

# Preface

For those of us who have been privileged to serve as neutrals in labor-management and employment disputes, the practice of arbitration has offered a wealth of learning experiences and opportunities to connect with men and women in an everyday working environment. In each of the 2,500 cases to which I have been appointed over 40 years as an arbitrator, I have learned how people interact within their own “special-purpose” communities. With each new case, the learning continues.

In the process, I have also been instructed on how to make glass, cardboard boxes, and the orange drink of the astronauts. I have visited sawmills, slaughterhouses, and aircraft factories. I have made some baseball players very wealthy in salary arbitration—and those are the players who lost their cases! I have learned about the telephone industry, the Internal Revenue Service, and over-the-road trucking. As a young academic, there was a risk that my work life would only be filled with theories, research, and hypotheticals. Arbitration has offered me a lesson plan in real life.

There is a rich literature on labor arbitration, much of it published by Bloomberg BNA. Many of the books explain how parties ought to prepare and present cases in arbitration. Others, such as *How Arbitration Works*,<sup>1</sup> the monumental text originally authored by Frank Elkouri and Edna Asper Elkouri and now maintained by the ABA Section of Labor and Employment Law, relate what arbitrators say in their decisions. No one, however, has written a book about arbitration from the perspective of the arbitrator. How does an arbitrator actually make a decision? How does an arbitrator react to the conduct of the parties at the hearing? One would think it would be quite valuable to understand how the decision maker goes about actually deciding a case. And so I have tried to discuss this and many other matters in this book.

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<sup>1</sup>ELKOURI & ELKOURI: HOW ARBITRATION WORKS (Kenneth May, ed., 7th ed. 2012).

Admittedly, this text presents my perspective. I do not pretend to speak for all arbitrators—no one can. My guess is that most of my colleagues who are labor arbitrators would agree with my conclusions, which are consistent with what I have learned from my colleagues in discussions at the National Academy of Arbitrators meetings for more than 30 years. I have participated in, led, and witnessed innumerable presentations by arbitrators on many of the issues raised in this book. Some arbitrators will disagree with my opinions and analysis, and they will be free to present their own thoughts in rebuttal.

In this text, I use the terms *arbitrator* and *neutral* interchangeably. I also use the terms *advocate* and *representative* in the same way—he or she is the person who will speak for a party in an arbitration proceeding.

I first began to think about this book when I reread the work of Judge Frank M. Coffin of the U.S. Court of Appeals for the First Circuit. It was my great good fortune to have clerked for Judge Coffin in 1970–71. He was a remarkable man and an inspirational mentor. His book about how an appellate judge makes a decision—*The Ways of a Judge*<sup>2</sup>—inspired my work in trying to understand how an *arbitrator* makes a decision. If I am half as successful as Judge Coffin was in his explanation, I will be very pleased.

When I began work on this project, I asked my research assistant, Joshua Nadreau, to contact union and management lawyers to seek their assistance. I wanted to know what questions they had always wanted to ask an arbitrator. Joshua compiled the questions they submitted but kept them anonymous. These questions formed the backbone of this work. I have also added some questions of my own to make the text more complete. Yet the book is not intended to be comprehensive, like the Elkouris' work. There may be questions that readers have that are not answered here—send them to me at r.abrams@neu.edu, and they will be answered in the next edition.

This text is designed for advocates and representatives with all levels of experience. Some of the material that explains the process of arbitration may seem basic to those more experienced in arbitration, but it is better to be inclusive rather than exclusive, particularly because of the influx of new advocates in the past several years, especially on the union side. Advocates for parties in arbitration must learn how their arbitrator reacts to certain issues and behaviors. There is an old saying

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<sup>2</sup>FRANK M. COFFIN, *THE WAYS OF A JUDGE: REFLECTIONS FROM THE FEDERAL APPELLATE BENCH* (1980).

that applies to arbitration as well as to litigation: A good lawyer knows the law, but a great lawyer knows the judge. A great arbitration advocate may not know the particular arbitrator who will hear his or her case, but the advocate should know how arbitrators approach the hearing and the issues to be resolved.

Books such as this one require many hands. I should make special mention of my friend and law school classmate Dennis R. Nolan. During the 1980s and 1990s, Dennis and I collaborated in writing 19 law review articles about various topics in labor arbitration. He helped me to understand the nature of this process that we both have administered for almost four decades. My editors at Bloomberg BNA, Tim Darby and Joanne Nobile, also have been of great help. My wife of 44 years, Frances Elise Abrams, has made this book better, as she has made my life better.

*Inside Arbitration* is not a tell-all memoir. Rather, it is a tell-you-more-than-you-know-now look from the perspective of one arbitrator. This wondrous process of arbitration in the workplace is the star of this enterprise, as we try to understand the various elements that come together to make it work so well.

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