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THE NATURE OF THE ARBITRATION PROCESS

WILLIAM M. HEPBURN* and PIERRE R. LOISEAUX**

Lawyers, law schools and the American public have become acutely conscious of the arbitration process generally, and in connection with labor-management disputes in particular, only within the past generation. Today, however, our industrial society could hardly function without this remarkable device for the settlement of controversies between employers and unions, and employees. One writer has commented that the grievance and arbitration procedure in collective bargaining agreements

. . . represents one of the most significant developments in the jurisprudence of the twentieth century. If this statement seems carelessly broad, consideration should be given to the fact that there are perhaps today more private disputes being resolved daily under provisions [for arbitration] . . . than are being handled in all state and federal courts in the country.¹

Nevertheless, in spite of its relatively new prominence in our society, arbitration is an old concept. Elkouri comments that:

Arbitration as an institution is not new, having been in use many centuries before the beginning of the English common law. King Solomon was one of the earliest arbitrators, and it is interesting to note that the procedure used by him was in many respects similar to that used by arbitrators today.²

It may be doubted whether the technique of splitting the difference as between the disputants actually appeals to many participants in labor-management disputes, but it is true that arbitration is not new and untried, but has ancient and respectable origins.

In Judge Cardozo's classic *The Nature of the Judicial Process*³ that famous judge examines the elements of a judicial decision—The Method of Philosophy, The Methods of History, Tradition and Sociology; The Judge as Legislator; Adherence to Precedent; The Subconscious Elements in the Judicial Process. The arbitrator's task is similar to that of the judge, but still quite different. Perhaps the chief difference is that the arbitrator is freer, and therefore carries heavier responsibilities than the judge. He is not only a judge, although a private one, but jury as well, and often legislator; from him there is usually no appeal; and the consequences of his decisions are

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1. MATTHEWS, *LABOR RELATIONS AND THE LAW* 345 (1953).

2. ELKOURI, *HOW ARBITRATION WORKS* 2 (1952).

3. CARDOZO, *THE NATURE OF THE JUDICIAL PROCESS* (1921).

often large in terms of money, and far-reaching in their effects on many people, and on industrial policies. The marvel is that management and labor will entrust to an individual, often a stranger to them both, final determination of very vital issues. And that cases are rare in which an arbitrator's decision is challenged is an extraordinary tribute to the institution of arbitration itself, and to the basic integrity of American management and labor.

It may be doubted whether parties always understand the difficulties of the arbitrator's task. Pearce Davis has said:

Arbitrators are characteristically lonely men. They ordinarily have no relations with the parties before a hearing, save for the formal mechanics of arranging for it. They analyze the evidence, meditate, make their decision in solitude, set down their reasons in the presence only of pen and paper, and silently dispatch their opinion and award. Arbitrators seldom see or communicate with the parties subsequent to the hearing.⁴

About 90 per cent of the collective bargaining contracts now in force in this country provide for the submission of unsettled grievances to arbitration.⁵ Some select an arbitrator for each unsettled grievance and others establish a permanent arbitrator or umpire. Some contracts name a panel of three or more arbitrators, who are assigned in rotation. To the uninitiated some of these grievances may seem to involve small disputes and relatively unimportant matters. However, almost every grievance that comes to arbitration is important. There are indeed seemingly petty cases which reach arbitration, but examination will usually reveal that what appears to be a case of small importance is economically significant not only to the parties to the dispute but very often to the public. For example, a grievant claims that under the terms of the contract he is entitled to eleven days of paid vacation rather than ten, as the company had figured. This employee receives an hourly rate that makes the day's pay in question come to about ten dollars. It might seem strange that the company should fly a lawyer from their distant home office to present the case, and that the union should bring an international representative from another city. However, when it appears that the company has twenty thousand employees working under this contract in a dozen different plants, is it strange that they do not wish to settle this case which could involve \$200,000, without making their best effort? Not only will the preparation and the hearing be important, but in all probability the parties will file

4. Address by Pearce Davis, *The Arbitration Process Today and the Function of the Industrial Engineer*, 20th National Time and Motion Study and Management Clinic, Nov. 1, 1956.

5. In a study of 1,442 collective agreements in effect during 1952, the Bureau of Labor Standards found that 89% of the contracts, covering workers in 29 broad industrial categories, contained provisions relating to the arbitration of grievances. Moore and Nix, *Arbitration Provisions in Collective Agreements, 1952*, 76 MONTHLY LAB. REV. 261 (1953).

extensive briefs after the hearing. The importance of this case may be obvious, but in many arbitration cases the significance of the decision is equally great, but less apparent. In some, little money is in dispute, but important policy matters, such as seniority provisions, may affect the welfare of employees and the conduct of business.

In addition to an unknown number of grievance arbitrations being heard each day there are occasional cases of what are usually called contract or interest arbitrations. Generally, in this situation, the agreement to arbitrate is not made in a collective bargaining contract, but is made by an ad hoc stipulation and agreement to arbitrate particular matters which the parties are unable to settle in their negotiations. The importance of the award in contract arbitration can hardly be overstated, particularly when wages and fringe benefits are in issue. The granting of an increase or decrease in hourly wages will involve large sums of money. Five cents an hour can amount to more than \$100 a year for each employee. A small plant employing 100 must pay \$10,000 a year for a 4 cent increase. The award in some cases will also have an important effect upon the national economy.

In the past twenty-five years the use of arbitration in the labor-management field has grown to an extraordinary degree and there is every reason today to believe that this growth will continue.⁶ Reasons for this growth can be summarized in a phrase—convenient necessity. To the parties, arbitration offers solutions to vexing and frequently explosive problems. Without such a decision-making process the parties might be forced into economic warfare or litigation. Neither is desirable. Arbitration offers speed, relative economy, and flexibility. Litigation is unsatisfactory to the parties because of great expense, undesired technicality and delay. The public interest would suffer if courts were required to decide many thousands of disputes between management and labor, which would impede the traditional work of courts. Moreover, the regular courts are not equipped to handle a large proportion of cases that now go to arbitration. Economic warfare, the other alternative in addition to litigation available to parties who do not agree to arbitrate their unsolved problems, is in almost every case unsatisfactory and in general productive only of tragic economic waste and personal hardship. Equally important in considering alternatives is the nature of the result sought. In litigation the parties are compelled to fit their frequently unique questions into established legal doctrine. A suit for breach of contract between labor and management must fit traditional patterns, parties must play their proper doctrinal parts, and the court is limited in the type and scope of remedy which it can award. This economically and socially sensitive continuing relationship could not stand the strain if it were

6. See WITTE, *HISTORICAL SURVEY OF LABOR ARBITRATION* (Labor Relations Series, U. Pa. Press 1952).

necessary to use our historical legal processes to solve every dispute.

