

National Academy of Arbitrators
HISTORY COMMITTEE INTERVIEW

Walter J. Gershenfeld

NAA President, 2003

Interviewed by Joyce Najita

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**TRANSCRIPTION
WALTER GERSHENFELD INTERVIEW
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Najita: This is the interview with Walt Gershenfeld in Minneapolis, Minnesota. Today is Thursday, May 26, 1994. And Walt, we should begin with the first question, or first set of questions dealing with your personal background. So how about starting with where you were born, where you educated, etc.

Gershenfeld: Okay I was born in Philadelphia, Pennsylvania, and went to school there, entered the Army during World War II and served in the Pacific, and came back to finish an undergraduate degree in business at Temple University in 1948. I then went to the University of Pennsylvania, and did a Masters degree in industrial relations, essentially economics, labor and industrial relations, studying under the wonderful leadership of George Taylor, who incidentally was then one of the early presidents of the Industrial Relations Research Association, and gave me an application to join. I now find that I'm the second Philadelphian to be the president of IRRA, am now president elect, with George being the first, and that's quite a thrill. After I finished my Masters I worked for the shipbuilders union from 1949 to '51, and then joined the Wage Stabilization Board for a couple of years during the Korean war. Following the Wage Stabilization Board, I went to work in industry at the International Resistance Company in industrial relations, and the vice president of industrial relations was one of my early mentors and a really superb individual named Walter Powell. The curious thing about this

been swallowed up by a conglomerate, TRW—was that there were 4 of us working together in industrial relations, and all 4 of us are now members of the Academy. So this is kind of rare; Walter Powell, myself, Charles Coleman, and Stan Schwartz worked together for a number of years at this organization. In 1960 I left them to become the head of industrial relations at the Lighting Corporation of America, and after about 4 years there I decided that I wanted to go back to school, get a doctorate, and move into the arbitration world. These were the days when you could arbitrate while still being an advocate, and I actually signed up with AAA and began to receive cases while I was still an industrial relations director. I gave it up and moved to a full-time teaching position at Temple University while I worked on my doctorate. I backed off to part-time teaching because I discovered that consulting in human resources, then personnel, particularly things like putting in a job evaluation plan at a large New York City hospital, was a better way to earn money while trying to support a family with 3 kids and work on the doctorate. The person I worked with on this job evaluation plan was a well-known Philadelphia arbitrator v/ho did consulting work at the time, Herb Unterberger, who was just a magnificent individual. He's not known to many people today, but he was clearly the arbitrator's arbitrator of our time as I knew him. When I worked with him and we'd be in the office, many of the nationally known arbitrators would call regularly and say "Herb, I have this case, and I don't know what to do," and Herb would be the one who would help them; he was just remarkable, and he encouraged me in my arbitration career, and it moved forward very rapidly. Simultaneously, I received a doctorate,

moved out west to teach for a year at Arizona State—no arbitration out there—but I was enticed to come back to Temple University, and my academic and arbitration career picked up immediately. After about 5 years of arbitration, as it happened, I went off on leave to help put in a program in business, with an emphasis on industrial relations, at the University of the West Indies in Jamaica. While I was there, one of the people with whom I was close in the National Academy, and who had encouraged me to apply, knowing what my caseload was, was Lew Gill; and I can remember the day in Jamaica when Lew Gill called and said, "Oh Walt, the Academy met, and you're now a member." This was in 1969, and I felt very good about being a member, while working down there. I came back to Temple University and continued my arbitration career, and became very active writing in the field, speaking in the field of industrial relations generally, doing my arbitration work, and becoming very much interested in arbitration training.

