Preface

This Second Edition of *How to Prepare and Present a Labor Arbitration Case* adds three new chapters and revises all other chapters in the First Edition. The new chapters are: Chapter 3 (Exploring Settlement), Chapter 19 (Blueprint of a Grievance Arbitration Case), and Chapter 20 (Interest Arbitration and Other Labor Arbitration Variations). Although some of the matters contained in Chapter 3 were in the First Edition, the bulk of that chapter is new, as are all matters covered in Chapters 19 and 20.

Chapter 19 takes the reader through an actual grievance arbitration case (albeit with fictitious names substituted for actual names and with some modifications due to space limitations). It is hoped that the chapter will provide the reader with a sense of the reality of labor arbitration not always possible in the more didactic portions of the book. Chapter 20 covers interest arbitration (as well as several other non-traditional forms of labor arbitration), which differs significantly from grievance arbitration, in that the arbitrator sets the terms of the parties' next collective bargaining agreement, rather than simply interpreting their existing CBA or MOU. Although an entire book could easily be devoted to discussing the preparation and presentation of an interest arbitration case, Chapter 20 attempts to cover the highlights and some of the key elements of that rather esoteric subject.

How to Prepare and Present a Labor Arbitration Case, *Second Edition*, is not an academic or philosophical presentation of labor arbitration. It is designed to be a handbook to guide the advocate, whether union or employer representative, in preparing his or her case to be presented to a neutral arbitrator or, perhaps, a board of arbitration. The closest analogy one might make between this volume and other types of books on arbitration is to compare it to a cookbook. This book attempts to lead the reader through each step of the labor arbitration process, much as a cookbook is used to guide its reader

through each step, for example, of baking a cake. For the novice advocate, a thorough reading of each and every chapter may be necessary, just as the author (a *very* amateur cook) finds it absolutely essential to follow a cookbook recipe to the letter. An experienced advocate, however, may only need to refer to selected portions of the book, much as a skilled chef might periodically check a cookbook merely to confirm the need for a particular ingredient and/or its quantity. In short, this volume is designed so that all advocates—novice and seasoned—can find value within its pages.

Arbitrators, too, might find it useful—particularly to see the arbitration process from the perspective of the advocate and to evaluate the strategies and tactics often employed by experienced advocates in case preparation and presentation. For these same reasons, students should find this to be an important resource in their studies of labor relations and arbitration advocacy.

This is a book essentially about *process*, not substantive labor arbitration principles. Many other well-written books cover arbitration principles in detail, most of which are included in the section entitled, "Additional Readings About Labor Arbitration," which can be found immediately following Appendix D in this volume. Although there are occasional references in the text and footnotes to substantive labor arbitration principles and issues, the intended scope of this volume is limited to the process of preparing and presenting a labor arbitration case.

This book is designed for union and management advocates alike. In virtually all aspects of case preparation and presentation, the tasks and skills of a union advocate are mirror images of those of his or her management counterpart, and vice versa. Although union advocates almost always represent the party bringing the grievance (the "grievant" or "complainant") and management advocates typically represent the employer or "respondent" (which is defending the case), the specific steps in preparation and presentation of the case are identical for each side. In the many examples and practical tips found throughout the book, both union and management perspectives are reflected.

No attempt is made to distinguish between process and procedures used in the private versus the public sector, or among the differences from industry to industry or between one public service and another. The author has had experience in both public sector and private sector arbitrations, as well as among a wide variety of private industries and public entities. He has found that although differences exist, they do not change the basic character or techniques of labor arbitration advocacy.

Despite the increasing prevalence of attorneys acting as labor arbitration advocates, particular care has been taken in the book to avoid legalisms and technical jargon. Notwithstanding, some readers may feel that hearing procedures discussed in some chapters (particularly Chapter 11, Rules of Evidence, and Chapter 12, Making and Defending Against Objections) are more technical than necessary on the basis of their own experience. As explained in several chapters, the author appreciates the existence of a rather wide range of formality followed by different arbitrators. As a result, he has opted to include more technical advice and guidance on such matters as rules of evidence on the theory that the reader may encounter arbitrators who follow or apply litigation rules and procedures that are more common in court than in the traditional labor arbitration settings. The rationale underlying this approach is to forewarn and prepare the advocate to cope with such rules and procedures in the event they are encountered. It is easier and more comforting to discard what is surplus than to be surprised and disadvantaged by new and unfamiliar procedures.

This book deals solely with *labor* arbitration, and no attempt has been made to address other types of arbitration, such as non-collective bargaining employment disputes or commercial arbitration. It is felt that justice could not be done to other related fields of arbitration in the same book as labor arbitration, without critically sacrificing adequate treatment of the latter subject. Nevertheless, advocates finding themselves with a case in other related arenas, such as employment disputes in non-union settings, may find relevant and useful information in a number of chapters in this book.

Since the First Edition, the author has become a labor arbitrator. This has changed his perspective somewhat, although not nearly as much as might be imagined. Hopefully, some of the insights from a neutral's vantage point have found their way into this new edition. Certainly, witnessing the advocacy process from a neutral standpoint has provided the author with an even greater appreciation of the value of excellent advocacy skills and thorough case preparation.

Having been a labor arbitration advocate and neutral in hundreds of cases spanning a career of more than 45 years and having labored in the legal litigation arena for a portion of those years, the author is absolutely convinced that labor arbitration as it is commonly practiced in the United States is a far superior means of resolving labor agreement disputes than civil litigation. The speed, simplicity, economy, and finality of labor arbitration has allowed unions and employers in the United States, at least those with mature collective bargaining relationships, to co-exist, if not thrive, in a relatively stable and harmonious environment.

Contrary to the European experience, strikes during the term of an existing labor agreement are extremely rare in this country. Moreover, lawsuits about the meaning and application of existing labor agreements are few and far between. This is due almost exclusively to the wide acceptance and proven effectiveness of labor arbitration. It is a process that has served unions and employers extremely well, and one about which the author is delighted to share his own lessons and experience and hopefully to which this book will make some lasting contribution.

C.S.L.
OAKLAND, CA
September 2006