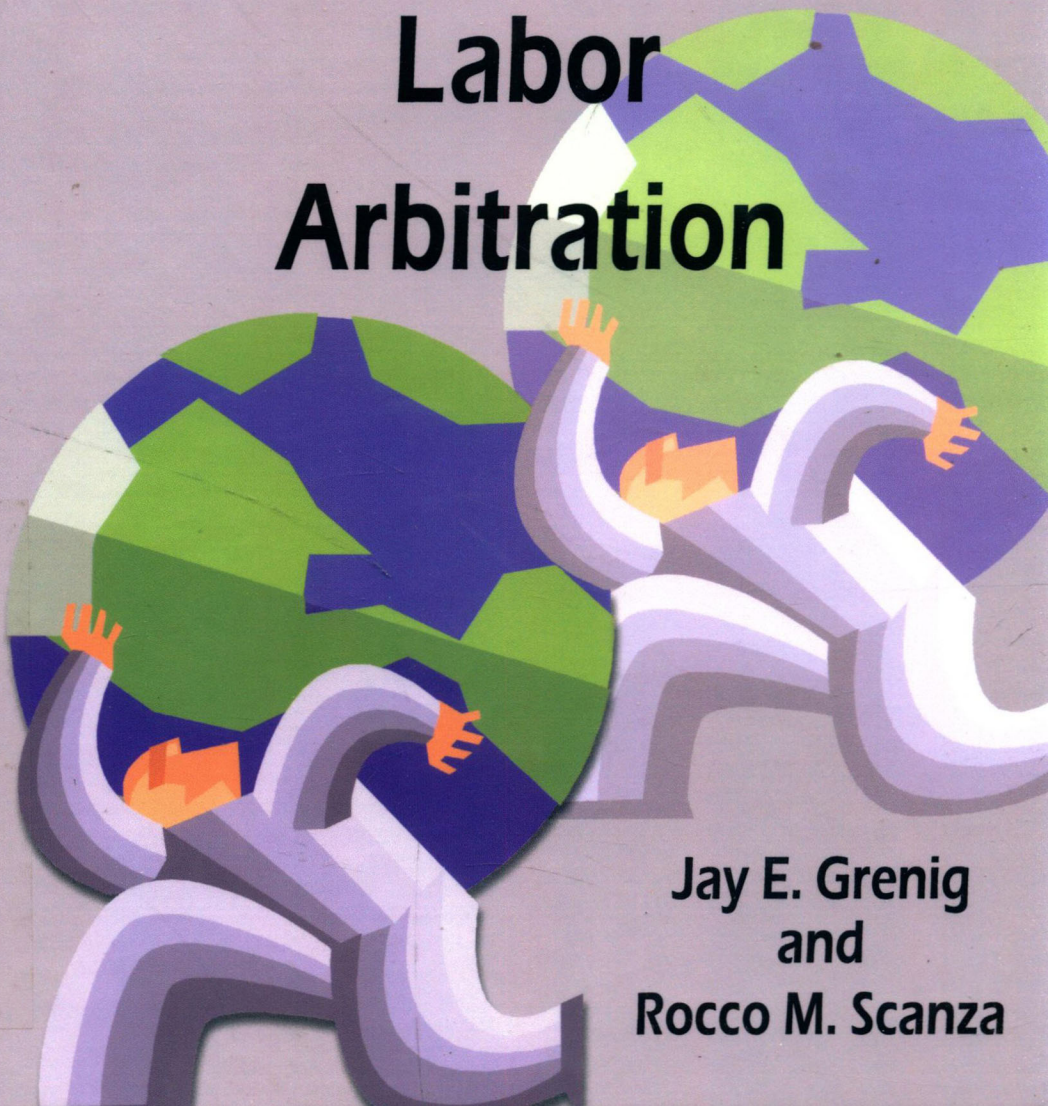




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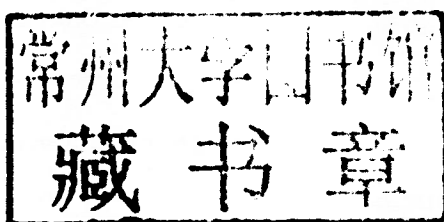
Fundamentals of Labor Arbitration



Jay E. Grenig
and
Rocco M. Scanza

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Jay E. Grenig
Rocco M. Scanza



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FOREWORD

This book is the all new incarnation of the American Arbitration Association (AAA) perennial favorite, *Labor Arbitration: What You Need to Know*, written by AAA past-president Robert Coulson. Given a new name and designated the first volume of a new series, it is a milestone publication for a couple of reasons. It is the first time since 1981 that this valuable resource is appearing with completely new material. It is written with today's sophisticated ADR audience in mind while retaining an emphasis on the practical and on understanding and participating in the ADR process. It also represents the first collaborative publishing effort by the AAA and the Cornell University ILR School Scheinman Institute on Conflict Resolution, a relationship forged in the commonality of our respective longstanding commitment to the labor-management community.