Thus, today, because of necessity and convenience, labor and management have by agreement established a procedure for settling disputes which includes their own forum and their own private judges, or arbitrators. How do the parties find these private judges? Obviously it is necessary to choose someone upon whom the parties can agree. What are the formal qualifications for this work? The only essential qualification is an ability to understand the dispute and to make a "fair," rational and dispassionate decision. For this task parties have selected business men, lawyers, ministers, engineers, sociologists, economists, and, in particular controversies, persons from almost every walk of life. University professors with training in law, business, economics or sociology are very frequently appointed. All people are judges in various ways—decision making is a part of life from which few escape. However, as the number of labor arbitrations has increased many persons who have proved satisfactory as arbitrators have been frequently reappointed. Some of these have become professional arbitrators and have given up other vocations to devote all of their time to the arbitration process.⁷ At the present time there are doubtlessly more persons serving as arbitrators on an occasional basis than there are permanent arbitrators.

The parties select the arbitrator by agreement, or accept one appointed by some agreed-upon third party. The third party may be a state or federal agency, the American Arbitration Association, or some other organization or person. Occasionally the contract will provide that a federal judge, the governor of the state, or the president of a university shall select the arbitrator, but such provisions are usually in new contracts and the parties soon change to one of the established sources of appointment. An appointing agency does not ordinarily name the arbitrator individually, unless requested specifically to do so. A list of qualified persons is submitted by the agency to both sides, and the parties strike names which are unacceptable and number the remaining names in order of preference. The agency then names the individual with the lowest total as arbitrator. Permanent umpires in major industries are well known, but even in such permanent appointments few are full-time professional arbitrators.

In the broadest sense, what both parties want from their private judge is a fair and practical decision. Frequently the arbitrator is sore pressed to know exactly what and how much he is to decide. At times the parties are not fully aware of the basis of their dispute, and the arbitrator must initially decide that issue. Some contracts

7. Information on the occupational status of arbitrators is available in the cumulative "Directory of Arbitrators" published as an appendix to BNA's Labor Arbitration Reports.

provide for this. However, the arbitrator must make a decision even if it is only that he cannot make a decision on the substantive question.⁸ What does the arbitrator bring with him to the arbitration hearing? Unlike the judge in legal procedures, often the arbitrator does not know the nature of the dispute he will be called upon to determine. If he has knowledge of industrial techniques and personnel policies he will be better able to accomplish the initial task of learning.

By what process does an arbitrator reach a decision? Probably no two follow identical rules. Often the same individual varies his method. That judges follow no definite formula seems evident. The methods of philosophy, history, tradition, sociology which Cardozo discussed are not foreign to the arbitrator; nor is precedent or reliance upon the subconscious. He quoted Munroe Smith that:

The rules and principles of case law have never been treated as final truths, but as working hypotheses, continually retested in the great laboratories of the law, the courts of justice. Every new case is an experiment; and if the accepted rule which seems applicable yields a result which is felt to be unjust, the rule is reconsidered.⁹

Probably, the first thing a judge or arbitrator does is to obtain as a complete an understanding of the facts as he can from the parties' opening statements, testimony, summations and briefs; then he sets up tentative questions and thinks in terms of possible answers, in terms of the collective bargaining agreement, practical knowledge, sense of justice. He must allocate various pieces of information to different sides of the formulated questions and assign some relative value to each. The final step usually involves a choice between two or more alternatives, but this is not always so. There are cases, for example, where the facts and the contract are so clear that only one answer is possible. For at times, both management and labor arbitrate cases which are clearly without merit, and the arbitrator's function, and it is a useful one to the parties, is to serve as whipping boy. But when the arbitrator must choose between alternatives, quite often a subjective element on a narrow point may lead him to his decision.

What are the arbitrator's tools? His authority comes from the collective bargaining agreement, plus the submission or stipulation, if there is one. Frequently the grievance is submitted, and the question is: What disposition shall be made of it under the contract? Very often the terms of the contract do not give a ready answer to the question or dispute that has been brought to the arbitrator. If there were a ready answer in the contract the case would usually have been settled during the grievance steps.

8. See Justin, *Arbitrability and the Arbitrator's Jurisdiction*, in MCKELVEY, *MANAGEMENT RIGHTS AND THE ARBITRATION PROCESS* (1956).

9. CARDOZO, *THE NATURE OF THE JUDICIAL PROCESS* 23 (1921), quoting SMITH, *JURISPRUDENCE* 21 (1909).

In making a decision what criteria are available to the arbitrator, what criteria does he use, and what criteria does he say he uses? The theme of this paper is that grievance arbitration in general follows the "law" and that the arbitrator functions principally as a judge.¹⁰

In comparing an arbitrator with a judge it is necessary to ascertain what sort of a judge is to be used as a standard of measure. Shall we compare the trial judge in a civil court with the arbitrator, or might we better take the criminal judge, or are there aspects of the arbitrator's action which would tend to have us select an appellate judge? Actually in most cases the arbitrator acts in a dual capacity: during the conduct of the hearing he is functioning primarily as a judge in ordinary civil proceedings. If we were to attend some hearings it would be difficult to distinguish without knowing ahead that this man sitting in a court room was not an ordinary civil judge hearing a jury-waived trial. On the other hand we might go into the conference room of some corporation and have a hard job distinguishing this activity from a committee meeting or an early step in a standard grievance procedure. Sometimes the flavor of the hearing may be much more that of criminal proceedings with the conduct in question such that if true as alleged the company would not only have just cause to discharge this person, but in all probability he is being, or will be, prosecuted by the law enforcement authorities. However, the essence of the arbitrator's dual capacity is that after the hearing he in effect sits as an appellate judge in making his final determination. This is particularly true if he first issues a tentative award, inviting the comments and criticism of the parties.

