

**ARBITRATION 1984:
ABSENTEEISM, RECENT LAW, PANELS, AND
PUBLISHED DECISIONS**

ARBITRATION 1984:
ABSENTEEISM,
RECENT LAW, PANELS, AND
PUBLISHED DECISIONS

PROCEEDINGS OF THE THIRTY-SEVENTH
ANNUAL MEETING
NATIONAL ACADEMY OF ARBITRATORS

Chicago, Illinois

May 22-25, 1984

Edited by
Walter J. Gershenfeld
Professor of Industrial Relations
Temple University

The Bureau of National Affairs, Inc.

Washington, D.C.

Copyright © 1985
The Bureau of National Affairs, Inc.
Washington, D.C. 20037

Library of Congress Cataloging in Publication Data

National Academy of Arbitrators. Meeting (37th :
1984 : Chicago, Ill.)
Arbitration 1984—absenteeism, recent law, panels, and published
decisions.

Includes indexes.

I. Arbitration, Industrial—United States—Congresses.
I. Gershenfeld, Walter J. II. Bureau of National Affairs
(Washington, D.C.) III. Title.
KF3424.A2N36 1984 344.73'0189143 84-23224
ISBN 0-87179-464-0 347.304189143

Authorization to photocopy items for internal or personal use, or the internal or
personal use of specific clients, is granted by BNA Books for libraries and other users
registered with the Copyright Clearance Center (CCC) Transactional Reporting Service,
provided that \$0.50 per page is paid directly to CCC, 21 Congress St., Salem, MA 01970.
087179-464-0/85/\$0 + .50

Printed in the United States of America
International Standard Book Number: 0-87179-464-0



DEDICATION

Three Academy members passed away recently, Nathan Feinsinger, Bora Laskin and Peter Seitz. Each of them brought luster to the profession of arbitration and made significant other contributions to society. Nathan Feinsinger and Peter Seitz both held high positions in the Federal Government in Washington and contributed singly to labor relations in their home states. Bora Laskin attained the high office of Chief Justice of the Canadian Supreme Court. All three were warm, caring individuals, and it is with affectionate remembrance that we dedicate this 37th Annual Proceedings volume to their memory.

In Memoriam
Nathan P. Feinsinger
1902–1983



Nathan P. Feinsinger was, by any standard, one of the giants of the labor arbitration profession. He was also my teacher, my mentor, my colleague, and my friend.

After graduating from the University of Michigan Law School, Mr. Feinsinger became a professor at the University of Wisconsin Law School. He remained in Madison the rest of his life, though his involvement in labor disputes took him all over the United States.

It was Nate's destiny to come into the teaching world at about the same time that the Wagner Act was passed. Fortunately, he became interested in labor-management problems. Studies in this field had been pioneered at Wisconsin by the John R. Commons group, many of whom were still at Wisconsin when Professor Feinsinger first became involved. Indeed, the Collective Bargaining Seminar, which enrolled

both law and economics students, featured a highly productive collaboration between Professor Edwin Witte and Professor Feinsinger. To this seminar Nate brought enthusiasm, vigor, a sharp but rarely cutting tongue, a wide assortment of labor and management practitioners, and a great capacity to stimulate students.

It was natural, particularly in Wisconsin which was committed to finding ways the University and the State could work together, that Nate became involved in the drafting, enactment, and administration of a little Wagner Act for the State. And when the National War Labor Board was formed at the outset of World War II he was called upon for service with that agency. It was with the NWLB that his national reputation was established, and through the 1940s he became one of the superstars of the mediation and arbitration field. If there was a major national dispute, Nate was likely to be involved. He had a sharp and incisive mind, an instinct for identifying key issues, an imagination that could repackage old issues so that they became more acceptable to the parties, a sense of humor which enabled him to hold the parties together, and a deep respect for fairness and equity.

