

National Academy of Arbitrators

ORAL HISTORY PROJECT

Harry H. Platt.

Interviewed by Joseph Krislov

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ORAL HISTORY COMMITTEE
NATIONAL ACADEMY OF ARBITRATORS

INTERVIEW WITH HARRY H. PLATT
BY JOSEPH KRISLOV
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HOW DID YOU BECOME AN ARBITRATOR?

In 1943j when Region XI of the National War Labor Board was established in Detroit, I was asked to serve as a public member on a tripartite panel to hear and decide union-industry disputes referred and to be referred to the Board for settlement. I was interested in helping out in the war effort, but was unsure about how much time I could devote because I was engaged in full-time law practice. I subsequently agreed to do it and heard my first case sometime in June, 1943- The dispute involved a demand for a general wage increase. The employer was a Detroit area manufacturer engaged almost exclusively in war production. The dispute was heard by a three-member panel comprised of a labor member, an industry member, and a public member. I was the public member and chairman of the panel. Our function was to hear and investigate the submitted issue and to make findings and recommendations for settlement. As panel chairman, I prepared and submitted a report of our findings and recommendations to the Regional Board for final decision. It set out the issues, the contentions of the parties, the relevant recommendations. In this, as in most of the cases, the labor and industry members of the panel concurred in my findings and recommendations. In cases where the panel was not unanimous, a dissenting member had the privilege of noting his dissent or writing a dissenting opinion, which was attached to the majority's report.

I also heard cases as a single Hearing Officer without a panel and submitted my findings and conclusions to the Regional Board which made the final decision. Between 1943 and May, 1945, when I heard my last WLB dispute case, I had served on panels or as Hearing Officer in about 75 dispute cases.

COULD YOU TELL ME MORE ABOUT THE ISSUES PRESENTED TO YOU AS A PANEL MEMBER OR HEARING OFFICER?

Typically, the issues concerned union demands for general wage increases, retroactive pay, premium pay for overtime work and for second and third shift work, pay for holidays not worked, pay for reporting to work as scheduled when no work was available, vacation pay, fringe benefits, seniority rules in lay-offs, transfers and promotions, etc. There were also issues pertaining to union security.

In the early months of its operation., the National War Labor Board established principles and standards to guide tripartite panels and regional boards in handling union security demands. For example, it formulated a maintenance-of-membership clause with a 15-day escape provision, which tripartite panels and hearing officers routinely recommended to be included in agreements whenever a responsible union requested. Demands for inclusion of grievance settlement provisions, with arbitration as a last step in the procedure, were also routinely recommended and ordered in dispute cases. Other issues concerned management rights and obligations, employee discipline, and appropriateness of suspension and discharge penalties meted out. Most often, though, discipline cases, except those involving suspension or discharge for instigating or participating in work stoppages that interfered with war production, were referred to arbitration instead of being decided by a tripartite panel.

One of many interesting cases I heard as chairman of a tripartite panel involved a machine products company in Muskegon, Michigan engaged in making gun mounts for the U.S. Navy. A wildcat strike occurred and because of the critical need to get the plant back into operation, an emergency panel hearing was scheduled. The work stoppage was triggered by the company's refusal to accede to a union request that one of the employees, a piece worker who refused to limit his rate of output as demanded by some of his co-workers, be summarily discharged. His refusal and the company's refusal to terminate him brought both of them almost instant national press and media attention. And indeed, he did not keep it a secret that his refusal to limit his rate of output was motivated by patriotism and a feeling that the wartime needs of the nation demanded greater output, not less. After the strike ended, the company discharged 41 employees for instigating and participating in the walk-out. The propriety of their discharges and the union's demand for the pieceworker's discharge were two of the critical issues submitted to the panel for investigation. After a lengthy hearing, we found and recommended to the Regional Board that both the union's demand for the pieceworker's discharge and its demand for reinstatement of the 41 discharged strikers be denied. The Regional Board agreed with the recommendation that the incentive worker not be terminated but disagreed that the 41 discharged strikers be denied reinstatement. On the company's appeal to the National War Labor Board, that Board in an opinion by George Taylor, reversed and set aside the Regional Board's determination and adopted the panel's recommendation.

Relating this bit of background experience in wartime disputes may not strike you as a direct response to the question of how I became an arbitrator, but I doubt if I would ever have become a labor arbitrator were it not for my war labor board experience and the exposure to union-management relations problems and the training and knowledge I gained in labor disputes settlement procedure and practice while serving on the WLB. I am sure this applies equally to a number of Academy members who acquired their experience and skills as arbitrators through War Labor Board service during World War II.

WHAT ABOUT YOUR EXPERIENCE DURING THIS PERIOD AS AN ARBITRATOR IN CONTRAST TO YOUR ROLE AS A PANEL CHAIRMAN MAKING RECOMMENDATIONS TO THE REGIONAL BOARD?

By the time the War Labor Board was terminated in 19⁵, I had already handled some arbitrations, mostly cases referred to me by the National and Regional War Labor Boards. I of course continued to practice law. I also began to receive requests from unions and companies to arbitrate their grievance disputes; and my name soon appeared on the American Arbitration Association list of labor arbitrators. Interestingly enough, I was recommended for the Association list by a UAW representative with whom I had just negotiated a pension plan for a client.

LET'S SKIP TO THE POST WORLD WAR II PERIOD IN WHICH YOU ARE NOW BEING REGULARLY SELECTED AS ARBITRATOR. CAN YOU TELL ME HOW YOU WERE SELECTED? HOW FREQUENTLY?

Between 1946 and 19⁹, I was selected by different companies and unions to serve as ad hoc arbitrator in about 70 to 80 dispute cases. They involved, typically, disciplinary suspensions and discharges, claims of seniority violation, alleged breaches of overtime, vacation and holiday pay provisions, and, in general, questions of contract interpretation and application. In 19⁹, I received my first interest arbitration case, a wage dispute. I also was appointed to my first umpireship in 19⁹.