It is not uncommon to make a record of the hearing in cases of importance. In many disputes the parties file briefs after the hearing. This post-hearing document smacks of both a closing argument and an appellate brief. It contains argument about the facts presented and their weight and applications such as is usual in closing argument, but it also contains extensive argument about the major premise

10. "... arbitration, except as provided by statute, is solely a creature of the parties. If the parties prefer an arbitrator to function as a 'mutual friend,' as a labor relations psychiatrist, or as a father-confessor, they are privileged to seek out an arbitrator who can fulfill such a role. If they prefer an arbitrator to adhere strictly to the traditional quasi-judicial approach, this can be made clear. It is important to the success of the relationship that the parties understand and agree upon the type of arbitration they want and that they make this clear to the arbitrator. Personally, I continue to hold the view that in grievance arbitration the arbitrator's function is properly a quasi-judicial one." Davey, *Labor Arbitration: A Current Appraisal*, 9 *IND. & LAB. REL. REV.* 85, 88 (1955). See also Taylor, *The Voluntary Arbitration of Labor Disputes*, 49 *MICH. L. REV.* 787 (1951); Warren and Bernstein, *A Profile of Labor Arbitration*, 4 *IND. & LAB. REL. REV.* 200 (1950); Braden, *The Function of the Arbitrator in Labor-Management Disputes*, 4 *ARB. J. (n.s.)* 35 (1949); Singer, *Labor Arbitration: Should it be Formal or Informal?*, 2 *LAB. L.J.* 89 (1951); Hoebrex, *In Defense of Judicial Arbitration*, 3 *LAB. L.J.* 487 (1952); Code of Ethics and Procedural Standards for Labor-Management Arbitration, Part 1, § 1 (AAA 1950).

under which these facts are to be placed. This argument of principles involves at times extensive use of legal sources, industrial statistics, other arbitration proceedings, state and federal statutes, practice and custom in industry or in a particular industry, and sometimes an element of emotion.

In making his decision the arbitrator then has a record of the hearing and written argument. He usually writes an opinion to accompany his award, and the parties expect this. An arbitration award is not merely the settlement of a dispute. Often it forms a rule or interpretation for the parties' future conduct, and they must live with it. In this last phase of the decision-making process the arbitrator is functioning in many respects as an appellate judge. By this it is not meant to imply that the trial judge has no copy of the record before he renders judgment, or that he is powerless either to call for briefing of the questions or to write his opinion on particular questions at great length. However, all this is somewhat unusual for most state court judges.

There are no pleadings in an arbitration proceeding, although the grievance and the company's answer may be analogous to pleadings when no submission is executed. The trial judge has the pleadings before him at the commencement of the trial and from these he can understand the theory of the plaintiff's case and the nature of the defendant's defense. The arbitrator will normally have a single paper—the Submission or Stipulation to Arbitrate. This does not always reveal the theory of the complaining party's case or the nature of possible defenses. The pleadings in a law suit set the limits of the argument and the scope of the proof to be made; often the stipulation in the arbitration proceeding does not serve either of these sometimes important functions.

It is not uncommon in industrial disputes to give the arbitrator a jointly conducted tour of the premises to show him the overall operation of the plant before the hearing is commenced. Although the judge is sometimes authorized to view the situs in question in civil litigation it is the exception rather than the rule for him to do so.

In important arbitration proceedings there is a genuine attempt to educate the arbitrator on all phases of the question which he is to decide. In litigation there are many rules of procedure and evidence designed to prevent the judge from knowing certain aspects of the case. Also the arbitration hearing has a psychological value.

The factors mentioned above describe two basic differences. The first is that parties to arbitration proceedings have more confidence in the "judge," they are more willing to entrust him with their problem without formal limitations, in part because they have had a direct part in his selection. The second difference is basic to the

field of labor relations—the parties are, unlike litigants, in a continuing relationship. The judge has served his function if the result is such that there will be no breach of the peace following his determination, *i.e.*, the parties do not have to accept the determination except to the extent that they will refrain from taking further action against the other person. On the other hand, in arbitration the award must be accorded a higher degree of acceptability.¹¹ The parties must not only be able to live with the award as such, but they must be able to live with the award and each other at the same time—this can be very difficult.

Outside these enumerated distinctions the actual decision making is very much the same in arbitration as it is in litigation. In so much as the process is the same, do arbitrators behave like judges, do they reach the same conclusions when faced by similar questions?

The Arbitrator shall be governed wholly by the terms of this agreement and shall have no power to add to or change its terms.

The above provision or one substantially like it is standard in contemporary collective bargaining contracts. It is common in today's labor contracts for the parties to provide that the employer shall not discharge any of the employees subject to the agreement except for "just cause." If an employee's discharge is challenged and the case goes to arbitration on the claim that the employer did not have just cause for his action, it is impossible for him to make a determination of the case without filling in the terms of the contract. Thereafter the term "just cause" will either include or exclude certain conduct—the term just cause has been added to, no matter what determination is made. Likewise, the company and the union may disagree as to what the term "layoff" means.¹² The company may have thought that it meant one thing and the union may have thought that it meant another—both parties acting in good faith. Eventually the arbitrator will decide which, if either, of these interpretations is "correct" and when he does so he has changed the terms of the contract for at least one of the two parties. We can, with the older jurists, take the pseudo-logical approach that the term "layoff" meant what the arbitrator says it meant all along; therefore, the contract was in no way changed—but in this age of "realism" we would fool few.

Do the parties put this clause in the contract knowing that it is often an impossible mandate? In all probability the parties do not consider the application of such a provision in varying circumstances. However, it may be that a very useful function is served by way of caution or

11. See SIMKIN, *ACCEPTABILITY AS A FACTOR IN ARBITRATION UNDER AN EXISTING AGREEMENT* (Labor Relations Series, U. Pa. Press 1952).

12. See *Universal Winding Company*, 14 LAB. ARB. 869 (1950) (Healy).

warning to the decision-maker, the arbitrator—he is put on notice that he is not employed to bargain for the parties and further that insofar as particular provisions are made the parties mean what they say.

THE ARBITRATOR'S TOOLS

The arbitrator is appointed to make a decision that is not usually apparent to the parties from the express provisions of the contract. What criteria for its construction and application are available? Does the arbitrator's written opinion reveal what standards were used in arriving at the conclusion announced? Does the arbitrator know in every case what factors guided his choice between possible alternatives?

The most convenient place to start would be with the published opinions accompanying awards made in arbitration cases. From this source we can ascertain what the arbitrator says guides his choice, and then later make certain observations about factors which may be present but remain unannounced.

