

HOW ARBITRATION WORKS

Fourth Edition

Frank Elkouri
and
Edna Asper Elkouri



Series on Arbitration

HOW ARBITRATION WORKS

Fourth Edition

by

FRANK ELKOURI

*Cross Research Professor of Law
University of Oklahoma*

and

EDNA ASPER ELKOURI

*Juris Doctor With Honors
The George Washington University
Law School*



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To the men and women
—labor, management, and neutrals—
who make arbitration work

Preface to Fourth Edition

The Preface to the Second Edition of *How Arbitration Works* continues to serve well and applies to the Fourth Edition, as it did to the Third Edition. Updating the book again presented a great challenge to the Authors: the increasingly prominent and relevant role of the law, the coming of age of bargaining and dispute resolution in the state and federal public sectors, and the impact of the Civil Rights Act upon arbitration, each contributed to the already demanding challenge involved in the updating process.

Frank Elkouri
Edna Asper Elkouri

Preface to Third Edition

The Preface to the Second Edition serves well for the Third Edition also. Certainly, the rapid pace of development has continued. Thus, the updating of *How Arbitration Works* again presented a great challenge to the Authors, both as to time and effort. Even so, we have expanded the scope of the book by adding two new chapters, various new topics elsewhere in the book, and of course new developments throughout the book.

Frank Elkouri
Edna Asper Elkouri

Preface to Second Edition

The period since publication of the first edition of *How Arbitration Works* has witnessed a great outpouring of arbitration decisions as well as writings by arbitrators and students of arbitration. Thus, the past few years might well be termed a "classical" period in the history of arbitration. Much new thought has emerged, much previous thinking has been modified, and some of the old has departed. This is convincing evidence of the progressive and dynamic nature of arbitration in our industrial scheme of things today. The words of John Day Larkin, speaking as President of the National Academy of Arbitrators in 1956, effectively tell the story:

"The work of arbitrators, like that of judges, is in one sense enduring and in another sense ephemeral. That which is erroneous is sure to perish. The good remains, the foundation on which new policies, practices and procedures will be built. That which is bad will be cast off in due time. Little by little, old and outworn doctrines are undermined, both through the process of negotiation by the parties and by the sounder reasoning of those called upon to interpret the language which the parties have hammered out in the heat of economic conflict, and through long hours of patient effort to reach an agreement."*

*Larkin, "Introduction: The First Decade," *Critical Issues in Labor Arbitration* viii, xv (BNA Books, 1957).

It is with the above thoughts in mind that the Authors offer the Second Edition of *How Arbitration Works* to arbitrators, students of arbitration, and especially to employers and employees.

Frank Elkouri
Edna Asper Elkouri

Foreword to First Edition

This study is a product of the graduate and research program of the University of Michigan Law School. The subject was selected on the basis of its current and increasing importance in the field of labor-management relations and as one which, partaking of many of the characteristics of a legal institution, is suitable for examination by lawyers as well as others.

Mr. Elkouri has sought from an examination of the reported arbitration cases themselves to throw new light on the procedural and substantive aspects of the arbitration process. He has modestly, and, in my opinion wisely, refrained on the whole from attempting to pass judgment on the wisdom and soundness of particular decisions and of general principles which appear to be emerging in the cases. Perhaps a study which undertakes such a critique will emerge in time, possibly from Mr. Elkouri himself. Meanwhile, what he has done is important enough.

It is still too early to determine the full impact of arbitration on collective bargaining. The next decade should disclose whether the recorded and published decisions of arbitrators have developed some generalized thinking about collective bargaining problems which has become an important part of the utilized knowledge of bargainers and of students of the subject. If experience with other bodies of accumulated knowledge is any criterion—and I can think of no valid reason why the field of labor relations should be set apart as an exception—we are likely to see just such a development. Some may view this prospect with alarm, based on a fear of stereotyped thinking and undue reverence for precedent. This attitude seems to me to show a lack of understanding of the judicial process. It is simply contrary to every canon of progress to refuse in this field or any other to conserve the accumulated wisdom and experience of the problems as sound judgment may dictate.

Russell A. Smith
Professor of Law
University of Michigan
1952

Acknowledgment, First Edition

I wish to acknowledge my deep indebtedness to Professor Russell A. Smith of the Michigan Law School, who, as my friend and Chairman of my Research Committee, contributed in so many ways to this book. I also wish to acknowledge my special indebtedness to the following persons, each of whom, in his respective way, contributed generously to make this book possible: E. Blythe Stason, Dean of Michigan Law School; Professor Lewis M. Simes, Director of Legal Research at Michigan Law School; Professor John E. Tracy, Professor Edgar N. Durfee, Professor L. Hart Wright and Professor Burke Shartel, all of Michigan Law School; Professor Hobart Coffey, Director of the Michigan Law School Library; Professor Coffey's Staff; Judge Frank P. Douglass and Mr. Leverett Edwards, both of the National Mediation Board; U.S. Senator Mike Monroney; Professor John B. Cheadle, Professor Victor H. Kulp and Professor Maurice H. Merrill, all of the University of Oklahoma Law School; Professor Sylvester Petro of New York University Law School; Professor George Wolbert of Washington and Lee Law School; Ford Motor Company Umpire Harry Shulman; Chrysler Motor Company Umpire David A. Wolff; Arbitrator Francis J. Robertson of Washington, D.C.; John D. Stewart, Executive Editor of The Bureau of National Affairs, Inc.; and, finally, the many arbitrators whose work has provided the basic material for this study.

Frank Elkouri

Acknowledgment, Second Edition

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Frank Elkouri
Edna Asper Elkouri

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