

National Academy of Arbitrators  
HISTORY COMMITTEE INTERVIEW

Benjamin Aaron

NAA President, 1962

Interviewed by Gerry Fellman

June 1, 1989

BENJAMIN AARON  
PRESIDENT, NATIONAL ACADEMY OF ARBITRATORS

1962-63

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Fellman: We are attending the 42<sup>nd</sup> Annual Meeting of the National Academy of Arbitrators at the Chicago Hilton and Towers in Chicago, Illinois. It is Friday, June 1, 1989. My name is Gerry L. Fellman. I am interviewing Benjamin Aaron, who was President of the Academy in 1962. This project is sponsored by the Academy History Committee in order to preserve the account of activities and the background of Academy Presidents.

First, we are interested in your personal background. Would you tell us where you were born, raised, and educated?

Aaron: I was born in Chicago, Illinois. But I spent a good deal of my life in California; some in Los Angeles, some in San Francisco. I was educated in the elementary and secondary schools of Los Angeles and San Francisco, finished my last year of high school at Hyde Park High School in Chicago, and then went on to the University of Michigan for my undergraduate work. Following my graduation from the University of Michigan, I entered and, in 1940, graduated from Harvard Law School.

Fellman: How about your employment and service prior to arbitration?

Aaron: Well, the story of that is a very brief one. When I left law school in 1940, I first did a little post-graduate work at the University of Chicago in labor law and then went to Washington, having got married in between. Immediately following my marriage, my wife and I went to Washington, DC. There, I remained unemployed until the establishment of the National War Labor Board in February of 1942. I joined the Board within a few weeks after it was established as kind of chief cook and bottle washer or man of all work. Then, I graduated to a position; I think that was known as Mediation Assistant. Then I became chairman of several commissions: the Detroit Area Tool and Die Commission in Detroit and the National Airframe Panel in Washington. Eventually, I became Executive Secretary or Executive Director of the National War Labor Board and remained in that position until the Board folded in 1945.

Fellman: And then what happened to get you into arbitration?

Aaron: Well, I moved to Los Angeles, to Santa Monica. After brief stints in Tokyo, Japan, as a member of a special labor commission that had been sent over by what was then called The War Department, I returned to Los Angeles and Santa Monica and took a part-time job in the Institute of Industrial Relations at the University of California, which shortly became a full-time job. In the meantime, because of my experience as Chairman of the National Airframe Panel during the war I was asked by several airframe companies to arbitrate cases for them, notably North American Aviation and Douglas Aircraft. Indeed, I think I was the first umpire to be appointed by North American and the UAW. After that, I kept on arbitrating.

Fellman: Were there any mentors along the way that helped keep you going? Maybe you did not need it because of the War Labor Board experience?

Aaron: Well, there weren't any mentors in the sense that the term is used today. But, yes, I had one enormously important mentor: George Taylor, the former Chairman of the National War Labor Board. When I came out to California, a number of representatives from various airframe companies that I had dealt with during the war approached me and urged me to become a full-time arbitrator, promising that they would give me more work than I could possibly handle and saying how important it was to have someone who was so familiar with the industry to be available to them. I discussed that matter with George Taylor, who gave me the best advice that anyone has ever given me on this subject. It was to this effect: Under no circumstances become a full-time professional arbitrator. He told me that I was not meant for that sort of thing and that I was meant to be a teacher and a scholar. He urged me to get, as soon as I possibly could, a connection with the university and to do such arbitration as I could manage on the side as an avocation. He told me that, undoubtedly, if I were to go into arbitration full-time, I would experience some immediate success and probably develop a lifestyle to which I would then want to become accustomed and to continue. He warned me that a number of these companies would fall upon considerably different times in the post-war period and that being dependent upon arbitration as the complete source of income was psychologically very dangerous. He added that, although he knew that under no circumstances would I deliberately alter my decisions to curry favor with one side or the other, subconsciously there is that danger when you know that your whole livelihood and lifestyle depend upon that. I took his words to heart. I resisted all my life the many times and occasions on which people have asked me to become a full-time arbitrator; and, I must say, I have never regretted it.

Fellman: How about the volume of cases in the early years? I guess, this would be talking about when you actually began arbitrating; because you were teaching at the same time.

