

National Academy of Arbitrators

ORAL HISTORY PROJECT

John Day Larkin.

Interviewed by Joseph Krislov

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ORAL HISTORY COMMITTEE  
NATIONAL ACADEMY OF ARBITRATORS

**INTERVIEW WITH JOHN DAY LARKIN**

BY JOSEPH KRISLOV

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HOW DID YOU BECOME AN ARBITRATOR?

Say, that's interesting; I'll give you a little background on it. In late 1930s, I hired Harold Davey, who'd just gotten his doctor's degree at the Harvard University, to join our staff as an instructor at the Illinois Institute of Technology. By 1942 our enrollment was such that we had to cut the staff and he was the low-man-on-the-totem-pole so he was dropped. He went to work for the War Labor Board (WLB) in Washington in personnel. In the Summer of 1942 he got in touch with me and said he thought I could do some special mediation work for the Board. The Mediation Service was swamped and the WLB had their own special mediators and he wondered if I couldn't take some cases. I agreed to do so. The Institute where I was teaching encouraged us to do a certain amount of outside work anyway (only two days a week) and a case was referred to me.

I don't remember the name of the company but the parties couldn't agree on a contract and it was assigned to me to mediate. I had meetings, first with the parties and then separately, back and forth. The key issue was the union's demand for a differential for workers employed in the manufacture of explosive mechanisms. They couldn't get together; finally I went out to the union headquarters and told them they didn't understand what must happen now that wage stabilization was in effect. I said, "I'm going to have to turn in a report and make a recommendation on the proper wage for this settlement. If it is in accord with the wage stabilization, the WLB in Washington will adopt it and you'll be stuck with my recommendation. Either you meet with the company again, and work out what you think would be a good solution or I'm going to send in a report.

They had a private session, and I waited out in the lobby for an hour or so. They came out and said they'd meet with the company; I arranged for them to meet on a Saturday morning and they worked out an agreement in the matter of a short time.

I went back to my office and wrote a report for Washington and after that I was being called on more and more.

The next case I had was with the Steelworkers and Inland Steel Company. I continued to mediate, but the parties asked me to arbitrate the first case that Inland Steel arbitrated. I don't recall exactly the details of that particular case but a few months

later I had an arbitration (and this was during the war too) that I recall very well. It involved wage payments to the female employees in the plant (there were a lot of them, in fact there was one crane operator; female crane operator, who was supposed to be doing one of the best jobs in the shop). The manager of the plant had called in the women employees and said, "Now, you're temporary employees. When this contract goes into effect, we're not going to move you into the regular rate," and that was taken to arbitration. I decided the company was off-base. If they worked the same as the men, they should be paid the same for doing the same work. The female employees who had worked beyond the probationary period were entitled to the same pay as the male employees.

WHAT WAS THE BEST PREPARATION YOU HAD FOR THE WORLD OF ARBITRATION?

During my graduate studies at Harvard, I became interested in public law and administration. My doctoral dissertation was entitled "The President's Control of the Tariff." (Harvard University Press, 1936)

From 1930 to 1937, I taught at the College of the City of New York. The courses I taught were in the field of Government regulation of business and labor, including courses in Constitutional Law, Administrative Law, and later, after I transferred to the Illinois Institute of Technology, a course in Labor Law.

NOW, MANY PEOPLE SAY THAT THEY WANT TO BECOME ARBITRATORS. WHAT WOULD YOU SUGGEST TO THEM?

Well, of course, the primary objective is to obtain acceptance by both unions and management. Many of us ol'timers got into labor arbitration, of course, back during World War II. Since then, many arbitrators have worked with permanent umpires and people like that. That's another way.

I don't know, it seems that, unless you have some affiliation of that sort, it would be a problem obtaining acceptance from both sides. There are many people, both in Economics and Law who become arbitrators. Other than working with someone who's already established in the field, most of the umpireships offer opportunities. The experienced arbitrators work with them and break them in and help them to become acceptable. That seems to be one of the best ways.