A brief word about the availability of source material. A major set of published arbitration awards dates back only eleven years and comprises about twenty-six volumes.¹³ Unlike the usual set of law reports these reports are incomplete in their coverage. Arbitrators have ordinarily taken the position that the publication of the award is subject to the consent of the parties. There are both companies and unions with a fixed policy against publication. The basis for such a rigid policy is not clear. For these reasons there are undoubtedly many excellent opinions that remain in arbitrators' files. In many instances the arbitrator himself does not want the particular opinion published and he may not even ask the parties to consent to publication. Occasionally one of the parties sends an award to a publisher. However, because the arrangement is largely consensual the reports available are incomplete. Notwithstanding the lack of uniform and complete reporting of arbitration awards, enough opinions are published to afford a good cross-section of the nature and type of most important problems.

Assuming the question the arbitrator has to decide is arbitrable, but is not covered specifically in the contract, what can he draw upon for his decision? He can use statutes or decisions, he can rely upon the doctrine of *stare decisis*; that is, he can consider himself bound by earlier awards, he can sometimes base his opinion upon practice and custom in the particular industry or bargaining unit, he can put his own powers of logical thought and reasoning to work on the problem, he may rely upon general policy considerations, or upon

13. The set referred to is BNA's Labor Arbitration Reports. Opinions are also printed in Prentice-Hall's Labor Arbitration Service.

emotional reaction, or, as is sometimes the case, he may not disclose the basis or reason for his choice either in his opinion or to himself.¹⁴ In discussing the use of various criteria it is necessary to note that lines are not easy to draw and frequently an arbitrator will use more than one of these resources in deciding a question. Another caveat in trying to ascertain the method in arbitration opinions is that the use made of these criteria varies. One arbitrator may base his opinion directly upon a statute while another, passing upon a similar question, may use the statute by way of analogy to the type of problem before him. Another will find that the reasons underlying the particular rule of law are equally applicable to the type of dispute now before him and therefore he will apply the rule because it is a reasonable way to settle a dispute of this nature.

The following discussion uses arbitration opinions by way of illustration and any exhaustive study of all available opinions in terms of the substantive result or of arbitration method is disclaimed. However, the excerpts and citations here do represent a reasonable cross-section of the published opinions of many arbitrators.

Instances of arbitrators apparently applying rules of law are frequent. In *Aviation Maintenance Corporation and IAM (Ind.) Arbitrator Aaron* had to decide upon the efficacy of certain small print found on an employment application above the signature of the aggrieved employee. After stating that the certification was categorical and extreme he added, "These facts support the general principle applicable to individual contracts between employer and employee, which is recognized both in law and in equity, that such contracts should be construed most strongly against the employer." Later in the same opinion Mr. Aaron adds, "Third, it is well established in law that whether or not the partial disclosure of facts is materially misleading depends upon whether the person making the statement knows or believes that the undisclosed facts might affect the recipient's conduct in the transaction at hand."¹⁵ In this case it may be said that it was necessary for Mr. Aaron to apply legal rules to ascertain the relation between the employee as an individual and the employer, but he is nevertheless applying "the law" in this respect in order to reach a decision in the case before him.

A question that arises with discomfoting regularity in arbitration proceedings is who has the burden of proof? Although the arbitrator may successfully evade the issue in many of the cases, when the evidence is equally balanced on any given issue the decision must take cognizance of this age-old problem. An example of the temporary postponement of burden of proof problems is found in the opinion of

14. For an excellent comment on this subject, see Note, *The Arbitrator's Approach to Labor Contract Interpretation*, 64 HARV. L. REV. 1338 (1951).

15. *Aviation Maintenance Corp.*, 8 Lab. Arb. 261, 268 (1947).

the Impartial Board in Southern Bell Telephone and Telegraph Co. and CWA (CIO):

In the classic treatise on the law of evidence by Mr. Wigmore it has been well pointed out that the question of who has the burden of proof arises only after all the evidence is in, and after the trier of the facts has determined that the evidence is precisely and equally balanced. In such case he is required to find the issue against him who had the burden of proof. In view of the fact that such situation may never arise in the trial of these cases (where Arbitrator finds an exact and precise balance) we think it would be merely to anticipate a difficulty that might never arise, for us to make a ruling at this time. (This was an ad hoc stipulation which provided that NLRB cases shall be considered and that other arbitration precedents may be considered.)¹⁶

Subsequently the board facing the problem mentioned decided that the burden of proof was upon the employer to show just cause in the discharge cases.¹⁷ Arbitrator Pollack reached the same result on a somewhat broader basis: "In discharge cases arising under a contract it has generally been held that the burden of proof rests on the employer to justify the dismissal. This is consistent with the American tradition that a person should not be considered a wrongdoer until proof establishes his guilt."¹⁸ In an earlier opinion Arbitrator Whitton was even more positive in his views of the process: "First, I find the burden of proof to be on the company. The collective bargaining process implies a system of industrial jurisprudence operating within a framework of substantive and procedural rules of law. The parties are bound to observe the sanctity of contracts, to deal fairly and frankly with one another, and are subject to all applicable statutes and principles of common law. The arbitrator is the court of last resort in the process and should follow generally accepted procedural rules in arriving at his decision."¹⁹ Again in discussing discharge of an employee it appears that Arbitrator McCoy is applying procedural rules of law when he says: "The Company has assumed that burden, as a matter of affirmative defense, in other cases, and I think properly so. The defense is in the nature of limitations, which is always a matter of affirmative plea and proof."²⁰ Arbitrator Platt found his authority in a state court decision, thus: "In a case of discharge, the burden of proof rests upon the company to show, by a fair preponderance of the evidence, that the discharge of an employee was for good and sufficient cause. *Sarri v. G. C. Bates & Associates*, 311 Mich. 624. Upon due consideration of the entire record, the arbitrator finds that this burden

16. Southern Bell Tel. & Tel. Co., 25 Lab. Arb. 85, 88 (1955).

17. Southern Bell Tel. & Tel. Co., 25 Lab. Arb. 270, 274 (1955).

18. F. J. Kress Box Co., 24 Lab. Arb. 401, 405 (1955).

19. American Optical Co., 4 Lab. Arb. 288, 292 (1946).

20. International Harvester Co., 16 Lab. Arb. 775, 778 (1951).

has not been met by clear and convincing proof and that the extreme penalty of discharge was not justified."²¹

Arbitrators have also turned to legal rules in discussing the quantum of proof. It seems to be pretty generally accepted among the arbitrators that the burden of proof is upon the company to show just cause in discharge cases.²² When the discharge is for conduct that also amounts to a crime then the arbitrators are asked to decide what amount of proof is necessary to meet this burden. In many cases of this type the arbitrators have unhesitatingly required the employer to establish that the employee was guilty of the acts alleged beyond a reasonable doubt.

