was beset by a caseload far greater than anticipated. Two things happened. One was that the annual number of decisions by Panel Arbitrators, anticipated to run at 500–700, turned out to be about 2,500. The appeal rate was as expected—about 10 percent. The upshot was that the ARB faced an annual caseload of about 250 cases, rather than 50–70 cases. The second problem came from a delayed start. Although the appeal right went into effect in early February 1975, it was not until the fall of 1975 that the ARB's three members were selected and in place. The appeal cases filed by then had simply piled up, so that the ARB was woefully behind from the start. The backlog problem became the worse when, toward the late stage of the 1974–1977 Agreement, the UMWA's District 28 (in southwestern Virginia) filed a law suit charging the ARB with negligence as the cause of not being up to date in its work. Concerned as to where the court might come down on the suit and not wanting to get entangled in UMWA politics by having the

union's General Counsel represent me, I ran to my long-time friends at Bredhoff & Kaiser to ask them to act as my lawyers in the suit. They agreed, and I emerged from the suit wholly unscathed. But I had in effect declared war on the UMWA's legal office, and I therefore could not expect to be renewed upon the end of my contract (which coincided with the end of the 1974–1977 BCOA-UMWA agreement). The expectancy turned out to be accurate.

Jim Oldham: What happened to the ARB after you departed?

Rolf Valtin: I had three successors, one to dispose of the initial backlog and two who served under the successor BCOA-UMWA agreement. The ARB was then abandoned in response to the miners' complaint that they were losing too many cases they thought they had won—a problem, of course, which inheres in the creation of an appeal right. The dissolution of the ARB, however, was accompanied by an agreement that all ARB decisions would continue to be treated as being of binding effect. To this extent, stability of agreement interpretation was achieved. The commitment to the ARB's past decisions has been observed ever since.

Jim Oldham: You have tabulated the results of ARB decisions. Share that with us.

Rolf Valtin: In my 2-plus years as Chief Umpire, the ARB issued 126 decisions. In 55 percent of them, the decision of the Panel Arbitrator was fully sustained; in 23 percent, it was fully reversed; and in 22 percent, it was remanded or left standing with clarifying or fixing observations.

Jim Oldham: Is there a decision that stands out as the most important?

Rolf Valtin: Decision 108 was probably of greatest importance. It concerned the question of whether picketing in connection with local strikes during the life of the agreement could properly be treated as a dischargeable offense. Despite the existence of closed, periodically renewable agreements as in the rest of American organized industry, such picketing was commonplace in the coal fields and often led to the spread of the strike beyond the mine at which it had commenced. Coal operators sometimes went to court to have the picketing enjoined. However, neither the courts, nor the parties at the national bargaining table, nor the holdings of arbitrators had ever dealt with the issue definitively.

Decision 108 turned on whether or not local strikes during the life of the national agreement should be viewed as permissible. If the strikes were permissible, it would be difficult to proscribe the

picketing that went with them. The answer to the underlying question was surprisingly unclear. All of us exposed to American organized industry see the forfeiture of the right to strike for the duration of the agreement—the ensuring of labor peace for a certain time in return for the benefits gained at the bargaining table—as a given. So far as I know, however, all such agreements contain provisions explicitly barring strikes and lockouts. The BCOA-UMWA agreement contained no such provision.

What the BCOA-UMWA agreement did contain, in similarity to agreements in the rest of American organized industry, was a grievance procedure making arbitration the final step. We could have come down on the side of permitting local strikes—simply stating that, where people mean to outlaw strikes and lockouts for the duration of the agreement, they know how to say so and they do say so. But, policywise, this would have been a bad decision. We held that refraining from strikes and lockouts for the duration of the agreement was an implied part of the presence of a grievance procedure ending in arbitration.

Management, of course, welcomed the decision. The miners were split on it—there were those who had come to oppose the local strikes as too costly a weapon, and there were those who believed that there was no way ever to gain the genuine attention of the owners of coal mines except by hurting their profits.

Jim Oldham: I remember when I did a few cases in the coal industry that there was a contract provision prohibiting the parties from using lawyers in the arbitration hearings. That reminds me of another of your stories—you know the one I mean. Could you retell it?