I was discussing that problem at my home with some other arbitrators, back several years ago. My wife commented that arbitrators have no regular formal course of education such as attorneys and doctors of medicine, and she said, "It seems to me to be a calling." That was her comment.

WHAT ABOUT THE IDEA OF CERTIFICATION?

I have not given that much thought and I don't think that that is the proper method. You mean to certify, like an attorney or a doctor or what not?

HAVE YOU ATTEMPTED TO MEDIATE A DISPUTE? WITH WHAT RESULTS?

My first assignment with the War Labor Board, In the Summer of 1942, was that of "Special Mediator." The first case assigned to me was one involving new contract terms. After a few meetings with the parties, together and separately, I got them to reach an agreement. I also had a few other such cases during the war, but none after the Chicago Regional was set up during the Winter of 19<sup>43</sup>- I have not attempted to mediate disputes since that time.

YES. THERE ARE MANY PROPOSALS, BUT GENERALLY SPEAKING, NO ONE HAS ATTRACTED A GREAT DEAL OF ATTENTION. I GATHER YOU'D HAVE SOME SORT OF A FORMAL TRAINING AND SOMEONE WOULD SAY, "WELL, YOU PASSED THIS EXAM AND YOU'RE NOW AN ARBITRATOR."

Well, I don't know about that •- it may come to be but I wouldn't recommend it.

ARBITRATORS ARE FREQUENTLY FRUSTRATED BY DELAYS IN SCHEDULING HEARINGS AND GETTING TRANSCRIPTS AND BRIEFS. WHAT CAN THE ARBITRATOR DO TO REDUCE THESE DELAYS?

I haven't found that to be a great problem. I find that usually with transcripts, the parties will tell the reporters approximately when they expect to get the transcript. They've come to suggest that they file their briefs within thirty days after receipt of transcript, filing two copies with the arbitrator for exchange. That seems to me to be quite a common practice.

I had one problem recently. The parties agreed at the conclusion of the hearing to file the briefs within a certain period of time and for exchange through my office. And came the time, I received two copies of the briefs from the company attorney but none from the union representative. I wrote him a letter and then wrote two or three times and never received any reply. This was an FMCS case with his telephone number on the letter, and I tried calling that number. I never got an answer. Finally, after two months, at least, has passed I issued an award in the case without a brief from him. I had a feeling that maybe he didn't intend to file one. I'd met him on many other cases and I was quite puzzled about that. It may have been a mistake to issue my opinion, but that's how I handled it.

WAS THE PROCESS OF SELECTING AN ARBITRATOR THE SAME WHEN YOU BECAME AN ARBITRATOR AS IT IS TODAY? WAS IT IN THE LATE 19<sup>40</sup> 'S THAT AAA HAD THE SYSTEM IT HAS NOW - A LIST AND THE PARTIES CHOOSE?

The answer to your first question is "no." The first arbitration case that I heard was in November, 1942. The case was referred to me from the War Labor Board In Washington. After the Regional WLB was started in Chicago in the Winter of 19<sup>43</sup>, I served as a public member of that Board and arbitrated several cases in the Chicago area during the war. I got on both the AAA and FMCS lists about 19<sup>47</sup>.

WAS THE EXCHANGE VERY ROUGH AND AGGRESSIVE? WERE THE PARTIES CIVIL TO EACH OTHER? HOW DO PROCEEDINGS TODAY COMPARE WITH THOSE PROCEEDINGS THEN?

The answer to your first question is "yes." There was much more noisy argument at arbitration hearings in the 1940's and later than is generally the case today. However, on August 1, 1980, I heard a case at the Bismark Hotel in Chicago at which the attorneys were on their feet shouting at each other repeatedly throughout the day. That is most unusual for hearings today.

Most of the hearings today are quiet, orderly, and shorter than they were thirty years ago.

WHAT WERE THE ISSUES PEOPLE WERE ARBITRATING IN THE LATE 1940'S? DO THEY DIFFER MUCH FROM TODAY'S ISSUES?

