Chapter 13

FIRESIDE CHAT WITH ARVID ANDERSON

Arvid Anderson is former Secretary and Commissioner of the Wisconsin Employment Relations Commission (1948–1967) and Chairman of the New York City Office of Collective Bargaining (1968–1987). Among other prominent positions, he served on U.S. Secretary of Labor Robert Reich's Task Force on Excellence in State and Local Government (1994–1996). In these capacities, Arvid Anderson has been a leading figure in the development of labor-management relations in the public sector of the United States. Since 1956, as a member of the National Academy, he has been an active arbitrator of labor-management disputes in the private as well as the public sectors.

The chat with Arvid that follows was led by University of Wisconsin Professor Emeritus and National Academy of Arbitrators Member, James Stern, during the Fifty-Eighth Annual Meeting of the National Academy of Arbitrators in Chicago on May 28, 2005.

Jim Stern: How did you come to get into this business, Arvid?

Arvid Anderson: The story begins in 1937 when I was a 15 year old and it involved the little steel strike of 1937. I took a streetcar ride from my home in Hammond, Indiana, to the Republic Steel's South Works in Chicago. I was there the day before and the day after the Memorial Day Massacre of 1937, when Chicago police killed 10 strikers, shooting 7 of them in the back. The following year I heard Phil Murray say from the same site that 10 men will picket this plant forever. I was convinced there had to be a better way to resolve labor disputes. As a consequence of the Memorial Day Massacre, the Wagner Act was enacted, bringing collective bargaining to the private sector.

I enrolled at the University of Wisconsin for the purpose of studying labor economics and came under the influence of Ed Witte, Selig Perlman, Nathan Feinsinger, Robin Fleming, and others. I never recovered.

But first there was World War II. I served as navigator with the Eighth Air Force and lasted seven missions before our plane was blown up and I became a Prisoner of War until liberated by

General George Patton 7 months later. I was fortunate to have survived. Among my memories are that I no longer want to eat cabbage or sauerkraut or any similar product because the Germans fed us dehydrated sauerkraut for many, many days.

After the war, I went to law school and, when I graduated, I had the good fortune of going to work as the executive secretary for the Wisconsin Employment Relations Board, now the Commission. Wisconsin was one of the first states to adopt a "little" Wagner Act in 1935, and in 1939 that law was amended by the Wisconsin Employment Peace Act.

Just a word about the Wisconsin pioneering role in worker protective legislation: In 1911, Wisconsin enacted the first workers' compensation law, which was administered by the Wisconsin Industrial Commission. In 1932, the Wisconsin legislature passed the first statute on unemployment compensation. The enactment of the Wisconsin Employment and Peace Act after only 4 years of the little Wagner Act followed milk strikes and sit-down strikes with accompanying violence. It is of interest to note that the Wisconsin Employment Peace Act became a model for the Taft-Hartley Law of 1947, but that is a different story.

Jim Stern: Arvid, tell us a little about what your job was like at the WERC.

Arvid Anderson: The position at the WERC included mediation and arbitration duties as well as serving as a trial examiner and a hearing officer. I am convinced the training I received as a mediator and arbitrator in the employ of the Wisconsin Employment Relations Commission was invaluable. It taught me a great deal about collective bargaining, which I believe is essential to an understanding and a successful career in labor arbitration.

The Wisconsin Employment Relations Board under the leadership of the late Morris Slavney and Zel Rice had established an excellent reputation in the labor relations community. The staff included Academy members George Fleischli, Bob Mueller, Ed Krinsky, Neil Gunderman, Howard Bellman, and Amedeo Greco.

Jim Stern: You were involved in the development of the Wisconsin public employee bargaining statute, considered to be the forerunner of public sector bargaining legislation.