Rolf Valtin: Two Kentucky parties came to the ARB to argue an appeal case. A lawyer was with the company to act as its spokesman. The union, pointing to a clause in the agreement, strenuously objected to any sort of participation by the lawyer. Lewis had obtained the clause in the early 1940s. It prohibits the functioning of lawyers on behalf of either side in any part of the grievance procedure. The precluded persons are defined as "attorneys licensed to practice law." Needless to say, we turned to the company, wondering what its defense would be. The lawyer confirmed that the union was correctly identifying him as someone who had for years practiced law in the particular town in Kentucky. "But," he said, "I have been disbarred."

Jim Oldham: One more permanent appointment we ought to hear about is your service with UPS and the Teamsters. To use the

language of the current UPS advertising campaign, "Tell us what Brown did for you."

Rolf Valtin: UPS has not resisted the unionization of its workers by the Teamsters, and UPS is the Teamsters' largest employer. The long relationship between UPS and the Teamsters has been successful in the sense of realistic, mutually respectful bargaining minimizing costly and unnecessary national strikes. Relationships at the local level, however, tend to be combative.

Arbitration of grievance disputes in the trucking industry is typically via bilateral committees. The committees are composed of an equal number of representatives from each side, none of whom has sat in judgment of the case in any of the lower steps of the grievance procedure. The idea is to use persons from the parties' own ranks, thereby keeping arbitration in-house, but not to use persons with a direct interest in the case. The appointed persons, of course, do not shed their managerial or union bias when they sit on one of these boards. But the system works remarkably well at many places in disposing of very large numbers of cases without using an outside arbitrator and, therefore, without using lawyers, transcripts, and briefs.

Indeed, there are critics who attack the system as *too* effective in achieving that goal. One of them was Clyde Summers, esteemed protagonist of the due-process interests of individual workers, at our annual meeting 20 years ago. He denounced the bilateral determinations as involving inadequate hearing processes, trades among committee members ("you have my vote on this case if I get yours on the next one"), and results tainted by politics. He urged that such bodies as the courts and the NLRB decline to treat the products of these bilateral committees as the equivalent of the products of regular arbitration.

The UPS-IBT relationship is governed by a National Agreement and a series of local supplements of defined geographical boundaries. One such supplement is the Atlantic Area Supplemental Agreement, covering the two Carolinas, the two Virginias, the District of Columbia, Maryland, Delaware, and Philadelphia. The arbitration volume in this area is such as to require one set of 2-day hearings every other month for discipline cases and another set of 2-day hearings every other month for nondiscipline cases—or a 2-day hearing every month for a mixture of both types of cases. Until the early 1980s, cases deadlocked by the bilateral committees were set aside for handling in regular arbitration channels (quite as was, and is, true under other UPS-IBT supplements and under other

trucking-IBT agreements). The union—whose treasury, it is to be held in mind, is fed by dues deducted from the workers' hard-earned wages—had for years sought to eliminate the high costs associated with regular arbitration. UPS successfully rebuffed the efforts through at least two negotiating rounds preceding 1982, but it relented in that round. The change that was made is this: an outside arbitrator is appointed (as the "permanent" arbitrator) to hear each case together with the members of the bilateral committee, he or she stands by while the case is considered by the committee members in executive session, the case becomes decided where the committee members reach a decision by majority vote, and the outside arbitrator is called upon forthwith to do the deciding where the committee members deadlock. By way of compromise in response to UPS' resistance to the adoption of the procedure, the use of it was confined to discipline cases—so that, while the parties continued to have monthly 2-day hearings, the hearings in the one month were under the new procedure and the hearings in the other month were without it.

(Historical note: the procedure was pioneered by the Teamsters and Anheuser-Busch; all types of cases there are covered by it; Dick Mittenthal was the first arbitrator under it and lasted in that role for many years; and Joe Rohlik has in recent times held the post.)