The very history of the AAA is steeped in the ongoing richness of that commitment. If I may quote Frances Kellor, a founding member of the AAA and the first woman to occupy an executive position at the Association, "Since its organization in 1926, the Association has been arbitrating what were in effect labor disputes under the standard contracts of the Actors' Equity Association—a member of the A.F. of L.—and from time to time it was called upon to open its tribunal for the settlement of other labor disputes." From this humble beginning the Association would go on to establish, a decade later, its Voluntary Labor Arbitration Tribunal. Within 15 months, 100 cases would be submitted and resolved.

The evolution of labor-management relations has continued unabated since then, as has the growth of the AAA, and its labor caseload in particular. There were 12,083 labor cases filed with the Association in 2009. As to the future, it rests in no small part on the preparedness and commitment of the generations of labor arbitrators to come. If this book contributes to the knowledge and experience from which those future generations will draw guidance, it will have achieved its purpose.

William K. Slate II
President and CEO
American Arbitration Association

FOREWORD

I am delighted that the topic of labor arbitration is the focus of the first and very timely joint publishing effort by the American Arbitration Association and the Scheinman Institute on Conflict Resolution at Cornell ILR, two organizations that I credit with helping launch my professional career as an arbitrator and mediator.

For too many years, talented men and women have bypassed the opportunity to work in the labor arbitration field as either advocates or arbitrators. The end result is that we now face a shortage of diverse, highly qualified labor arbitrators. With the publication of *Fundamentals of Labor Arbitration*, the AAA and the Scheinman Institute hope to send a new and positive message: we want to educate and train a new cohort of arbitration practitioners from the labor and management communities. I believe this book is an excellent step in helping to convey that message.

There are many outstanding treatises and casebooks on the law and practice of arbitration. However, *Fundamentals of Labor Arbitration* takes a different approach. The authors' goal is to provide a contemporary and practical primer on the evolving nature of labor arbitration, focusing on the needs and interests of labor relations managers, union representatives, attorneys, and labor arbitrators.

An essential mission of the Scheinman Institute is "educating the next generation of neutrals" by providing the highest quality training in the labor field. We define the next generation of neutrals to include, not only the men and women enrolled in the ILR School's degree programs, but also advocates and other practitioners in labor relations and employment who seek to become professional labor arbitrators and mediators. I am also persuaded that neutrals, advocates, and other participants in the labor arbitration process must stay on the frontier of that process if the practice of labor arbitration is to continue to improve.

FUNDAMENTALS OF LABOR ARBITRATION

The joint publication of this book by two landmark institutions in the labor arbitration field symbolizes and reflects their abiding commitment to the highest quality practice of labor arbitration in America. I welcome the opportunity to play a role in furthering that laudable goal.

Martin Scheinman
Foremost Benefactor of the Scheinman
Institute on Conflict Resolution

PREFACE

Labor arbitration is a vitally important method of resolving labor-management disputes. This book does exactly what the title says. It provides the fundamentals of labor arbitration to a new audience, covering more topics than Robert Coulsen's successful but not outdated *Labor Arbitration: What You Need to Know*.

Our goal is to provide a solid base of information about grievance and arbitration procedures, while also explaining what advocates and arbitrators actually do. If you want to know what should be in an opening statement, or how to conduct an investigation into alleged employee misconduct, or how to select and prepare witnesses for the hearing, or how arbitrators decide discipline and discharge cases, you will find it here.

This book is an outgrowth of our more than 60 combined years of experience as advocates, arbitrators, administrators, educators and trainers in workplace dispute resolution. We believe it will give advocates and arbitrators a firm grounding in how labor disputes are resolved, whether they involve private or public sector employers or employee grievances or impasses in collective bargaining.

This book is organized into 10 chapters. Chapters 1-3 provide the background necessary to understand the labor arbitration process and why labor disputes often end up in arbitration. They explain the different varieties of arbitration, touch on arbitration's advantages over other types of processes while emphasizing cost control and training in order to have an efficient and cost-effective process. In addition, these chapters address the sources of labor arbitration in statutes and case law, and then discuss the grievance process, from filing of a grievance through settlement or rejection of the grievance.

Chapters 4 and 5 deal with the practical aspects of initiating arbitration and the pre-hearing phase of the process. These "how to" chapters tell you what you need to know to commence a grievance arbitration, select the arbitrator, conduct a factual investigation, interview witnesses, select and prepare them to testify, and make use of subpoenas for documents and witnesses.

Chapter 6 focuses on planning the hearing. It addresses procedural matters (for example, how the date and location of the hearing are decided and the order of proceedings), as well as substantive matters (such as deciding the issues to be submitted to the arbitrator for decision, using stipulations to reduce the number of facts in dispute, and preparing an effective opening statement to deliver at the hearing).