OKAY. LET'S TAKE A LOOK AT THE 70 OR 80 CASES DURING THAT PERIOD. I CONCLUDE FROM WHAT YOU HAVE SAID THAT YOU STILL WOULDN'T HAVE SEEN MUCH DIFFERENCE IN THOSE CASES AND IN THE WAY THEY WERE HANDLED AND IN THEIR PRESENTATION, AND SO FORTH, THAN THE CASES YOU HAVE TODAY?

That is true as far as the hearing went and the people who attended them. Generally, those who participated in the hearings on behalf of the union were the officers of the local union involved in the dispute, one or more representatives of its international union who usually presented and argued the case, members of the local union bargaining committee, the grievant, and union witnesses. In earlier years, I arbitrated frequently in Muskegon and Grand Rapids, Michigan and Leonard Woodcock was the international representative in a number of those cases. Those who appeared for companies were mostly supervisors, witnesses, and company lawyers. The unions seldom were represented by lawyers in grievance cases. In interest arbitration cases both sides were usually represented by attorneys.

IN ALL YOUR CASES, HAVE YOU FOUND EXCESSIVE EMOTIONALISM A SERIOUS PROBLEM?

In earlier years, representatives on both sides often used less than genteel language and argued vehemently and with considerable emotion in the belief, no doubt, that that was the way to persuade an arbitrator of the correctness of their position. But with the passage of time, as both sides gained in experience and sophistication, they have become professional and more responsible in their presentations and in their attitudes and conduct. Where I have served as

umpire, the employer's cases were presented mostly by lawyers; the union's cases were not. In one of the companies where I served as permanent arbitrator, both the company lawyer and the union representative were extremely capable, conscientious, cooperative and desirous of advancing the parties' relationship. In other places, I found the company representatives often did a better job of preparing and presenting cases than the union representatives.

WHAT ABOUT TRANSCRIPTS AND BRIEFS?

That depended pretty much on what union was involved. For instance, the UAW was not overly enthusiastic about transcripts or extended hearings and briefs. One of the main reasons was that they did not want to incur or share the cost of transcripts and, too, they did not believe any useful purpose would be served by having the hearings transcribed. On the other hand, both the companies and unions in the steel, airlines, newspaper and a number of other industries regularly had and continue to have their arbitration hearings transcribed. As for myself, I have found that in cases in which technical evidence is introduced and where the facts and issues are complex, transcripts are desirable and often indispensable.

WHAT ABOUT YOUR ARBITRATION OPINIONS? HAVE THEY CHANGED OVER THE YEARS?

Well, I suppose they have. Many of the cases I have arbitrated, particularly in recent years, have involved novel and difficult issues which required detailed analysis and discussion of facts and argument and required making careful findings and conclusions. I don't suppose I will every be completely satisfied with the quality of my opinion-writing, but I think that, by and large, my present opinions, which are often the product of brooding rather than the windfall of inspiration, are an improvement at least in style and effectiveness over the earlier opinions.

YOU WERE TALKING ABOUT THE UMPIRESHIPS AND ABOUT INTEREST ARBITRATIONS. LET'S TAKE THE UMPIRESHIPS FIRST. TELL US ABOUT THEM. HOW YOU WERE APPOINTED, YOUR SERVICE, AND WHAT YOUR CONTRIBUTION WAS.

I obtained my first umpireship in 19⁴⁹ when I was chosen by L.A. Young Spring and Wire Company, an automobile parts supplier, and the UAW to serve as permanent arbitrator under their collective bargaining agreement. I held the office seven years. An international union representative appeared for the local union in the arbitration hearings and the company was represented by its Industrial Relations Director. The hearings were informal, testimony was not taken under oath, there were no transcripts and no posthearing briefs (except when requested by the arbitrator). Each party submitted a short prehearing written statement of the nature of the grievance claim, the company answer, and the agreement provisions the parties were relying upon. Decisions were rendered within 30 to 45 days after the close of the hearing.

In 1950, I was selected as umpire under the labor agreement between Firestone Steel Products, a Division of Firestone Tire and Rubber Company, and UAW Local 174, and later that year, I was appointed to serve as a temporary umpire by Ford Motor Company and UAW. Harry Shulman was the permanent umpire under their collective bargaining agreement. He held the office from 1942 until he died in March, 1955- Harry was a very special person; he was a warm, wise, compassionate person and a highly skilled and universally respected arbitrator. He was also a legal scholar, distinguished law professor, and Dean of the Yale University Law School. As a high Ford executive once observed when speaking of Harry Shulman, "It took rare courage, patience and tact to hear out both sides, to go back of the arguments to the facts, and to the underlying human problems of the job, and to prescribe a remedy for the issues which both parties would accept."

Shulman's basic philosophy was that the grievance procedure was a safety valve which should be utilized freely by the employees to obtain redress for violation of their contract rights. He felt strongly that workers should articulate their problems and grievances in discussions with their supervisors. And, he encouraged appeals to the umpire to obtain proper adjustment of grievances. As this had been going on since 19³ with the company's knowledge, the rapid increase in the volume of umpire appeals made it necessary, by 1950, to appoint a second temporary umpire, and I was appointed (Ronald Haughton having been appointed earlier in the year as the first temporary umpire).