Except that I was geographically suitable, I had no particular qualifications for the arbitration job under the new procedure. When it was offered to me, my acceptance came without hesitation—admittedly in part because I was being offered an arbitration post that did not involve opinion-writing. Opinion-writing is part of our work and is not to be scoffed at. But it is the laborious part—and an offer for an arbitration post that calls for bench decisions with a mere sentence or two in substantiation is an offer containing a nice bonus.

Jim Oldham: It seems that you thought highly of the system. Is that right?

Rolf Valtin: I held the UPS-IBT job for eight years, and I view it as among the most useful jobs I have been permitted to perform. The system devised by the Atlantic Area UPS-IBT parties grew from trucking-industry traditions and cannot simply be transferred to industries—e.g., steel and autos—with different arbitration traditions. But I became a fervent believer in its effectiveness. Assume that the agenda per bi-monthly meeting was made up of 25 cases, the great majority of which were discharge cases (as contrasted with suspension cases). Some would be postponed and some settled at

the last minute, but about half of the cases on the agenda were heard and decided at the meeting. It constitutes the height of achievement for promptness in the resolution of disputes. In effect (overlooking the postponements, which cannot be for more than four months), dischargees under this system have certain knowledge of their fate within two months of the time of their discharge.

Jim Oldham: But what about the quality of the results?

Rolf Valtin: As to those who would view the speed with which the cases are done as revealing a rough-justice system incompatible with employment rights in a civilized society, though I would grant that those rights are best protected by the drawn-out processes followed under government MSPB procedures and under typical private-sector arbitration procedures, I would state my belief—as I did when asking myself the question while I held the post—that the results I came to under the system were the same in 90–95 percent of the cases as they would have been had I heard the cases in regular arbitration and written full-blown opinions. And as to the cases in the 5–10 percent range, there is no reason to assume that the results were mostly to the detriment of the employee. Presented is a tradeoff between promptness in furnishing results and a slight loss in correct results. Our profession would not be unanimous in choosing between these alternatives. But, both from the standpoint of the employer's potential back-pay liability and from the standpoint of the upheaval in the life of the discharged employee, I have no difficulty coming out on the side of promptness.

Had George Taylor been alive when Clyde Summers presented his paper at our annual meeting in 1984, I think we would have heard a spirited rejoinder. Taylor would have said that one of the important advantages of the institution of collective bargaining over the regulation of the terms of employment by governmental legislation lies in the capacity of the parties to deal with the particular problems affecting them and that this includes the capacity to create particular arbitration systems; that grievances are for the union and the company, not individual grievants, to dispose of; that compromise offers and solutions are the essence of an effective grievance procedure; and that insistence on purity in arbitration should not be allowed to be dominant over these values. The widely acclaimed Wirtz due-process paper and the Stockman comments on it (delivered at our annual meeting in 1958), although not directly concerned with the bilateral committees, are supportive of the Summers criticisms. I do not relish having to choose between the Taylor and Summers-Wirtz-Stock-

man schools of thought. But a declaration on this issue is here in order. I remain a Taylor disciple.

Jim Oldham: Let's move on to another of your interesting assignments: the Atomic Energy Labor-Management Relations Panel. Tell us something about the history.

Rolf Valtin: Cyrus Ching, perennial pipe smoker and 6 feet, 7 inches tall, had been an industry representative on the War Labor Board and emerged as a well-known and well-liked person with an influential voice of moderation. In 1947, President Truman appointed him as the first Director of the newly formed Federal Mediation and Conciliation Service. It was a time of much strife following the end of the no-strike pledge of World War II and the subsequent post-war inflation. It was also a time of the intensification of the Cold War, leaving the government little choice but to call for an uninterrupted flow in the development and production of atomic weapons.

The Atomic Energy Labor-Management Relations Panel was a panel of some five or six individuals charged with the responsibility of intervening in disputes threatening interruptions in that flow. As part of a change in the composition of the members of the panel, in 1952, Truman asked Ching to come out of retirement and take over the chairmanship of the panel. Ching agreed and stayed in the post for 16 years. When a dispute threatened to turn into a work stoppage, the parties were asked to refrain from striking and/or locking-out for 30 days to permit the functioning of the panel. The panel was authorized to hold hearings, to mediate, and to make recommendations for settlement. The panel did not have the power to decide settlement terms, unless the parties agreed to convert the panel to an arbitration panel (which happened sometimes). The panel produced many settlements, both pre-strike and post-strike, at such diverse places as production plants, weapons laboratories, and underground test sites. The panel was known, for the rest of Ching's life and beyond, as the Ching Panel.

