

ARBITRATION OF
SUBCONTRACTING AND
WAGE INCENTIVE DISPUTES

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ARBITRATION OF SUBCONTRACTING AND WAGE INCENTIVE DISPUTES

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ANNUAL MEETING
NATIONAL ACADEMY OF ARBITRATORS

Dearborn, Michigan

May 9-12, 1979

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In Memoriam

Leo C. Brown, S.J.

May 3, 1978

Leo C. Brown, S.J., died on May 3, 1978, five days after his 75th birthday. He was one of the founders as well as a past president of the National Academy of Arbitrators. Father Brown had few equals as a mediator and arbitrator. Although he was not a headline-grabber, his accomplishments as a low-key, self-effacing professional can be attested by leaders of labor and management from coast to coast—and even beyond, to Hawaii, Samoa, and Puerto Rico.

Three years after his birth in Stanberry, Missouri, Leo Brown's parents moved to Council Bluffs, Iowa, where he spent his formative years. Immediately after his graduation from Creighton High School in Omaha, Nebraska (a trolley ride across the river), Leo followed in his father's footsteps and became a railroader. As a yard clerk for the Union Pacific Railroad, he worked the typical 12-hour shift from 6 P.M. to 6 A.M. His obvious concern for his fellow employees gained him union recognition and appointment as probably the youngest chairman of a brotherhood grievance committee. When his work shift was reduced to eight hours in 1919, Leo embraced the opportunity to enroll at Creighton University. In two years he became eligible to enter the College of Law. However, in the process of filling out the law school application, Leo decided to confront a problem with which he had been wrestling for some time. He had been debating with himself about becoming a priest. Finally he concluded that he had a religious vocation. Leo rejected a career in law and entered the Jesuit seminary at Florissant, Missouri.

In 1934, some 13 years after entering the seminary, Leo Brown was ordained a priest. As a member of the Society of Jesus, he taught in a number of high schools and colleges. In the meantime, he continued his own education in labor economics. He was awarded a Ph.D. by Harvard University in 1940.



Thereafter Leo joined the faculty of St. Louis University and became a full professor. Subsequently he was named director of the Institute of Social Order.

One of Father Brown's classes in labor relations, in which students were enrolled from the ranks of unions and employers, led to his first appointment as an arbitrator. In 1945, two of his former students, one a plant manager and the other a union representative, informed Father Brown that they had selected him as the arbitrator in a discharge case. During the same year he received his first appointment as a mediator. Before long the demand for Father Brown's services as arbitrator and mediator began to snowball. During his career he resolved well over 4000 disputes. His talents were utilized and praised by three Presidents of the United States—Eisenhower, Kennedy, and Johnson.

President Eisenhower appointed Leo Brown to the Atomic Energy Labor-Management Relations Panel in 1953. As a member of that body for 25 years and as its chairman for some 10 years, he was remarkably effective in bringing about the peaceful adjustment of disputes that imperiled the atomic energy program. Father Brown made further contributions in the national interest by his service on the Regional War Labor Board in Kansas City, the Regional Wage Stabilization Board in St. Louis, and presidential emergency boards.

Father Brown was unstinting in sharing his knowledge and experience with others. He was the author of numerous papers and spoke before various groups of labor and management representatives, including frequent participation in the seminars sponsored by the American Arbitration Association. In addition, he served as a consultant for the Federal Mediation and Conciliation Service. His paper entitled "Mediation of Labor Disputes: Art, Science, or Miserie?" was circulated to all of its professional staff. The FMCS recognized Father Brown's contributions by making him the first person outside the organization to receive its award for distinguished service in the cause of labor-management peace.

Father Brown also shared his insights on statistics and probabilities with some of the members of the Academy. However, that particular information was not gratuitous. It was available only at card games where his colleagues found the lessons to be somewhat costly.

In his dealings with others, Leo Brown was guided by a quota-

tion from the Old Testament: "You must not be guilty of unjust verdicts. You must neither be partial to the little man nor overawed by the great." His patience, understanding, versatility, and unfailing courtesy broke down numerous barriers and gained the quick respect of the parties. Although his voice was gruff, his complete gentility dispelled any notion that he might be abrupt or inconsiderate.

On one occasion when he was making arrangements to offer Mass at a parish in a distant city, the pastor asked Father Brown if he would sing the High Mass. Leo replied in his gravelly voice, "Monsignor, you may find it hard to believe that I didn't sing my first Mass on the occasion of my ordination and I didn't sing the funeral Mass for my father. However, if you insist, I'll sing." The pastor got the message and quickly declined the offer.

Despite the gravity of the conflicts into which he was thrust, Leo Brown remained a joyful person. As arbitrator, mediator, and priest, his life was one of service to others. His accomplishments in the field of labor-management relations will be long remembered by those with whom he came in contact. The members of the National Academy of Arbitrators consider themselves fortunate to have had him as their friend and colleague.