Closely akin to such problems is the existence of the presumption of innocence. "A basic concept of our American System of Jurisprudence is that one accused shall be presumed innocent until proven guilty by proper and competent evidence. Mere accusations and unsupported charges are certainly not evidence."²³

One arbitrator, asked to pass upon the reasonableness of the union's action in removing a member, refused to pass on the question because of the rule used by courts that such review is limited to violations of law or public policy, breaches of contract, or violation of the union constitution or by-laws. After announcing his decision on the above basis, he added, "more than mere precedent justifies this doctrine."²⁴

Another direct approach is found in an opinion by Arbitrator Livenood: "Deeply rooted in the American tradition of justice is the concept of double jeopardy—the principle that a man shall not be twice punished, or even exposed more than once to the risk of punishment, for the same offense. It seems to me that principle has been violated here."²⁵

In one interesting case an employee was discharged for carrying a knife in violation of company rules. The issue at the hearing generating the most discussion was whether or not the company had been justified in making a search of the employee's locker and whether or not it was entitled to base its case upon the evidence adduced by this search. A rather extended quote is here set out because this opinion is an excellent example of direct application of legal rules in arbitration proceedings:

To the majority members of the arbitration committee, the adoption of the aforementioned procedure by the company guards represented a serious error in judgment and invaded the personal rights of the aggrieved. In certain respects, the tactic bordered on that of entrapment since the aggrieved's innocence of the company's objective or of her own rights

21. Campbell, Wyant & Cannon Foundry Co., 1 Lab. Arb. 254, 262-63 (1945).

22. See ELKOURI, HOW ARBITRATION WORKS 164-68 (1952).

23. A.C. & C. Co., 24 Lab. Arb. 538, 540 (1955) (Scheiber).

24. American Tel. & Tel. Co., 6 Lab. Arb. 31, 35 (1947) (Wallen).

25. Durham Hosiery Mills, 24 Lab. Arb. 356, 358 (1955).

placed her honesty and good will at the disposal of the company and caused her to incriminate herself. Such self-incrimination has long been outlawed by the basic law of the United States, specifically, under the Fifth Amendment to the Constitution and the precedent-making Supreme Court decisions in the noted Search and Seizure Cases. In the present case, the entire episode was confined to the premises of the company, but the aggrieved's locker and purse continue inviolate as the private realm of the individual and are not to be searched or seized in an illegal fashion. . . . Constructive as the rule is, [company rule against carrying knives] both in purpose and practice, its positive qualities need not be vitiated by resort to police methods which infringe upon the basic residual rights of the individual under our constitutional system. Under the circumstances, the majority members conclude that the evidence of the possession of the knife is inadmissible, and, consequently, the discharge of the aggrieved was unjustified.²⁶

Other instances of the direct application of law in arbitration decision-making are not rare.²⁷ The most usual case is that in which the arbitrator relies upon either the National Labor Relations Act or the Fair Labor Standards Act.²⁸ Reliance upon the former raises the intriguing question of what application will be made of the pre-emption doctrine in an arbitration case where the arbitrator is obviously applying the provisions of the NLRA to settle a dispute between the parties.²⁹

All the cases mentioned above, in form anyway, apply a rule of law or statute directly to the arbitration problem as a standard for decision or a direct method of decision. Such examples are numerous and easier to find than the cases discussed later where the arbitrator specifically refuses to be guided by or to apply a rule of law.

However, there are a goodly number of cases in which the arbitrator discusses a rule of law but does not base his decision upon that rule. These cases are distinguished from those discussed above because, although the arbitrator formulates the rule he does not apply it, but makes his decision on some independent ground using the rule as a guide or reference.

The following excerpt from an opinion of Arbitrator Maggs shows a situation in which the arbitrator was guided by the rule of law—not a direct application of the rule to the case at hand:

Even in court proceedings, it has now become customary for judges frequently to reserve rulings on motions which if granted would dispose of the whole case. Submission of a case to a jury for its verdict is now, in the federal courts, subject to a later ruling by the judge upon

26. *Campbell Soup Co.*, 2 Lab. Arb. 27, 31 (1946) (Lohman)

27. *Grayson Heat Control, Ltd.*, 2 Lab. Arb. 335 (1945) (Prasow); *Ford Motor Co.* (1944) (Schulman), reported in SCHULMAN AND CHAMBERLAIN, *CASES ON LABOR RELATIONS* 1014 (1949).

28. See, e.g., cases cited note 27.

29. See *United Electrical Workers v. Worthington Corp.*, 236 F.2d 364 (1st Cir. 1956), 35 TEXAS L. REV. 275.

a motion for a directed verdict, even though decision on that motion was not expressly reserved. (Rules of Civil Procedure, Rule 50). The reasons for this development in court procedure apply with greater force to labor-arbitration procedure. . . . Labor arbitrations should certainly not be shackled by a procedure less flexible than the modern, revised, court procedure. Expedient disposition of cases is more essential in labor arbitrations than in court proceedings.³⁰

In another case in which Arbitrator Lewis was deciding an issue raised by objection to certain evidence as hearsay he made this pertinent statement:

It is clear that in informal proceedings of the character of the present matter, the technical rules of evidence of the common law do not bar the hearing of such testimony. However, its evaluation for probative value may properly take into consideration, its inherent credibility, and its failure of opportunity for cross-examination: in short the reasons calling for the existence of a hearsay rule in common law jury actions should at least guide the judgment of the arbitrator in the evaluation of the weight, if any, to be attributed to such evidence in an arbitration proceeding.³¹

Another arbitrator paying heed to the rules of evidence states his reservation in this form: "But as of today the experience with this type of trial [arbitration] does not yet permit a complete or facile carryover of normal rules of evidence to the arbitration process."³²

In the cases involving discharge of an employee for acts which are criminal, the arbitrator frequently considers the quantum of proof necessary to sustain the discharge. Here are found good examples of using a rule as a guide. Arbitrators usually find that the company must sustain the burden of showing that the employee is guilty beyond a reasonable doubt. In so doing they generally discuss the effect of sustaining the charge upon the employee's future opportunity and the collateral effects upon his family, and emphasize the difference between being fired for non-criminal offenses and discharge for a criminal offense.³³ In such determination the arbitrator is guided by the criminal law, but he rarely applies the rule without explanation. Typical of this use of legal doctrine as a guide is the statement of Arbitrator McCoy in a discharge case: "In other words, the act here was *malum prohibitum* rather than *malum in se*, to use a distinction in the criminal law—bad only because prohibited, not bad in itself."³⁴

30. Caledonia Mills, Inc., 15 Lab. Arb. 474, 477 (1950).

31. Continental Paper Co., 16 Lab. Arb. 727, 728 (1951).

32. Swift and Co., 12 Lab. Arb. 108, 113 (1948) (Healy).

33. General Refractories Co., 24 Lab. Arb. 470, 481 (1955) (Hale); Marlin Rockwell Corp., 24 Lab. Arb. 728, 729 (1955) (Somers); Fruehauf Trailer Co., 21 Lab. Arb. 832 (1954) (Murphy).

