Critical Issues
in
Labor Arbitration

PROCEEDINGS OF THE TENTH ANNUAL MEETING
NATIONAL ACADEMY OF ARBITRATORS

PHILADELPHIA, PENNSYLVANIA • January 31-February 2, 1957

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BNA INCORPORATED • WASHINGTON, D. C.
1957
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Washington, D. C.

First Printing August, 1957
Second Printing May, 1961

Printed in the United States of America
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EDITOR'S PREFACE

Organized in Chicago in 1947, the National Academy of Arbitrators celebrated its tenth anniversary at the annual meeting held in Philadelphia, January 31-February 2, 1957. This volume contains the proceedings of the decennial convention. It is the third such volume to be published for the Academy by The Bureau of National Affairs, Inc. Starting in 1955 the Academy published its proceedings under the title: ARBITRATION TODAY. The following year, 1956, the proceedings were issued under the title: MANAGEMENT RIGHTS AND THE ARBITRATION PROCESS.

In addition to the current volume, the Academy also is publishing this year, under separate cover, selected papers from its first seven annual meetings under the title: THE PROFESSION OF LABOR ARBITRATION. The completion of these four volumes makes available to all those interested in the arbitration process—industry, labor, practitioners, and students—a wealth of material on arbitration in labor-management relations covering such topics as theories, procedures, substantive issues, law, and professional ethics.

Reviewing the first decade of the Academy's history in his Presidential Address which introduces this volume, John Day Larkin notes that the Academy was created for the specific purpose of improving the process of arbitration. He goes on to trace the ways in which the Academy has endeavored to accomplish this goal through its activities and functions as a professional organization. But an organization, like an individual, must look ahead, as well as back. The challenge of the next decade is set forth by Ralph T. Seward who served as the first President of the Academy. Another past President, George W. Taylor, comments on the place of arbitrator in a free society in his dinner address: "The Effectuation of Arbitration by Collective Bargaining." This paper stirred memories of Dr. Taylor's earlier address to the Academy: "Effectuating the Labor Contract through Arbitration"* and served to tie the present to the past by indicating the reciprocal relationship between collective bargaining and arbitration.

* Published in The Profession of Labor Arbitration, ch. 2.
The other papers delivered at the tenth annual meeting, in a program arranged by Paul Guthrie, covered four areas of current interest in arbitration. One session dealt with procedures, addressing itself to the question: Can the drift toward technicalities in arbitration be halted? Two presented research findings on substantive issues: the arbitration of discharges and of incentive problems. A fourth session was devoted to a discussion of the proposed Uniform Arbitration Act. To assist the reader in following the debate on this Act the editor has placed in the Appendix the text of the revised Draft Act, and the Report of the Academy’s Committee on Law and Legislation.

In preparing the volume for publication the editor wishes to acknowledge the cooperation of the speakers, who once again made her task an easy one. In addition, she wishes to express for the Academy its appreciation of the editorial encouragement and assistance of Mr. John D. Stewart, Vice-President of the Bureau of National Affairs, Inc. The Academy is also greatly indebted to Miss Sibyl Sills of the Sills Reporting Service who donated her time to make a stenographic transcript of the sessions.

In addition to the papers and committee reports found in this volume, there is one innovation which merits comment and explanation. This is the final chapter entitled: “The John Deere-UAW Permanent Arbitration System” by Harold W. Davey, which is the first of a projected series of research studies by members of the Academy on Umpire Systems in Mass Production Industries. In order to make these studies available upon their completion the decision has been made to publish them initially as chapters in the annual volumes. Ultimately it is the intention of the Board of Editors, under the Chairmanship of William H. Davis, to bring the separate chapters together and to issue them as a single volume which will for the first time describe, analyze and evaluate what has been the most striking development in the arbitration field in recent years: the growth of permanent arbitration systems in mass production industries. The Academy is proud that its members have served as arbitrators in so many of these situations and hopes to prod them to make available to others their own rich experience as practitioners. It is especially grateful to Professor Davey for completing his assignment in time for publication in the decennial volume.

Finally, the editor notes with sorrow the death of J. Noble Braden, Vice-President of the American Arbitration Association, on February 15, 1957, just two weeks after the close of the Academy meeting. Mr.
Braden attended this convention and the transcript bears witness to the many helpful remarks he made during the sessions. Had he lived, he planned to cooperate with the editor in providing additional material for this volume. His untimely death leaves all of us with a debt which can never be repaid.