Patrick J. Fisher

In Memoriam

David L. Cole

January 25, 1978

David L. Cole died on January 25, 1978, at the age of 75. His was one of the most distinguished careers in the country in the resolution of industrial disputes by mediation and arbitration. His outstanding skills and services in the development of industrial peace were recognized by the Academy when it elected him as its third president.

David's introduction to labor disputes was not as an arbitrator, but as labor counsel for textile managements in Paterson, New Jersey. Despite this background, he had an unparalleled career as a neutral in a long succession of national and state commissions. He was Director of the Federal Mediation and Conciliation Service, a member of the President's Committee on Labor Management Policy, a member or chairman of boards in national disputes in the coal mining, steel, railroads, airline, waterfront, and maritime industries, appointed by both Democratic and Republican presidents. He chaired or served on important boards appointed by governors of New York, New Jersey, and Pennsylvania to resolve labor disputes or to suggest legislative programs. Managements and unions in numerous industries retained David as their permanent arbitrator, and for decades he had been the choice of the parties to mediate or arbitrate the more intractable and important labor disputes.

For those services, many honors were bestowed upon him. The published arbitration services contain scores of his decisions that are considered landmarks in the development of the arbitration process and are frequently quoted. He was the first "No-Raid" arbitrator in the AFL-CIO program to resolve jurisdictional disputes. He was a member of the Carnegie Endowment for International Peace and many other prestigious organizations, boards, and commissions. Limitations of space forbid listing additional community, state, and federal activities, accomplishments, and services.



David's greatest contribution, perhaps, was his leadership in establishing, developing, and shaping the role of the neutral in labor disputes. The mediation and arbitration processes, as accepted and practiced today, owe much to David L. Cole's years of devotion to the role of peacemaker with justice. He served his country and our industrial society conscientiously, imaginatively, and with outstanding professional skill.

His death is a severe loss to those who admired him as a colleague and regarded him with affection as a friend.

Peter Seitz

PREFACE

The program for the Academy's Thirty-Second Annual Meeting gave the participants an opportunity to reflect on the weaknesses and strengths of the arbitral process, the advocates, and the arbitrators. In his Presidential Address, Richard Mittenhal, reflecting on the life of an arbitrator and the varied industrial scenes to which he is exposed, expressed the satisfaction that most experienced arbitrators get from working with the labor-management community.

Ralph Seward reviewed the quality of arbitral presentations, and the commentators, Eva Robins, Bernard W. Rubenstein, and Anthony T. Oliver, Jr., agreed almost totally with his assessment. In turn, a management and a union advocate, William M. Saxton and Bruce A. Miller, had the opportunity to tell the arbitrators what they did wrong in discipline and discharge cases. Theirs was a long laundry list, but one with which their discussant, William J. Fallon, did not quarrel.

Unfortunately, Ray Marshall, the Secretary of Labor, who was scheduled to give the Friday luncheon address, could not attend the meeting. His tribute to the role of collective bargaining and arbitration was read by Beatrice Burgoon.

One session was given over to a discussion of the arbitration of wage incentive problems. Milton Rubin reviewed the process generally, along with William Gomberg, who framed his remarks in the context of his presentation on the same subject at the 1957 Academy meetings. Alfred Dybeck rounded out that session with a review of the steel industry incentive program and how the nonengineer-arbitrators handle incentive problems.

Anthony Sinicropi undertook the yeoman job of analyzing what has happened in the area of subcontracting, bringing up to date the 1960 landmark analysis of the subject by Scotty Crawford. Union and management advocates, Leonard R. Page and Richard C. Hotvedt, admired Sinicropi's tour de force. Also, considering the strong feelings that management and labor bring to the subcontracting question, the commentators were surprisingly complimentary about the arbitral doctrines that Academy members have formulated in this field.

Four speakers discussed the design and operation of permanent arbitration arrangements. Myron L. Joseph presented a general review of the topic; Stuart F. Meyer, a management representative on the Teamster-Anheuser-Busch arbitration panel, described the evolution of that arrangement; Ben Fischer, a long-time Steelworkers union representative, reviewed the experience of the Board of Arbitration in the steel industry; and Paul L. Selby, Jr., the chief umpire of the United Mine Workers-Bituminous Coal Operators' Association arbitration procedure, explained developments in that industry.

The program as a whole blended the concern of the arbitrators for the old problems that are still with us and an eagerness to learn about new developments that suggest possible answers to some of these problems. The Editors are grateful to the authors and panel members for their prompt submission of manuscripts and their cooperation in preparing them for publication.

JAMES L. STERN
BARBARA D. DENNIS

July 1979

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