The designation "temporary umpire" had no special implication or significance. The term was used to distinguish between the permanent umpire and the supplemental (temporary) umpires. The temporary umpires had the same jurisdiction and authority under the collective bargaining agreement as the permanent umpire. But there was a difference in the type of cases they were assigned. They mostly heard and decided cases which involved no dispute as to principle and discipline cases, and cases of alleged contract violation, the issues in which had already been decided in an Opinion by the permanent umpire. Only he decided cases by Opinion and Award. The Opinions had precedential force and were printed. The temporary umpires issued unprinted memoranda and awards in which they followed precedent to the extent that there was precedent in Shulman's Opinions. All decisions of the permanent and temporary umpires were final and binding on the parties.

In the period between 1950 and 1955, I decided nearly 400 cases as temporary umpire. Actually, more were heard because some of the memoranda decisions covered multiple grievances and issues.

YOU SAID "WE" ISSUED DECISIONS AND I'M WONDERING IF THERE WERE OTHER PEOPLE EMPLOYED AS TEMPORARY ARBITRATORS DURING THIS PERIOD.

Yes. Ronald Haughton was the first temporary umpire. He was a full-time salaried employee of the umpire staff. Later, as the volume of umpire cases increased, David Miller, who was also a full-time employee and administrator of the Ford-UAW Pension Plan, was named as the third temporary umpire.

Shulman also decided cases by unprinted memoranda. In the 12 years he was umpire, he wrote 284 Opinions and between 2,700 and 2,800 memorandum decisions. No rigid test differentiated the cases decided by memoranda from those decided by Opinion and Award. Typically, memoranda were written in cases which involved no dispute as to principle, or were not of general interest, or which involved an issue that had already been decided in an Opinion. Or as Shulman used to say, when he just did not have the time or energy or spirit to write a "lasting" Opinion.

HOW MUCH TIME DID YOU DEVOTE TO YOUR FORD WORK?

As temporary umpire, I heard cases two days a month and I stuck to that schedule from 1950 to 1953- In 1953 and 1954, I cut down my hearing schedule to two days every two or three months. That was because I remained active in law practice and my ad hoc arbitration designations increased and were consuming more and more of my time. In addition, I was selected in 1953 by International Harvester Company and the Farm Equipment Workers-UE to serve as umpire under their agreement. I held the office two years during which I decided about 250 cases. Later in the same year, I was appointed umpire under the agreement between American Seating Company and UAW. I decided about ten cases in the period between 1953 and 1955, most of which involved critical incentive pay issues. I was told by the parties afterwards that I had settled all of their incentive pay problems which was probably a bit of an exaggeration. But the fact is that they have not had any later grievances for me to decide, incentive plan or other issues, although I am still the umpire under their agreement. Both parties have insisted on continuing to pay me an annual retainer as umpire under the agreement.

The following year, in 1954, I was appointed umpire under the agreement between Republic Steel Corporation and United Steelworkers of America. I was their first umpire. I held that office until 1959 when I resigned because of the large volume of cases they had. I was then doing ad hoc work as well as Ford umpire work and it became a question of whether I should give up my temporary Ford umpireship or the Republic Steel umpireship. I decided to resign the Republic Steel post.

WHAT ABOUT SOME OF YOUR DECISIONS AT REPUBLIC STEEL?

I decided over 250 cases as umpire under the Republic Steel - Steelworkers agreement. Among those decisions, one in particular stands out in memory. It was a 1957 decision which involved an employee who was discharged for refusing to cooperate with a congressional committee investigating communism by invoking the First and Fifth Amendments and refusing to answer certain questions of the committee. I held that even if refusal to cooperate with a congressional committee were deemed an industrial offense subjecting an employee to discipline under the collective bargaining agreement, he was not required to cooperate to the extent of abandoning his

constitutional rights under the First and Fifth Amendments. In the case before me, I found that the grievant did not occupy a "sensitive" position in the plant and there was no evidence indicating that he ever did anything to endanger the employer's property or personnel. Furthermore, the grievant testified at the arbitration hearing that he was not then and had not been for some time a Communist Party member. I determined that whether an employee is a security risk was a factual question and an affirmative answer may not be assumed from his failure to deny the allegation. However, inasmuch as the company might have acted differently had the grievant denied present Communist membership before he was discharged, I ordered him reinstated but without payment of lost earnings.

LET US RETURN TO THE TIME WHEN YOU BECAME PERMANENT UMPIRE UNDER THE FORD-UAW AGREEMENT. FIRST, I UNDERSTAND THAT SHULMAN'S DEATH IN 1955 BROUGHT ABOUT A REASSESSMENT OF THE UMPIRE ROLE AT FORD. COULD YOU SUMMARIZE WHAT THE COMPANY THOUGHT WAS THE DIFFICULTY AND WHAT ACTIONS WERE TAKEN?

The company had complained for a long time about the number of cases appealed by the union to the umpire step. In its presentation to the union during the 1955 contract negotiations, the company pointed out that while many hundreds of grievances were appealed to and decided by the Ford umpires each year, the General Motors umpire had relatively few cases to decide, noting for example that the GM umpire rendered 44 decisions in 1954 while the Ford umpires in the same year rendered more than 750 decisions. The company stated it was also concerned about nearly 1,200 cases that remained pending at the end of 1954. When provision was made in 1949 for appointment of temporary umpires, the parties' main objective was to reduce the volume of cases to the point where a single umpire could keep reasonably current. The company believed that better screening and a more responsible approach in the lower steps of the grievance procedure would operate to reduce the high volume of umpire cases. The temporary umpire expedient, it reminded the union, was provided as only one aid in reaching that objective; it was not contemplated that a multiple umpire system would be permanent. The company deplored the fact that Shulman encouraged extensive use of the grievance procedure and appeals to the umpire and more importantly that he was willing to go into cases individually to work out a solution rather than require the parties to provide the facts and background material necessary to render an opinion. And it continued to stress that hundreds of cases Shulman heard remained undecided at the time of his death, many of which he had held for more than a year following the hearing, because he believed it would be in the parties' best interest to delay rendering decisions in particular cases. At the time of his death, Shulman had 307 cases which he had heard over the years and had not decided. What the company proposed was that the parties select a new permanent umpire who would place a greater responsibility on them to present their cases and be less concerned with protecting them from themselves.

