

REMEMBERING DAVID A. WOLFF

By Howard A. Cole

It was 1955, and as a recent University of Michigan Law School graduate I was marking time in a research capacity while looking for a job befitting my rather naive aspirations. I was unsuccessful until aided by my labor law professor, Russell A. Smith, who would later become President of the National Academy of Arbitrators. He suggested that I walk across the street to the office of a prominent arbitrator who was searching for an assistant. I was initially reluctant, reminding him that I was "sympathetic to Labor". He wisely responded, "That's fine. All you need then is to be sympathetic to Management too."

With that, I crossed the street and met David A. Wolff, a founding member of the Academy and its fourth President (1952). He was then middle aged, rather portly, and favored with eyes suggestive of good humor, authority, and understanding. He invited me to be his full time assistant, and we began a thirteen-year professional and personal relationship, ending with his death in 1968. Like Smith, he was dismissive of my declaration of sympathy for Labor. Later, he would delight in reminding me of it when I would favor Management's position in concrete cases.

His pre-arbitration life began in Bryan, Ohio in 1900. At an early age, he moved with the family to Champaign, Illinois. He earned an undergraduate degree at the University of Illinois and a law degree at Harvard. He settled in Detroit and began a ten-year stint as an Assistant United States Attorney in 1927. His subsequent private law practice included some in the field of labor relations but also in what he described as the more lucrative work of entering guilty pleas for Detroit River bootleggers.

As was true for many pioneering colleagues, the War Labor Board launched his entry into arbitration. The Detroit Regional Board was a major and critical component of the "arsenal of democracy". He served as Chairman of the Automotive Section for two years and became Vice Chairman of the Board. In 1943, the National Board directed that Chrysler Corporation & UAW (United Autoworkers) provide for arbitral resolution of disputes by adding an Impartial Chairman to their Appeal Board, the final step of their grievance procedure. The parties selected Wolff to be the Impartial Chairman, and he remained in that position into the 1960's. Other major umpireships followed, including those for ALCOA (Aluminum Company of America) & USWA (United Steelworkers) and Caterpillar Corporation & UAW. He served in numerous other and varied bargaining relationships on both a continuing and an ad hoc basis. While his practice was broad, it was geographically limited by his refusal to fly until persuaded to do so in the 1960's by pilot members of an airline system board of adjustment. Illness leading to his premature death in 1968 explains his noninvolvement in the then emerging public sector.

His tenure in the Caterpillar/UAW umpire system ended shortly after the start of my association with him, so I did not become greatly familiar with it. It appeared to have a traditional model. Its most attractive feature for him was its Illinois hearings location, which he could reach by rail without need for the dreaded flying.

The Chrysler/UAW and ALCOA/USWA systems had some unusual features.

The Chrysler/UAW system has been described at length in the 1958 Proceedings of the Eleventh Annual Meeting of the Academy. While the bargaining unit consisted of as many as 140,000 employees in plants across the United States, the case load was low because of a highly effective pre-arbitration grievance procedure, and all hearings before the umpire were held in Detroit. They were attended only by the umpire and the four party members of the Appeal Board. It was rare for the hearing in any one case to last more than a couple of hours. There were no transcripts, no plant visits by the umpire, and no posthearing briefs. The presentations consisted of written and oral statements of the party members, exhibits, and unsworn written statements from witnesses. There was no opportunity for cross-examination or other confrontation of witnesses. In response to criticisms of this procedure, Wolff insisted that "Although on occasion the actual presence and participation of witnesses might be of some help where credibility is a factor, almost always the type of proof called for and submitted is more than adequate to enable an accurate determination of the facts." He found ultimate justification in the facts that the system was created by the parties, was considered by them to be beneficial to their relationship, and had unusual longevity.

The ALCOA/USWA system also had a tripartite board, consisting of two party members and Wolff as chairman. Again, the case load was relatively low for a bargaining unit of thousands of employees at multiple sites. It also had uncommon features that fit well with his preference for simplicity of process and his rejection of air travel. In each case, either party could choose a full board hearing in Pittsburgh (easily reachable by train) or a "panel" hearing at the local site of the grievance. Wolff did not attend the local panel hearings. They were conducted by the party members of the board, who would take turns compiling hearing records consisting of written documents and transcripts of audio recordings of the statements of advocates and testimony of witnesses. Wolff would receive the hearing records, meet with the party members of the board, and issue decisions in the name of the board. With the panel procedure, he had no opportunity to observe witnesses and no occasion to make hearing rulings on objections. I once heard an Academy colleague, who had served as Union advocate at a panel hearing (prior to becoming a neutral and eventually President of the Academy), express frustration at having been required to direct his objections and arguments "to a box". Here also was a system that was created by the parties and worked for them over many years.