At the start of the 1950s Nate had a tragic auto accident which required a long period of recovery and impaired his physical strength the rest of his life. Though lame from the accident and often in pain, Nate refused to slow his pace and continued his national efforts in mediation and arbitration. He also continued to teach in the Wisconsin Law School. During the Korean war he took time off from Wisconsin to serve as Chairman of the National Wage Stabilization Board under President Truman, and in the years thereafter was Chairman of a number of Emergency Disputes Boards and of boards privately established for the settlement of a wide variety of disputes. He was also the contract arbitrator under a number of agreements, principal among which was the General Motors-UAW contract.

As the years passed, Professor Feinsinger's physical strength was increasingly impaired. Though he officially retired from the University of Wisconsin in the early 1970s he continued to be involved on a reduced basis in mediation and contract dispute cases for a few years thereafter.

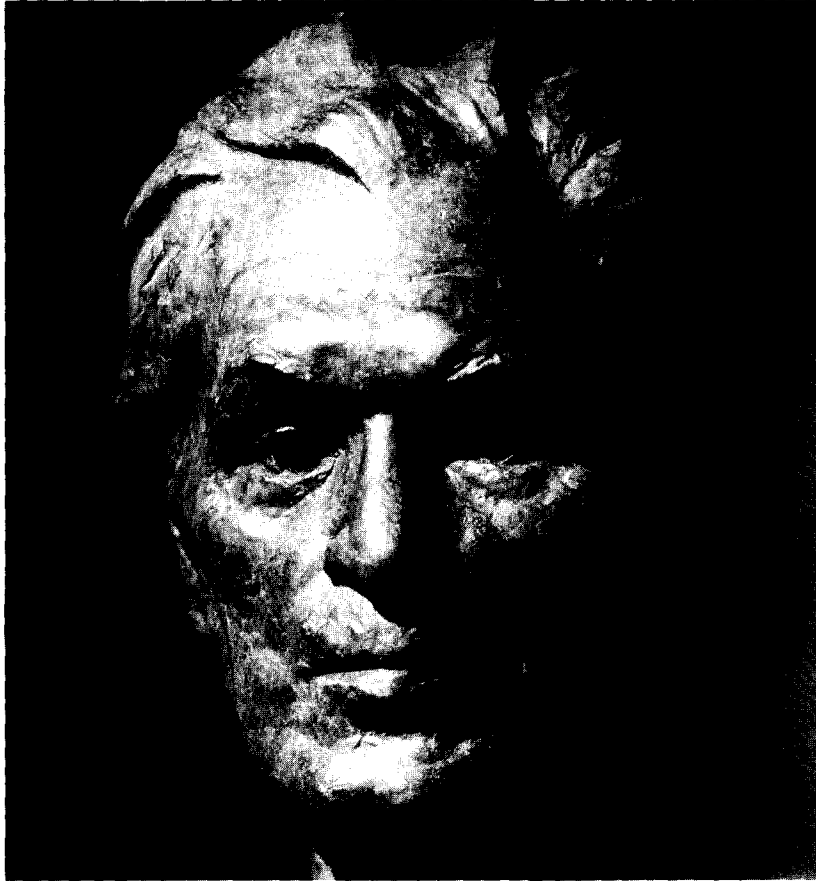
When Nate died in 1983 he was 81 years old. Those of us who were privileged to know him have lost a delightful companion, a source of infinite wisdom about mediation and arbitration, and a revered colleague. For those who did not know him personally, his reputation and stature are assured by his distinguished record of accomplishment over at least a forty-year period. The University of Wisconsin, which he so loved, will count him among its brightest stars, and the nation will find it hard to replace his exceptional talent. The National Academy of Arbitrators, of which he was a founding member, will hold him in ever honored memory.

Robben W. Fleming

In Memoriam

Bora Laskin

1912–1984



Bora Laskin died on March 26, 1984, at Ottawa. He was 71 years old, and in his tenth year as Chief Justice of Canada. It is sad to report that his wife, Peggy, survived him by only two months.

Portrait in Bronze of the Rt. Hon. Bora Laskin, P.C., C.C., Q.C.
Sculptor and photographer: Kenneth Jarvis, Esq., Q.C.