I was involved in helping put on a substantial program in Philadelphia in the early '70s for the development of new arbitrators, and out of that grew an ongoing training program which exists to this day, and has been very successful in getting arbitrators involved, and helping them to understand the field. Some of the new people have no real sense of the history, ethos or background of the field and need to learn about the technical aspects of arbitration. As an illustration, one of the individuals in the training program asked me to look at an opinion he had prepared, but had not sent out for a case. In the award, he wrote that the grievance was denied. In the body of the opinion, he reinstated the

grievant without back pay. He assumed that since he didn't provide back pay he was denying the grievance. You can imagine the furor that would have caused if the parties had seen it. In any event, I've continued to be involved in teaching, research and organizational arbitration activity, primarily in the NAA and IRRRA through the '70s and into the '80s. In the '80s, I became more involved in university administration. After a stint as president of the faculty senate at Temple University, I became acting dean of a large campus with 5,000 students, and did that for a few years. When that was finished, I went into arbitration full-time. Should I turn now to ~~my~~ NAA activity?

Najita: Sure.

Gershenfeld: From the '70s to the present time, I have been very active in NAA, and became chair of four committees. One committee that I co-chaired involved arrangements for the very successful 1986 annual meeting in Philadelphia, I co-chaired that committee with Gladys, and we had a wonderful time doing that. I had earlier been a board member from 1980 to 1982, and chaired the Committee on Public Employment Disputes Settlement from 1977 to 1979. I had worked with Arvid Anderson on that committee and succeeded him for 3 years leading the committee.

In the early '80s, I edited an issue of The Chronicle. In the late '80s I edited the Proceedings, which came under the Publications Committee I chaired from 1984 to 1986.. I discovered we knew very little about how sales of the Proceedings had fallen off. We tried a number of promotional attempts, and found, unfortunately, that many of the sales which we used to be able to count on by university

libraries were no longer there because their budgets had been so drastically cut. I began attempts to make the Proceedings more alive and vigorous. This has been maintained by Gladys Gruenberg, and now Joyce Najita is—I'm sure—going to take it in the same direction.

During 1987 and 1988, I moved into a vice-presidency of the academy.. Shortly afterward I chaired a new Committee on Professionalism Programs, which included the development of a film on ethics in arbitration. That was a loving effort done with a talented group of Academy people who worked with me. We created scripts and approaches to the film, and we were able to get some funding from the Academy itself, the Research and Education Foundation and the American Arbitration Association.

I went to Cornell's ILR school, where they had the expertise and the directorial skills of Bob Julian. We put the film together at Cornell, and it turned out to be an exciting experience. It was also a very consuming one for a period of 3 months, during which I gave about 1/2 my time to the project. One side vignette about making the film offers an insight to people's reaction to arbitration. In the film we had a series of sketches about labor arbitration, and, in many cases the arbitrators were going to be put in compromising positions. We decided to use actors to portray the role of arbitrators. And I had to keep stopping the film because the actors—some of them real actors, and some of them ILR officials who were playing arbitrators—did not know how to behave as arbitrators. For example, an arbitrator would, in the middle of an important opening statement, cap a pen and put it away. You just don't do that—you stay at the ready to take notes. Where an advocate would present a

document for the other side to see before it was offered for evidence, the actor arbitrator would grab it to read it before the other side could see it and possibly raise an objection. The curious thing is that at the end of each day of shooting, with the exception of one individual who had some knowledge of arbitration, all of the actor arbitrators came to me and said "Walt, this is interesting work, how do I go about becoming an arbitrator?" One day of acting was enough to lead them to believe they could become active arbitrators.

I left Temple University in 1988, moved into full-time arbitration work, and continued organizational activity and writing. Also, as I mentioned earlier I'm president elect of the IRRA. We just completed a wonderful national IRRA meeting in Philadelphia, which involved close cooperation with the International Labor Organization. We had excellent speakers from the current Secretary of Labor, Robert Reich, to George Taylor's colleagues, like Lew Gill, Eli Lock, Alan Dash, Tom Kennedy, and others.