For Wolff, the parties came first. He accepted whatever arbitral procedures and standards the parties in any given bargaining relationship saw fit to adopt. He did not attempt to influence the nature of their pre-arbitration grievance procedures or how they selected cases for arbitration. He did not mediate. He regarded the parties' agreed upon interests as being superior to those of individual grievants. Considerations of due process, individual rights, and fair representation were outside his perceived role. This point of view was common in the ranks of War Labor Board alumni and undoubtedly had roots in the paramount need for labor peace in a country waging "total war". In a few cases, it led Wolff to issue awards purporting to come from his independent judgment but actually reflecting joint party wishes communicated without the knowledge of the grievants, a practice now widely (not universally) believed to be inconsistent

with correct professional standards.

Wolff strongly felt that cultivation of personal relationships between party representatives, and between them and himself, was beneficial to all concerned. He participated in the then accepted practice, since eliminated by the Academy, of personally inviting some parties to attend its annual meetings and paying their registration fees. He loaded his briefcase with fine cigars for distribution to appreciative hearing participants. He hosted many posthearing lunches, some of which consumed whole afternoons. Where both parties approved, he did not hesitate to engage in unilateral social contacts. He was fond of recalling a conversation with the international union president in one of his umpireships, in which he expressed a desire to be allowed such contacts and was told by the president: "That's fine. The company can take you out for an evening of food, drink, and lobbying, and the next night the union will get you so drunk you won't remember what the company said." In the early 1950's he moved with his wife Dorothy and children David and Jeanne to a stately home high on a shore of Barton Pond near Ann Arbor, which became a pleasant place for hearings, tripartite board meetings, and convivial gatherings. It was previously occupied by Professor William Haber, who became a member of the Academy. Haber playfully named the site "Haber's Bluff". Wolff preferred "the Wolff residence".

Although he genuinely believed that his frequent socializing and entertaining were helpful to the parties' relationships, Wolff readily acknowledged that he was motivated in part by business considerations and at times seemed a bit discomfited by that. After one day of mixed work and partying with tripartite board members at his home, he asked if I thought he was "living by my wits". My response was a cautious "It works", and with that he seemed content.

His decision making process always centered on the specific case. He did not favor attempts to generalize or construct arbitral common law. Although he lived and worked in the shadow of the Ann Arbor university community, he was never completely comfortable with academia. He befriended and admired many in the academic world, but he would use the term "academician" as something other than a compliment. (He spoke with amusement of having been instructed by a professor that he was mispronouncing "academician" by accenting the first syllable rather than the second.) His bookcases contained volumes of law, published arbitration decisions, and arbitration commentary, but he never consulted them. His use of decisions of other arbitrators was almost entirely confined to those within the bargaining relationship source of the case before him. An illustration of his thinking in this regard was tactfully included in an early Chrysler/UAW decision:

"During an Appeal Board presentation a recent decision by Harry Shulman as

Umpire for Ford Motor Company and UAW (CIO) was repeatedly cited. This decision had to do with the interpretation of a contract provision the here pertinent parts of which are substantially identical with those applicable in this case. The parties were not in agreement as to the weight which the Chairman in the instant case should give Dr. Shulman's decision and the reasoning supporting it. The Chairman realizes that despite the fact of similarity of parties, location and type of business, there are distinctions which exist and must be observed. The parties are not the same parties. Their practices are not

identical. Even their application of the considered contract provisions has varied. Further while Dr. Shulman and the Chairman both act as umpires, they were not selected by, nor do they act for, the same parties. The parties making the selections undoubtedly had in mind the known general thinking of each at the time of selections, and made the selections on an individual basis. On the other hand, points of similarity may not be disregarded. In addition, the Chairman has high regard for Dr. Shulman's sincerity, clarity of thought, and reasoning process. The Chairman does not propose to unthinkingly adopt Dr. Shulman's determination in another case as his own in the instant case. However, to the extent to which he believes it here applicable, he makes use of it with appreciation."

He did his decision writing only at his desk in his office. Except for a brief experiment with dictating equipment, he wrote in longhand on legal pads. He did not produce literary gems. He did not attempt witty or poetic phrasing. He did not value creative writing. He was a master of prosaism (an uncommon word that he would shrink from using). He wrote only for the parties and their constituents. He did not submit decisions for publication although he did not care if the parties did. He strove to be understood by all with a stake in the case, whether at the highest levels of management or the lowest levels of bargaining unit workers. He usually began with exhaustive reports of facts, evidence and statements of position, primarily with an eye to assuring party representatives and their constituents that the case had been fully presented and heard. In explaining his conclusions and rationale, he was an unrelenting craftsman. He insisted on precision as well as avoidance of unsettling rhetoric. He kept Webster's Unabridged Dictionary on a stand by his desk and at times would spend hours brainstorming for a single word or phrase. He believed all of this to be conducive to understanding and acceptance of the award and, consequently, a more harmonious workplace.

As his assistant, I was not spared the rigors of these writing methods, and for that I am grateful. As my mentor, he was a taskmaster but unusually generous in sharing both expertise and time. Not only was I able to observe his conduct of many hearings and board meetings, but more importantly I had the remarkable privilege of literally sitting at his right hand for many hundreds of hours, watching decisions evolve and learning why my own efforts at input were either helpful or inadequate. For him, it was an inefficient way of doing business. For me, it has been the cornerstone of an immensely satisfying life as an arbitrator who became sympathetic to both Labor and Management.