

ARBITRATION 1993
ARBITRATION AND THE CHANGING
WORLD OF WORK

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PROCEEDINGS OF THE FORTY-SIXTH
ANNUAL MEETING
NATIONAL ACADEMY OF ARBITRATORS

Denver, Colorado

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PREFACE

The changing world of work was the unifying theme of the 46th Annual Meeting of the National Academy of Arbitrators, held at Denver, Colorado, May 31–June 6, 1993, continuing the “change” pattern for the 1990s. In his presidential address David Feller concentrated on the changes that had occurred in legislation and court decisions since the *Trilogy*, which he had argued before the Supreme Court. He challenged Academy members to become proactive in anticipating change to protect the arbitration process and to preserve the highest professional standards (Chapter 1).

Distinguished speaker, Archibald Cox, put arbitration in a broader context to accommodate new social and environmental challenges. Using tripartite arbitral panels of the War Labor Board as a role model, he emphasized the effectiveness of public-private coalitions in many areas of human endeavor and described his experience as a member of the Health Effects Institute Board of Directors for resolution of scientific disagreements (Chapter 2).

Paul Gerhart analyzed the changing competitive pressures facing industrial relations practitioners and how arbitration decisions were likely to be affected. Theodore Clark (management) and John Zalusky (labor) agreed that arbitrators could not solve all these economic problems but worried that arbitral decision making could have a serious adverse impact if it tried to break new ground beyond the limitations of the collective bargaining agreement (Chapter 3). A similar conclusion was reached by Edward Miller (management) and Lynn Williams (labor) during their discussion of arbitration issues arising from downsizing and other restructuring activities, but Academy member Edward Hales was sure that arbitrators were up to the task, especially if they considered using mediation in the process (Chapter 4). In line with continuing attempts by the Academy to acquaint members with alternative dispute resolution, John Kagel, Nancy House, and Daniel Ish discussed mediation of grievances and where it was likely to be effective (Chapter 5).

Lamont Stallworth also promoted mediation for resolution of conflicts arising out of work force diversity. However, Patt Gibbs (labor) felt that arbitration rather than mediation could best be used to avoid expensive and time-consuming litigation, especially in cases alleging discrimination (Chapter 6). Continuing the diversity theme, Glenn George discussed the effect of employment discrimination legislation on arbitration issues, with comments by Elaine Bernard (labor) and Lawrence W. Marquess (management). Steven Briggs described the increasing use of collective bargaining by gays and lesbians to achieve parity at the workplace in health and other benefits (Chapter 7).

Whether current issues are merely an extension of old antagonisms or are the result of changing values in the workplace was discussed by William Rentfro, with comments by Walter Brauer (labor) and James Hautzinger (management), warning that arbitrators could do little about values except to keep their values to themselves as neutrals (Chapter 8). Matthew Finkin suggested that workplace problems were exacerbated by loss of workers' loyalty to their employers. This view was supported by Roy Heenan (management), but Alvin Goldman commented that employers' failure to exhibit loyalty to employees may also be an important cause of those problems (Chapter 9). According to Lewis Maltby, performance monitoring is a specific cause of employee dissatisfaction because it interferes with privacy. Raymond Deeny (management) had an opposing view of this matter (Chapter 10).

In connection with the arbitration hearing, Carol Wittenberg described some problem witnesses she had encountered in the mental health field, and Edward Archer added his analysis of how courts determined competency. Roger and Frances Abrams thought that neutrals should give more attention to the therapeutic value of the arbitration process, but commentators John McKendree (management) and William Schoeberlein (labor) did not agree. They felt that the process would deviate from the parties' expectations if arbitrators became counselors (Chapter 11).

The "Fireside Chat" has now become a tradition at Academy annual meetings, and this year past presidents Benjamin Aaron (1962) and Jean McKelvey (1970) regaled Academy members with their experiences on the road to an arbitration career, especially work on the War Labor Board staff. Their nostalgic anecdotes brought forth laughter and knowing nods from the audience, especially those Academy members who had received their 30-year membership certificates. The Academy honored Chief Justice Alan

Gold of the Superior Court of Quebec by presenting him with honorary life membership (Chapter 12).

Other Academy business included a report on the Academy's role, if any, with regard to alternative labor dispute resolution procedures (Appendix B), submitted by a special committee chaired by David Beck, appointed by past presidents Howard Block and Anthony Sinicropi and continued by president Feller. The Board of Governors accepted the Committee's recommendation that the Academy become more involved in those procedures. The Committee on Professional Responsibility and Grievances, chaired by Alex Elson, submitted a Manual of Procedures for Disciplinary Proceedings, as approved by the Board of Governors (Appendix C).

The excellent program was arranged by a committee headed by Alvin Goldman, and John Sass ably chaired the Arrangements Committee. We thank this year's contributors, whose cooperation in prompt submission of their manuscripts made this volume possible. BNA's special editor, Cheryl Drew, performed in her usual capable fashion.

July 1993

Gladys W. Gruenberg, Editor

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