To the best of my recollection, the issues arbitrated in the late 19<sup>40</sup>'s were much the same as today. Discipline and discharge cases seem to be the most frequent. However, in some industries wage rates and job assignments continue to be prevalent.

WERE THERE ANY CONTROVERSIES THEN THAT ARE NO LONGER AROUND OR IS YOUR VIEW THAT WE ARE STILL DEALING WITH THE SAME ISSUES?

The controversies remain much the same.

WE HEAR THAT HEARINGS ARE BECOMING QUITE FORMAL. WHAT CAN AN ARBITRATOR DO TO REDUCE THE FORMALITY?

I haven't noticed that they've become any more formal than they have been for quite some time. There is some indication, I think, that some parties at times overextend the cross-examination. They question beyond what the direct examination was and they spend more time cross-examining than the direct examination. They also open up areas that weren't even discussed, and that is a bit of a problem. What was the question again?

HOW CAN THE ARBITRATOR REDUCE THE FORMALITIES?

I haven't noticed that hearings are becoming more formal.

IS THE ARBITRATOR'S ROLE IN AN AD HOC CASE DIFFERENT FROM HIS ROLE IN A PERMANENT UMPIRESHIP?

I would not say that it's greatly different. It seems to me that the umpireships more and more are giving away to panels of arbitrators but the handling of the cases themselves, I do not see that there's a great deal of difference. That has not been my experience. I was an umpire for a time with the John Deer and Company and the UAW and also with one of the packing houses, Wilson Packing Company. Did that for a period but I can't say there's a great deal of difference as far as handling the cases.

YOUR FORMER COLLEAGUE, HAL DAVEY, PREDICTED MANY YEARS AGO THAT AD HOC ARBITRATION WOULD GRADUALLY DIE AND THAT PERMANENT UMPIRESHIPS WOULD BECOME MORE NUMEROUS.

It's gone the other way.

RIGHT. SO THE PREDICTION THAT PERMANENT UMPIRESHIPS WOULD GROW HASN'T BEEN FULFILLED AND CERTAINLY WE HAVE AN ENORMOUS AMOUNT OF AD HOC ARBITRATION. HOW DO YOU ACCOUNT FOR THIS FAILURE OF PREDICTION AND HOW DO YOU ACCOUNT FOR THE PATTERN?

I don't know...I don't know. Really, I couldn't account for it.

The parties have tended to go in more for panels of arbitrators rather than a single umpireship. Now, for instance, I am on the panel of General Electric and IUE, all over the country. That is the largest union that they have contracts with and there's a list of 18 or 20 names in their contract. The same is true for Greyhound Bus Lines and the Transit Union; I'm on their panel. I was on one for some time, it was recently terminated, for Federal Aviation Administration and Professional Air Traffic Controllers. They have panels, three panels; one in the Great Lakes area and others in other parts of the country. The total is about 21 arbitrators in all the different panels.

IN THINKING ABOUT YOUR THEORY OF ARBITRATION, DO YOU CONSIDER YOURSELF A STRICT CONSTRUCTIONIST?

Yes, to the extent that I am bound to apply the language which the parties have hammered out in their negotiations. By the end of the war, in 19<sup>45</sup>, the parties were inserting into their agreements the language now commonly seen which states that the powers of the arbitrator "shall include the authority to render a final and binding decision . . . but excluding the right to amend, modify or alter the terms of this Agreement."

LET ME ASK YOU SOME QUESTIONS ABOUT THE NATIONAL ACADEMY. WHEN DID YOU FIRST BECOME AN ACADEMY MEMBER?

I am a charter member of the Academy. The Academy was started at a meeting held in Chicago in the Summer of 19<sup>47</sup>- As I recall, there were approximately <sup>45</sup> or 50 members present at that meeting.

HAVE YOU ATTEMPTED TO MEDIATE A DISPUTE PRESENTED TO YOU AS AN ARBITRATOR? WITH WHAT RESULTS? WOULD YOU RECOMMEND THAT ARBITRATORS TRY TO MEDIATE DISPUTES?