Aaron: Yes, although the teaching I did was somewhat unusual in nature. There was no law school at UCLA at the time, and I taught classes in labor law to undergraduates in economics and in business administration. It was not as if I were teaching in a

professional school; nevertheless, the teaching duties were quite demanding. As a matter of fact, I also, to increase my income, did some extension teaching. I had a very, very rigorous schedule. Nevertheless, I managed to do quite a bit of arbitration work. In the period just before I returned to Washington as a member of the Wage Stabilization Board, in 1951, I was the impartial umpire for BF Goodrich Company and the Rubber Workers, for which I handled cases for about 7 plants around the country. I think that, plus other ad hoc arbitration that I did, gave me a caseload of something over a hundred cases a year.

Fellman: While you were doing all this teaching?

Aaron: Yes.

Fellman: Now, did you apply to the FMCS, the American Arbitration Association, state agencies and others during your early career as an arbitrator?

Aaron: Well, I was certainly on those panels, so I must have applied. Although, very early on, I got so many cases from the FMCS that I simply was unable to handle them. So I asked them to keep my name on the roster, but not send it out; and that has been so for at least the last thirty years. I gave the AAA similar instructions, but I don't know. In recent years, my name tends to come up on their panels; and I have been accepting cases within the last few years from the AAA. So, I am sure that I did apply, but I simply can't remember.

Fellman: So, it has been a few years.

Aaron: Yes.

Fellman: The next question seems to me is not really applicable to you. That is: What were the greatest hurdles in developing an arbitrator career? It seemed to flow from the War Labor Board.

Aaron: I was one of the very fortunate ones who had built up a kind of a national reputation while I was working for the National War Labor Board; and I never had any trouble breaking into the field. The only problem I had was the period immediately following my service on the National Wage Stabilization Board, during the Korean War. That was because of the Steel Case and its aftermath. The climate at the time was such that, anybody connected with the Wage Stabilization Board and particularly the Steel Case, was regarded with some suspicion, particularly by employers. I went through a year or so, a rather lean period, before my practice then began to pick up again.

Fellman: I see; then go full steam?

Aaron: Yes.

Fellman: Well, now, as to your membership in the Academy. Do you recall who recommended that you join the Academy and when?

Aaron: Well, I was one of the charter members.

Fellman: That is right; you were a charter member.

Aaron: I remember when the whole idea of the Academy was first discussed in the office of the Secretary of Labor, or rather the office of the Director of the US Conciliation Service, who I think was Ed Warren at the time. Then, there was a meeting of a group in Chicago which I was unable to attend. But, they sent me a telegram, inviting me to join as a charter member.

Fellman: So, you were really there in the beginning? Before the beginning, almost at the discussions before the organizing ...

Aaron: At the creation.

Fellman: Creation. That's right. Now, I am wondering about your assignments. Let's start with committees and regional chair. Were you ever a chair of your region?

Aaron: No. As a matter of fact, I am not sure that we had regional system well enough developed to have regional chairs much before I became President. Although, to be very honest with you, that whole period is so remote in time for me that I can remember little or nothing about it. I do remember that I was on a committee called the Ethics Committee, which is the forerunner of the present Committee on Professional Responsibility and Grievances.

Fellman: Did that begin at the very beginning of the Academy?

Aaron: Pretty close to the beginning. I can't remember what other committees I was on. Eventually, I know I was on the Nominating Committee for at least one year. I think I may have served one term as a member of the Membership Committee. I think I was on the, I don't know what the committee was then called, but ... law committee of some kind, labor law committee. I believe I had a hand in formulating or getting started the committee that deals with international correspondents. I know I certainly suggested a number of the members who became correspondents, which grew out of my own international comparative labor law research. I think that may well have been after I had my term as President.

Fellman: Before you became President, were you on the Board of Governors?

Aaron: I was on the Board of Governors and a Vice President; yes.

Fellman: And a Vice President. In regard to annual meetings, have you attended most of the annual meetings?

Aaron: Yes, I have. The first few meetings, I was unable to attend because I simply could not afford to attend. But, thereafter, I was very faithful in my attendance at annual meetings. I have missed very few over the years.

Fellman: How about educational – those fall meetings?

Aaron: No, I have yet to attend one of those, although I am looking forward to doing so.

Fellman: And the regional conferences? Have you attended some regional ...