Born and brought up in Fort William (now Thunder Bay), Ontario, at the head of Lake Superior, Bora Laskin studied at the University of Toronto, taking an arts degree in 1933 and a law degree in 1936. He obtained a graduate degree from Harvard Law School in 1937.

He was for a brief time counsel to the Canadian Division of the United Auto Workers. For many years, however, he was a teacher of law, first at the Osgoode Hall Law School in Toronto and then at the University of Toronto Faculty of Law. He was in the forefront of those whose efforts brought about the modernization of legal education in Ontario.

He was a distinguished teacher in many fields of law, including labour law, and a number of his students have since become members of the Academy. He became very active as a labour arbitrator at a period when arbitration of industrial disputes was becoming widely accepted in Canada, and when there was a need for acceptable neutral labour experts to fill the role that had first been assigned to judges. He was one of the first Canadian members of the Academy. The style of his conduct of a hearing and of his decision-writing did much to set the tone, and the quality of his decisions much to establish the substance of arbitration law as it is now.

As a judge of the Ontario Court of Appeal, then of the Supreme Court of Canada, and finally as Chief Justice of Canada he participated, often at first in dissent and later in majority opinions, in many landmark decisions in labour law. Of course his judicial work, like his teaching, went beyond labour law, his greatest renown being in the constitutional field, but in every area of his work and his life, the quality of his mind and the warmth of his soul were sources of inspiration. He was a great teacher, a great arbitrator, a great judge; a great man.

J.F.W. Weatherill

In Memoriam

Peter Seitz

1905-1983



Following a quotation from the obituary of Peter Seitz in the *New York Times*, October 19, 1983, is the eulogy given by Ralph Seward at the memorial service held on October 21, 1983.

“Mr. Seitz, a lawyer, was a public member of the American Arbitration Association’s labor-management panel in 1965-66 that studied collective-bargaining procedures in New York City

and made recommendations that provided the basis for the Office of Collective Bargaining and the city's current labor law.

"He was a public member of the National Wage Stabilization Board, counsel and assistant to the director of the Federal Mediation and Conciliation Service and director of industrial relations for the Defense Department."

Peter has always been a hard act to follow. He still is.

But it is good to think and talk about Peter with his friends.

Have you ever noticed, when thinking or talking about Peter, how often you find that you are smiling and that your heart is growing warm? We smile because Peter spoke to us through the language of laughter; and our hearts grow warm because, behind the sparkle and glitter—and sometimes the cutting edge—of his words we can sense Peter's own warm heart. Peter had a talent for friendship and the supreme gift of knowing how to love.

He was a man of complete integrity and great courage. Those of us who had contact with him in his professional life can all testify to that.

He was vastly erudite, and his knowledge of the world and of life was not only broad but deep. Perhaps for that reason there was often an undercurrent of sadness beneath his words. He was not only a thinker who delighted in the processes of thought, but a sensitive man deeply conscious of the absurdities and tragedies of life.

He threw himself not only into the ordinary tasks of his profession but into its great issues and controversies; the journals and literature of arbitration have been enriched by his defense of principles and values he held dear.

And he was a great teacher—sometimes formally, on the lecture platform or in the classroom—but more importantly, in talking to the many arbitrators who came to him for advice and counsel. And his effectiveness as a teacher stemmed in part from his ability to listen and to judge when he could best speak and be heard.

But all these statements are inadequate. Peter was a close, dear friend for many years and on the map of New York City which I carry in my mind, there has long been a special glow over the spot that marks 285 Central Park West. Peter somehow enriched the area around him. Wherever he was—at home, in meetings, or with groups of friends—you found that thoughts cut more sharply and feelings ran more deep.

Years ago, when my father died, one of my sisters who lived a great distance away and could not be with him at the time of his death, wrote to me expressing her regret. But she said, "Ralph, what really matters is not the moment of parting, but all the life we have had together."

There is no way of hiding or glossing over the enormous loss we feel today. But we can take some comfort in the knowledge that Peter was, is, and always will be a treasured part of our lives.