Ching had not been an arbitrator and had not been an Academy member. Upon his death, in 1968, in an unprecedented action, we made him an honorary member. I think he is the only one from outside the Academy on whom this honor was ever bestowed. The other panel members included Charles Gregory, successively professor at the law schools of the University of Chicago and the University of Virginia and author of the renowned *Labor and the Law*; Russell Smith, one-time dean of the law school of the University of Michigan and Academy President in 1965; Robben Fleming,

one-time President of the University of Michigan and Academy President in 1966; and Father Leo Brown, mentor of Jack Dunsford and Academy President in 1960.

When Ching died, Brown was selected to serve as the panel's chairman. And when Fleming resigned because of his busy university schedule, Byron Abernethy and I were asked to join the panel. I don't know whether Byron hesitated when offered the post, but I accepted with lightning speed because the panel worked on interest disputes and because of the high quality of its members. I had second thoughts only when I filled out the mile-long security form.

Jim Oldham: Tell us about some of your recollections.

Rolf Valtin: Three recollections from my time on the panel are worth recording. The first one has to do with the operation of the panel. In my first participation as a panel member, I raised the question as to what we would say in the opinion to justify the contemplated wage increase. The answer was that "we don't write opinions." I learned then that, as a matter of policy at the outset of its operations, the panel had decided that anything said in rationalization of the wage outcome in one case would be regretted when considering the proper wage outcome in the next case. It was the panel's way of ensuring that there would be a free hand in dealing with each case on its own merits. Some among us would have opposed the policy on the grounds that holdings of high stakes should not go unexplained. I think that it was a wise policy formed by wise men.

The second recollection occurred some years later when Chairman Brown—I always called him Leo, but Byron always called him Father—asked Byron and me to work with him on a dispute involving the building trades at the Nevada test sites. The hearings were held at a hotel in Las Vegas. Brown wore his collar for the hearings, and he changed to civvies for the evenings.

Brown was an inveterate poker player. He was also very good at it, in part because he was a math whiz. His math proficiency, incidentally, was both impressive and most helpful when working with him on wage cases. His routine for the evenings of the Las Vegas hearings was to have dinner with us and then depart for a hotel that offered a poker game on one of its public floors. On one such occasion, Byron and I joined him to watch the game for a while. After an hour or so, we tired and decided to return to our hotel. I left quietly, respecting the players' manifest preference to be left alone. Byron, inclined to be polite and wanting to let Brown

know that we were leaving, said in a tone loud enough to be heard by those at and around the table: "Good night, Father." The next morning, as we were chatting before the start of the hearing, Brown, half-grinning and with a characteristic twinkle in his eyes, said: "Byron, there are times when I wish you'd address me by my first name."

The third of the recollections is concerned with the times, following Brown's death, when I had taken over as the panel's chairman. Strikes at installations involving atomic weapons had become tolerable, and the Reagan and Bush administrations were inclined to be friendly toward the companies that ran the installations and preferred not to be saddled with panel intervention. Entry by the panel into disputes had always been either at the government's initiative or at the initiative of one of the parties together with the government's certification of its vital interest in a peaceful settlement. By the late 1980s, almost all requests for intervention came from the unions, with the companies stating their resistance and the government saying that a strike at the installation would be without catastrophic effects. The upshot was that we had several occasions on which we declined to intervene despite the union's strenuous pleas for intervention, on one occasion in the form of the question: "My people have been on strike for umpteen weeks while you stand idly by—what are you there for?" Some may wonder why the requests for panel intervention in the later years of the panel's existence came from the union side. The answer lies in recalling what Taylor used to say in class: where government intervention is available, the weaker party will seek it.

