In Memoriam

Eva Robins
1910–2001
One of my last tasks as executive director of the New York State Board of Mediation was to interview applicants for the open civil service position of labor mediator in New York City. That was in 1957. Looking back, the decision to recommend Eva Robins’ appointment was one of the best I ever made.

Eva’s credentials, even then, were impressive. Born in Hamilton, Ontario, of American parents, she had come to New York and, in the early 1930s, had gone to work in the law department of the newly formed Pioneer Ice Cream Brands, Inc. (which subsequently became a division of The Borden Company). While there she had attended St. John’s Law School at night, obtaining her LLB in 1935. During the ensuing two decades she had risen to the rank of assistant vice president in charge of industrial and labor relations at Pioneer, the word “pioneer” being a prophetic one in many ways.

Although destined to succeed to the post of director of industrial relations, after 27 years with Pioneer Eva decided that a change was in order—hence her application to the New York State Board of Mediation, where she remained for 11 years, honing her skills as both mediator and arbitrator. Although not the only woman in this field, she truly was a trailblazer for others as her career developed and expanded. Eva left her job as the sole female staff member at the State Board of Mediation in 1968 to join a new agency, the New York City Office of Collective Bargaining (OCB). Her position: deputy chairman. Her responsibilities: to participate in the certification process of labor organizations representing public employees and to provide mediation, fact finding, and arbitration machinery for negotiating contracts and resolving disputes. At the time, New York City had about 200,000 employees represented by labor organizations.

Eva decided to hang out a shingle as a private practitioner in 1972, at which time she was serving as Treasurer of the National Academy of Arbitrators. (She had become a member in the early 1960s.) In a tribute to her at that time, OCB Chairman Arvid Anderson told the New York Times:

Miss Robins has played a major part in the development of OCB’s structure and policies. Her knowledgeability in the field of labor relations and her superior skills as a mediator and administrator helped shape the OCB’s role as an effective, independent neutral agency . . . . She has a special faculty for anticipating trends and sensing problem areas, and through her knowledge of labor relations in the private and public sectors has planned well in advance how to accommodate to change and how to meet problems before they become crucial . . . .
Not unexpectedly, Eva’s practice flourished. Her trailblazing, moreover, continued unabated. In the early 1980s, she became the first female arbitrator in professional sports when she was appointed to the injury panel of the National Football League and the National Football League Players Association. In a fond recollection of one of the “all-time greats” in the business, an attorney who has represented the Players Association and the NFL at different times wrote:

As a former attorney for the NFL Players Association, and currently an attorney at the NFL Management Council, I found Arbitrator Robins tough, but fair. She did not suffer fools gladly, nor did she have a tremendous tolerance for weak legal arguments or witnesses who tried to put one over on her. “The iron fist in the velvet glove” is a descriptive phrase that comes to mind. She would listen, for awhile, to inadequate legal argument or waffling witnesses, nod her head, and say, politely, but firmly: “I know what you’re trying to do, why don’t you move along.” And when she said that, you moved along. When you had a strong case, she was a great arbitrator in front of whom to present your case. She was not afraid to give you what you deserved. But woe to the presenter of a trumped-up case. If your opening statement promised what you could not deliver, she was not afraid to deliver her own bad news to you when you received her opinion. She called them as she saw them . . . .

Not the least of Eva’s accomplishments was her authorship of A Guide for Labor Mediators, published initially in 1976 and revised in 1997 with the assistance of Margaret Leibowitz and Linda Robins Franklin (Linda and Eva being the Academy’s only sister act to date). The Guide gained international attention, was translated into Spanish and Portuguese, and was adopted as a training tool in Brazil, Ecuador, and San Salvador, and is still in demand. The foreword to the revised edition is revealing:

The Guide is a timeless piece, a classic work for study by today’s and tomorrow’s labor mediators. While it was written especially for the aspiring mediator, the “old pro” will also find it of interest because Eva Robins is an experienced arbitrator and mediator who combines a nice sense of the philosophy and goals of the profession with a wealth of experience and practice in it. All mediators will benefit from the Guide which uses examples, taken from actual cases, to illustrate specific techniques that can be used to further the mediation process at different stages. Naturally, mediators eventually build up their own set of experiences, but all mediators, whether novice or experienced in the field, should find it helpful.