FUNDAMENTALS OF LABOR ARBITRATION

Chapters 7 and 8 deal with the work of labor arbitrators. Chapter 7 focuses on the labor arbitration principles arbitrators use to decide discipline and discharge cases and their responsibility to see that procedural due process is observed at the arbitration hearing. Chapter 8 covers the principles of contract interpretation that arbitrators use to interpret labor agreements.

Chapter 9 covers the requirements for arbitration awards and tells you what you need to know about consent awards, interim versus final awards, and modifying, correcting and setting aside arbitration awards.

Finally, Chapter 10 addresses the subject of labor arbitration in the public sector, which has special nuances.

The appendix contains a glossary of terms used frequently in labor arbitration. For the convenience of readers, it also contains the Code of Professional Responsibility for Arbitrators of Labor-Management Disputes, which establishes high ethical standards for labor arbitrators, the Federal Arbitration Act, and Section 301 of the Labor Management Relations Act, a key labor statute.

Special thanks are due to Susan Zuckerman, an editor at the American Arbitration Association, for her careful and skillful editing. We are also grateful for the help and encouragement of Ted Pons, vice president of publications at the AAA. In addition, we acknowledge the helpful contributions of R. Wayne Estes, professor of law emeritus at Pepperdine University School of Law.

Readers who have suggestions or comments are encouraged to contact the authors at jgrenig@earthlink.net or rms43@cornell.edu.

Jay E. Grenig
Rocco M. Scanza

INTRODUCTION

Nearly 30 years after its initial publication, the American Arbitration Association's seminal primer, *Labor Arbitration: What You Need to Know*, has undergone a complete facelift with the publication of this brand new book. *Fundamentals of Labor Arbitration*, the first volume in the "AAA/ICR Dispute Resolution Series," features all new content that is indispensable to advocates, arbitrators, employers, unions, and readers who wish to know more about resolving labor-management disputes. Here, readers will find a clear introduction to the grievance process and labor arbitration, as well as practical guidance to help users of the process effectively resolve labor-management disputes in the private and public sectors.

This book is co-published by the American Arbitration Association and the Cornell University School of Industrial and Labor Relations, Scheinman Institute on Conflict Resolution.

ABOUT THE AUTHORS

Rocco M. Scanza and **Jay E. Grenig** both serve on the American Arbitration Association's labor panel.

Mr. Scanza is an Attorney, Arbitrator and Mediator of labor and employment disputes. He is also the Executive Director of Cornell University's Scheinman Institute on Conflict Resolution, where he teaches courses in workplace alternative dispute resolution. Mr. Scanza was formerly a national Vice President at the American Arbitration Association. He graduated from Queens College in New York City and Loyola Law School of Los Angeles. He lives and works in Ithaca, N.Y.

Mr. Grenig is a Professor of Law at Marquette University Law School. He has served as an arbitrator or mediator in over 2,000 labor and employment disputes. A member of the National Academy of Arbitrators, the American Law Institute, and the Order of the Coif, Mr. Grenig is also a fellow of the College of Labor and Employment Lawyers. He formerly chaired the Labor and Employment Law Section of the Association of American Law Schools and served as a consultant to the National Commission on Employment Policy. He has written or co-written numerous books and articles.

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CHAPTER ONE

Introduction to Labor Arbitration

1:01 INTRODUCTION

Collective bargaining has flourished in the United States as a method of resolving issues relating to the conditions of employment. National labor laws have encouraged this process. For settling disputes over the interpretation or application of collective bargaining agreements, unions and employers have agreed to procedures that usually take the form of joint grievance discussions terminating in arbitration if the discussions do not produce a resolution of the grievance. Grievance arbitration procedures are found in most bargaining contracts. Hundreds of thousands of labor disputes have been resolved using labor arbitration with limited judicial intervention.

Arbitration is a method of dispute resolution in which the parties to a dispute submit the dispute to an impartial person or persons known as arbitrators. In arbitration, an arbitrator makes a decision based on the evidence and arguments presented by the parties at the arbitration hearing.

As an impartial dispute resolution organization that administers labor and other forms of arbitration proceedings, the American Arbitration Association wants the arbitration process to be fair and efficient. Accordingly, it encourages parties to help make arbitration work more efficiently and in a cost-effective way. Used intelligently and prudently, labor arbitration can continue to serve the needs of unions, employees and employers. Not only can it resolve disputes, it can improve communication between union leadership and management and between employees and employers.

1:02 TYPES OF ARBITRATION—BINDING AND ADVISORY ARBITRATION

Decisions in binding arbitration (usually referred to simply as “arbitration”) are final and binding on the parties. A binding arbitration decision can be enforced in court. In advisory arbitration (sometimes called “fact finding”), the arbitrator recommends a resolution of the