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September 28, 2010

Ruth Singleton
Managing Editor
The National Law Journal
ALM
120 Broadway, 5th Floor
New York, NY 10271-1101

Dear Ms. Singleton:

Many of our members read the Op-Ed "Arbitration Under Siege" by the esteemed former federal judges, Hufstedler and Webster, (September 20, 2010) with interest and great appreciation.

The basic thrust of the Op-Ed is completely consistent with the position the National Academy of Arbitrators (NAA) shared in 2009 with Senator Feingold concerning Senate Bill 931.

Our organization is troubled by the one-size fits-all approach of the S. 931. A ban on the enforceability of pre-dispute arbitration agreements between parties of unequal bargaining power is arguably justified in consumer, franchise, and other types of disputes (although we take no position on that).

However, the NAA believes that enforceability of pre-dispute employment arbitration agreements subject to the basic fairness standards is particularly appropriate.

The facts concerning employment arbitration clearly show why. This case was made convincingly by one of our NAA members, Theodore J. St. Antoine, former Dean of the University of Michigan Law School in 2008. See "Mandatory Arbitration: Why It's Better Than It Looks" University of Michigan Journal of Law Reform (Volume 41, Issue 4). In short, lower-paid employees with modest monetary claims find it extremely difficult to get a lawyer to take their case to court. Studies also show that arbitration, even "mandatory arbitration," produces at least as good a win rate for employees as court litigation, and often a better one.

Indeed, the NAA has drafted statutory language to amend Chapter 4 of the FAA, which sets forth qualifying criteria for a pre-dispute employment arbitration agreement to be enforceable under the Federal Arbitration Act. I would be glad to share our model language with anyone who would like a copy. Our model statutory language is similar to the "Due Process Protocol for Mediation and Arbitration of Statutory Disputes Arising Out of The Employment Relationship" issued in 1995 by the Task Force on Alternative Dispute Resolution in Employment. The "Due Process Protocol" can be found at http://naarb.org/protocol.asp.

So, as we see it, the solution is not the abolition of pre-dispute agreements to arbitrate, mandatory or otherwise, but requiring due process standards in arbitration.

Sincerely,

Gil Vernon, President
National Academy of Arbitrators