In addition to her arbitration, mediation, and writing activities, Eva became chair of the Employment Relations Panel of the Port
Authority of New York and New Jersey in 1992. She also participated with Dean John Feerick of Fordham Law School in a series of closed circuit television discussions concerning “at will” employment disputes.

Were she here to state which of her innumerable professional accomplishments she cherished most dearly, Eva might well refer to the seminars she conducted (with Peter Seitz) for fledgling arbitrators. Many, if not most of the participants, went on to become preeminent in the field (as well as members of the Academy). A tribute from one of that group, Carol Wittenberg, follows.

Arthur Stark

Eva Robins was a devoted Academy member and an inspiration to others, particularly new members. Between 1965 and 1999, she served as chair or member of innumerable Academy committees and as Academy president in 1980–1981.

In her presidential address to the Academy, Eva expressed her concern that new arbitrators who come to the profession without collective bargaining or contract administration experience have an understanding of the philosophy of arbitration as it originally developed. She always made herself available to meet with individuals desiring to enter the profession to guide them. As part of her commitment to the preparation of new arbitrators and their entry into the profession, Eva participated as a member of the Women Arbitrators Development Program faculty. Eva continued to support the development of new arbitrators when she and Peter Seitz shared their knowledge and experience with a small group of new arbitrators. Those who participated dubbed the sessions “the salon” to signify a place where the newly initiated sat at the feet of the venerable to exchange ideas and to learn.

One of the pearls of wisdom Eva shared with new arbitrators was never to do anything that you would not like to see reported on the front page of the New York Times. This warning reflected Eva’s dedication to maintaining the profession’s ethics. Parties knew that they could expect to arbitrate before a superb arbitrator of the highest ethical standards who was devoted to her profession. She did much to see that those who followed her embraced her beliefs.

Carol Wittenberg
PREFACE

The Academy’s Fifty-Fourth Annual Meeting was held at the Atlanta Hilton and Towers in early June 2001. The program, entitled “Arbitrating in an Evolving Legal Environment,” highlighted the many ways in which conventional labor arbitration has been and will continue to be affected by case and statutory law. Moving beyond those and related issues, the program also revisited the time-honored topic of what arbitrators can do to improve the arbitration process.

Chapter 1 of these Proceedings contains President John Kagel’s address to Academy members and guests. Kagel reviews the pitfalls of commercial and employment arbitration, warning that labor arbitrators have a responsibility to protect the fairness and integrity of the process they have shaped over the years. He explains how practices adopted by the courts and private commercial dispute resolution procedures might spill over into labor arbitration. He emphasizes as well that the Academy should continue to educate its members regarding the ever-enveloping legal environment in which they practice. In his final remarks, President Kagel urges Academy members to be vigilant stewards of the fairness that has been characteristic of the labor arbitration process.

Chapter 2 sets forth Professor Joseph Grodin’s authoritative review and analysis of four recent U.S. Supreme Court decisions that had an impact on the arbitration process. Grodin concludes that through those decisions collectively, the Court maintained its historical enthusiasm for arbitration, “even in contexts where one might think such enthusiasm is not entirely warranted.” In his response to Professor Grodin’s paper, management attorney James Walters expresses a preference for arbitration over litigation, noting that arbitrators bring to the dispute resolution process an experience level and dispassionate perspective rarely found in a typical jury. Attorney Edward Buckley III offers comments from the employee point of view, explaining why many of them prefer a trial by a jury of their peers to a decision by a professional arbitrator who may not so easily identify with their plight. Finally, in his spirited and thought-provoking remarks, Attorney Robert Giolito objects to what he views as the Supreme Court’s thrusting
of employment arbitration upon unwilling employees. Like President Kagel, Giolito urges arbitrators and advocates to take an active role in ensuring that the fairness, justice, and equality that have been characteristic of labor arbitration are not lost in the employment arbitration shuffle.

Chapter 3 is devoted to the “Distinguished Speaker” address. After a most informative introduction by Academy member Jacquelin Drucker, veteran mediator W.J. (Bill) Usery, Jr., compliments the Academy—and particularly its founders—for their many contributions to the institution of collective bargaining. He also cautions that labor arbitration has come to exist in a kind of “no man’s land,” assaulted from all sides by the seemingly inexorable penetration of legalistic mentality. Usery concludes by challenging arbitrators to take a more active role in defining how the arbitration process should serve society, rather than leaving such work entirely to the courts.