One thing that I didn't mention during my years at Temple that I started, and is now an ongoing activity is an annual one-day conference on the teaching of industrial relations. The program covers every facet of industrial relations teaching on a nuts-and-bolts basis, like: The introductory course; what do you put into it, how do you sequence it, and what supplementary materials do you use? We have had a session on how to use the games that are available to illustrate collective bargaining. We've done this year after year since the '70s, and from mid-Jersey to north central Pennsylvania, down to Maryland and southern Jersey and Delaware, come to this

conference. It continues to be successful; it's been picked up by a consortium of people from Temple, Rutgers and Drexel, and I'm very pleased that it's an ongoing event.

Najita: Why don't we get back to the 1970s, early development of arbitrators that you were involved with. Give me some of the details on that: How did it come to be, then also who was involved with that, and what kind of courses, or what issues, topics are discussed?

Gershenfeld: Okay. In the early '70s the American Arbitration Association regional vice president asked me to help him identify a group of people who were either hearing cases for the first time and had heard a few, or who had expressed interest in becoming arbitrators and had not yet heard cases. We developed a multi-day program involving existing arbitrators and advocates, who would be the ones likely to use these people, as instructors. The program was oriented around first an overview of arbitration—where it came from, how it developed, how it works—on a very basic kind of introductory basis, and almost an Elkouri and Elkouri kind of topic by topic approach. We went through the content of arbitration, but we gave equal attention to the topics of how do you listen, what do you look for in evidence, and how do you write opinions? We had opinions prepared by the trainers and reviewed. Once we had the broad basic training in place, we moved to this regular training program which meets once a month, just before the monthly IRRRA meeting. The rules initially were that people who entered the program had to be on the AAA panel and have had at least 5 cases. We've since backed off. If you're on the AAA panel, even if you haven't had any cases, we consider you eligible for participation in the training program. The

way we've kept it alive is that the regional chair of the NAA is responsible. The chair calls on other members of the NAA to help advise, as well as AAA personnel, and each year a program is prepared for a year in advance, one meeting a month covering generally substantive topics of interest that will help the new arbitrators make it. In the early days I was very much involved in leading sessions and in planning them. As time has gone on, the people who've taken over as regional chairs have continued the activity. Most recently, Stan Schwartz has done an outstanding job of organizing and planning these programs. Philadelphia is somewhat unique in that we have an ongoing program and about 15 participants have become NAA members.

We've not been without problems. We've found that some of the trainees would go to the IRRA meeting after the training session, pass out their cards, promote their interest, and we began to receive complaints. We now recognize that one integral part of each year's training program has to be some emphasis on ethical behavior, for which this film is useful. However, it becomes difficult because the caseload has remained relatively stable, and the supply of arbitrators has tripled. New arbitrators are concerned about getting cases. An illustration of today's problems is that if we say when one party wants to look you over in the absence of another party, and they're going to ask you questions about your standards of proof in discharge cases, that's not something you should go to. It's unfair to the other side in a dispute in which you might be picked. Some of the current crop of trainees will say, "Well, we understand the ethical problem it presents, but you need to understand the realities

of the marketplace. The situation is that you people who are well-established get the cases you want, but we who are not established can't get cases until the parties get to know us. If we go out to visit a party, we know how to behave responsibly. If we don't go, someone else is going to go and get the work, and we're not." We have some very lively discussions about the lines you can't cross and can cross. It's clear the difficulties of the marketplace have made it necessary for the new people to raise questions about whether or not ethical behavior is what it used to be. This is now coming to the fore at the Academy in terms of an advertising ban. It also seems quite clear that a listing that's paid for covering factual material, or not paid for covering the same material, both constitute advertising. I have little doubt that factual listings, whether or not paid for, are going to be legitimate under the code in the near future.

Najita: Why did the training become a matter of concern for the regional vice president of the AAA?

