St. Antoine, Ed., The Common Law of the Workplace, (BNA Books, 2nd Ed., 2005), pp. 72-74, reprinted with permission from the Bureau of National Affairs, Inc., Washington, D.C. 20037

§ 2.3. The Role of Ambiguity; "Plain Meaning" Rule

Arbitrators differ about the role of ambiguity in contract interpretation cases and about the extent to which seemingly clear and unambiguous language is subject to interpretation.

Comment:

Some arbitrators follow the so-called "Elkouri" rule: if words "are plain and clear, conveying a distinct idea, there is no occasion to resort to interpretation, and their meaning is to be derived entirely from the nature of the language used." Ruben, Alan Miles, ed., Elkouri & Elkouri, How Arbitration Works, 6th ed. (2003), at 434 [hereinafter Elkouri]. As one arbitrator using this approach concluded, "if the contract is

clear, logic and equity will be cast aside, regardless of the result." *See Safeway Stores,* 85 LA 472, 475 (J. Scott Tharp 1985). Followers of this approach believe that the literal wording of the agreement itself provides the most reliable basis for determining the parties' intent.

Other arbitrators use an approach championed by Professor Arthur Corbin and believe that language, on its own, generally does not convey one unambiguous meaning without reference to the context in which the language arose. The spirit of this approach is described in Restatement (Second) of Contracts (1981) § 202, cmt. a, at 87, with the observation that uses of rules in aid of contract interpretation "do not depend upon any determination that there is an ambiguity, but are used in determining what meanings are reasonably possible as well as in choosing among possible meanings." Arbitrators who use extrinsic evidence without proof of ambiguity do so on the theory that the presence or absence of ambiguous meaning in the agreement can only be established in light of all relevant information. Those who believe that "[i]f the relevant language is clear and unambiguous, the arbitrator should apply it without recourse to other indications of intent," are suggesting that the plain meaning of a contractual provision can be gained from studying the words of the contract alone. *See* Nolan, Dennis R., Labor and Employment Arbitration (1998), at 305. Rejecting the "plain meaning" rule, other arbitrators follow the approach of Chief Justice Traynor of the California Supreme Court who observed that "the meaning of a writing '. . . can only be found by interpretation in the light of all the circumstances that reveal the sense in which the writer used the words.' " *Pacific Gas & Elec. Co. v. G.W. Thomas Drayage & Rigging Co.,* 442 P.2d 641, 643 (Cal. 1968). This approach recognizes the reality that the collective bargaining process often produces compromise contract language.

Arbitrators who use Justice Traynor's approach point to such authorities as Professor Arthur Corbin in support of the notion that it may not be possible for language, on its own, to convey one unambiguous meaning without reference to the context in which the language was used. *See* Corbin, Arthur, *The Interpretation of Words and the Parol Evidence Rule,* 50 Cornell L.Q. 161, 171–72 (1965). Hence, extrinsic evidence about context becomes essential to discovering meaning. It is probably accepted by most arbitrators that at least some

information concerning the circumstances of the agreement may be necessary to give words meaning. Rarely can meaning be discerned without lifting one's eyes from the four corners of a contract, although some arbitrators believe it is possible.

Arbitrators who require ambiguity in order to use evidence outside the "four corners" of a labor contract believe that this approach lends stability and predictability to the parties' agreement. Those who reject the "plain meaning" rule and follow the views of Professor Corbin reason that relying on evidence of the total transaction provides more data about the actual intent of the parties. Either approach, however, asserts fidelity to the intent of the parties. Ambiguity, as a tool of contract interpretation, may disadvantage the drafting party, as an arbitrator may choose the interpretation that most benefits the party not responsible for creating the ambiguous term.

REFERENCES

Farnsworth, E. Allan, *"Meaning" in the Law of Contracts,* 76 Yale L.J. 939 (1967).

Goetz, Raymond, *The Law of Contracts—A Changing Legal Environment: Comment,* in 31 NAA 218 (1979).

Restatement (Second) of Contracts (1981) § 212 cmt. b.

Snow, Carlton J., *Contract Interpretation,* 55 Fordham L. Rev. 681 (1987).

- Elkouri and Elkouri, How Arbitration Works, (BNA, 7th Ed., 2012), states why parol evidence should be considered:

. . .

"The strict version of the old 'plan meaning' doctrine has lost respectability in the last several decades. Labor arbitration might have been the last of its strongholds. At least since the late Carlton Snow published his persuasive analysis of the role of that rule in labor arbitration, *Contract Interpretation: The Plain Meaning Rule in Labor Arbitration*, 55 Fordham Law Review 681 (1987) few careful arbitrators have barred evidence of bargaining history on that ground alone. Doing so too often leads to harsh results that contradict the contracting parties' true intentions. At the very least, arbitrators and judges now recognize, as Professor Snow did, that extrinsic evidence is relevant for the preliminary inquiry of *whether* the questioned contract provision is ambiguous. A better approach would be to use extrinsic evidence in Professor Snows' terms, 'to prove meanings to which a contractual provision is reasonably susceptible,' id., at 706."

. . .