Arvid Anderson: In 1962, Wisconsin became the first state to enact a comprehensive bargaining law for public employees. This followed a substantial debate because opponents of the Act said that collective bargaining meant the right to strike and, because there was no right to strike against the public, there could be no

collective bargaining. The Wisconsin legislature substituted a form of fact finding with recommendations in lieu of the right to strike. There was also considerable opposition, even from labor unions, to collective bargaining at the time, particularly from the NEA. I remember addressing a school board convention and listening to superintendents talk about how they should adopt a position in the middle of the road in dealing with their employees. I suggested that people who stood in the middle of the road were likely to get run over.

John Lawton, a very experienced labor lawyer and a lobbyist, was responsible to a considerable extent for the enactment of the Wisconsin collective bargaining law. He worked on the principle of one slice at a time and eventually he got the whole loaf, but it took him several years to do so. He was very effective.

Jim Stern: Many folks first learned about you when you went to New York. Tell us a little about that.

Arvid Anderson: In 1966, Wisconsin extended its bargaining law to cover state employees and in 1967, New York City enacted a tripartite statute called the NYC Collective Bargaining law, which established the Office of Collective Bargaining. I was induced to come to New York in part in the belief that, if collective bargaining could be made to work in New York City, it could be made to work anywhere. There were many able people in New York City, but for some reason they were either not interested in running the OCB or were not acceptable.

The move to New York was a difficult decision. First of all, I was very happy to be in Wisconsin and I had just been re-appointed as a Commissioner of the WERC. Also, the move to New York meant that three of our four children would have to move. My son Steve was a junior in high school and a good basketball player. The coach at Madison gave me a very bad time about moving Steven to New York. However, we were fortunate to move to Hastings-on-Hudson, which needed a ball player. Steven became a star player on the team that won the Westchester championship.

I was also attracted by the names of the people involved in the New York City Office of Collective Bargaining. The late Saul Wallen, Eric Schmertz, and the late Walter Eisenberg, were the principal neutral players. Later they were replaced by Dan Collins and George Nicolau. The tripartite structure called for a full-time administrator to be paid half by the unions and half by the city. There were two union representatives, two city representatives,

and three neutrals. The chairman was the only full-time board member.

There were two Boards: a Board of Certification, which took care of representation questions, and the Board of Collective Bargaining, which included the city and union representatives. As Chairman, I was allowed to employ two deputies of my own choosing. I happily chose Eva Robins, then of the New York State Mediation Board, as the Deputy Administrator for Mediation and Arbitration, and Philip Feldblum, a very able labor lawyer who was then the General Counsel of the New York State Labor Relations Board. Their participation proved invaluable because it enabled me to walk on water because they told me where the stones were. Both Eva and Philip were National Academy members.

Jim Stern: Your New York City welcome was a bit challenging, I believe.

Arvid Anderson: Things did not go well at the start. Shortly after I arrived, the sanitation strike occurred. I thought it was a labor dispute but I found out later it was really a dispute over the Republican nomination of who could be more effective in dealing with public employee strikes—Nelson Rockefeller or John Lindsay. We had bargained intensively and I and Walter Eisenberg had acted as mediators and we narrowed the gap to $403 versus $425 per year per man or about $250,000. The dispute had escalated into a war between then Mayor Lindsay and then Governor Nelson Rockefeller, to demonstrate who could be the most effective in dealing with public employees' strikes. There had been a welfare strike, a transit strike, and a teachers' strike, "So it was time to show these fellows," so to speak. The fact that this was a prelude to the Republican nomination in 1968, later that year, was a fact that apparently they didn't forget. Meanwhile, Mr. Eisenberg and I were under the illusion that we were dealing with a labor dispute. We couldn't make it and the strike occurred for 9 days. It was eventually settled by arbitration for approximately the same terms that we had recommended before the strike occurred.

There was also a confrontation as to whether the National Guard would be called out. Then President of the New York Central Labor Council, Harry Van Arsdale, and a labor member of the Board of Collective Bargaining, and Joseph Terotola, then head of the Teamsters Joint Council, both declared that not a truck would roll in the city if the Guard was called, so it was a very serious and tense time.

Jim Stern: The interest arbitration process then became a permanent part of the New York City framework, didn't it?

