PROBLEMS OF PROOF
IN ARBITRATION

PROCEEDINGS OF THE NINETEENTH ANNUAL MEETING
NATIONAL ACADEMY OF ARBITRATORS

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ARBITRATION TODAY, Proceedings of the Eighth Annual Meeting of the National Academy of Arbitrators, 1955

MANAGEMENT RIGHTS AND THE ARBITRATION PROCESS, Proceedings of the Ninth Annual Meeting of the National Academy of Arbitrators, 1957

CRITICAL ISSUES IN LABOR ARBITRATION, Proceedings of the Tenth Annual Meeting of the National Academy of Arbitrators, 1957


ARBITRATION AND THE LAW, Proceedings of the Twelfth Annual Meeting of the National Academy of Arbitrators, 1959

CHALLENGES TO ARBITRATION, Proceedings of the Thirteenth Annual Meeting of the National Academy of Arbitrators, 1960

ARBITRATION AND PUBLIC POLICY, Proceedings of the Fourteenth Annual Meeting of the National Academy of Arbitrators, 1961


LABOR ARBITRATION AND INDUSTRIAL CHANGE, Proceedings of the Sixteenth Annual Meeting of the National Academy of Arbitrators, 1963

LABOR ARBITRATION—PERSPECTIVES AND PROBLEMS, Proceedings of the Seventeenth Annual Meeting of the National Academy of Arbitrators, 1964

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EDITOR'S PREFACE

The National Academy of Arbitrators at its Nineteenth Annual Meeting in San Juan, Puerto Rico, January 24-27, 1966, directed much of its attention to a matter of great interest and importance—problems of proof in the arbitration process. There is general agreement that strict adherence to the rules of evidence and judicial procedure is neither desirable nor possible because of the unique nature of the arbitration process, but few would endorse the opposite position that these rules have no applicability. This is so because the parties and the arbitrator must have some standards to guide them in the presentation and evaluation of evidence. The question is, therefore, what rules and procedures are applicable?

The Program Committee, acting upon the suggestion of President Russell A. Smith and President-Elect Robben W. Fleming, devised a method to consider this question that proved to be exceedingly fruitful. Early in 1965, four regional tripartite committees composed of management and labor representatives and chaired by Academy members were appointed. Their task was to consider the general question of Problems of Proof in the Arbitration Process. The committees were provided a common agenda of matters to discuss. Among the many items they were asked to explore were such matters as the exclusionary rules (hearsay, parol evidence, etc.), standards for the examination and cross examination of witnesses, the arbitrator’s responsibility for insuring a fair hearing, and the use of pre-trial (hearing) procedures. The time and effort expended by these committees is readily apparent in the reports submitted by them—Chapters IV, VI, VIII, and X.

The Committee Reports were distributed to members and guests attending the Annual Meeting. The participants were then distributed into four workshop groups to discuss the Committee Reports; the committee members served as a panel in each workshop to lead the discussion. A transcript of each workshop was made and the deliberations of the workshops are reported in Chapters V, VII, IX, and XI. Following the workshop sessions, a General Session on the Problems of Proof, chaired by President-
Elect Robben W. Fleming, was held. The purpose of this session was to explore areas of consensus and disagreement that developed in the workshop sessions. The proceedings of this session are reported in Chapter XII.

These nine chapters constitute a valuable source of information concerning an important and complicated subject; they will prove invaluable to all those involved in the arbitration process, experienced and inexperienced alike. Even though, as to be expected, consensus was not attained on every matter, there was, nevertheless, a substantial amount of agreement. Even in the areas of disagreement, the discussion itself helps to clarify the problems inherent in the use of many of the evidentiary rules.

In his Presidential Address, Chapter III, Russell A. Smith comments upon the criticisms of arbitrators and the arbitration process made by Judge Paul Hays in his Storrs Lectures at Yale University. Although President Smith recognizes the need for constructive criticism of the arbitration process if it is to remain a viable instrument, he questions the validity of the serious charges made by Judge Hays. President Smith suggests that research to prove or disprove these charges be undertaken and outlines the kind of research he believes necessary.

Two other matters of importance were considered by the Academy. Father Leo C. Brown discusses in Chapter I the use of tripartite industry committees for the purpose of setting minimum wages in Puerto Rico. Father Brown, who has served as a public member and chairman on several of these committees, examines the problems that confront such committees and the results obtained by them. It is his opinion that these committees have, in general, functioned successfully and he urges their continued use. Father Brown's analysis and conclusions are discussed by David M. Helfeld, Mitchell J. Cooper, and Val Wertheimer. Their comments provide additional insight into a matter which is of such great importance to Puerto Rico.

Chapter XIII should be read in conjunction with Chapter I. This chapter, "Reflections on Commonwealth," is an address by Dr. Jaime Benitez, President of the University of Puerto Rico. Dr. Benitez thoughtfully discusses the progress as well as the problems of Puerto Rico.

Collective Bargaining in a vital industry is the subject of Chapter II—"Problems of Collective Bargaining and Dispute Settle-
ment in the East and Gulf Coast Longshore Industry." David H. Stowe brings to this discussion a wealth of information as the result of his experience as Director of the Manpower Utilization and Job Security Study Committee which investigated collective bargaining problems in this industry. This study committee was established by the Labor Department as part of a settlement proposed by the Morse Board, and accepted by the parties, to terminate the 1962 strike. Mr. Stowe analyzes the manning and job security problems of the industry, the reasons why collective bargaining had deteriorated in the industry, the work of the committee in helping the parties to meet their problems, and the future of collective bargaining in the industry. Theodore W. Kheel, whose work in the transportation industry as an arbitrator and mediator is widely known, utilizes his vast experience in commenting upon Mr. Stowe's paper.

Finally, the Editor wishes to call attention to Appendix B which contains the usual excellent Report by the Law and Legislation Committee chaired by Professor Edgar A. Jones, Jr. Appendix A provides a directory of Academy officers and committee appointments for 1966-67.

The Editor wishes to acknowledge his appreciation, as well as that of the Academy, to the many people who helped make possible the publishing of this volume. We are especially indebted this year to the many non-Academy members who so willingly gave of their time either as members of the tripartite committees or as discussants. The Editor also wishes to express his personal appreciation for the help provided by Professor Edgar A. Jones, Jr. in the preliminary editing of the workshop sessions; the assistance of the committee chairmen in the final editing of the manuscript of those sessions; and the cooperation of the staff of the Bureau of National Affairs, Inc. in preparing the manuscript for publication.

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