Jean T. McKelvey

Ithaca, New York
March 26, 1957
INTRODUCTION: THE FIRST DECADE

Recently a college professor, who is not familiar with the arbitration process, asked me why the National Academy of Arbitrators came into being. Ten years after its founding, no one who is familiar with the field of labor-management arbitration raises such a question. But it is only fitting, after the experiences of this decade, that we briefly review the Academy's initial objectives in the light of its subsequent accomplishments.

In 1947 an article was published which severely criticized certain practitioners in the field of grievance arbitration. The author objected to what he termed the "big business" aspect of it. He implied that some who were engaged in labor-management arbitration were playing politics with their decisions and passing out awards on a "now-it's-your-turn" basis. These comments, which have been reprinted in a current case book on labor law, are still conveying to students of this subject the impression that many of those engaged in the arbitration of labor grievances are practicing without ethical standards.

Unfortunately there was just enough truth in some of the things this critic had to say in 1947 to cause certain arbitrators to take steps to remedy the situation. The National Academy of Arbitrators was created for the specific purpose of improving the arbitration process. In this venture it has had substantial cooperation from the parties to industrial disputes. Both management and labor representatives have contributed much to aid us in our study of the problems in which we all become involved.

While arbitration is ancient in origin, labor-management arbitration as we know it is a unique American institution. In fact, as a process for resolving disputes in the industrial relations field, it is essentially a development of the first half of the twentieth century. And its greatest usefulness has developed in the United States during the past fifteen years.

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1 S Labor and the Nation, No. 5, pp. 48-49.
During World War II, when many of us saw the War Labor Board inundated with unresolved disputes, which ranged from major wage issues to the most trivial grievances in industrial plants throughout the country, certain of those serving on the Board began to encourage the parties to collective agreements to introduce arbitration as a terminal step in the grievance procedure of their contracts. The Board even provided its own panel of arbitrators and managed to reduce its backlog of disputed cases by getting the parties to submit many of them to arbitration rather than take up the time of the entire Board. Often management was reluctant to accept this process as a substitute for its final decision-making in grievance matters. But with the counter-offer of the no-strike pledge for the duration of the agreement, more and more companies and unions began to find arbitration acceptable.

Also, since the War Labor Board was a temporary, emergency agency for handling unresolved disputes, some appropriate peacetime solution for deadlocked labor-management issues had to be worked out. Our very tradition of free enterprise, and free collective bargaining, suggested a solution by the parties themselves. The provision in the collective agreement for a grievance procedure ending in final and binding arbitration was a way of keeping petty issues at home, out of the hands of the government, and particularly out of the courts, while at the same time keeping production lines operating. In this way the parties were privileged to choose their own judge; one with special knowledge and competence in the industrial relations field.

It is significant that at the Labor-Management Conference of 1945 the committee on "Existing Collective Agreements" unanimously recommended the use of arbitration to resolve disputes over contract terms. And today this is a major factor in the maintenance of industrial peace. Of approximately 100,000 collective bargaining agreements in the United States (according to our best information), more than 90% of them have some type of arbitration provision.

The most admirable aspect of this development is that it is something which labor and management have developed to serve them. As the late Herbert Syme said: "Labor arbitration is one of the great examples of American voluntarism." It is outside the orbit of government. But it

is not a substitute for litigation. It is a substitute for the strike and the lock-out. It is a process whereby the parties to collective agreements may resolve their differences and continue to live in peace and relative harmony, without resort to economic pressure and loss to all concerned. It is, in short, one aspect of the American democratic process.

Those of us who were engaged in the practice of labor-management arbitration ten years ago often felt that we were adrift on an uncharted sea. We were forever finding ourselves in out-of-the-way places, in the midst of local tensions. In such an atmosphere, the parties to the disputes we were called in to resolve were at once quick to curry favor with the impartial arbitrator, and equally quick to suspect his every move. If he decided the case in your favor, he was approvable for another such assignment; if he decided against you, he was forever expendable. And this was too often the parties' conclusion, regardless of the merits of the case.

Speaking of the situation in 1947, Bill Simkin has said: "Many of us in this 'lone wolf' type of work felt a need for a common meeting ground." The only indication of what fellow arbitrators were doing in situations comparable to those confronting us was to be found in selected cases which were published in the Labor Arbitration Reports of The Bureau of National Affairs, or in the Prentice-Hall Labor Law Service. We not only read, with some chagrin, what our critics had to say; we often listened to the parties' complaints of some of the alleged questionable practices of those pretending to be arbitrators. It was the conviction of a dedicated group of professional men that the arbitration process could be preserved only if it were kept in professional hands and away from both the amateurs and the shysters. This led to two meetings in the summer of 1947 which resulted in the founding of the National Academy of Arbitrators.

