ARBITRATION

THE MEANING OF ARBITRATION

Arbitration is third party settlement of disputes between individuals or parties outside a court of law. Labor arbitration most commonly is used to settle disputes between parties to a labor agreement as to its application or interpretation. Since such arbitration consists of determining the rights of a party to an agreement, it is referred to as a "rights" dispute or commonly as "grievance arbitration." This is the focus of this program.

A second type of arbitration is called an "interest" dispute. It involved the determination of the interests of the parties, as distinct from their rights under an existing agreement. It applies to a determination by an arbitrator or arbitration board of the terms and conditions of a new or renegotiated labor agreement. This type of arbitration is rarely used in labor relations in this county, although it is used in some situations (including the IBEW, in the construction industry and sometimes in public utilites) as an alternative to a strike over a new agreement.

Labor arbitration is an extension of the process of collective bargaining but differs from other aspects of bargaining in one crucial respect: the parties have ceased to negotiate with each other and are trying to convince an arbitrator that their case would be upheld. In this sense, it is sometimes called a judicial proceeding since the arbitrator must judge the case before him. Other arbitrators, however, shun the word "judicial" as an inadequate description of the arbitrator's function. To them, the arbitrator is more than a judge since he must occasionally fill in the cracks of the labor agreement, and in this capacity he is "legislating" or setting up his own rules which he believes to be consistent with the labor agreement and the plant practices. Sometimes he constructs these rules from general industrial relations practices.

The way an arbitrator views a case depends in part on his personal philosophy of arbitration and in part on his relationship to the parties. The arbitrator who is called in for a single case (ad hoc arbitrator) is inclined to be a judge in most cases. The permanent umpire who handles most or all of the cases for a company and union is inclined to be more than a judge. But these generalizations have their exceptions and should not be taken literally.

Distinction from mediation, conciliation and fact-finding.

Arbitration results in a decision, which the parties have agreed in advance to accept. (The occasions when the parties may try to upset an award will be discussed later.) Mediation and conciliation are efforts by a third party to bring the parties to an agreement on their own. The mediator or conciliator has no power to enforce a settlement, since the parties have made no prior agreement to accept his conclusions. Fact-finding is merely an effort to obtain and point out the key facts in a dispute.

Even when a fact finding board makes recommendations, these carry no great force beyond the persuasiveness and the power or public opinion when they generate.

Voluntary and compulsory arbitration.

Almost all arbitration in this country is of a voluntary kind. This means that the parties voluntarily accept it, either as a general means of settling all disputes under an agreement or as a means of settling a particular dispute. Sometimes the term mandatory arbitration is used to describe the situations where the parties have agreed in advance that they will arbitrate disputes to distinguish from agreements that the may (or may not) do so. Compulsory arbitration is rare; it imposes the process on the parties as a matter of law of decree. Usually it is associated with industries where the right to strike is curtailed by law, as in public utilities or railroads in some instances.

THE ARBITRATION CLAUSE

The authority for arbitration is the clause in the labor agreement setting forth the circumstances under which it will be used and the procedure will be followed. The following elements are common in arbitration clauses, although some of them are omitted where the parties see fit to do so.

ELEMENT	EXAMPLE OF LANGUAGE
1. Prerequisites to invoking the arbitration clause.	"Any grievance which remains unsettled After having been fully processed pursuant to the grievance procedure...
2. Its scope	"and which involves either: (a) the interpretation or application of provision of this Agreement, or (b) a disciplinary penalty (including discharge)... alleged to have been imposed without just cause (some agreements make an exception to arbitration of production standards)."
3. Scope of arbitrator's authority	"The arbitrator shall not have the power to add to, subtract from, or modify any of the terms of this agreement, or any agreement supplementary thereto, nor to pass upon any controversy arising from any demand to increase or decrease wage rates, except as provided in Article X of this agreement."
4. Method of initiating arbitration	"If a grievance is not settled in the fourth step, either party must submit the dispute to arbitration..."
5. Time limits on initiating arbitration	... within 30 days of the date of receipt of a written answer in step four of the grievance procedure."
--on selecting an arbitrator	"If the parties cannot agree on a third member within 20 days of the reference to arbitration, then the Union shall have the right to apply to the American Arbitration Association to submit a list from which the parties will select an arbitrator.

6. Composition of arbitration board (Used only in triparte arbitration)	An arbitrator will be agreed upon by the two bargaining committees. The arbitration board will be composed of one member appointed by the City and one member appointed by the Union, and one member agreed upon by the parties.
7. Method of selection of the arbitrator	(The usual methods are to strive first for agreement and then in case of a deadlock to ask the American Arbitration Association or the Federal Mediation and Conciliation Service for a name or a panel. A final selection is then made.
8. Procedural rules to followed	The arbitration shall be conducted under the rules of the American Arbitration Association.
9. Status of arbitrator's award	The arbitrator's award shall be final and binding on both parties. Any award of the Arbitrator may be modified or rejected by mutual written agreement of both parties. Each case shall be considered on its merits and the collective agreement shall constitute the basis upon which decision shall be rendered. No decision shall be used as a precedent for any subsequent case.
10. Costs of arbitration	The parties shall share equally the arbitrator's fee, the cost of a hearing room and the cost of a transcript of requested by the arbitrator. All other expenses shall be paid by the party incurring them.

ARBITRABILITY AND SCOPE

A. What the Contracts says:

1. Definition of dispute in arbitration clause
   e.g., "All disputes"
   "Interpretation and application of Agreement"
   "Specific exclusion of subjects"

2. Is the definition of arbitrability contained in the definition of a grievance?
   e.g., "Grievance which cannot be settled"

3. Are the powers of the arbitrator specifically limited?
   e.g., "The arbitrator shall not have the power to add to or modify the terms
   of the agreement."

4. Other clauses affecting arbitrability:
   (a) Management rights clause
      1. How much does it exclude from the contract?
      2. Does it exclude from management rights anything mentioned in the contract?
         (e.g., "Recognized for wages, hours, and conditions of employment)

5. Timetable:
   Has the issues been processed within the time limits?

6. Procedural steps:
   Have they been followed?

B. Measuring the issue against the scope

1. Is the subject mentioned in the contract?
   e.g., vacations, seniority, etc.

2. If not:
   (a) Is there a past practice clause, and is this event a deviation from past practice?