OKAY. SO THE COMPANY AND UNION DECIDED ON A DIFFERENT APPROACH AND THEY APPOINTED YOU AS THE PERMANENT UMPIRE. HOW DID YOU CARRY OUT THIS STEWARDSHIP? MY UNDERSTANDING IS THAT YOU WERE THERE FOR TWELVE YEARS AFTER YOU BECAME PERMANENT UMPIRE.

Yes, after serving five years as temporary umpire. As permanent umpire, I heard and decided between 1,300 and 1,400 cases. One thing I did was to cut down on the number of opinions, deciding most of the cases by memorandum decision.

LET ME BACK UP TO TWO THINGS THAT STRIKE ME HERE. ONE IS THE MAIN CRITICISM OF SHULMAN WAS HIS ENCOURAGEMENT OF THE PARTIES AND PARTICULARLY THE UNION TO APPEAL CASES TO THE UMPIRE STEP. APPARENTLY, YOU MUST HAVE DONE SOMETHING TO DISCOURAGE CASES BEING APPEALED TO YOU.

No, I did not discourage appeals to the umpire. I believed that whether a grievance should be appealed to the umpire was a decision for the union alone to make. I accepted all cases that were timely appealed and that were within the umpire's jurisdiction.

MY SECOND OBSERVATION IS APPARENTLY SHULMAN HEARD SOME CASES WITHOUT DECIDING THEM. YOU DID NOT DO THAT?

That is right. I decided all the cases I heard.

OKAY. JUST AS CURIOSITY, WHAT ABOUT THOSE 307 CASES THAT HE HEARD AND THAT HE NEVER DECIDED? WHAT DID YOU DO ABOUT THEM?

The parties settled most of them. But we did rehear some. Incidentally, shortly after I became the permanent umpire, the parties appointed two additional temporary umpires to assist me in bringing the volume of regular and backlog cases up to a current basis, hopefully, by the end of 1956 or 1957. Ron Haughton left us at about that time to take a position as co-director of the Institute of Labor and Industrial Relations at Wayne University, which left David Miller as the sole temporary umpire. The two new temporary umpires were Charles Killingsworth and Saul Wallen. Both were nationally prominent, experienced and highly regarded arbitrators. They served as Ford temporary umpires from 1955 until 1958, by which time the volume of umpire cases had been greatly reduced to a point where it was believed that I could comfortably handle our future agendas with the assistance of a single temporary umpire. In addition, the union was doing a better job of screening grievances and appeals to the umpire so much so that by 1959, the cases pending in the umpire step numbered less than fifty. This marked a change in case history at Ford from one of high volume arbitration to low volume arbitration.

YOU SPOKE ABOUT UNUSUAL CASES YOU DECIDED AS FORD UMPIRE. WHAT WERE SOME OF THEM?

I decided a number of important issues between 1955 and 1967. Two come readily to mind as being of major significance. One was decided in 1958 by Opinion 3-14 (incidentally, Shulman's Opinions were of the "A" series and mine were the "3" series). B-14 took a broad

look at the problems of job assignment in the skilled trades in the Rouge Plant. Of the many problems that confronted Ford and the union from the beginning of their relationship in 19¹, few caused more bitter controversy than the issue over which skilled trades may properly be assigned to perform particular work. The union had complained for a long time that maintenance management at the Ford Rouge Plant was ignoring established trade lines of demarcation in the assignment of skilled trades jobs. More specifically, it contended that assigning work to skilled tradesmen that was wholly different from and unrelated to their own specialized trade was an improper assignment which they had a right to refuse and to take a lay-off instead. Harry Shulman had so ruled in 19⁶ in a case involving a tradesman who was disciplined for refusing a job assignment which he believed to be improper because it was work outside his trade. The company, not being entirely convinced by the Shulman ruling, decided to resubmit the issues in the context of a work assignment dispute, not a discipline case. The case before me which involved that issue and other related issues of job assignment in the skilled trades took a long time to present and was argued extensively both orally and by brief. Incidentally, it was one of the few cases that was presented and argued by the union general counsel's office. The company was represented by outside counsel and by its own umpire proceedings attorneys.

In Opinion B-14, I reaffirmed the decision that a skilled tradesman may not be required to do work wholly different and unrelated to the central skill of his trade and if such bald assignment is attempted because of a shortage of work in his trade or a desire to get the other work done, he may refuse it and take a lay-off instead.

A number of the cases decided by Opinion B-14 involved work assignments which fell within the scope of two or more trades but which were claimed either by the grievant or the protested employee to be work within the exclusive jurisdiction of his trade. For example, work assigned to a millwright was often protested by a tin-smith who claimed it was work belonging in the exclusive jurisdiction of his trade and could not properly be assigned to millwrights. In a number of cases, millwrights challenged assignments of work to electricians. Riggers protested the assignment of millwrights to erection and dismantling of gin poles on the roof of one of the plants. In all such cases of overlapping skills, Opinion B-14 decided that where work assigned was within the normal and proper scope of two or more trades, management was free to assign it to any of those trades, as the situation dictated.

Other cases dealt with assignment of "incidental tasks" to skilled tradesmen. The union was greatly concerned over this issue because of management's oft asserted position that a protested assignment involved tasks that were relatively minor or insignificant and was work which the tradesman assigned was capable of performing, whether it fell within the normal and proper scope of his trade or not. Opinion B-14 defined an incidental task as a relatively minor task - not just a trivial or insignificant task - which is complementary to

a principal job. The time it takes, I stated, may be large or small, as long as it is short in relation to the principle job. The Opinion went on to hold that incidental tasks are not limited to those arising in the course of the principal job; they may also occur at the beginning or end of the job and as such, they can be properly assigned to the principal tradesman on the job.