The first of these meetings was a brief, informal gathering in Washington, D.C. This was followed by a meeting at the Stevens Hotel in Chicago, September 13, 1947, with forty-three qualified arbitrators, representing the several sections of the United States. From this meeting came the N.A.A. organization, its constitution, its by-laws and its first working committees.

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The purposes and aims as initially stated are:

To establish and foster high standards and competence among those engaged in the arbitration of industrial disputes on a professional basis; to adopt canons of ethics to govern the conduct of arbitrators; to promote the study and understanding of the arbitration of industrial disputes.

The Academy is not, and never was intended to be, an agency for the selection or appointment of arbitrators. From the first it was understood that the designation of arbitrators in particular situations, where the parties could not agree, and where the assistance of an outside agency might be required, should be left to the American Arbitration Association, the Federal Mediation and Conciliation Service, or the appropriate state agency. The purpose of the Academy was to strengthen the arbitration process in those particulars not already serviced by the appointive agencies. It was not the intent or the purpose to duplicate the functions of existing agencies, but rather to supplement their established activities. Such has continued to be the objective of this Academy.

Between the founders' meeting in 1947 and the first annual meeting in Chicago, January 16 and 17, 1948, the Membership Committee brought the list of charter members up to 105. From that time forward this committee has remained one of our most important, paying particular attention to the experience records and character references of those seeking membership in the Academy. While we may differ among ourselves as to the qualifications of individual applicants, we have generally agreed that the applicant should be of good moral character, as demonstrated by adherence to sound ethical standards in his arbitration practice, and that he should have substantial and current experience as a neutral arbitrator of labor-management disputes. It has been our purpose to foster the highest possible standards of integrity, competence, honor and character among those engaged in the arbitration of industrial disputes on a professional basis. Without standards of exceptional integrity this process cannot survive.

Approximately 250 arbitrators have been admitted to membership in the Academy. But it cannot be said that all of these have remained practitioners of the profession. Some have become public servants. Two are in the United States Senate. Others have become judges. One has become chancellor of a major university. One has become sheriff of Cook County, Illinois. And others have been advanced to responsible
administrative positions in government, in industry and in the academic world. A few have retired. And our current roster lists fourteen deceased members.

To offset this loss to our ranks, we are adding from ten to twenty qualified members annually. This number will vary according to the number and quality of applications received.

There has been some criticism of our roster because certain members are no longer primarily engaged in the practice of arbitration. Indeed we now have members who, though qualified when admitted, have since accepted positions as advocates for labor or management in the industrial relations field and currently have little or no practice as neutral arbitrators. Once having established his qualifications and been admitted, one remains a member of the Academy, if he wishes, in spite of some change in occupational status. It has been said that arbitrators are expendable. But so also are those holding political office or administrative positions in government and industry. And some of our outstanding members have moved from active to inactive status as arbitrators and returned. The point of no return is when the Ethics Committee, upon the basis of substantial and conclusive evidence, finds that a member is conducting himself in a manner which may jeopardize the arbitration process and the Academy decides that the member's name should be expunged from our list. Thus far this drastic step has not been necessary.

At the January 1948 meeting, the Ethics Committee began its study of proper practices and procedures for arbitrators. It was only a matter of a few months thereafter that the American Arbitration Association set up a committee to restudy its rules and procedures. As the work of the two committees progressed, it became evident that one set of rules governing the conduct of arbitrators in labor-management disputes would be more appropriate than two. In the final stages of the preparation of the ethical standards, the Ethics Committee of the National Academy worked with the A.A.A. Committee. By cooperating with the A.A.A. and the Federal Mediation and Conciliation Service, a Uniform Code of Ethics and Procedural Standards for Labor-Management Arbitration was adopted and published. Since its adoption this code has not only become the accepted one by these national organiza-

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tions, but it is also in general use by state appointive agencies. The wide circulation of this publication, by both the National Academy of Arbitrators and the American Arbitration Association has done much to improve the practices in labor-management arbitration.

One of the first activities initiated by the National Academy of Arbitrators (designed to take arbitrators out of the "lone wolf" stage) was a series of regional meetings, wherein members could meet, exchange experiences and discuss common problems. Such meetings are held with or without the participation of other interested parties who are not members, depending upon the nature of the subject matter under consideration.

Perhaps the greatest contribution which the National Academy has made toward the strengthening of the arbitration process has been its annual meetings. From the first the members who have been able to attend these events have learned much from the most experienced and most highly skilled practitioners in the field. And it has also been the practice to have on our annual programs some of our most severe critics, those who represent the parties in labor-management disputes. It is through these public meetings that the standards of those who practice professionally in the field of arbitration are elevated and the public learns something of the nature of the profession.