34. International Harvester Co., 12 Lab. Arb. 1190, 1193 (1949). See also Dirilyte Co., 25 Lab. Arb. 639, 641 (1955) (Kelliher); Mather Spring Co., 13 Lab. Arb. 878, 879 (1949) (Trotta).

Arbitrators do not uniformly apply or use legal doctrine in making their decisions. There are numerous examples of cases in which the arbitrator expressly refuses to apply a particular rule. However, in such cases it is necessary to distinguish situations in which the arbitrator merely thinks that the rule in question does not apply from those cases in which the arbitrator indicates that legal doctrine is inappropriate in an arbitration decision. An example of the former view is found in an opinion by Arbitrator Brecht in which he was faced with the question of admissibility of statements by persons employed as checkers. The checkers rode the busses of the employer and watched the fare collections of the employees driving the busses. The checkers did all their work without being identified. The employer did not want to bring the checker to the arbitration proceeding because his future usefulness would be substantially impaired. In deciding whether the management should be required to produce the checker rather than his statement the arbitrator said: "In ordinary circumstances due process of law would require the direct testimony of the checker, but it is felt that the unique elements of his service justify his nonappearance in this case."³⁵ The view that particular areas of the law have no application in arbitration proceedings is indicated by Arbitrator Wirtz in the following passage from an award in a discharge case: "The Union's cry of 'double-jeopardy' is only an attempt to construct a technicality on which to base its case. The technicalities of criminal law are a poor guide to labor relations, and the particular rule relied on here is obviously inapplicable."³⁶ Arbitrator McCoy in a more recent case expressed his views as follows: "There was a time when the criminal law was so technical that even on a given set of facts a conviction of larceny would be set aside on the ground that those facts constituted embezzlement, and vice versa. Arbitration should not be tied up with such technicalities."³⁷

As frequently as arbitrators rely upon legal doctrine as a standard of judgment when making a choice they will rely upon other arbitration opinions. This tendency is more pronounced in recent years as the reporting of arbitration opinions has become more comprehensive and the total quantity of reported arbitration awards has increased. The fact that arbitrators use a system of *stare decisis* in making awards is significant, but more important is how the arbitrator uses the prior award. A proper application of the doctrine of *stare decisis* would require that an arbitrator consider himself bound by a prior award made in a proceeding between the same company and the same union involving substantially the same question. This is distinct from the

35. *Shenango Valley Transp. Co.*, 23 Lab. Arb. 362, 365 (1954).

36. *International Harvester Co.*, 13 Lab. Arb. 610, 613 (1949).

37. *Esso Standard Oil Co.*, 19 Lab. Arb. 495, 498 (1952). See also *John R. Evans & Co.*, 24 Lab. Arb. 145, 150 (1955) (Abersold).

case in which the arbitrator is faced with a prior award made between the same parties under the same contract; in this event something nearer to the doctrine of *res judicata* would seem called for. In arbitration the arbitrator is more often faced with a prior award between one of the parties and another union or another company, or a prior award between parties completely disassociated from the present parties, but nevertheless discussing the same or a substantially similar question. Many examples of each of these uses of prior awards can be readily found. But in most opinions no distinction is made between different types of precedent. Another matter for investigation is the use made of the prior awards—in some instances the arbitrator uses these materials as controlling authority, in other instances he uses the prior award as persuasive because the reasoning found therein is appropriate in considering the question before him.

A few examples of variant use of prior awards in arbitration will give flavor to the above remarks on *stare decisis*. The direct use of *stare decisis* is illustrated by the following excerpt from an opinion of Arbitrator Wolff: "In making a determination of whether an employee is properly classified, the Appeal Board must recognize the 'wide skill band' premise on which the Corporation's classification pattern is based. [citing earlier decision made in dispute between the same union and the same company]."³⁸ Arbitrator McCoy expresses a similar view in these terms: "The former grievance decided by Mr. Latture was submitted under a submission agreement that the award should be final and binding on both the company and the union. I, therefore, cannot go behind the award in that case. For the purpose of deciding the grievance before me, it must be taken as settled that a work load change was instituted in violation of the contract."³⁹ This statement by Arbitrator McCoy may fit more properly within the class of cases analogous to the rule of *res judicata*. The example supplied by Arbitrator Kerr shows the recognition of earlier awards by a restatement thereof with qualification: "The Impartial Chairman finds that on earlier occasions arbitrators under this contract have accepted cases for rehearing. The granting of rehearings, however, should be rare and the burden of proof is on the party requesting the rehearing."⁴⁰

In one instance the arbitrator used the rule of a previous arbitration between the same company and a different union as controlling the criteria for a later award stating his premise thus: "In an arbitration between this same company and Local 234, Building Service Employees' Union (AFL), Duluth, Minn., involving the suspension of a guard, in which this arbitrator ruled in favor of the union, the rule

38. Chrysler Corp. (1945) (Wolff), reported in SCHULMAN AND CHAMBERLAIN, *CASES ON LABOR RELATIONS* 750, 752 (1949).

39. Pacific Mills, 3 Lab. Arb. 144, 145 (1946).

40. Waterfront Employers' Ass'n of Pac. Coast, 7 Lab. Arb. 757 (1947).

involved in this type of case was stated in the following language: [quoting from that opinion]. "The evidence in this case must be tested and considered under that rule."⁴¹ The converse of this situation, *i.e.*, an arbitrator using a rule from a case between the same union and another employer, has not been located.

