What is an Arbitrator’s Role

Creature of contract, consensus or common sense?

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Multiple dispute resolution tools to meet variety of situations

• Arbitration
• Mediation
• Med-Arb
• Arb-Med
• Fact finding
• “Advisory opinions”
• Novel hybrids
Union Penetration: RLA v NLRA

• Union penetration:
  • 80% airlines
  • 90% railroads

• History
• Differences in law
• Protected industries
• Acceptance
RLA overview

- Versus NLRA: purposes
- CBAs don’t expire
- Direct, mediation, Interest arbitration, Emergency Boards, Congress
- Agreements reached
Air and rail: Dynamic Culture

- Intense environment, joint efforts, non-hierarchial
- Airline Carrearists
- Employees become managers
- logistical demands v scheduling constraints = conflicts
- Active dispute resolution processes
CSX/BRS: Mediation/”Advisory opinions”

• 11 mergers over 30 years
• Multiple contracts, rules, union politics
• Issues: geographic work areas, pay, seniority, travel pay and rules, lunch periods, shift and vacation bidding
• Carrier seeks uniformity; union preserve benefits
• Statutory alternative
CSX/BRS process

- NMB involvement
- Med/ Advisory opinions
- Time limit: 3 days
- 2 “interventions”
  - early, big issues
  - Late final differences
Lessons

• New hybrid
• Flexibility
• New process
• “Nudging”
• ”Mediator Proposal”
• NMB’s central role
Compass/ALPA: Med-Arb

• Med-Arb Process
• Pressures: pilot shortage & 30 grievances
• Signing bonus issue
• Resolution:
  • “Dual qualification”
  • bonuses
  • pay increases
  • grievance resolutions
  • relationship
Lessons

• Market intrusion
• Contract re-negotiation v contact interpretation
PSA/ALPA: Complexity v finality

- Reserve availability
- Mgt: Flexibility, staffing
- ALPA: “life style,” premium pay
- “Gap” in contract
- Language, negotiating history, past practice
- Intentions, expectations
- Unintended consequences
Negotiate or arbitrate

• Push back to parties
• Push back to Josh
• MOU, LOA alternative
• Which better?
  • Negotiate: Better result, “own” it
  • Arbitrate: Period of peace; Benefit of the bargain; harder