

APPENDIX B

CODE OF ETHICS AND PROCEDURAL STANDARDS FOR LABOR-MANAGEMENT ARBITRATION

Foreword¹

About two years ago the American Arbitration Association submitted its Code of Ethics for Arbitrators for re-examination and criticism to more than one hundred arbitrators and representatives of labor and management.

A variety of views were expressed and many suggestions were received. A special drafting committee was then organized which held a series of meetings for the consideration of these views and suggestions.

At about the same time, the National Academy of Arbitrators instructed its Committee on Ethics to inquire into the same subject. The committees met together and were joined by representatives of the Federal Mediation and Conciliation Service. Drafts and redrafts were prepared, debated, and circulated among members of the American Arbitration Association Committee and the members of the National Academy of Arbitrators for approval. The result was this Code of Ethics and Procedural Standards for Labor-Management Arbitration, which is a complete revision of the earlier Code. It will be noted that the new Code is not applicable to commercial arbitrations; this field has been completely divorced from labor-management arbitration. It will also be noted that standards of

¹ This Foreword appeared in the first printed booklet containing the Code of Ethics. Funds for the publication of this booklet were made available by the Bernheimer Arbitration Education Fund, as a tribute to the late Charles L. Bernheimer, who was one of the early advocates of the use of arbitration in labor-management disputes.

ethics for parties as well as for arbitrators have been included. It was considered that the ethical and orderly conduct of labor-management arbitrations necessarily requires the observance by the parties of certain obligations and duties in order to make the essential standards of arbitrators more effective. In view of the plain desire of management and labor representatives to have their differences conclusively resolved through the arbitration process, it is highly desirable that arbitration be self-disciplining, thus promoting respect for this process and narrowing the situations in which resort is had to courts to set aside, modify, or enforce awards.

This field has grown very rapidly and it is entirely understandable that varying concepts may be held with regard to the nature of the process and of the character of the arbitrator's functions. It is the purpose of the drafters to have a code of ethics primarily designed to meet situations in which the parties, having failed to resolve their differences through direct negotiations, either with or without the assistance of mediators, have elected to submit their dispute for settlement through arbitration. The dispute may be over the interpretation or application of an existing agreement, or over terms and conditions of the agreement to be in effect in the future.

In any event, it is not intended to deny or narrow in any way the right of the parties to have whatever type of proceeding they desire. The arbitrator is serving them, and the proceeding is theirs.

It is not intended to have this Code regulate many kindred types of proceedings in which third parties play a part. Thus, this Code would not be applicable to fact-finding proceedings, with or without recommendations, to mediation or conciliation efforts, or to proceedings which are combinations of mediation, fact-finding, and perhaps eventually of decision-making.

The preparation of this Code has not been a simple matter. Strong and divergent views had to be reconciled in the successive drafts. The success with which this has been accomplished is evident from the unanimous approval given to the final form by the members of the National Academy of Arbi-

trators, the representatives of the Federal Mediation and Conciliation Service, and the large group constituting the Committee of the American Arbitration Association.

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Code of Ethics for Arbitrators

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Part I—Code of Ethics for Arbitrators

1. *Character of the Office*

The function of an arbitrator is to decide disputes. He should, therefore, adhere to such general standards of adjudicatory bodies as require a full, impartial and orderly consideration of evidence and argument, in accordance with applicable arbitration law and the rules or general understandings or practices of the parties.

The parties in dispute, in referring a matter to arbitration, have indicated their desire not to resort to litigation or to economic conflict. They have delegated to the arbitrator power to settle their differences. It follows that the assumption of the office of arbitrator places upon the incumbent solemn duties and responsibilities. Every person who acts in this capacity should uphold the traditional honor, dignity, integrity and prestige of the office.

2. *The Tri-Partite Board*

Where tri-partite boards serve in labor arbitrations, it is the duty of the parties' nominees to make every reasonable effort to promote fair and objective conduct of the proceedings, to aid the arbitration board in its deliberations and to bring about

a just and harmonious disposition of the controversy. It is recognized, however, that the parties frequently expect their appointees to serve also as representatives of their respective points of view. In such cases, the rules of ethics in this Code, insofar as they relate to the obligations of strict impartiality, are to be taken as applying only to the third or neutral arbitrator.