In certain situations it is appropriate to consider other opinions and awards in the same industry which are important because of the similarity of the company's endeavor. Such a use was made by Arbitrator Naggi in a case involving Standard Oil of Indiana: "The discharge penalty for violation of the no smoking rules is firmly established in practice and upheld in arbitration both for the industry and refinery."⁴²

More often an arbitrator in using prior awards as a measure for his decision will make no distinctions based upon parties or the type of industry involved but will simply use prior awards as a point of departure if the question in the earlier case was substantially similar to the one at hand. On many issues arbitrators as a group have not been uniform in their conclusions. In such a situation an arbitrator cannot simply elect one view or another without further explanation. Arbitrator Smith demonstrates the technique ably:

While there is no certainty that this is the prevailing view among arbitrators . . . it seems reasonable and proper to hold that alleged misconduct of a kind which carries the stigma of general social disapproval as well as disapproval under accepted canons of plant discipline should be clearly and convincingly established by the evidence. Reasonable doubts raised by the proofs should be resolved in favor of the accused. This may mean that the employer will at times be required, for want of sufficient proof, to withhold or rescind disciplinary action which in fact is fully deserved, but this kind of result is inherent in any civilized system of justice.⁴³

In many instances the arbitrator finds that a particular question has been so often decided in the same way that there can be very little doubt of the proper choice. In such instances the arbitrator frequently states the proposition without specific citation of prior awards. This approach is shown in the following excerpt from an opinion of Arbitrator Rader: "An examination of the provisions of Article VI leads to the conclusion that it is the standard type of grievance procedure provision in use throughout the United States in collective bargaining agreements. In practically all major industries arbitration is provided for as the final step in the grievance procedure. And the interpretation placed on such provisions is that one or more grievances may be sub-

41. *Walter Butler Shipbuilders, Inc.*, 2 Lab. Arb. 633, 634 (1944) (Gorder).

42. *Standard Oil of Ind.*, 19 Lab. Arb. 795, 797 (1952).

43. *Kroger Co.*, 25 Lab. Arb. 906, 908 (1955).

mitted in arbitration in one session and be heard by the same arbitrator."⁴⁴

In an interesting series of arbitrations between Southern Bell and the CWA (CIO) the stipulation covering all cases submitted provided that in making decisions the arbitration board and the individual arbitrators should consider other arbitration decisions. Using this mandate the board did in fact make use of the "arbitration law."⁴⁵ There has been much discussion of the use of the doctrine of *stare decisis* in arbitration proceedings. Most of the discussion indicates that the doctrine should be used with caution rather than advocating a disregard of prior awards in reaching decisions. Occasionally, however, one party will insist that the award be on the particular facts without reference to precedent. Arbitrators are in fact using the doctrine of *stare decisis* and this is particularly noticeable in reading recent awards and opinions.⁴⁶

At law, contracts are interpreted in the light of the circumstances and customs of the trade. In ascertaining intent, past practices are usually material. When an arbitrator refers to past practices it is difficult to ascertain whether he is merely following the usual rules of contract construction or whether he is using a rule for decision in arbitration proceedings. This theoretical difficulty gives way, however, to the fact that in deciding cases the arbitrators do look to past practice as a guide. Opinions involving a reliance upon past practice seem to fall into two classifications: past practice between these same parties as establishing a pattern, and cases of general practices in industry or recognized personnel practices.

Three brief quotations from recent awards serve to illustrate the use by arbitrators of past practices between the parties. Arbitrator Jacobs had this to say as a background to decision: "A union-management contract is far more than words on paper. It is also all the oral understandings, interpretations and mutually acceptable habits of action which have grown up around it over the course of time."⁴⁷ A somewhat different approach was taken by Arbitrator Bernstein as follows: "The submission agreement has placed upon this arbitration board the burden of determining whether Relations gave the Company 'just cause' to discharge him. Beyond these two broad and indefinite words, the parties' collective bargaining agreement affords no guide. Hence we must look elsewhere for criteria alongside which to measure management's action in this case. There are two sources: the written disciplinary system as embodied in the Company Rules and their ad-

44. *St. Joseph Lead Co.*, 20 Lab. Arb. 441, 443 (1953).

45. *Southern Bell Tel. & Tel. Co.*, 25 Lab. Arb. 270, 274 (1955) (McCoy).

46. See *American Saw & Tool Co.*, 23 Lab. Arb. 534, 536 (1954) (Warns); *United Press Ass'n*, 22 Lab. Arb. 679, 683 (1954) (Spiegelberg); *Carolina Coach Co.*, 20 Lab. Arb. 451, 455 (1953) (Livengood).

47. *Coca-Cola Bottling Co.*, 9 Lab. Arb. 197, 198 (1947).

ministration as exemplified by other cases."⁴⁸ It may be that the arbitrator is referring to other cases as meaning other arbitrations between the parties, but it is believed that he was referring to other disciplinary cases as a matter of company practice. The third opinion demonstrating past practice between the parties as a basis for choice is one of Arbitrator Shulman's in which he makes this statement: "Here there is no classification in the Spring and Upset building for polishing other than the one involved. No other negotiated classification in that building is more applicable. By long standing practice that is the right classification. . . ."⁴⁹

Frequently the arbitrator will not confine himself to practices between the parties to the arbitration proceeding but will look to practices in industry generally. Such an approach was taken by Arbitrator Feinberg in deciding whether or not he was empowered to hear more than one grievance at a single hearing: "Moreover, the practice of having several grievances heard by one arbitrator being well established in industrial relations, it would seem that any intent of the parties to the contrary should be clearly expressed."⁵⁰ The same arbitrator in an earlier case involving a problem about the timeliness of an award made these remarks: "The impartial chairman has been advised by the parties that at no time during their labor-relations history has an award of an arbitrator been attacked on the ground that it was not rendered within one week although it was not unusual for such award to be issued more than one week after hearing. The experience of the present impartial chairman is of the same nature. It seems clear to the impartial chairman, therefore, that the custom and practice of the parties has been to disregard this provision in their contract."⁵¹ Perhaps more often the arbitrator will use practice in industry generally in aid of some other measure of his choice as did Arbitrator Ferguson in the following statement: "This conclusion gives a reasonable interpretation of the language used by the parties in the agreement. Various legal principles and general customs in the field of labor relations support this finding."⁵²

In addition to relying upon legal rules or statutes and relying upon arbitration precedent or custom, arbitrators may base their ultimate choice upon a process of reasoning or the inherent logic of the situation. The use of reasoning or logic in solving a problem is of course not unique to the arbitration process and it is probably an element of any rational decision-making process. It is for this reason that specific examples of the use of logic or reasoning are difficult to find in isola-