Finally, Opinion B-14 affirmed the principle, challenged in numerous grievances by various tradesmen, that in emergencies the company may make assignments across trade lines.

SO THAT WAS ONE OF THE FIRST IMPORTANT DECISIONS AS PERMANENT UMPIRE?

Yes. It was decided in January, 1958 and, despite the heat it generated at the time, the parties afterwards reaffirmed the principles of B-14 by incorporating them in the Skilled Trades Work Assignments Section of the 1964 and subsequent collective bargaining agreements as factors to be considered in making skilled trades work assignments.

WAS THERE ANOTHER MAJOR DECISION YOU WISH TO TALK ABOUT?

Yes. The costliest strike in the company's history occurred in 1963 at its Stamping Plant in Chicago. It was a wildcat work stoppage that lasted nine days and compelled the closing of 31 company plants and idling more than 47,000 Ford workers. At the company's request, an emergency umpire hearing was scheduled and held in Chicago during the strike to determine the specially submitted issue of alleged breach by the union of the no-strike provision of the collective bargaining agreement and the company's request for an order enjoining picketing and continuation of the strike by the local union. At the conclusion of the hearing I determined, on the evidence presented, that the work stoppage was illegal and in violation of the parties' agreement and I ordered the local union and its officers and members to end the strike forthwith and to cease and desist from picketing the plant.

An arbitrator's authority to make an award enjoining an illegal strike was a lively topic of discussion in labor circles at that time. Under Federal law, Federal courts could not issue an injunction to end a strike but State courts could. And so the company immediately after the award was made, petitioned the Circuit Court in Chicago for an Order confirming my award. At a hearing in open court, at which both the company and Union were represented by counsel, a Judge of the Circuit Court of Cook County confirmed the award and issued a permanent injunction restraining all picketing and ordering an end to the strike. The ending of the strike following the injunction did not, however, end the controversy because the company then discharged the local union president and a number of other employees for instigating and participating in the stoppage. Grievances were immediately filed by them protesting that they were discharged without proper cause.

In a subsequent hearing on the merits of the grievances, I found that there was just cause to discharge the local union president for his part in the wildcat strike and to discharge eleven rank and file union members for their participation in the unauthorized and illegal strike and for picketing the plant. The discharge penalties against three other rank and file members were modified because their picketing activity was minimal. They were ordered to be reinstated with full seniority but without back pay.

Opinion B-22 decided the individual grievances of the discharged employees. It held that by failing to prevent the stoppage when he had a positive duty to act to prevent it, the local union president gave leadership to the stoppage and encouraged employees to continue it. More than that, as union president, he was obligated to take affirmative action to halt all picketing, which he failed to do. Further, it held that because it was unauthorized and illegal, the strike should have been disavowed by the president and he should have ordered it to end. For failing thus to act responsibly and in obedience to the union's no-strike pledge, the penalty of discharge was for proper cause.

As for the discharged rank and file members, the Opinion declared that picketing in furtherance of an illegal and unauthorized work stoppage was prohibited by the agreement and employees who engaged in such activity are properly subject to discipline.

In 1967, I decided another case which became a cause celebre — not because of its uniqueness, but because it evoked a union request for my resignation. The case involved a subcontracting Issue submitted to me for decision shortly before the 1967 contract negotiations between the UAW and the big three auto companies began. The international union and the national Ford department had announced publicly a short time before that a major contract demand would be a proposal by the union to place a strict limitation on the auto companies' right to subcontract work. Both Shulman and I made decisions in subcontracting cases over the years, but the union was not pleased with some of them.

In the case before me in 1967, the union protested that a subcontractor's employee was permitted to run a baling machine for rubbish and other waste materials at two companies plants in New Jersey. The baling machine was owned by Ford, not by the subcontractor, which the union viewed as an important distinction and a factor warranting a different holding from decisions on subcontracting made in earlier umpire cases. I found, on the evidence presented, that the protested rubbish removal work by the subcontractor's employee did not violate the seniority provisions of the agreement or the union recognition clause, even though bargaining unit jobs were eliminated and the subcontractor's employees used Ford-owned balers and performed the baling work on company premises.

The union was not pleased with the decision, coming as it did just before the 1967 national contract negotiations began and it requested my resignation as Ford umpire. The resignation was highly publicized in the national press and there was a good bit of

speculation on the reasons for the requested resignation. While some speculated that the request was dictated to a large degree by union dissatisfaction with rulings on the key subcontracting issues, others believed that a more likely reason for the request was the union's desire to underscore the seriousness of its demands for more say on subcontracting. But, as BNA observed in its Daily Labor Report, there was general agreement that neither the umpire system at Ford nor my job performance as umpire were put in question by the request for my resignation.

Ironically, UAW did not prevail in the negotiations with any of the auto companies even after a long strike. It did not get what it wanted on the subcontracting limitations either at Ford or at any other auto company. My earlier rulings on those questions have continued to be adhered to and enforced.

WE HAVE BEEN TALKING ABOUT YOUR PERMANENT UMPIRESHIPS. IF YOU GO BACK TO THE 40'S AND 50'S, MANY PEOPLE THOUGHT THAT AD HOC ARBITRATION WOULD GRADUALLY DIE AND PERMANENT ARBITRATORS WOULD TAKE OVER. YET, TODAY, MOST ARBITRATION IS STILL AD HOC. HOW DO YOU ACCOUNT FOR THE FAILURE OF THE PREDICTION THAT THERE WOULD BE WIDESPREAD PERMANENT ARBITRATORS?