No. I have not attempted to mediate the settlement of pending grievances. It seems to be the accepted practice is to hear the parties' evidence and arguments and render an award later.

However, I learned from a court reporter that David Cole, who was the permanent umpire for Inland Steel Company and the Steel-workers, for several years before he died, spent much time in getting grievances resolved through mediation.

BEFORE THAT TIME DID YOU HAVE CONTACT WITH MANY ARBITRATORS? WITH WHOM AND WITH WHAT RESULTS?

Yes. Most, if not all, of the charter members of the Academy were involved in the resolution of labor problems during the war as War Labor Board personnel.

DO YOU HAVE ANY REFLECTIONS ABOUT YOUR FIRST MEETING IN THE ACADEMY?

The first annual meeting of the Academy was held at the Drake Hotel in Chicago in January, 19<sup>43</sup>. Peter Kelliher was in charge of local arrangements. I served on one or two committees, including the one that initiated the Code of Ethics. The same people on that committee later cooperated with the American Arbitration Association in initiating our joint code.

My first meeting with charter member Charles P. Taft was at that meeting.

AND HOW WOULD YOU EVALUATE THE ACADEMY'S ACHIEVEMENTS?

Well, I think it's made a real contribution. I don't know how to specify it in more than that but certainly, both management and unions have come to respect the members of the Academy and give them priority. I think it's done quite a bit.

IN YOUR PRESIDENTIAL ADDRESS IN '57, YOU PLACED GREAT EMPHASIS ON THE ANNUAL MEETING AS A ROUND TABLE FOR DISCUSSION. IS THE ANNUAL MEETING WELL RUN TODAY?

Well, it seems to me it's very different from what it was twenty years ago. I suppose that's what you're talking about.

HOW IS IT DIFFERENT?

Well, I don't know. It seems that there's a great deal more of the merrymaking and what not. The Academy is much larger, a tremendous increase in the number of people involved, even though we've always had guests from both management and labor. It seems as though it's really enormous. I don't know if it's age creeping upon me or what, but I get worn out before they're over now and usually leave after three days.

IN RECENT YEARS, THEY'VE BEEN HAVING SEPARATE SESSIONS FOR ARBITRATORS.

Yes, that's been going on for quite some time.

QUITE SOME TIME. SO THERE'S NO FORMAL CHANGE, IT'S JUST THAT THEY HAVE MORE GUESTS.

Some of the separate sessions focus on problems that we need to discuss without the presence of outsiders; among the members themselves. That's mostly what the special sessions "for members only" is about. When we deal with large aspects of problems which management and labor would be interested in, that's when they are present and involved in the discussions.

DO YOU FIND THE SESSIONS -- THE COPIES OF THE PROCEEDINGS WHEN THEY'RE IN BOOK FORM -- USEFUL? DO YOU EVER USE THE PROCEEDINGS?

Well, I have not been reading them as thoroughly and as much as I used to. I can say that I really don't know whether I am not reading the proceedings because I'm swamped with other things or not.

DO YOU GET THE FEELING THAT THERE REALLY IS VERY LITTLE THAT IS NOW BEING DISCUSSED AT THE ANNUAL MEETING?

You mean it gets repetitious?

YES.

Well, I wouldn't say that. There is considerable repetition in going over the same subjects, but there's always something new that might be added. That's the way I feel.

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

I couldn't say if there is.

IS THERE ANYTHING THAT THEY'RE DOING THAT THEY SHOULD STOP DOING?

Well, I wouldn't say that either.

WHAT WAS YOUR MOST DIFFICULT CASE TO DECIDE?

One which involved new contract terms. The parties were at odds on every article of the proposed agreement and I had to write the language of their new contract.

WHAT WAS YOUR MOST UNUSUAL CASE?

That is difficult to say. It was either a case involving new contract terms that required more than a week of hearings, or a recent case of indecent exposure. I have had two such cases recently and they were most unusual.