I agreed with those who were pointing to the anomaly between the existence of the panel and its refusal to step in, and I came to the conclusion that the panel had outlived its usefulness and should be taken out of existence. For administrative purposes, the panel was housed in the FMCS, and, sometime in the 1990–1992 period, I had a meeting with the then-Director of the FMCS in which I identified the problem and recommended the panel's extinction. He seemed to agree, but he also said that, for political reasons, the White House might oppose the elimination of the panel. The matter stayed in limbo because I did not receive an affirmative response from the then-Director and because I did not re-raise the matter with subsequent FMCS directors. Officially speaking, the panel may still be in existence. But it has neither functioned nor has had a request for intervention since the early 1990s. In fact, thus, the panel has become extinct.

Jim Oldham: I earlier made mention of the Steelworkers' Campaign Conduct Administrative Committee. What was that about?

Rolf Valtin: In response to the near-success in an election for the USWA presidency by a challenger from the USWA ranks with the help of lots of outside money donated by the left of the political spectrum, the Steelworkers (in 1980 or thereabouts) adopted a constitutional amendment prohibiting the use of outside moneys in the quadrennial elections of the top officers and District Directors. Bill Wirtz—W. Willard Wirtz, Secretary of Labor for Presidents Kennedy and Johnson—was asked to act as the administrator enforcing the ban. He raised a simple—but very wise—question before accepting the post: whether the ban might be made applicable to union monies as well. The USWA accepted the suggestion, and there followed the drafting of rules banning the use of outside moneys, defining union resources for the purpose of providing clarification of the ban on the use of union moneys, and setting up a series of financial reporting requirements.

Formed to administer the rules and reporting requirements was the Campaign Conduct Administrative Committee (CCAC), consisting of a chairman and two members. Bill was its chairman from the beginning and through five or six elections (bowing out when in his late eighties and when his ailing wife needed his full-time care). The other two members have been an American lawyer (currently Eric Springer from Pittsburgh) and a Canadian lawyer (currently Tom Berger from Vancouver). The CCAC is dormant for three years and then functions for some 12 months, for about 9 months preceding the November election time and for about 3 months following it (the latter in dealing with election protests and closing-out tasks). Staff for the committee has consisted of a full-time administrative assistant and a part-time executive director. The committee's operations are funded exclusively by USWA monies, but the committee functions as an independent body—and has had its independence preserved by a USWA General Counsel, Bernie Kleiman, who has understood the need for the CCAC's ironclad independence. As Bill, in one of his inimitable play on words, used to observe: "We are belligerently neutral."

In late 1992, about a year before the USWA election in November 1993, Bill invited me to lunch, explained the history and function of the CCAC, and offered me the Executive-Director job. I had no difficulty freeing up the needed time, and I gladly accepted.

One of my duties as the CCAC's Executive Director was to hold investigative hearings respecting alleged violations of the rules and to report on them to the CCAC members for their dispositions on the allegations. Political ambitions have a way of producing pettiness and meanness. And so it was that I sometimes witnessed ugly accusatory exchanges on the part of people whom I had previously viewed as devoted labor leaders engaged in worthy struggles on behalf of humanity. One of the contested elections required some four or five hearings to deal with an endless array of charges and countercharges. This one, in an ironic twist, involved the re-election campaign of a District Director with whom I had served on a tripartite commission to investigate the contracting-out problem in the steel industry. He was unseated following 20 years of incumbency—not, I think, via injustices perpetrated either by my reports or by the conclusions drawn from them by the CCAC members.

I spent about half of my work time over about a year's time in each of two quadrennial USWA elections—the elections of 1993 and 1997. These two stints as CCAC Executive Director and my membership on the contracting-out commission (a two-year assignment in the late 1970s) constituted instances of my good fortune in having had assignments that offered the chance to work with collective-bargaining parties in a non-arbitrator role. Such assignments bring heightened appreciation of institutional problems faced by the parties and thus enhance the capacity to come up with sound decisions as an arbitrator. In my case, they were particularly satisfying because they were provided by one or both of the parties who had given me the chance to become an arbitrator. (I think that Mickey McDermott, my successor in the post, would share these sentiments.)