Aaron: Some.

Fellman: This is all prior to your presidency?

Aaron: That is right.

Fellman: The educational conferences would not be real early – because they did not exist before?

Aaron: I don't think we had regional conferences before I became President.

Fellman: Now, any other contributions to the Academy, before become President, that you can recall?

Aaron: Only my contributions to the annual meeting itself -- the presentation of papers.

Fellman: So, there were a number of times where you were a speaker or a commentator?

Aaron: Yes.

Fellman: Do you think that membership in the Academy affected your caseload?

Aaron: I simply have no way of knowing. If I had to say one way or the other, I would say, No. But I can't be sure about that.

Fellman: I wouldn't think so. It seems as though you were busy with all your teaching, and you were as busy as can be. Turning now to when you became President-Elect. Were you surprised at your selection?

Aaron: Now, in the first place, I don't think I was President-Elect. I checked this with Gabe Alexander just a day or so ago. He was my immediate predecessor, and he verifies that I was not President-Elect when he was President. The first President-Elect was the President who followed me: Syl Garrett. I, of course, remember that very well,

that he and I worked together very closely during my year as President; but I was not anybody's President-Elect.

Fellman: I see. You did not have that transition year?

Aaron: I don't think I was particularly surprised at being nominated President. Enough people had mentioned it to me ... saying, well, next year after Gabe will be your turn and so forth. In those days, it was done somewhat differently than it is today.

Fellman: In preparing to become President, choosing the committee people and all, were you preparing for that prior to your Presidential period? Was there a transitional period at all, or were you just sort of thrown right in?

Aaron: Well, I did all that after I was nominated as President.

Fellman: That is right, because you would have been selected right at the Annual Meeting. You were selected right then.

Aaron: That is right. I was selected at the annual meeting in Pittsburgh, where Gabe Alexander gave his Presidential Address.

Fellman: You were thrown into the water?

Aaron: Right.

Fellman: How about the major goals of the Academy during your term?

Aaron: Well, I set as my major goal something that turned out to be rather unpopular. I wanted to bring more members into the Academy. I felt that we were a little inbred, and I truly believed that in some areas of the country there was a shortage of arbitrators. I wanted to develop education programs for new arbitrators and bring them along to help them become eligible to be members of the Academy. That turned out to be rather an unpopular goal, and I was told in no uncertain terms that there was not any shortage and that some of the members were not getting enough cases, complaints that are more or less endemic in the Academy. And, although we set up a committee and so forth to deal with this problem, I think it is fair to say that the heart of the membership was really not in it.

Fellman: I think you prevailed in the long run, though, considering the increase in the size of the Academy.

Aaron: Yes, although not for the reasons that I had mentioned initially.

Fellman: I see. I see. You mentioned that as one of the major problems. Were there any other major problems or major goals during your term?

Aaron: That was my principal goal; and I must say that, in those days, being President was a much simpler affair than it is now. The Academy was much smaller.

Fellman: Any professional staff at that time?

Aaron: We had a Secretary, Dave Miller, who really, just as the Secretary does today, assumed the major burden of administrative duties; and he was just a tower of strength. He was an absolutely wonderful Secretary, and he helped me in so many different ways, at every step of the way. To a very large extent, I think my duties were largely ceremonial. I was invited to address members (I guess they might have been called local or regional meetings of Academy members) in several different parts of the country. Although I did not travel around quite as extensively as some of my successors have done.

Fellman: Probably did not have the funds that the Academy ...

Aaron: Nor the occasion, really. It was a very peaceful year. I was interested in the program. I followed that very closely ...

Fellman: The program for the Annual Meeting?

Aaron: Yes, plus the selection of the Program Committee and working with the Committee. So there were some duties in connection with the Annual Meeting; but for the rest of the year, I think I had it pretty easy and did not work nearly as hard as many of my successors have had to do.

Fellman: I see. I guess we have already dealt with questions about greatest accomplishments and greatest disappointments. I guess that would be pretty well covered?

Aaron: Right.

Fellman: I think the Academy prospered under your leadership. The effect of the term of office on the size of your case load: Did you have to cut down in order to give these talks in different places of the country?

Aaron: I may have cut down a little bit, although I don't recall it as a time when there was any significant cutback in my case load. As I say, the duties of the Presidency did not intrude very heavily on my normal life.

