

History of Arbitration and Grievance Arbitration in the United States

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There are many misconceptions about labor arbitration in the United States. One of those misconceptions regards the evolution of arbitration, especially in the United States. The purpose of this paper is to review the history of arbitration, which will clear up some of those misunderstandings. Having spent fifteen years as an arbitration advocate for the United Mine Workers of America and the last four years as a labor educator for West Virginia University, I have often had the opportunity to discuss the history of arbitration with workers from all walks of life. One of the things that always seems to amaze me the most is when I talk to workers, both management and union, who think that arbitration is a phenomenon of the 1970's. Many times in my long career workers have expressed to me that arbitration is something that got its start in the late 1960's to early 1970's. Nothing could be farther from the truth. One has to look at the history of arbitration to find out where arbitration came from, where it has gone in the United States and where it is heading.

HISTORY OF ARBITRATION

Arbitration is a very old method of settling disputes between people and even disputes between different nations. (1) There are many forms of arbitration. This paper will mostly examine grievance arbitration but it is worthy to note that international arbitration, which is used to settle disputes between different countries, arguably prevents war and helps to promote world peace. Commercial arbitration is a very old and much relied upon practice of dispute resolution between national and international companies and corporations. (1) (6) It was labor unions that helped promote the use of grievance arbitration in the United States but compulsory arbitration is also now a growing means of dispute resolution in the non-union sector of the United States today. (2) Most, if not all, labor educators and authors in America agree that every business should have a means of dispute resolution for employees and the result of not having this means, for workers to air out their disputes, would be low morale and decreased productivity. (3) In the United States unionized sector, studies have shown that the number of collective bargaining agreements that contain arbitration clauses as a means of dispute resolution (grievance arbitration) has been on the rise. (4) (9) In fact, by 1944 the Bureau of Labor

Statistics showed that 73% of all labor contracts in America contained arbitration clauses and by the early 1980's that figure had grown to 95%. (4) Today, 98% of all collective bargaining agreements in the United States contain arbitration clauses. (3) Arbitration as a means of dispute resolution has not only been a preferred method by business and labor but has also been supported by the federal government for over a century. An example of governmental support for arbitration can be found in the Interstate Commerce Act, passed in 1887, which had a voluntary arbitration clause for workers in the Railroad industry. (5) Another example of governmental support for arbitration was in 1925 when Congress passed the Federal Arbitration Act (FAA) which further enhanced the credibility of arbitration and later in the 1991 Civil Rights Act Congress encouraged the use of arbitration in the interpretation of antidiscrimination laws. (2)

ARBITRATION GENESIS

No one knows exactly when arbitration got started but it was long before the twentieth century as many workers wrongly believe. King Solomon was an arbitrator. Philip the Second, the father of Alexander the Great, used arbitration as a means to settle territorial disputes arriving from a peace treaty he had negotiated with the southern states of Greece as far back as 337 B.C. (1) (2) In England, arbitration is older than the common law system, which our United States courts later inherited. In fact, England used arbitration as a common means of commercial dispute resolution as far back as 1224. (3) In ancient Rome arbitration was one of the preferred methods of settling disputes and was the preferred method of settling commercial disputes in the Middle Ages. Long before the white man ever arrived in what is now the United States early Native American tribes used arbitration as not only a means to resolve disputes within the tribe but also as a means to resolve disputes between different tribes. George Washington, our nation's first president, had an arbitration clause in his will that basically stated that if any dispute should arise over the wording of the document that a panel of three arbitrators would be implemented to render a final and binding decision to resolve the dispute. (2) President Washington stated that he considered any arbitration decisions rendered from his will to be as final and binding as is any decision of the Supreme Court of the United States. (2)

The Journeymen Cabinet-Makers from Philadelphia actually had an arbitration clause written into their union constitution back in 1829. (8) This clause was more of an interest arbitration clause than a grievance arbitration clause but it was still the first time in United States history that an arbitration clause was used in a labor management document. (8) Interest arbitration is more common in the public sector as an alternative to a legal strike at the expiration of a contract before or after impasse has been reached by the parties during negotiation whereas grievance arbitration is basically a tool used by impartial arbitrators interpreting the language of a contractual dispute between the parties. (7) Interest arbitration is also very common in United States professional sports as a way to determine equality in player's salaries. The United Mine Workers of America (UMWA) developed a grievance arbitration type clause that was adopted by the delegates and placed into its constitution at the UMWA's founding convention in 1890. (11)

GRIEVANCE ARBITRATION

In the United States, prior to 1930, arbitration was a preventive strike tool used mostly in negotiation. Due to rapid industrialization and unionization in the United States after 1930 and due to the passage of the National Labor Relations Act in 1935 arbitration use (mostly interest arbitration) really started to grow in America. Grievance arbitration became the preferred method of dispute resolution in the United States sometime around 1945 due to World War II. Because of the great World War, President Franklin Roosevelt and his War Labor Board were cognizant of the fact that during this war the interruption of steel production and other war materials could not be tolerated by work stoppages taking place prior to interest arbitration hearings. Therefore, Roosevelt's War Labor Board insisted that labor and management place grievance-arbitration clauses into collective bargaining agreements as a final and binding last step of the grievance procedure to meet the wartime production needs of the country. (3)

Today, one of the most popular arbitration organizations in the world is the American Arbitration Association (AAA). (6) AAA arbitration has over 800 employees in 35 offices worldwide and represents over 8,000 arbitrators and mediators worldwide. Last year AAA arbitration administered 230,255 cases and has administered over 2 million cases in the last 75 years. (10) Today in America, grievance arbitration is expanding far beyond the scope of industrial relations. For example, in 1996 arbitration use was implemented for Olympic athletes, who have to take a drug test as a prerequisite for eligibility to participate in Olympic events, in the event there was a dispute over the test results or the procedures of the test. (2) Many arbitration proponents argue that arbitration could be used to clear up our overcrowded United States courtrooms by decreasing the use of our court system as a tool to resolve property disputes, divorces, wills, and other similar civil court situations in an effort to free up the courts to handle mostly criminal cases. (2) Many economists predict that arbitration may soon become one of, if not the, fastest growing industries in America. Over 70,000 grievance and interest arbitration cases are ruled on by arbitrators each year in the United States and due to the final and binding nature of arbitration less than 1.5% of all arbitration cases heard in America ever end up in court. (4)

CONCLUSION

Arbitration is one of the oldest forms of dispute resolution in the history of the world. It is clearly not a phenomenon of the twentieth century nor is it an American invention. Grievance arbitration is the widely accepted means of conflict resolution in the workplace in unionized settings and is becoming more accepted in the nonunion settings. Due to World War II, and the fact that productivity could not be interrupted due to the war, grievance arbitration became an extremely popular substitute for strikes in United States labor relations. Arbitration is not limited to labor management relations and may ease the burden of the overcrowded court docket problem in the United States in the very near future.

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