The even more satisfying part of the CCAC job lay in the association with Bill Wirtz, one of the founders of the Academy and currently an Honorary Life Member. As attested to by a great many people who have worked with him and as borne out by his many speeches and other public appearances, he is a person of unfailing moral courage, of endless wit both in the written and the spoken word, and of true devotion to his friends.

I never doubted the correctness of my choice in accepting the CCAC job. But I did not then see it as I now see it: the crowning good fortune in a career marked by good fortunes.

Jim Oldham: Let's spend the last few minutes on the Academy. Give us your reflections on the organization, looking back over your years of membership.

Rolf Valtin: It hardly bears saying that the Academy has been a big part of my life. It is true of most of us, and it requires no elaboration. I was involved in an episode in the life of the Academy that may correctly be said to have been of historic significance, and I think that this is the right occasion on which to bring it out. The episode arose in connection with the work of the so-called Re-Examination Committee in the mid-1970s. It was a committee, appointed by Eli Rock, to look into the implications of a continually and substantially enlarging membership. Eli made me the chairman and gave me a star-studded committee: Gerry Barrett, Irv Bernstein, Jack Dunsford, Jim Hill, Phil Linn, Abe Stockman, and Bob Stutz.

It was a large-scale undertaking. We were given two years in which to accomplish it; we developed a preliminary survey of substantial breadth; and we were required to deal with a series of specific policy questions. We submitted a stage-setting report at the business session of the 1974 annual meeting, and we submitted the report containing all of our recommendations at the business session of the 1975 annual meeting. All but one of the recommendations were approved by the members in attendance, but the one recommendation that was not approved generated lengthy and heated debate. The upshot was that the committee agreed to reconsider it and then to submit the final report (amended or not) at the next annual meeting.

The rejected recommendation was concerned with the under-representation of women and blacks in the Academy's membership. We had five female members and seven black members in a membership numbering about 450. These were manifestly dismal proportions. Moreover, given the nation's progress in the area of discrimination, we were running badly behind American society as a whole. Equally true, however, was that we had always applied the basic admittance standard ("substantial and current experience" as an arbitrator) by which admittance depended on the extent of the candidate's selections by the arbitrating parties and that, accordingly, the under-representation was not of the Academy's making. The committee was divided but ultimately came to a consensus in favor of an affirmative Academy step. Specifically, we recommended that there should be some loosening in the implementation of the "substantial" factor when weighing the applications of women and blacks. Gerry Barrett aptly referred to the recommended step as a "tilt" in assessing the applications of female and black applicants.

The recommendation produced an uproar on the part of our female and black members. They argued that the word would spread that women and blacks were being admitted under relaxed standards and that selecting parties would draw no distinction between arbitrators admitted to Academy membership before the relaxation and arbitrators admitted to Academy membership after it. They thus argued that the proposed affirmative action would operate to give inferior standing in the arbitration community to present and future female and black members alike. There were as many voices against this view as voices for it. An unforgettable moment came when Bill Murphy openly chided the opponents of the recommendation for blocking progress.

I was upset by the reaction of our female and black members. But I did some real stocktaking when Peter Seitz said that "there is something wrong with you if you can't bring yourself to yield on this." The committee appointed a subcommittee to deal with the matter, and the subcommittee met (in magnificent summer weather) at Bob Stutz's place on Martha's Vineyard. The determination was that it would not make good sense to press forward with the recommendation in the light of the solidity of the opposition by our female and black members. The full committee gave its approval both to this and to the suggested language changes in the report.

The same was true of the membership as a whole at the business session of the 1976 annual meeting. The adopted report contains a paragraph speaking to the under-representation as a serious problem. But the paragraph is confined to hortatory expressions. And it includes the statement, in clear inconsistency with what we originally argued, that "the Academy cannot itself rectify them [the distressing statistics] without abandoning general acceptability by the parties as the central measure of qualification for membership." Thoughts of chameleon conduct occurred to me, but I quashed them with thoughts about the strength of a democratic society.