Michigan Law Review

Volume 50 | Issue 7

1952

Elkouri: HOW ARBITRATION WORKS.

Gabriel N. Alexander
Member, Michigan Bar

RECENT BOOKS

This department undertakes to note or review briefly current books on law and materials closely related thereto. Periodicals, court reports, and other publications that appear at frequent intervals are not included. The information given in the notes is derived from inspection of the books, publishers' literature, and the ordinary library sources.

BRIEF REVIEWS

HOW ARBITRATION WORKS. By *Frank Elkouri.* Washington, D.C.: Bureau of National Affairs. 1952. Pp. xii, 271. $5.50.

Mr. Elkouri's book is a product of the graduate and research program of the University of Michigan Law School. It is based upon lengthy research into the published opinions of labor arbitrators and is descriptive rather than critical. The author has undertaken to abstract and index much in the writings and rulings of labor arbitrators, but has refrained almost completely from evaluating his source material either from his own point of view or from any of the several conflicting points of view apparent in the opinions themselves. The bulk of the work deals with the background and procedural aspects of labor arbitration; about a quarter of it is devoted to the substantive issues which are thereby decided. Of course one finds as many, if not more, interesting questions in examining arbitration as an institution as in examining the problems which are presented to the arbitrators for decision. Previous study and discussion in the field, however, has seemed to emphasize the former to the exclusion of the latter. There is need today in collective bargaining literature for closer analysis of many of the concepts which companies and unions use in their agreements. Clearer understanding of the various meanings which have been and can be placed upon such terms as "seniority," "wage classification," "job," "layoff," "plant," "department," etc. should be of value to contract negotiators, arbitrators, and students.

The early chapters in *How Arbitration Works* relate the arbitration process to other institutions in the labor-management field, and discuss its scope and procedures. The distinction between disputes over "interests" and "rights" is dwelt upon at some length, and the thinking of various arbitrators and other authors as to the relation of arbitration to agreement making and agreement administration is mentioned. The author points out that even in disputes over "interests" or new contract terms, arbitrators do have and can find "standards" for decision, but emphasizes that in presenting arguments and in formulating a final judgment in such a dispute, the persons concerned must deal with a large variety of imponderables.

Later chapters deal with evidence and burden of proof, the use of awards as precedents for other awards, and some of the issues which arise in grievance arbitration, primarily as they bear upon "management prerogatives."

A few schools offer separate courses in Labor Arbitration; teachers of such courses will find in the subject work a welcome text, containing adequate material for development of classroom discussion, and copious references to sources for outside reading. For courses in Labor Law or Collective Bargaining, *How*

Arbitration Works may itself be used to supplement texts or casebooks. It is better for this purpose than any book known to the reviewer. The volume can be recommended to attorneys and others who participate in arbitration as a well compiled secondary reference work. It does not purport to be, and should not be regarded as, an independent authority for or against any disputed proposition of substance or procedure.

Some may question the wisdom of efforts to propound general principles based upon published arbitration opinions and awards. Merely because arbitration is regarded by many as a "judicial process," seems not a complete justification for developing or advocating a uniform "industrial jurisprudence." Without going to the extreme sometimes advocated, that arbitrators should ignore precedent and decide each case on its "intrinsic merit" (incidentally a concept which cannot be used without reference to experience, either one's own, or another's), it ought to be recognized that the numerous variables encountered in industry-labor disputes greatly diminish the value of some precedents. Some of the variables are these: (1) The type or tone of the bargaining relationship involved, i.e., formal or informal, multiplant or single plant, etc. (2) The variation in industry practices. Is a "sound" decision in the garment industry ipso facto a sound decision in the trucking industry? (3) Regional differences. Ought the "standards" acceptable in New England be imposed upon arbitration litigants in the Pacific Northwest? (4) The most important one of all, what does the contract say? Others will also come to mind.

Obviously these considerations do not apply to decisions emanating from the same arbitration tribunal. Within a single bargaining relationship, the highest regard, within reason, for prior decisions is a sine qua non of effective continuing arbitration.

A fundamental rationale of voluntary arbitration is that its existence, philosophy and trend should be largely responsive to the needs of the particular litigants involved. For the arbitrator that means that he must concentrate on the parties before him. If he looks around at what others are doing for too long, or with too great preoccupation, he risks losing the immediate insight to which the parties before him are entitled.

Dr. Elkouri does not strongly advocate the development of a uniform industrial jurisprudence, but he does infer that it's "in the cards," so to speak. As to that, only future events can say.

*Gabriel N. Alexander**

* Member, Michigan Bar; Impartial Umpire, UAW-CIO and General Motors Corporation.—Ed.