Such representatives, however, unless the parties agree otherwise, should refrain from conveying to the parties who appointed them, the discussions which take place in executive session and any information concerning the deliberations of the board. No information concerning the decision should be given in advance of its delivery simultaneously to both parties.

3. Qualification for Office

Any person whom the parties or the appointing agency choose to regard as qualified to determine their dispute is entitled to act as their arbitrator. It is, however, incumbent upon the arbitrator at the time of his selection to disclose to the parties any circumstances, associations or relationships that might reasonably raise any doubt as to his impartiality or his technical qualifications for the particular case.

4. Essential Conduct

a) The arbitrator should be conscientious, considerate and patient in the discharge of his functions. There should be no doubt as to his complete impartiality. He should be fearless of public clamor and indifferent to private, political or partisan influences.

b) The arbitrator should not undertake or incur obligations to either party which may interfere with his impartial determination of the issue submitted to him.

5. Duty to the Parties

The arbitrator's duty is to determine the matters in dispute, which may involve differences over the interpretation of existing provisions or terms and conditions of a new contract.

In either event, the arbitrator shall be governed by the wishes of the parties, which may be expressed in their agreement, arbitration submission or in any other form of understanding. He should not undertake to induce a settlement of the dispute against the wishes of either party. If, however, an atmosphere is created or the issues are so simplified or reduced as to lead to a voluntary settlement by the parties, a function of his office has been fulfilled.

6. Acceptance, Refusal or Withdrawal from Office

The arbitrator, being appointed by voluntary act of the parties, may accept or decline the appointment. When he accepts he should continue in office until the matter submitted to him is finally determined. When there are circumstances which, in his judgment, compel his withdrawal, the parties are entitled to prompt notice and explanation.

7. Oath of Office

When an oath of office is taken it should serve as the arbitrator's guide. When an oath is not required or is waived by the parties, the arbitrator should nevertheless observe the standards which the oath imposes.

8. Privacy of the Arbitration

a) An arbitrator should not, without the approval of the parties, disclose to third persons any evidence, argument or discussions pertaining to the arbitration.

b) There should be no disclosure of the terms of an award by any arbitrator until after it is delivered simultaneously to all of the parties and publication or public disclosure should be only with the parties' consent.

Discussions within an arbitration board should be held in confidence. Dissenting opinions may be filed, however, but they should be based on the arbitrators' views on the evidence and controlling principles, and not on the discussions which took place in the executive sessions of the board.

9. Advertising and Solicitation

Advertising by an arbitrator and soliciting of cases is improper and not in accordance with the dignity of the office. No arbitrator should suggest to any party that future cases be referred to him.

Part II—Procedural Standards for Arbitrators

The standards set forth in the following sections are intended only as general guides to arbitrators and to parties in arbitration proceedings. It is not intended that they will be literally adhered to in every particular, nor are they intended to supplant contrary practices which in particular cases have been established or accepted by the parties. These standards are meant to be equally applicable to partisan and neutral members of arbitration boards.

These standards of procedure are not to be deemed mandatory precepts or controlling rules which will furnish a basis for attacking awards or enlarging the grounds prescribed by law for the impeachment of awards.

1. Compensation and Expenses of the Arbitrator

a) Arbitrators serving in labor-management disputes generally receive compensation. The position of an arbitrator, whether compensated or not, is an honorary one and is accepted as an opportunity for public service.

b) Compensation for arbitrators' services should be reasonable and consistent with the nature of the case and the circumstances of the parties. A fee previously fixed by the parties, or by schedule, should not be altered during the proceeding or after the award is delivered.

c) It is commonly understood that necessary expenses, including travel, communications and maintenance, may be incurred by the arbitrator and that such expenses are reimbursable. The arbitrator should be prepared to render a statement of his expenses if the parties desire it.

2. *Hearing Arrangements*

a) The arbitrator should consult the convenience of the parties in fixing the time and place for the hearing but should not allow one party to delay unduly the fixing of a date for the hearing. Written and timely notice of the date, time and place of the hearings should be given.

b) Whenever the law permits, the arbitrator in his discretion may issue subpoenas.

