

CHAPTER 1

PRESIDENTIAL REFLECTIONS

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I

A recent editorial in the *Detroit Free Press* commended labor and management officials in the auto industry for their willingness to experiment with "quickie arbitration" procedures. Acknowledging that some grievances may be too complex for speedy disposition, the editor suggested that the majority could be given expeditious handling if appropriate machinery were made available for the purpose. Aside from steps taken to accelerate the usual procedures, he found some promise in such other innovations as "arbitration-by-telephone." This Orwellian concept reminds one of the "automated arbitrator" tale prophetically told us some years ago by our late good colleague Arthur Ross.

Innovation is the current vogue in dispute-settlement circles. A good part of it comes in response to the flexing of bargaining muscle in newly recognized collective bargaining areas, chiefly the public sector. The forward movement there is influenced by the entry of new people and the introduction of new ideas in a climate different in significant ways from that which nurtured the traditional grievance-arbitration concepts. Known but infrequently used ideas concerning fact-finding, advisory procedures, mediation, last-offer arbitration, and other techniques have been accorded formality in contract and statute. And some interesting twists have been added by the new professional sports organizations.

But the idea of "expedited arbitration" is especially related to "mature" industrial grievance-arbitration procedures. The impe-

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tus comes mainly from "distressed" systems so heavily burdened with docketed claims as to prevent some from being answered at all and to cause long delay in others. The ramifications of the problem need no elucidation here. At center is the simple but quite valid notion that slow justice is poor justice. Questions of remedy often become overly complex. The beneficiaries of the system are no longer content with procedures that are remote in time and place from the origins of the claim. Ponderous grievance systems do not foster confidence, particularly in an impatient labor force that seems more inclined now to avail itself of every possible litigatory avenue.

The auto industry is not, of course, the first to experiment with "expedited arbitration." The best known broad-scale effort was launched in the steel industry several years ago. Since then other industries—aluminum, for example—have begun to test similar procedures. And the American Arbitration Association is setting up panels and procedures for the ad hoc users of its services. Clearly, to those who view it as a way of reducing the time and costs of arbitration as the end step in a grievance procedure, the idea has strong appeal.

Those professionally engaged in the practice of arbitration do not speak with one voice about the new developments. Some try to keep abreast of these trends, but others, fully occupied with their own heavy caseloads, remain indifferent. Some stay aloof, apparently in the belief that since the grievance system belongs to the parties they may do as they wish with it. Others are openly skeptical, questioning whether such expedited procedures can really serve to reduce grievance loads or effect any significant economies. Some are seriously concerned about the quality of decisions reached hastily by inexperienced panelists, and the possible lowering of professional standards. Also, it appears, there may be some apprehension about invasion of the profession's jurisdiction.

We have long been aware of the problems posed by flooded grievance procedures. Mainly the suggestions made to deal with these problems in our studies have related to the need for correction at the front end. Essentially this meant more responsible conduct by employee and employer, more effort to weed out claims of little consequence or merit, and some streamlining of the existing procedures. In short, improvement has been sought

by focusing on steps to reduce the number of cases that advance to arbitration. If there has been progress, however, it was largely spotty or temporary. We must now recognize that there has been little evidence of abatement in the flow of grievance claims in large single or multiplant bargaining units. And, given the temperament and inclinations of today's work force, there is small promise of improvement.

It was inevitable, then, that labor and management would be forced to search for ways to improve the entire grievance-arbitration system. And this has led them to experiment with supplementary arbitral routes for the disposition of cases that they mutually agree are susceptible to resolution under "expedited" procedures. One theoretical advantage of a system that permits quick disposition of a large body of relatively simple claims is that it allows the parties and the arbitrators the freedom to devote special care and attention to disputes of such complexity, import, or precedent value as to warrant the most professional consideration.

Although it is too early for reliable evaluation of expedited arbitration procedures, it is plain there was urgent need for some new way to provide quick, economical disposition of claims that were being poorly handled or not handled at all. While professional arbitrators may still be reluctant to endorse the new systems, they must nevertheless acknowledge the existence of the problem and the need for new approaches. It is my judgment that we are bound by our responsibility to the institution of arbitration to cooperate in the development of these new systems and make available to parties whatever constructive aid our experience can provide.

A year or so ago, while pondering a particular situation where the growing caseload was fast becoming unmanageable, I speculated about a system—dubbed by a colleague the "Chautauqua Plan"—especially applicable to a multiplant bargaining relationship in which the employees were accustomed to resort to the grievance and arbitration procedures on all manner of complaints, such as discipline, assignment rights, promotion, seniority, and a welter of other matters covered by the agreement. Some grievances were withdrawn or settled, some were disposed of in "crash" negotiating sessions, and others simply lay dormant. Those that ultimately came to arbitration and were answered had

taken one, two, or even three years from their inception to final resolution. The addition of some "temporary arbitrators," a contractual resort, helped to some extent to alleviate the problem, but they could make no real inroads on the heavy backlog and steady flow of new appeals.