Most umpire systems were established in major industries by companies and unions with heavy grievance caseloads. Small and medium-sized companies and unions have not felt the need of a structured umpire system. It is generally felt that an arbitration system should fit the industrial relations environment in which it must operate; and in the vast majority of employer/union relationships, the parties simply have not felt the need to employ a single, permanent arbitrator. The reasons vary. In small and medium-sized enterprises, both unions and managements are more cost-conscious and less willing to commit themselves to payment of a predetermined fee for the umpire's services. Also, where arbitration is new to the parties, there is a desire on their part to experiment with different arbitrators and to choose them on the basis of their special qualifications for the disputes that arise. Another reality is that because of the tenure requirements under most umpire agreements, the parties may be fearful of becoming saddled with an arbitrator who proves to be incompetent or otherwise unsatisfactory.

Incidentally, what has been happening recently is that companies and unions who are regular users of arbitration are establishing their own panels from which they select arbitrators in individual cases. The panels are usually made up of from three to ten neutrals who are selected by joint agreement to serve for the term of the contract unless sooner terminated by mutual agreement of the parties. When a dispute arises, it is submitted to a tripartite board of arbitration comprised of a union representative, an employer representative, and a neutral third arbitrator who acts as chairman. The neutrals are usually listed on the panel roster in alphabetical order and serve in rotation. The first case submitted is assigned to the first arbitrator on the list and each subsequent case is assigned in rotational order to the arbitrator next on the list. Actually, the arbitration panel system provides advantages to the parties similar in many respects to those provided by an umpire

system, e.g. in avoidance of controversy in choosing an arbitrator each time a case arises, etc. This has proved to be quite a satisfactory system for many companies and unions and which no doubt accounts for the greater current resort to ad hoc arbitration.

DID YOU EVER THINK YOUR ROLE DIFFERED IN AN AD HOC CASE FROM A CASE ARISING UNDER A PERMANENT UMPIRESHIP?

Yes, to a degree. Much depended on my contractual authority and jurisdiction. The scope of jurisdiction and the limitations upon my authority were, of course, what the parties had agreed that they should be. In a way, I felt a greater responsibility for the decisions made as umpire. For one thing, I was more familiar with the agreement under which I served as umpire and with the parties' expectations, their collective bargaining history and experience and their attitudes, concerns, etc. I also had a strong sense of responsibility for consistency in my umpire decisions and for their effective use as precedent in later cases. While serving as umpire, I frequently met with the parties on a social basis. In that way, I became better acquainted with them and with their general thinking and attitudes, which I found of great assistance.

MANY PEOPLE WANT TO BECOME ARBITRATORS. WHAT WOULD YOU SUGGEST TO THEM?

I think it is important for one who wants to be a labor arbitrator to be moderately informed in industrial relations matters, collective bargaining principles, labor legislation and dispute settlement procedures. To be sure, one is not required to be a lawyer or college professor to qualify as an arbitrator. What one needs is to have a sense of fairness and impartiality, intelligence and sound judgment and discretion.

From what I have observed, not many people who say they would like to be arbitrators have an understanding or true appreciation of the functions and responsibilities of a labor arbitrator. For them, I would suggest a course of training and study in principles of industrial relations, arbitration procedures, and decision-making. As you know, the National Academy of Arbitrators, the AAA, FMCS, and others have programs for development and training of labor arbitrators. I would suggest to anyone who is serious about wanting to become an arbitrator that he/she enroll in one of the ongoing training programs.

Another suggestion for would-be arbitrators is that they make themselves available to serve as apprentices to established arbitrators. In fact, a number of arbitrators became arbitrators in just that way. They first worked as apprentices to arbitrators who served as umpires in major companies and industries, notably steel and auto. Incidentally, I myself have had the opportunity over a number of years to train and develop new arbitrators. They served as my apprentices for a time, then as hearing officers and/or associate arbitrators. A number of them later went out on their own

and have become highly qualified and widely sought-after arbitrators. The first one who served an apprenticeship with me was Dick Mittenthal, a past president of the Academy and now a highly successful arbitrator. Dick trained and worked with me full time for about five years, first as an apprentice arbitrator and later as associate arbitrator. Just before Dick left, I employed another young man, Stanley Aiges, who wanted to become an arbitrator and who served for about three years as my apprentice. Stanley ultimately was accepted for membership in the Academy and is now a successful arbitrator in the East. A few years later, a young Michigan Law School graduate, Paul Glendon, wanted to become an arbitrator and I employed him as my apprentice. Paul was a hard worker and a fast learner. In addition to engaging in law practice, he worked part-time with me as an apprentice arbitrator and later as my hearing officer and associate arbitrator. During the seven years he was with me, he worked on a number of important cases and gained a tremendous amount of experience. Now a full fledged, highly skilled arbitrator, he was admitted to membership in the Academy last year and is enjoying high acceptability as an arbitrator. Needless to say, it has been a source of deep gratification for me to have had a part in the training and development of these arbitrators.

WHAT IS YOUR ATTITUDE TOWARD ARBITRATOR'S CERTIFICATION?

If you mean what is my attitude toward a formal certification program established by the Academy or by a State Board for passing on the qualifications of arbitrators or of persons who want to become arbitrators, I would not favor it. No need for arbitrator certification has been shown and no serious demands for certification have been made by the regular users of arbitration, insofar as I am aware. Such a program would require placing responsibility on a special committee of the Academy or on a body of State officials for testing and approving or rejecting arbitrators on the basis of their qualifications or lack of qualifications to be arbitrators. I think few, if any, members of the Academy would want to assume that awesome responsibility and I would be wary of placing such responsibility in the hands of State officials. Moreover, I am not persuaded that a program of arbitrator certification, by whomever administered, would be successful or would improve the general standards of performance of arbitrators.