Our Committee on Research and Education edits and, through the cooperation of The Bureau of National Affairs, publishes the proceedings of these annual meetings. This practice was started in 1955 with the publication of Arbitration Today. It was continued with a second volume on Management Rights and the Arbitration Process in 1956. It is our purpose this year to publish in addition to this volume of proceedings, a companion volume which will include some of the more noteworthy papers delivered at the first seven annual meetings.7

This committee also plans to edit and publish a volume on umpireships in major industries, provided those members who have served in this capacity are able to get the cooperation of the parties in a sufficiently representative number of cases.8

In addition to the cooperation of The Bureau of National Affairs, the Commerce Clearing House, through its Labor Law Journal, has pub-

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7 Editor's note: This volume will appear under the title: The Profession of Labor Arbitration.
8 Editor's note: The first such study has just been completed and is incorporated in the present volume as Chapter IX: "The John Deere-UAW Permanent Arbitration System" by Harold W. Davey.
lished a number of papers produced by members of the Academy, some of which have been the direct result of workshops conducted at our annual meetings. Through all of these channels our organization has contributed much to advance the professional status of those active in the field of labor-management arbitration.

While we stated at the outset that it was not our purpose to serve the public as an appointive agency, it is significant that since the beginning of the publication of our membership roster, there has been not only a growing respect for the professional arbitrator, but also a steadily increased demand for those who have been admitted to membership in the N.A.A. Some parties to collective bargaining agreements have begun to specify in their agreements, not a particular arbitrator, nor a panel from which one is to be chosen, but simply that the one who serves them must be a member of the National Academy of Arbitrators. And we are told that the appointive agencies have at times been requested to include only N.A.A. members on the panels which they are asked to submit to the parties.

There is one recent development in the arbitration field which the National Academy did not initiate. We take no credit for the introduction of the proposed Uniform Arbitration Act. While the members of the Academy are divided on the subject, a substantial number believe that the less legislation we have in the field of labor-management arbitration the better it will be for the prompt settlement of grievances. Legislation of this kind invites litigation. And such litigation will tend to stifle the use of voluntary arbitration and to prolong rather than shorten the grievance process.

Today, the generally accepted contract clauses provide for the settlement of grievances by final and binding awards of arbitrators chosen by the parties. Under the proposed Uniform Arbitration Act, an award will be neither final nor binding if one party is unhappy with the result and elects to hire an attorney and appeal to the courts. In this way the pot is kept boiling; the process is prolonged; the expense mounts; and the government lays on a heavy hand. What has been a voluntary, economical and speedy method of resolving grievances may

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well become involuntary, expensive and long drawn-out, if this proposed act is adopted in all of the major industrial states.

While the National Academy had no part in initiating the proposed Uniform Act, it has offered constructive suggestions for the improvement of this proposed legislation. And it will continue, through its Committee on Law and Legislation, to advocate such changes in this and other legislative proposals as will reserve to the parties the greatest possible latitude in resolving their local grievances without becoming involved in needless litigation in the courts.

The work of arbitrators, like that of judges, is in one sense enduring and in another sense ephemeral. That which is erroneous is sure to perish. The good remains, the foundation on which new policies, practices and procedures will be built. That which is bad will be cast off in due time. Little by little, old and outworn doctrines are undermined, both through the process of negotiation by the parties and by the sounder reasoning of those called upon to interpret the language which the parties have hammered out in the heat of economic conflict, and through long hours of patient effort to reach an agreement.

Often we worry overmuch about the enduring consequences of our errors. They may work some confusion for a time. But in the end they will be modified or corrected or their teachings ignored. The future takes care of such things. "In the endless process of testing and retesting, there is a constant rejection of the dross, and a constant retention of whatever is pure and sound and fine."

We take pride in the contributions made by the National Academy of Arbitrators toward the strengthening of the arbitration process. What our critic had to say ten years ago may still apply to some who pose as arbitrators; but we believe that he will agree that the questionable practices referred to by him are not being generally perpetuated by the members of this Academy.

But our contribution thus far is only a beginning. The future belongs to you younger men who accept the challenge of this new and growing profession. Long after many of us have joined the roster of deceased members, and our small part in the arbitration process has been for-

10 Editor's Note: See Appendix C of Management Rights and the Arbitration Process, and Appendix C of this volume for the reports of the Committee on Law and Legislation.

gotten, you will be here to carry the torch forward. I know the flame will burn bright while the torch is in your keeping. And in this way the prestige of the profession of labor management arbitration will continue to be enhanced. We cannot afford to permit this process, which has done so much to promote industrial peace, to be undermined by the activities of the cynical, the uninformed, or those incompetent to handle such matters.

John Day Larkin
President, 1956