Gershenfeld: This was a period in the early '70s when the concern was that the War Labor Board arbitrators were beginning to age, and a new generation of arbitrators had not emerged. Academy membership was between 300 and 400. We've actually doubled membership in the last 30 years, and, at the time, nobody anticipated that. They expected that we would have the slew retirement and passing away of War Labor Board arbitrators over the next 10 to 20 years. Actually the truth is many of them are long-lived, still working, and going strong long after they were expected to be inactive. But the concern was then, in the early '70s, what are we going to do about the coming

shortage of arbitrators? We were also aware of the need for women and minority arbitrators. Less than 10 years later, an overall shortage of arbitrators was a nonissue.

Najita: Of that group of people who did become involved in that training, what happened to them?

Gershenfeld: About 15 people who've passed through that training program are now members of the Academy. It's been enormously successful and continues to be so. There's a mailing list of about 40 to 50, and 25 to 30 come to a session. I'd say there are 5 to 10 who will be in the Academy in the next 5 or 6 years.

Najita: Is this a kind of plan that could be replicated elsewhere, or is it unique only to Philadelphia?

Gershenfeld: I think it could easily be replicated, and in fact some cities were doing the same thing. Cleveland was doing it for awhile. What often happens is that these activities become the planned concern of one individual and, when that individual leaves the scene, the plan dies. We're very conscious of that, and we have deliberately structured into the organizational picture that it is a major duty of our regional chair for the eastern Pennsylvania, New Jersey, Delaware region. We also point each year to the major meeting of local IRRRA and NAA for the year, which is the joint final meeting in May. It's a joint meeting which forces the NAA person and the IRRRA local president to work together to put something on in the area of arbitration which will satisfy the interest of both groups.

Najita: Is the AAA still involved in this?

Gershenfeld: Absolutely. We conduct the training programs at the AAA, using their centrally-located facilities. They help us with

planning; they have ideas as to programs which they think are needed based on their observations, and we integrate that into the system.

Najita: Where do you get your so-called instructors for these programs.

Gershenfeld: We have no trouble. We identify topics of interest, and then we reach out to the membership and to people we know in the industrial relations community, and they've always been happy and anxious to participate. The students are happy to participate, particularly when we have advocates, because they want to meet the advocates; and the advocates are delighted because they--the big complaint of the advocates always is, "We get these lists from triple A or FMCS, and we don't recognize many of the names." In the early days we actually did something that: we've now bypassed. We used to have a once a year cocktail party at the end of the training programs, just for the trainees and the advocates to meet each other and mingle and walk around. We found that they're doing that at IRRA and it was not needed as a separate institution. So there's been a very conscious attempt to keep a supply of trained arbitrators coming.

Najita: Did you say the initial program in the '70s was a one-day training program?

Gershenfeld: Actually it was a 2-day program, and we ran it at a retreat facility operated by Temple University.

Najita: Was there a charge for this?

Gershenfeld: There was a minimal charge. We charged what it cost us to put it on, and as I recall, I was able to get the facility for

free, and the charge was something like \$15 dollars for 2 lunches. All of the participants volunteered their time.

Najita: Yes. No one was paid an honorarium or anything like that.

Gershenfeld: Right.

Najita: The opinion that was written is I guess like a final exercise? Is that what it is?

Gershenfeld: Not necessarily. That's an ongoing effort. We encourage the people in the training program to feel free to call the Academy members and talk to them about questions they have, and what that generates into is that they identify with some Academy member in Philadelphia and they'll say, "Would you mind reading some of my opinions?" So Gladys and I, without having an intern as such, have over the years had people call and say, "Would you read some of my opinions?" The same holds true for other local Academy members.

Najita: Right. I notice that both in your interview and Gladys' interview, there was not much mention of interns, mentoring kind of relationship, but that it's more of a--I'm not sure how to characterize this kind of relationship--but it's an ongoing but less formal but very supportive kind of relationship. What explains that as opposed to other--for example I've noticed, based on my very limited knowledge, but in Massachusetts there's more of a mentoring kind of environment; what explains that?