IS THERE ANYTHING THAT THE ACADEMY SHOULD BE DOING THAT IT ISN'T DOING NOW?

I suppose there is always more that can be done than is being done in promoting the interests of its members and in advancing the relationships among the parties they serve. But, nothing that is immediately necessary comes to mind. It has been our good fortune always to have had capable and dedicated officers and members on the Board of Governors who established Academy policy and planned its activities. Over the years, the Academy has made tremendous strides in promoting the interests of its members and promoting peaceful relationships between unions and management. I am confident that it will continue to contribute, as before, to the well-being of its members and the industrial relations community.

WHAT DO YOU THINK OF THE ANNUAL MEETINGS? ARE THEY AS SUCCESSFUL AS THEY USED TO BE?

I must say they are getting terribly cramped due to the fact that we have so many guests attending, notably company and union representatives. Some members deplore this condition, but I, for one, do not. I enjoy socializing at those meetings with our friends and representatives. I have found that our guests are very much interested in our activities and programs and some indeed have made highly professional and scholarly contributions to our programs and literature. Their attendance at the annual meetings gives our guests a chance to become better acquainted with us as arbitrators and better informed in the arbitration process, in which they have a stake at least as great as ours.

As for our programs, they have been outstanding, as witness the high quality of the delivered papers and discussions and the respectful attention they receive from the academic and professional communities and the judiciary. In brief, my answer to your question is that our annual meetings continue to be successful.

DO YOU READ THE PUBLISHED PROCEEDINGS? SOME PEOPLE SAY THAT THE TOPICS ARE QUITE REPETITIVE. YOU CAN LOOK AT THE PROCEEDING IN 1980 AND SAY THIS TOPIC WAS DISCUSSED IN 1970 AND 1964, 1958.

Well, that might be true to some extent, but the reason is that there have been new developments in the field and in the subjects discussed, new experience and new thinking. For example, interest arbitration has been discussed at a number of annual meetings, but the entire subject hasn't yet been fully exhausted. A few years ago, Jack Steiber delivered a talk on Interest arbitration which was well received. Then, Robbin Fleming spoke on the subject at an annual meeting and I chaired an Academy program in 197_ on interest arbitration in the transit and newspaper industries. I was then doing a lot of transit arbitration and I was also chairman of the Appellate Board of the International Board of Arbitration in the newspaper industry. Both arbitration systems had novel features which were largely unfamiliar to many arbitrators.

WHAT ABOUT THE FUTURE OF ARBITRATION? IS IT GOING TO GROW AS IT HAS GROWN IN THE PAST FEW YEARS?

It has grown tremendously in recent years and I don't see anything on the horizon that will inhibit its growth in the future. I know that Dave Feller talked at one of our annual meetings about "the end of the golden age" of arbitration. But frankly, I was not persuaded. We have certainly not experienced any diminution in the number of cases submitted to arbitration recently. As for the frequent reviews of arbitration decisions by the courts, I don't find any serious problems in that.

DO YOU SEE EXPEDITED ARBITRATION GROWING?

I don't really know to what extent it is growing. I was never very much taken with the idea. While there are a large number of

disputes that can and should be heard and decided in fairly short order, most cases require more than a brief statement of the issue involved and the decision reached. It seems to me that most parties prefer a well-reasoned written opinion and award in the cases submitted to arbitration.

CAN YOU TELL US ABOUT YOUR EXPERIENCE WITH INTEREST ARBITRATION?

Over the years, I have arbitrated a large number of "interest" disputes in both the private and public sectors. I served in those cases either as sole arbitrator or as the impartial member of a tripartite board of arbitration in establishing new contract terms under a first collectively bargained agreement or under a successor agreement after the parties failed in collective bargaining to agree upon proposed new terms. My interest arbitration experience has been mainly in the private sector and in disputes over wages, fringe benefits, premium pay, overtime work, hospital and medical care benefits, pensions, and other working conditions. For a number of years, I was chairman of a board of arbitration under the International Arbitration Agreement between the American Newspaper Publishers Association and International Printing Pressmen and Assistants Union which sat as an appellate body to review the decisions of local arbitrators in both "rights" and "interest" disputes. In the latter, the appealed decisions involved contract terms established by local arbitrators respecting wage rates, press manning tables, contract duration, and other working conditions, especially those which involved substantial operating costs and benefits and earnings. For example, in manning disputes it is a matter of great concern to a cost-conscious publisher, as well as to a union, faced with a potential loss of jobs by its members whether a printing press has to be manned by seven pressmen journeymen or nine, eleven or more. In all those cases, I served as chairman and impartial member of an appeal board which included three directors of the International Pressmen's Union and three members of the Labor Relations Committee of the American Newspaper Publishers Association.

In addition to serving on the appellate board, I served as a single local arbitrator in a number of "interest" disputes. One such case, decided in 1968, went beyond submitting strictly economic issues, however; it involved a question of principle and of general importance to employers and unions engaged in collective bargaining. Basically, the question concerned a party's right in a dispute over new contract terms to have a terminal arbitration clause that was in the expired contract continued in the new contract against the objections of the other party. Interestingly, in some cases, newspaper managements and local pressmen unions have at different times taken positions for and against the proposition. In the case before me, the managements of three California rotogravure companies argued to have a terminal arbitration clause included in a successor agreement, while the Los Angeles Pressmen's Union objected to continuing such a clause in the new contract. The case was expertly presented and argued by exceedingly able legal counsel. Upon due consideration and study, I decided to deny the request for including a terminal arbitration clause in the renewed agreement against the union's objection. The imposition of terminal arbitration upon an unwilling

party, I stated, runs against the grain and the contracting parties themselves must take the responsibility for ordering their own peace keeping procedures for reaching agreement on contract terms. While I found there was a tradition of terminal arbitration in the newspaper and in the publishing printing industry, that tradition was bottomed upon voluntary privately negotiated agreements, not terminal arbitration awards. Under the circumstances, I felt that ordering mandatory arbitration of new contract terms over the objection of either party would be the equivalent of compulsory arbitration of a new contract and that the imposition of such a requirement on a non-consenting party was incompatible with our system of free collective bargaining.