WHAT WAS YOUR BRIEFEST CASE (HEARING TIME)?

I cannot recall when or where I had my briefest case, but I have had a number that were only an hour or so.

WHAT WAS YOUR LONGEST CASE (HEARING TIME)?

To my best recollection, the longest hearing time on a single case occurred in Iowa or Nebraska, ten or twelve years ago. It involved a new contract between one of the largest publishing firms and the Mailers Union. Initially three hearing days were scheduled. However, when we met, it was soon evident that the parties had failed to narrow the unresolved issues, and, in fact, they had failed to agree on anything. They could not even agree on a statement of the preamble. The result was the scheduling of a total of 8 or 9 days for hearing, with two additional trips to Des Moines or Omaha. It ended with me writing the new contract from start to finish.

WHAT TYPE OF CASE DO YOU PREFER? WHY?

My preferences are for cases that are not too technical. Discharge and discipline cases are often more interesting than such things as wage rates, or even job classifications, promotions, and such.

ARE THERE ANY CASES THAT YOU THINK THAT YOU MAY HAVE MADE A MISTAKE?

We are all human and as such we are prone to make mistakes sometimes. While there have been many cases where parties have protested my decisions, and at least four or five have been appealed to Federal courts, I have not heard of any case in which a court has set aside my ruling.

WHAT TYPE OF CASE DO YOU REMEMBER AS MOST DIFFICULT? WHY?

While difficult cases occur in many different areas, those involving new contract terms can be generally more difficult than most.

MANY ARBITRATORS WONDER ABOUT THE IMPLEMENTATION OF THEIR AWARDS, ESPECIALLY IN AD HOC ARBITRATION. DID YOU? WERE YOU ABLE TO FIND OUT ABOUT THEIR IMPACT?

There have been a few of my cases where parties have raised questions. It has been my practice to respond to such requests of "clarification" only when such requests are jointly made by the parties. I can recall only one case, which had been appealed to the General Counsel of the N.L.R.B. by the grievant's personal attorney and not by his union or the law firm that represented the union in his case. That matter was soon resolved with only a brief statement from me to clarify one paragraph in my opinion.

YOU INDICATED THAT YOU HAD SERVED AS A PERMANENT UMPIRE FOR SOME RELATIONSHIPS AND AS A PANEL MEMBER FOR OTHERS. COULD YOU TELL ME ABOUT THESE RELATIONSHIPS?

My first assignment as "permanent umpire" began with John Deere Co. and UAW, where I served from 1958 to 1961. I served Wilson & Co. and UPWA from 1962 until 1969 in the same capacity.

In recent years, so-called "permanent arbitrators" seem to have been replaced by panels of arbitrators, where cases are rotated. Currently, my name is on two such panels: General Electric Company and IUE, and Greyhound Company and ATU.

The final arrangement with John Deer Co. and UAW was a \$1,500 per year retainer, plus my regular per diem rate. However, with Wilson & Co. and UPWA, I was paid only my regular per diem rate for all time spent on their cases.

As to the number of each cases, to the best of my recollection, I had three or four cases per month with each of them. In each case, seven or eight plants were involved in cities throughout the Midwest.

As for other umpireships, I did serve in that capacity with the Franklin Association and the Typographical Union for a few years. All of their cases were heard in Chicago and involved printing and publishing firms who were members of the Association.

As to the panels on which I have served, General Electric Company and IUE have had panels listed in their agreements for several years. The current list has 18 names. I have been on their list for about 12 years and have heard cases for them throughout the country, from Massachusetts and Virginia on the East Coast to Kent, Washington, and Los Angeles on the West Coast.

I have served on the panel of Greyhound Lines and ATU for approximately a decade or more, hearing cases in such places as Boston, New York, Washington, D.C., Atlanta, Birmingham, New Orleans, San Francisco, Reno, Nevada, Phoenix, Greenville, South Carolina and Charleston, West Virginia. My most recent case with them was in Chicago on August 1, 1980.