3. *Oath of Office*

The following is the general form of oath which the law of certain states requires the arbitrator to take:

..... being duly sworn deposes and says that he will faithfully and fairly hear and examine the matters in controversy between the above named Parties, and that he will make a just award according to the best of his understanding.

4. *The Hearing*

a) The arbitrator should be prompt in his attendance at the hearing and should so conduct the proceeding as to reflect the importance and seriousness of the issue before him. The orderly conduct of the proceeding is under his jurisdiction and control, subject to such rules of procedure as the parties may prescribe. He should proceed promptly with the hearing and determination of the dispute. He should countenance no unnecessary delays in the examination of witnesses or in the presentation of evidence. Where the law requires it, witnesses must be sworn unless the parties duly waive this requirement.

b) The arbitrator may participate in the examination of parties or witnesses in order to clarify the issues and bring to light all relevant facts necessary to a fair and informed decision of the issues submitted to him. However, he should bear in mind that undue interference or emphasis upon his own knowledge or view may tend to prevent the proper presentation of the case by a party. Examinations should be fair and courteous and directed toward encouraging a full presentation of the

case. The arbitrator should avoid assuming a controversial attitude toward witnesses, parties or other arbitrators. He should avoid expressing a premature opinion.

c) The informality of the hearings should not be allowed to affect decorum and the orderly presentation of proof. The arbitrator should seek to prevent any argument or conduct at the hearings which would tend to cause bitterness or acrimony.

d) Unless the parties approve, the arbitrator should not, in the absence of or without notice to one party, hold interviews with, or consider arguments or communications from the other party. If any such communications be received, their contents should be disclosed to all parties and an opportunity afforded to comment thereon.

e) The arbitrator should allow a fair hearing, with full opportunity to the parties to offer all evidence which they deem reasonably material. He may, however, exclude evidence which is clearly immaterial. He may receive and consider affidavits, giving them such weight as the circumstances warrant, but in so doing, he should afford the other side an opportunity to cross-examine the persons making the affidavits or to take their depositions or otherwise interrogate them.

f) The arbitrator is expected to exercise his own best judgment. He is not required except by specific agreement of the parties to follow precedent. He should not, however, prevent the parties from presenting the decisions of other arbitrators in support of their positions. When the parties have selected a continuing arbitrator, it is generally recognized that he may establish or follow precedents for the same parties.

5. The Award

a) The arbitrator should render his award promptly and must render his award within the time prescribed, if any. The award should be definite, certain and final, and should dispose of all matters submitted. It should reserve no future duties to the arbitrator except by agreement of the parties.

b) The award should be stated separately from the opinion, if an opinion is rendered.

c) It is discretionary with the arbitrator, upon the request of all parties, to give the terms of their voluntary settlement the status of an award.

d) The award should be personally signed by the arbitrator and delivered simultaneously to all parties. The arbitrator should exercise extreme care to see that the contractual or legal requirements for making and delivering the award are met.

e) It is discretionary with the arbitrator to state reasons for his decision or to accompany the award with an opinion. Opinions should not contain gratuitous advice or comments not related or necessary to the determination of the issues. If either party requests the arbitrator to prepare an opinion, such request should be followed.

f) After the award has been rendered, the arbitrator should not issue any clarification or interpretation thereof, or comments thereon, except at the request of both parties, unless the agreement provides therefor.

6. Privacy of Proceeding and Award

The arbitrator should not publish or publicly comment on the proceedings or the award against the wishes of the parties.

Part III—Conduct and Behavior of Parties

1. General

Arbitration is predicated on the voluntary agreement of the parties to submit a dispute to a disinterested third party for final determination. It implies not only the willingness to arbitrate but the willingness to attend a hearing, submit evidence, submit to cross-examination and to abide by the decision of the arbitrator.

2. Scope

The power of the arbitrator depends upon the agreement of the parties. Accordingly, the contract or the submission agreement should define his powers. In initiating an arbitration—whether under a clause in a collective bargaining agreement or

under a submission agreement or a stipulation—it is the duty of the parties to set forth the nature of the controversy, the claim asserted and the remedy sought. The initiating party has the duty of setting forth its claim and the defending party the right to outline its position.