48. Douglas Aircraft Co., 20 Lab. Arb. 331, 333 (1953).

49. Ford Motor Co., (1943) (Schulman), reported in SCHULMAN AND CHAMBERLAIN, CASES ON LABOR RELATIONS 777, 779 (1949).

50. American Hardware Corp., 23 Lab. Arb. 588, 590 (1954).

51. Modernage Furniture Corp., 4 Lab. Arb. 314, 315 (1946) (Feinberg).

52. Servel, Inc., 1 Lab. Arb. 163, 164 (1945).

tion. Applying the standards or criteria for decision in each case involves an amount of discrimination which is a by-product of logical thought. Examples of all of the classical forms of logical argument are readily available in the opinions of arbitrators. This excerpt from an opinion of Arbitrator Baab illustrates the use of the *reductio ad absurdum*: "Literally, the employee had committed no violation of rules from the end of June to the 10th of October—a period three months and ten days in length. But it is not reasonable to include a two week period in which the shop was not in operation and in which there was no opportunity for an employee to establish any kind of a record, either good or bad. Hence it must be concluded that the violation slip of October 10 was the second one within a three month period. . . ."⁵³

Not infrequently the arbitrator will decide at least in part on the basis that any other choice would be against public policy. Courts have traditionally assumed the burden of ascertaining public policy and electing certain results in order to avoid violating that public policy which they have found. It is interesting that in deciding the disposition of a grievance upon the basis of a general or specific public policy the arbitrator may be recognizing that his functions as a decision-maker run beyond the immediate interests of the parties by whom he is employed to make his decision. This facet of the arbitrator's job is significant—when he bases a decision upon public policy, whether expressed or not, he is assuming a responsibility to society, and if he impliedly recognizes this duty he cannot at the same time deny that society has certain rights and interests in the arbitration process. A good statement of the use of public policy as a basis for decision is found in an opinion of Arbitrator Lesser wherein he is discussing the propriety of discharging a bus driver: "Consideration was given to the union's contention that the company did not comply with the agreement by failing to file a charge in writing against Mr. Mauro. The arbitrator is inclined to go along with the union on this but believes that the question of public safety is far more weighty than one involving the failure to notify Mr. Mauro in writing."⁵⁴

In many other instances the reliance upon policy is not so clearly expressed. Some arbitrators use what may be called emotional words in writing their opinions. The terms referred to are abstractions which in many instances could front for notions of public policy. One is reluctant to assume that the terms are evidence of pure visceral reaction to a given question, but on the other hand it would be difficult to argue that there is not an element of emotion in the decision of

53. Electric Storage Battery Co., 16 Lab. Arb. 118, 121 (1951). See also American Rolling Mill Co., 9 Lab. Arb. 410, 416 (1948) (Killingsworth); Continental Can Co., 1 Lab. Arb. 65 (1945) (McCoy).

54. Hudson County Bus Owners Ass'n, 3 Lab. Arb. 786, 787 (1946).

any controversy. Such terms as "justice,"⁵⁵ "sound labor relations,"⁵⁶ "patently wrong,"⁵⁷ "fairness,"⁵⁸ "establish a dangerous precedent,"⁵⁹ and "common sense,"⁶⁰ indicate in part a use of concepts of public policy and perhaps emotional reaction to a given question. Such inherently subjective abstractions are useful, but in many instances indicate a decision that has been reached without full and conscious application of a given set of criteria. Such use of subjective abstractions is common with judges, and objectionable principally in that it tends to block communication between the decision-maker and his reader.

CONTRACT DRAFTING AND DECISION-MAKING

Assuming for the moment that the above discussion of the tools and standards used by arbitrators in reaching their decisions is valid, at least in part, what does this mean to the parties to the collective bargaining contract? Would it be advisable for them, recognizing that the arbitrators must at times use standards not anticipated in the contract, to supply him with the standards they desire, either in the contract or in the stipulation? Any attempt to control the process of reaching a decision in this way would be confronted with two immediate difficulties. First, negotiations concerning the drafting of any clause or clauses embodying standards for decision would perhaps take longer than the contract period. In considering such a task a party would think in terms of specific cases and, although favoring application of legal rules in one area, would be violently opposed to following such rules in another set of circumstances. It is well known that today's "strict" constructionists may tomorrow insist on a "liberal" construction of the contract. A second difficulty is that it is probably impossible to embody all of the rules of decision in an overall-pocket size document designed for daily use by a great many people. It is also open to question whether in drafting a contract it would be possible to do more than make certain standards permissible or make other standards specifically excluded. Decision-making is in the final choice largely subjective and an attempt at such control would probably be as futile as the present use of the clause discussed above.⁶¹

55. *Armstrong Cork Co.*, 23 Lab. Arb. 13 (1954) (Williams).

56. *Bethlehem Steel Co.*, 2 Lab. Arb. 194 (1945) (Shipman).

57. *Kroger Co.*, 12 Lab. Arb. 1065 (1949) (Blair).

58. *Fairchild Engine and Airplane Co.*, 7 Lab. Arb. 112 (1947) (Taylor); *North American Aviation, Inc.*, 17 Lab. Arb. 715 (1951) (Komaroff).

59. *Cit-Con Oil Corp.*, 24 Lab. Arb. 186 (1955) (Morvant).

60. *Sylvania Electric Products, Inc.*, 24 Lab. Arb. 199 (1954) (Brecht); *John Lucas & Co.*, 19 Lab. Arb. 344 (1952) (Reynolds).

61. See McDonald, *How Business Men Make Decisions*, *Fortune*, Aug., 1955, where it is stated that business men make their important decisions subconsciously.

CONCLUSION

The process of reaching a decision in labor-management arbitrations involves many uncertain factors. As to the final result in a case, we can perhaps say that it is in accord with the contract of the parties or that it is not; that it is "fair" or not; "practical" or unworkable; or that it accords with "public policy" or violates it. Some or all of the criteria discussed in this article may be satisfied in a particular case, but, as is proper, the parties are most often interested in basic equities, in whether an award can be brought within the ambit of their contract, and whether it will work in their daily relationships. But, all these considered, thousands of awards attest that, when the parties believe the arbitrator has understood the facts and the contract, and reached a decision that is logical and practical they will accept it without complaint. Few realize fully, however, how often a decision must be based on somewhat incomplete information, and the difficulty the arbitrator has in satisfying himself that the award is correct beyond all doubt.