Fellman: Did you consider any of your committees most important during your term?

Aaron: I have always felt that the Ethics Committee and its successor committees were extremely important. That is the one committee on which I continue to serve, now as the Committee on Professional Responsibility. I have always felt that was an extremely important committee. I was active as a member, not as a committee



member, but as an Academy member, when the Code was being developed; and I wrote quite extensive memoranda to the Committee members about the draft code.

Fellman: This was during your term? Or ...

Aaron: No, it was after my term. But, I played a very active role in that. And, other than that, I recognize the importance of many of the committees. I continue to serve as a member of some of them; but the one that has attracted my lasting attention and concern has been the Committee on Professional Responsibility.

Fellman: That is during your term and since then or before your term?

Aaron: Yes, during my term. I think it was still called the Ethics Committee, if I am not mistaken.

Fellman: What do you consider as the most important qualification or the most important qualifications for Academy presidents?

Aaron: For Academy presidents?

Fellman: Right.

Aaron: Well, it is a little hard to say. I think that it is important that the President have served for some time in the Academy and indicated, by the nature of his service, that he is truly interested in the work of the Academy. I think that, increasingly, as the job becomes more important and more manifold, that some degree of executive ability is probably desirable. But above everything else, I think the President ought to embody in his own life the qualities that we think are most important for arbitrators: integrity, ability, and, well, those are the two outstanding ones.

Fellman: Would you have any suggestions for future Academy presidents?

Aaron: No. We have a number of highly qualified persons.

Fellman: May I? I did not mean suggestions of individuals to come President, but ideas that you think would be useful to them in the future. Things that future Academy Presidents could utilize.

Aaron: No, I don't think I have any profound thoughts on that. I think that most Academy Presidents know what they have to do and generally go about doing it quite well.

Fellman: Finally, how would you characterize the economic and industrial relations environment during your arbitration career?

Aaron: Well, it has gone through what we all recognize as profound changes. When I first started to arbitrate, arbitration was, in terms of any broad usage, relatively new. There was a good deal of suspicion and hostility on the part of the parties towards each other. There was a tendency toward – how should I put it – arms’ length dealings between the parties; and that gradually yielded to more of a cooperative atmosphere and a general adoption of certain basic principles of collective bargaining. In many instances, in my experience, there was a very good relationship between the parties. Collective bargaining in those industries, where it was established, seemed to be doing pretty well.

Since the ‘70s, of course, we have had a very aggressive attitude develop by management, strong resurgence of anti-unionism, and, of course, a dramatic decline in unionism and the number of union members; and the state of collective bargaining has fallen considerably. Now we see evidence that those companies that do not want to have anything to do with unions, and they make no bones about it, are still anxious to get some of the benefits of a collective bargaining agreement, the principle one being some form or method of settling grievance disputes. So, we are seeing the development of grievance-arbitration procedures in unorganized companies. This raises very serious questions for arbitrators; and, indeed, in the Committee on Professional Responsibilities and Grievances, we are trying to come to grips with that, because there are certain ethical considerations that come into play. For example, should an arbitrator accept an appointment in an unorganized situation in which the arbitrator is designated by the company alone and paid entirely by the company? Is it consistent with the arbitrators’ responsibilities under the Code for him to accept appointment under those circumstances? There have been variations of this where the employee is given an opportunity to share in the selection of the arbitrator, when the employee can be represented by someone from the outside of his own choosing. Then some arbitrators, including myself, feel that it is not a violation of professional responsibility to accept payment by the company alone. Other arbitrators still feel differently about that and say that as long as only one party is paying, that that raises serious questions that have to be dealt with; and we are trying to get some sense of how people feel about that. That is an interesting and very serious development that we will have to look into very carefully.

Fellman: I certainly agree. Then, in terms of the future, these are some of the issues that the Ethics Committee will be grappling with. I suppose, maybe wrongful terminations, where grievants are represented, but are vice presidents of companies, and all sorts of different types of grievances that ...