In Chapter 4, Professors Peter Feuille and Michael LeRoy analyze arbitration-related federal court decisions issued between 1960 and 2001. They compare the courts’ approach to deciding labor-management cases with their treatment of nonunion employment cases, concluding that there is a more stable “judicial review equilibrium” in the unionized sector. That is, only a small fraction of labor arbitration awards are appealed and fewer than a third of those are vacated. Feuille and LeRoy posit from their scholarly case review that since judges hearing nonunion employment arbitration cases have less Supreme Court guidance (no Steelworkers Trilogy, for example) they are more likely to accept such cases for review and may be inclined to break new ground in deciding them.

Academy member Stephen Hayford’s scholarly paper on the Revised Uniform Arbitration Act (RUAA) is the focus of Chapter 5. As academic advisor to the RUAA drafting committee, he brings special insight to this important topic. Hayford argues that since 1983 the Supreme Court has put into motion a “radical shift in the law of commercial arbitration”—one that is becoming increasingly significant to labor arbitration. He guides the reader through significant aspects of the RUAA, noting their various implications for the arbitration of labor and employment disputes. Hayford concludes his paper with a stern admonition to the Academy and its members: reconcile our longstanding fidelity to collective bargaining with the “new arbitration reality” created by an enveloping legal environment.
In Chapter 6, Professor Deborah Hensler reviews the body of procedural justice research and tests some of its hypotheses through interviews with plaintiffs and defendants in tort cases across three regional suburban courts. She found that no matter the case outcomes, litigants’ satisfaction with the particular dispute resolution system was strongly connected to their evaluation of its procedural fairness. Hensler discusses how that result might impact the arbitration process and suggests what arbitrators and advocates can do to shape the parties’ perceptions of its procedural attributes. The Chapter concludes with comments from the union perspective by attorney Norman Slawsky, some thoughts from the employer point of view by attorney William Earnest, and a lively set of questions from Academy members and advocates in attendance.

Entitled, “Reminiscences,” Chapter 7 contains former Academy President Howard Block’s delightful “fireside chat” with former Academy President Dick Mittenthal. Following Block’s deft lead, Mittenthal gives us a condensed version of his lengthy arbitration career—beginning in the basic steel industry when he was just 27 years old! Paying particular attention to the numerous permanent umpireships he has held over the years, Mittenthal shares thoughts about his longevity in so many of them. He also describes two interesting and humorous encounters—one with an argumentative advocate and another with an exuberant court reporter. And in response to Block’s inquiry, Mittenthal revisits some of the many topics he has written about in these Proceedings, providing personal insight into the factors that prompted him to write them—not to mention the unique physical environment in which they were written.

The final chapter of this volume contains an informative, cutting-edge paper by Academy member Paula Knopf. Entitled “Free Speech and Privacy in the Internet Age: The Canadian Perspective,” the paper reviews different case law concerning Internet use at work by employees and offers some fascinating questions of interest to arbitrators and advocates alike. Though this paper was not presented at the Annual Meeting in Atlanta, but at the following Fall Meeting in Tampa, we felt its timeliness and obvious contribution to the arbitration literature justified its inclusion here.

In our role as the Co-Editors of these Proceedings, we owe thanks to a great many people. First, and on behalf of the Academy, we are grateful to Program Chair Norman Brand and to Host Committee Chair James Odom for making the Atlanta meeting a memorable
one. Thanks are also in order to Kate Reif, Brenda Ryan, and others who so ably and cheerfully met the minute-to-minute challenges of a successful conference. We especially underscore the contributions of all those who wrote papers for this volume. Without exception, they are dedicated arbitrators and advocates whose influence on the arbitration process will undoubtedly be profound and lasting. We wish to thank BNA Senior Book Editor Renee Brown as well. She is a consummate professional editor without whose guidance and expertise we would have been lost. We are also grateful to our wives, Sharon Grenig and Barbara Briggs, for their patience and understanding as we dealt with the many challenges and opportunities that “came with the territory.”

With this, our fourth Proceedings volume, we are retiring our red pens and hanging up our plastic visors. It has been our privilege to serve the Academy in this important capacity, and we extend to our replacement, Academy member Charles Coleman, our very best wishes for the future.

January 2002

Jay E. Grenig
Steven Briggs
Editors
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