I have also arbitrated disputes over wages and other economic issues in public and private investor owned utilities and in the local transit industry. The latter involved arbitration of new contract terms on transit properties in several major cities, notably Boston, Washington, Chicago, Baltimore, Minneapolis, New Orleans and others. Arbitration of new contract terms has been an essential ingredient of labor relations in the local transit industry for over eight decades. For many years the transit systems in most cities of the country were privately owned and operated. Today, only a very few local transit systems remain under private ownership; all the rest, including those in practically all the major cities, have been taken over by public agencies and are thus in the public sector. Nevertheless, transit arbitration has remained essentially local with contracts determined by and applicable to individual properties and local unions.

For me, the transit arbitration cases in which I served have been educational and most interesting. For one thing, they were presented by highly capable counsel on both sides from whom I learned a great deal. All of the cases were heard and decided by tripartite boards of arbitration on which I was the impartial member and chairman and Herman Sternstein or Isadore Gromfine, attorneys for the Amalgamated Transit Union was the union member and John Dash was the company member on the Board. Typically, the issues involved basic wage and salary rates, cost of living escalation, job class differentials and reclassifications, pension issues, and working conditions peculiar to transit such as scheduling of service and employees' assignments, payment for travel time between assigned points, recovery time to adjust for delays and personal needs, etc. Many of the issues are highly technical and complex.

I UNDERSTAND THAT YOU HAVE BEEN A LEADER IN THE THINKING ABOUT MODIFYING DISCHARGE PENALTIES. CAN YOU TELL ME ABOUT THAT?

In discipline cases, the arbitrator's task is to decide not only whether the grievant is guilty of the misconduct he is charged with but also whether the misconduct warrants disciplinary action by the employer and, if so, whether the penalty imposed is such as would appeal to fair-minded persons as just and reasonable and not disproportionate to the offense. Essentially, the determination must be made whether the grievant was disciplined for "good", "sufficient", "proper" or "just cause" and may, in the final analysis, depend on the arbitrator's background, training and experience, his

own or the community's standards of justice and fair treatment and possibly, as Justice Douglas said of judges in the exercise of the interpretative function, their genes or the bloodstream of their ancestors. It is true that I was one of the arbitrators who was in the foreground of battle on the question of an arbitrator's right to modify or commute a discharge penalty, if it is unreasonable, to a lesser penalty. I recall in the early 19⁰'s, arbitrators throughout the country debated this question at local Academy meetings. There was of course no unanimity of opinion among us. Some believed that unless arbitrators were expressly given the right to modify penalties in the collective agreement, they did not have the right. In their view, an arbitrator's authority in a discharge case was limited to determining whether the employee was guilty or innocent of the acts charged; and if he was found guilty, the arbitrator could not change the penalty or decide what other penalty would be reasonable.

I took a contrary position in local meetings and in discussions wherever the subject arose and in my early arbitration opinions, many of which are reproduced in BNA and other labor arbitration service publications. I also wrote on the subject early in my arbitration career. In 19⁷, I wrote on the subject of "The Arbitration Process in the Settlement of Labor Disputes" in the Journal of the American Judicature Society, a magazine which has a wide circulation among lawyers, judges, and law teachers. In It and in my discussions at meetings, I stressed the importance and wisdom of deciding discharge cases on broad equitable principles contending, among other things, that it is not socially desirable that penalties for industrial offenses be applied strictly as punishment for wrongdoing. Rather, the object of the penalty should be to make employees recognize their responsibilities so that they would become better workers in the future. And I strongly urged that In discharge cases, unless prohibited by contract, arbitrators do have the right to change, modify or reduce an excessive and harsh penalty. Such right, I reasoned, was inherent in the arbitrator's power to decide the sufficiency of the cause for discipline and in his authority to finally settle and adjust the dispute. The reasonableness of a disciplinary penalty, I maintained, was an essential ingredient of good, proper or just cause for discharge and If discharge is an excessive or unreasonable penalty under all the circumstances of the situation, then "good", "proper", or "just cause" for discharge does not exist. Should the arbitrator decide that although there was not proper cause for discharge, but some disciplinary action was justified, he might then consider what lesser penalty would be fair and just in the circumstances.

What penalty, for instance, would effectively deter the discharged employee and others from similar misconduct in the future? What effect would a modification of the penalty have on the morale of the other workers in the plant, and of the supervisory employees? Would a reduction in the penalty furnish a basis for a better understanding in the future between management and the union? What was the degree of personal responsibility of the discharged employee for his action, and does the penalty imposed relate to the misconduct for which he was discharged or to past acts long forgotten or condoned

by the employer? How severe a penalty, if any, was imposed by the employer in the past on other employees guilty of similar misconduct? How long had the grievant been employed by the company and what was his general attitude toward his job and his employer? What does his past record show as to competence and industry? In a word, do justice and fair dealing warrant a reduction in his penalty? The arbitrator may modify an unreasonable discharge in several ways. He may order a wrongfully discharged employee reinstated with or without back pay and with or without loss of seniority; the discharge might be commuted to a layoff of several days or weeks.

As I indicated to you earlier, my view of the arbitrator's authority to modify discharge penalties was not universally shared. The names of three highly respected arbitrators who disagreed come readily to mind: David Wolf, Whitley McCoy and Marion Beatty. But I think the overwhelming majority of arbitrators have long been persuaded that they do have the right to modify discharge penalties in appropriate circumstances,