3. *Selection of Arbitrator*

The parties should select the arbitrator, in accordance with their agreement, to determine the controversy existing between them and his designation should be based on his integrity, knowledge and judgment. A party should not seek to obtain the appointment of an arbitrator in the belief that he will favor that party and thereby give him an advantage over his adversary.

In keeping with the desire for complete impartiality, parties should reject as arbitrators persons who solicit cases.

4. *The Tri-Partite Board*

When parties select members of tri-partite boards, it is recognized that generally each will select a representative rather than an impartial arbitrator, but in making such appointment parties should select persons who will join with the impartial arbitrator in full and fair discussion and consideration of the merits of the questions to be determined.

5. *Essential Conduct*

Parties should approach arbitration in a spirit of cooperation with the arbitrator and should seek to aid him in the performance of his duties.

Having selected an arbitrator, the parties are under a duty not to subject him to improper pressures or influences which may tend to prejudice his judgment. They should neither give nor offer favors of any kind to the arbitrator. As a general rule they should not communicate with him privately; and if it becomes necessary to communicate with him, it should be done in writing and a copy thereof should be simultaneously delivered to the other party.

Parties should respect the office of the arbitrator and recognize his essential right to control the conduct of the arbitration and should abide by whatever rulings he may make.

When an arbitrator elects to withdraw from a proceeding and gives the parties his reasons, they should respect his right to do so in the interest of good arbitration.

6. The Hearing

Parties should not unduly delay the fixing of a date for the hearing nor the completion of the hearing. They should be prepared to proceed expeditiously with their evidence and their witnesses, have their exhibits ready and cooperate with the arbitrator in furnishing whatever additional information he may deem necessary.

They should be prompt in attendance at the hearing.

Parties should be fair and courteous in their examination of witnesses and in their presentation of facts. Concealment of necessary facts or the use of exaggeration is not conducive to a good or sound determination of the differences between the parties. Acrimonious, bitter or ill-mannered conduct is harmful to the cause of good arbitration.

When hearings are concluded, parties should not attempt to communicate any additional information to the arbitrator. If new evidence becomes available, written application for the re-opening of the proceeding with the reasons therefor should be made to the arbitrator and a copy transmitted simultaneously to the other party.

When it has been agreed that briefs will be submitted, they should be filed promptly on the date arranged and no new matter should be included in the briefs. Briefs should be a summarization of the evidence presented at the hearing, together with the arguments of the parties and their comments on the evidence.

7. Privacy of the Arbitration

The parties should consider whether the subject matter of the arbitration is of such public interest as to warrant publicity

concerning the proceeding and publication of the award and opinion, if any; and should advise the arbitrator accordingly on the record or in writing.

8. Arbitrators' Executive Meetings

Meetings of the arbitrators and discussions in executive sessions by members of boards of arbitration are private and confidential and parties should not seek to obtain information concerning such meetings either from the third arbitrator or from their nominees. Parties should likewise refrain from attempting to secure in advance from the arbitrator or their nominees information concerning the award but should wait until the award is received in the regular course by both parties.

9. The Award

Parties, having agreed to arbitration, should accept and abide by the award.

After an award has been rendered, neither party should unilaterally request a clarification or interpretation of the award from the arbitrator. If one is necessary, it should be requested jointly by both parties.

10. Settlements

If the parties reach a settlement of their dispute but desire nevertheless to have an award made, they should give the arbitrator a full explanation of the reasons therefor in order that he may judge whether he desires to make or join in such an award.

11. Compensation of the Arbitrator

Parties should agree in advance of the hearing with the arbitrator on his compensation or the basis upon which it will be determined, but such arrangements should be made only in the presence of both parties. If the parties do not agree with one another as to the compensation, they should discuss the matter in the absence of the arbitrator in order that there be no intimation or suggestion that one party is willing to pay more

compensation than the other and thereby raise the possibility of a question thereafter as to partiality on the part of the arbitrator.

Having agreed on the compensation for an arbitrator's services or to the reimbursement of his necessary expenses, parties should remit promptly and under no circumstances should such payment be withheld because of displeasure over the award.