Ralph T. Seward

PREFACE

The Thirty-Seventh Annual Meeting of the National Academy of Arbitrators in Chicago was rich in diversity. The sessions opened with an updated examination of the role of law in arbitration. This all-important topic merits frequent review as circumstances change. Arbitration and the absent employee was discussed in the afternoon session, reflecting the revival of interest in this topic particularly as “no-fault” attendance plans have grown. Considerable controversy was aroused over the use of local or regional bipartite panels at the end of the in-plant grievance procedure. The meetings concluded with a look at the representativeness of published decisions and included important hard data on the topic.

Mark L. Kahn’s presidential address is appropriately titled, “Labor Arbitration: A Plea to the Parties.” It focuses on numerous aspects of the process which the parties can control in ways beneficial to all concerned. President Kahn’s paper dovetails nicely with Robben L. Fleming’s analysis of arbitration twenty years after the publication of his book, *The Labor Arbitration Process*. Everyone interested in arbitration will want to review his perception of difficulties and opportunities.

Normally, we do not publish papers presented at the Members Only sessions. However, the principal topic this year was the use of computers/word processors by arbitrators, and it was felt desirable to share the approaches of the panel with a wider audience. We are also publishing the report of the Future Directions Committee with its careful consideration of many facets of arbitration as they involve the Academy.

My personal appreciation for assistance rendered goes in particular to Mark Kahn, Jack Dunsford, Rich Block, Dallas Jones, Chuck Rehmus, Art Malinowski, Jim Stern, Gladys Gershenfeld, Mary Miner, Camille Christie, and the ever-helpful Barbara Dennis. A special thanks to those many authors who believe a deadline is a deadline.

Walter J. Gershenfeld

June 1984

CONTENTS

DEDICATION	v
For Nathan P. Feinsinger	vi
For Bora Laskin	viii
For Peter Seitz	x
PREFACE	xiii
CHAPTER 1. The Presidential Address: Labor Arbitration—A Plea to the Parties	1
by Mark L. Kahn	
CHAPTER 2. Reflections on Labor Arbitration	11
by Robben W. Fleming	
CHAPTER 3. Recent Law and Arbitration	21
I. W.R. Grace and Co.: An Epilogue to the Trilog?	21
by Thomas G.S. Christensen	
II. Reflections on Wrongful Discharge Litigation and Legislation	32
by William B. Gould IV	
III. NLRB Deferral to the Arbitration Process: The Arbitrator's Awesome Responsibility	51
by Charles J. Morris	
CHAPTER 4. Arbitration and the Absent Employee	77
Absenteeism	77
by Howard Block and Richard Mittenthal	

CHAPTER 5. Arbitration Without Neutrals	106
I. The Legal Background	106
by David E. Feller	
II. Teamster Joint Committees: The Legal Equivalent of Arbitration	118
by Gerry M. Miller	
III. Teamster Joint Grievance Committees: Grievance Disposal Without Adjudication	131
by Clyde W. Summers	
IV. Bipartite Airline System Boards	153
by Stuart Bernstein	
V. Bipartite Airline System Boards of Adjustment	161
by Robert H. Nichols	
CHAPTER 6. How Representative Are Published Decisions?	170
Part I	170
by Howard A. Cole	
Part II	172
by Jack Steiber, Richard N. Block, and Leslie Corbitt	
Part III. Proper Prepublication Procedures: An Arbitrator's Comment	192
by Merton C. Bernstein	
Comment	199
by Earl M. Curry, Jr.	
CHAPTER 7. Microcomputer Use in Arbitration	204
I. Using a Database to Get More Out of Your Computer	204
by Barbara W. Doering	
II. Computers for Arbitrators?	210
by C. Chester Brisco	
III. Word Processing as a Tool of the Arbitrator's Trade	218
by I.B. Helburn	
IV. How I Picked My Word Processor—and Why	222
by Alexander Macmillan	
APPENDIX A. National Academy of Arbitrators. Officers and Committees, 1984-1985	227

APPENDIX B. Report of the Future Directions Committee	234
CUMULATIVE AUTHOR INDEX	279
TOPICAL INDEX	291