Arvid Anderson: After the strike was settled, the Governor convened a second session of what he called the Taylor Commission to make recommendations for amendments to the New York City bargaining law, because all the New York City law had was fact-finding with recommendations. After the Taylor Commission Report, there was a legislative mandate that the City of New York should come up with a plan for finality. The Mayor submitted a report and we then fashioned, with the help of the unions and the city, the present scheme of interest arbitration that has been the law since 1972.

During the sanitation strike, which received considerable publicity, particularly in New York, John Delury, the sanitation strike leader, got on television and said, "That man from Wisconsin can go back where the cheese comes from." My wife and children heard that comment and thought they had better start packing to return to Wisconsin. We didn't return until 20 years later.

Subsequent to the sanitation strike, there was a 5½ hour strike of firefighters, which was quite serious. During the strike, I recall being in Mayor Lindsay's office when he asked the fire chief how many men were on duty. The chief replied, "I can't tell you that sir because my officers will not report that to me." Actually, there were 156 men on duty. Fortunately, the firefighters returned to work before four people were killed in a fire that night.

Shortly thereafter, I participated in a discussion panel where Milton Friedman, the economist not the arbitrator, was one of the panelists on the right to strike for firefighters. Friedman advocated the right to strike. My comment was to recommend psychiatric care in a city like New York.

New York City also endured a police strike for almost a week. Patrolmen struck, but not the sergeants and the detectives who kept the force under control. These actions by the Fire and Police unions led to the demand for a final and binding arbitration law, which was finally enacted in 1972.

Jim Stern: The arbitration statute has a unique twist in New York City. Tell us about that.

Arvid Anderson: One of the unique features of the New York City Bargaining Law provides that an impasse panel decision, which is a euphemism for an arbitration panel, can be appealed

to the tripartite Office of Collective Bargaining. It has occurred a few times, but in all the cases that I am familiar with, the decisions of the panel were unanimously approved by the tripartite board, except in one case where an arbitrator had given the store away. In that case, a unanimous panel reduced the award. The tripartite system has worked well because the labor and city representatives wanted it to work. A great deal of credit goes to the late Edward Silver, who was a long time City member of the Board of Collective Bargaining.

Jim Stern: The fiscal situation in New York City in that early era of collective bargaining was a harbinger of what we see in a lot of places today.

Arvid Anderson: In 1975, New York City experienced a fiscal crisis. Albert Shanker, the head of the teachers union, called off a teachers' strike after 5 days. He declared in a comment that made the quote of the day in the New York Times, "A strike is a weapon you use against a boss who has money. This boss has no money." When the City, the banks, and the mayor had appealed to Washington for help, they were turned down by President Ford, which action the New York Daily News headline reported as, "Ford to City: Drop Dead." The legislature then created an Emergency Financial Control Board, which in cooperation with the banks, the Municipal Labor Committee, and the Mayor's office was allowed to borrow several billion dollars from the City's pension funds when the banks would not lend any money. I played no roll in the fiscal crisis, but I mention it because the Municipal Labor Committee, which had been created for a different purpose, was very useful in securing the City's survival.

The Board of Collective Bargaining makes determinations on the scope of bargaining. One such decision was against the City; I think it dealt with work load. Bruce McIver, the then Director of Labor Relations, was very upset. He told me that he would appeal the decision to the New York PERB, to the courts, and, if need be, to the Pope. I told him it would not do him any good because I had just been in Rome and had received the Papal blessing. I happened to be in Naples for an arbitration case with the American Schools in 1981. It was at the time that the Pope made his first appearance since the assassination attempt in Portugal, and I, and 10,000 other people, received the Papal blessing. In any event, the comment defused the situation and the City never appealed the decision.

Jim Stern: What was your relationship to the State of New York?

Arvid Anderson: One of the fortunate developments during that time that I served in New York was that the late Bob Helsby was the Chairman of the New York Public Employment Relations Board. The New York PERB Law had been enacted about the same time as the New York City Collective Bargaining Law. We worked very well together.