My thought was that such a system could be speeded up and made more meaningful to the employees by adding a supplementary procedure that would assign arbitral responsibility for several plants in a given geographical area to a three-man team consisting of one arbitrator, one corporate representative, and one international union representative. The team would travel to those plants, hear, and decide grievances presented by the local parties. Hearings would be scheduled periodically, or as needed, and the claims would be decided by majority vote in the same week they were heard. A simple statement of award, identifying the grievance and giving the decision, would be issued promptly over the arbitrator's signature. Either party, or the arbitration team, could choose to bypass this procedure for designated grievances which would then be processed through the regular procedure. Aside from the speedier resolution of appeals and the ameliorating aspects of on-site hearings upon the decision-making process, the parties could avail themselves of the services of an experienced arbitrator capable of applying established precedents. With decision by majority vote, the arbitrator would be freed from compulsion to write an opinion setting out his reasoning in cases submitted in this way.

There is no purpose here to seek acceptance or approval of this "Chautauqua Plan." I offer it only to stimulate thinking about an area of serious concern that surely deserves our attention. As professionals, dedicated to the concepts of grievance arbitration, we cannot conscientiously remain unresponsive to conditions which command remedy.

II**

A Code of Ethics that doesn't generate some difference of opinion is likely to be so innocuous as to be of little value. The

** The following commentary on the proposed new Code of Professional Responsibility was drafted by David Miller in the course of his preparation to chair the October 11-12, 1974, meeting of the Board of Governors with the Joint Committee chaired by William Simkin. It was not intended for verbatim publication, but it warrants publication as a thorough and convincing statement of his views, which the Board of Governors came to share.

Board of Governors left it to the Steering Committee to determine whether it would stick to a Code of Ethics involving simple statements of principle—as, thou must do this or thou shalt not do that—or whether to produce a broader Code of Professional Responsibility including specific guidelines regarding what constitutes good arbitration practice. The committee chose what is clearly the more difficult course—that is, to adopt a code of broader dimensions covering not only purely ethical guides but also “good practice” guides.

It is important to understand that the proposed Code of Professional Responsibility is not simply an internal document applicable only to Academy members. The committee represents the Academy, the AAA, and the FMCS. And there is *nothing new* about this. Since 1951 we have operated under a code that was developed and approved or adopted by the same three organizations. If the proposed new code is not adopted, we will still be subject to a code fashioned by and applicable to the same three organizations.

There are solid reasons for revision of the code. They are, for example:

1. When the original code was adopted, there were only about 200 members in the Academy—and probably no more than 300 or 400 persons with any significant experience in labor-management arbitration. The nucleus of that group was widely experienced both in practice and in the ethical commands of the newly developing profession. It is probably fair to say that as individuals they did not require great guidance either in practice or in ethical principles. However, we face a vastly different situation in 1974. There are now upwards of 2,000 persons holding themselves out as available to serve as arbitrators. Many have no real background training to qualify them in terms of either the ethical principles or practical guides we have developed and which we respect in the performance of our work. Our own membership is rapidly approaching 500, and many applicants wait in the wings for admission. The eligibility standards applicable to them are now under serious study by our Reexamination Committee.

2. Whether we like it or not and whether or not we accept a vast new membership, the fact is that the burgeoning supply of arbitrators will be engaged in the public or private sector in var-

ious roles—under expedited systems, statutory appointments, or selection by the parties. What they do and how they conduct themselves will become public knowledge and will tend to establish the standards of competence, integrity, and good practice by which our profession is judged. If their performance is inferior, the adverse impressions they make will spill over and muddy the public's view of the entire process.

It seems to me a matter of sound, intelligent self-interest to recognize that Academy membership does not insulate us from the conduct of nonmembers. I contend that we are the preeminent organization in the profession and thus are obliged to set the standards by which every aspirant should be guided and judged. It is elementary that this requires a broader statement of ethical guides and good practice than we may require. In simple terms, it means the inclusion in our code of more guides and more explanation than some of us believe are necessary for our own personal guidance.

The committee, I understand, started its deliberations on the basis of a "laundry list" of matters to be covered. Its draft, starting, I believe, with about 70 pages, has been whittled down to 22 pages, and is somewhat less in print. The revisions and deletions that have been made came from consideration of the critical comments and constructive suggestions of the membership. I have been a member of the Academy for nearly 22 years—a mere fledgling by some standards. But my involvement has been heavy, and I have never seen as much continued and serious input by the membership in any project.

The final vote will be by the general membership, since adoption requires a constitutional amendment. The proper constitutional approach is set out in Article VII, Section 1, of the Constitution and Section III, Section 1, of the Bylaws. Together those provisions make the "Board of Governors the governing body of this Academy" and require a constitutional amendment to be approved by "two-thirds of those voting at any membership meeting." An amendment to be considered must be "approved by a majority vote of the Board of Governors" (or one drafted and signed by 10 members). Germane amendments to any proposed amendment brought properly before a membership meeting are not prohibited.

A fair look at the work of the committee from its first draft to the 12th or 13th shows that the committee has given serious consideration to the views of the members. In simple terms, the changes made reflect with substantial accuracy, I believe, the broad consensus. There remain, of course, serious differences on various points as well as the general approach. I share the views of those who disagree with parts of the draft (as it stood before October 1974). But I believe the document is sound and fair in substance. It is now time to elevate the standards of arbitration practice.