Gershenfeld: I think it's personal choice. Philadelphia has people who've done our kind of thing. The person in Boston who did this magnificently is of course Bill Fallon. We had a similar individual in Philadelphia who chose to work closely with interns, and his name was S. Harry Galfand. He passed away this last year. Harry had 5

interns that I know of who worked closely with him and who moved on to the Academy. He chose to work on a very formal, continuing basis, of the traditional Fallon type. Gladys and I have found that our schedules have not been such as to have been conducive to a regular intern, so we've worked more on an informal basis, with probably a greater variety of people, but with less depth than the mentor-intern. So it's not that this was a Philadelphia choice, it was an individual choice that varies individual by individual in Philadelphia.

Najita: So far that's about all the questions I have about the training program. If you have other topic areas that you'd like to move on to, we can do that; but I'm also going to ask that you think about talking about what kinds of training programs are needed in light of the environment in industrial relations, its impact on the practice of arbitration, what all those factors portend, or how they would influence the kind of training that we should be thinking about for future arbitrators.

Gershenfeld: Well I think it's clear that, first dealing with the existing Academy membership, we need to provide them with an opportunity for greater mediation training, including people who think they're qualified as mediators. As I mentioned in the talk I gave at this annual meeting, many people are going to find that federal agencies and employer-promulgated plans are raising questions about using mediators first. In this first year of employment disputes under AAA, 15 percent of the cases chose mediation; it's an option available to them before arbitration, and they had almost a 100 percent record of settlement. I think we need to construct

ongoing mediation training programs, probably in cooperation with an organization like AAA, and in concert with organizations like the Equal Employment Opportunity Commission, which is accustomed to mediating disputes about law violations, and would, I assume, be just as interested in handling mediation of disputes which are referred to arbitration. So I think an ongoing mediation training program--an elementary, an intermediate, an advanced level--repeated perhaps every few years, is something that's going to be desirable for Academy members; and insofar as it applies to the field as a whole, the kind of system which emerges needs to be made available to arbitrators who are not yet Academy members. So we should be involved and interested and behind that.

Now, going beyond that, we do an admirable job of covering all facets of labor-management arbitration, and I'm sure we will continue to do so. But we probably need to have some tracks, so that those of our members who are engaged in securities arbitration, or other kinds of arbitration, at least on some regular basis, have access to sessions on both dealing with problems in those areas. The one ongoing area that we'll need to include in our training programs is employment disputes, because they now are in a state of some confusion. For example, we could spend an all-afternoon workshop as to under what circumstances should you consider taking an employment dispute? What standards are meaningful? I picture working in mediation and nontraditional worker-management areas as the principle emphases for the near-term future.

Najita: Is there machinery presently existing in the Academy to take on some of this training?

Gershenfeld: No. It's something that will come about only if the present program committees add it to their agenda, and it may be that we need a new type of committee to facilitate the work of the program committee in these training areas. It may be an adjunct to existing program committees. We need to make it somebody's responsibility, because right now it exists only if program chairs and their committees wind up thinking that this is important. Just to illustrate, I'm going to give a talk next week at a meeting in Florida of the Public Employee Relations Commission, which has an annual meeting of the 40 special masters who work under their jurisdiction. The day before that meeting, they're running a joint session with AAA on how do you become a mediator. So that the day before the content session for the special masters on public employee dispute problems, there's an opportunity to become much more qualified as a mediator, and it's a very effective marriage of the two organizations.

Najita: Who would be doing the training? What kinds of individuals would function as the faculty for this training?

Gershenfeld: We have members who are fully qualified to do it, and they could be supplemented by professionals who come from other organizations. For example, when AAA does training in mediation, it frequently uses training and education leaders, who are very effective in conducting these programs. It would be a mixture of in-house people and other organizations v/hich have highly qualified people to provide these skills. In addition, many of the skills can be imparted through university affiliations.

Najita: Were there other points that you wanted to emphasize Walt,
that we haven't covered so far?

Gershenfeld: I think you've asked the principal, pertinent
questions.

Najita: Thank you very much Walt for a fine interview.

Gershenfeld: Thank you Joyce.