The New York City collective bargaining law providing for binding arbitration has been in effect since 1972, some 33 years. It has virtually eliminated the strikes from the New York City scene for all the employees covered by the law.

Jim Stern: Can you tell us about some of the other unique aspects of bargaining in New York City?

Arvid Anderson: Another aspect of the New York experience was the consolidation of bargaining units. When I arrived in New York, there were more than 400 different bargaining units because recognition had been granted by title and by department. When we got through consolidating them, they got down to fewer than about 50. That was not any easy task. All of the major unions—AFSCME, CWA, the Teamsters, sanitation, police organizations and fire organizations have been consolidated a great deal.

One of the unique features is how the Chairman of the Office of Collective Bargaining is chosen. The Chairman must be chosen unanimously by the representatives of labor and management for 3-year terms. I was chosen seven times, but I decided after 20 years that was enough and I got time off for good behavior. When it came time to retire, we decided to go to Florida for 7 months and Wisconsin for 5 months. I planned to continue to arbitrate, but the notion of driving in Wisconsin in the winter no longer appealed to me. So we have gone back and forth to Florida for 17 years.

The experiments in Wisconsin and New York were by no means unique. California, Connecticut, Florida, Hawaii, Illinois, Iowa, Massachusetts, Michigan, Montana, Nevada, New Jersey, Ohio, Oregon, Pennsylvania, Rhode Island, and Washington were among the states that had enacted meaningful collective bargaining laws. Only 14 states have not passed bargaining legislation for their state and local employees. They are mostly in the south. The laws vary in terms of coverage. Some apply only to teachers, others to police and firefighters. Some apply to state employees, some provide for

binding arbitration. Virtually all have survived constitutional challenges. None, to my knowledge, have been repealed.

Any discussion of the development of public sector collective bargaining must recognize the great contributions in Canada, which parallel those in the United States. The Ontario Labor Relations Board was created in the late 1950s or early 1960s, but that proved to be a model for the rest of Canada. The late Jake Finkelman was an inspirational leader of the Ontario Board and later for the entire Federal system in Canada. Also, the issuance of Executive Order 10988 by President Kennedy extending the right to organize and bargain to federal employees had a tremendous impact on the public sector of bargaining.

One of the most significant developments in the public sector has been the widespread acceptance of grievance arbitration. Even in states that do not really have full-scale collective bargaining for public employees, there is often grievance arbitration. In Wisconsin, a very able Deputy Attorney General, Beatrice Lampert, persuaded the Wisconsin Supreme Court in the 1960s that grievance arbitration was constitutional. Grievance arbitration is widely used in the federal sector. The Postal Service provides employment for a great many academy members. The Armed Services, the Social Security Administration, the Bureau of Prisons, and the Treasury Department, are among agencies of the federal government that use grievance arbitration. So it is fair to conclude that public sector collective bargaining is here to stay and with it the profession of labor arbitration.

Jim Stern: You have seen a lot of these developments first hand and contributed substantially to them, Arvid.

Arvid Anderson: Just another word about the public sector. I was taught, in the classroom by Ed Witte and by his and other examples, that it was a good thing to be in the public service. I am not referring to the notion that government employment is a sinecure, a concept which itself is fast disappearing. I still think it is a good thing to serve the public. I hope that our political leaders at all levels of government will recognize the importance of saying good things about the value of public service, rather than contributing to the decline of public employee morale by demeaning the role of government and trampling on the dignity of public service. That somehow the people who serve the public, whether by teaching school, or fighting fires, or providing police protection, or collecting garbage, or healing the sick or, yes, even col-

lecting taxes, are somehow less worthy or less efficient than those who work in the private sector, in offices, factories, businesses, and professions, is a myth that needs to be dispelled.

It has been a privilege and a pleasure to be a part of an orderly dispute settlement process for many years. At times, it has been stressful, but never boring.

Jim Stern: On behalf of the Academy and our profession, thank you for your participation today and thank you for all of the many contributions you have made to our field. We look forward to many more. Thank you.