Aaron: Yes, and there is an aspect of this that has troubled me for some time. One frequently hears about it in the proposed legislation, although we still have only one state in the Union that has legislation involving unjust dismissals. But in many of the laws that have been proposed, it is being suggested that, rather than go to the courts, the grievant and respondent go before a private arbitrator. One of the things that concerns me a little bit is that the same companies are apt to come to require the

services of an arbitrator on more than one occasion, maybe frequently. But the individual grievant will be before the arbitrator only once, and then he is gone – or she. So there is some kind of psychological pressure on the arbitrator, who comes to depend upon this kind of arbitration for a large part of his income or her income, to stay on the good side of the employer, who is going to come before him or her over and over again. I am not saying that anybody would consciously say, well this is the side my bread is buttered on, so I am going to favor this side; not at all. But there is that subconscious pressure, and that bothers me a little bit.

Fellman: That is an interesting aspect of it. There is not much of that kind of arbitration up to this point?

Aaron: No.

Fellman: Bit it certainly appears to be something in the future.

Aaron: The only case like that that I have had involved, not a rank and file employee, but a very highly paid executive, and there was no problem of that kind involved at all.

Fellman: Do you see, with the changes, with the unions perhaps being less secure financially in terms of the future, more arbitration or less arbitration? Or do you think that things will change now that there is a change in the holder of the Presidency of the United States?

Aaron: I can't see things changing remarkably one way or the other with the change of the administration from one Republican administration to another. I have been told by many of my colleagues that arbitration cases are coming less frequently, and many more of them are being settled at the last minute. I can't say that I have had too much experience with it in my own practice, although, I do think there are probably more cases that are being settled at the last minute in my experience than previously.

Fellman: It might reflect the economic conditions?

Aaron: Yes, that may very well be the case. I just don't know; but I have discerned no lessening of the desire of some unions to arbitrate, no concern about arbitration fees, and apparently the willingness and the wherewithal to keep on arbitrating and arbitrating – in some instances, as far as I am concerned, much too often. I think there is one major reason for that, and that is the number of cases that are being brought against unions for alleged violations of the duty of fair representation. So that, in almost every discharge case, certain unions feel that they must take it to arbitration, regardless of the merits. I think that is a very, very unfortunate development.

Fellman: Is there anything in addition that you would like to add, things that you can think about, either that are reflections of the Academy or your Presidency or anything else that we have been talking about or related to it?

Aaron: Well, a few years ago, we had a committee of elder statesmen of the Academy who talked about, wrote a report about trends in the Academy and some that they were concerned about, such as the poor quality of some of the awards then being handed down by Academy members and a preoccupation with the money aspects of the profession. I say a profession, but, of course, it is not a profession. It is an occupation. It is not licensed; there are no tests to become a member. It does not have any of the criteria of an established profession, such as law or medicine. But, I found myself completely in sympathy with that report. It is not something that one can always put one's finger on. One hears stories, which, for better or for worse, are usually never backed up with hard evidence. Although, in some instances, I am convinced that what I heard was true. But I hear of things going on among arbitrators generally, and including some Academy members, which I think are outrageous and unethical, and tend to make the occupation less than a worthy one. I bothers me very, very much indeed.

I also am concerned that today most of our new members are full-time arbitrators and that, less and less, members of the Academy have other professions which they pursue full-time and that arbitration is sort of an avocation – for the reasons that I mentioned to you earlier. Those are the same reasons that George Taylor represented to me, which I have always believed to be good reasons, and I have not changed my mind over forty odd years or more of arbitrating. And it concerns me that these young people are under the gun right from the start to make enough money to live on. I think that makes them susceptible to dubious practices, which they may see others doing, and copy, for example, questionable billing practices and the acceptance of cases when they are not in a position to hear them or dispose of them quickly; that kind of thing. That bothers me very much.

I don't want to sound like somebody who keeps saying it snowed harder when I was a boy and things have been going to hell in a hand basket ever since. There are these signs that I find distressing. I am pleased that, increasingly now, we are devoting attention to them. And I also think, although I am only going by hearsay, but I think that these mid-year meetings probably do a good deal to increase the expertise, not only of new arbitrators but of arbitrators who have been practicing for some time and come back for refreshers. I think that arbitrators really need to keep upgrading their skills; anything we do in that direction is all to the good.

Fellman: Fine. Anything further?

Aaron: No, I think that is it, Gerry.

Fellman: Well, I am really pleased to be involved in your interview. On behalf of the History Committee and the Academy in general, I thank you for your cooperation. This is now history.

Aaron: Thank you.