

7-1-2012

## Fundamentals of Labor Arbitration

Christen L. Rafuse

Follow this and additional works at: <http://elibrary.law.psu.edu/arbitrationlawreview>



Part of the [Dispute Resolution and Arbitration Commons](#)

---

### Recommended Citation

Christen L. Rafuse, *Fundamentals of Labor Arbitration*, 4 397 (2012).

This Student Submission - Book and Literature Review is brought to you for free and open access by Penn State Law eLibrary. It has been accepted for inclusion in Arbitration Law Review by an authorized editor of Penn State Law eLibrary. For more information, please contact [ram6023@psu.edu](mailto:ram6023@psu.edu).

# FUNDAMENTALS OF LABOR ARBITRATION

Christen L. Rafuse\*

## I. INTRODUCTION

*Fundamentals of Labor Arbitration*<sup>1</sup> was co-authored by Jay E. Grenig and Rocco M. Scanza, both of whom are on the labor panel of the American Arbitration Association.<sup>2</sup> Scanza and Grenig are experienced on the topic of labor arbitration; between the two, they have over a half-century of “experience as advocates, arbitrators, administrators, educators, and trainers in workplace dispute resolution.”<sup>3</sup> The authors’ extensive experience comes as a comfort for readers, who can be reassured that their “how-to” manual was written by two competent people who have been greatly involved in arbitration for years. Additionally, it may come as a comfort to readers that this book was not written by a sole author. Because Grenig and Scanza worked as a team to write this book, the views in it are likely to be more comprehensive and aggregate rather than one-sided.

*Labor Arbitration: What You Need to Know*, published by the American Arbitration Association almost three decades ago, was this book’s predecessor and has been completely reconstructed by Grenig and Scanza.<sup>4</sup> *Fundamentals of Labor Arbitration* is the first volume of the forthcoming “AAA/ICR Dispute Resolution Series.”<sup>5</sup> This book contains important material for readers such as attorneys, arbitrators, and arbitrating parties who are eager to learn about the arbitration process and its details.<sup>6</sup> The book states that it intends to serve as an introductory guide to labor arbitration and to help both arbitrators and parties involved to more efficiently reach a resolution<sup>7</sup> – and it accomplishes this objective by breaking down the arbitration process into sizable and comprehensible sections of material designed to instruct both the experienced and inexperienced reader. The book manages to explain arbitration in detail but also in a way that is concise and does not slow down more experienced readers, making it a very useful book for arbitrators in practice and for arbitrating parties.

William K. Slate II, the president of the American Arbitration Association, described this book in a foreword as a “milestone publication.”<sup>8</sup> Slate notes that the book was written with “today’s sophisticated ADR audience in mind while retaining an emphasis on the practical and on understanding” the ADR process.<sup>9</sup>

Similarly, Martin Scheinman, “Foremost Benefactor of the Scheinman Institute on Conflict Resolution,” stated in another foreword that he wants to give arbitrators a “new and

---

\* Christen L. Rafuse is an associate editor of *The Yearbook on Arbitration and Mediation* and a 2013 Juris Doctor Candidate at The Pennsylvania State University Dickinson School of Law.

<sup>1</sup> JAY E. GRENIG & ROCCO M. SCANZA, *FUNDAMENTALS OF LABOR ARBITRATION* 1 (2010).

<sup>2</sup> *Id.* at ii.

<sup>3</sup> *Id.* at xi.

<sup>4</sup> *Id.* at i.

<sup>5</sup> *Id.* at i.

<sup>6</sup> GRENIG & SCANZA, *supra* note 1, at i.

<sup>7</sup> *Id.* at i.

<sup>8</sup> WILLIAM K. SLATE, *FOREWORD* TO JAY E. GRENIG & ROCCO M. SCANZA, *FUNDAMENTALS OF LABOR ARBITRATION* 1, ix (2010).

<sup>9</sup> *Id.* at ix.

positive message,” specifically “to educate and train a new cohort of arbitration practitioners from the labor and management communities” by publishing this new book.<sup>10</sup>

Slate and Scheinman were correct in their views; the book manages to properly balance its content for both an experienced and a more novice audience without disadvantaging one over the other. The process of arbitration is broken down into such detail that *Fundamentals of Labor Arbitration* proves to be a most useful manual for both the experienced and inexperienced. Any new arbitrator or arbitrating party would find it advantageous to pick up this book and at least browse through it to get an idea of what the arbitration process entails.

## II. SUMMARY

*Fundamentals of Labor Arbitration* is divided into ten chapters, each with multiple sections for easy reference. Grenig and Scanza have made it incredibly easy for a reader to pick up the book and quickly find the section he or she is looking for because of the way the authors have broken down the text. Because of this, *Fundamentals of Labor Arbitration* would be most useful as a guide to be consulted in sections rather than read as one continuous text. The chapters are sometimes slightly disjointed, but it seems as though this is the nature of a manual; it does not read as a narrative with chapters that perfectly flow into one another, but Grenig and Scanza did a good job tying together various bits of information and topics as neatly as possible.

### A. The First Chapter of *Fundamentals of Labor Arbitration*

Chapter One notes that arbitration has been flourishing as a method of resolving issues, and labor laws have thus been encouraging this process.<sup>11</sup> The book states that some of the main points of arbitration are to improve communication between employer and employee, to provide a cost-effective remedy of resolution, and to have the dispute presided over by an impartial third party who is capable of making a binding decision.<sup>12</sup> However, there is also something known as advisory arbitration, or “factfinding,” in which the decision is merely a recommendation and is not binding on either party.<sup>13</sup> The authors tend to add lesser-known facts about arbitration (such as “factfinding” arbitration), which is helpful to parties who may be interested in a different form of arbitration other than binding. Although the authors do not delve into factfinding arbitration much, at least the reader is informed of the fact that it exists as another way for parties to resolve a dispute. An interested reader or arbitrator could easily do more research on the topic and determine whether or not that form of arbitration is better suited to the needs of the arbitrating parties, or if one of the parties may like to use it in the future for a different dispute. Grenig and Scanza are quite adept at giving the reader the information he or she needs, and some extraneous information that he or she may be interested in, but which is not necessary to understanding the process of typical arbitration.

Chapter One also explains two types of arbitration. One is “interest arbitration,” which is used to solve conflicts arising over the creation of a labor agreement.<sup>14</sup> These disputes are usually

---

<sup>10</sup> GRENIG & SCANZA, *supra* note 1, at x.

<sup>11</sup> *Id.* at 1.

<sup>12</sup> *Id.* at 1–2.

<sup>13</sup> *Id.* at 2.

<sup>14</sup> *Id.* at 2–3.

caused by a disagreement over the prospective terms going into the contract between employer and employee<sup>15</sup> or into the collective bargaining agreement, which sets forth which complaints are covered by the grievance procedure.<sup>16</sup> The other type of arbitration is grievance arbitration, or “rights arbitration,” which arises over the “interpretation or application” of the language already implemented in a contract.<sup>17</sup> As stated previously, *Fundamentals of Labor Arbitration*, even in the very first chapter, is already adept at giving cursory, brief explanations of terms that are comprehensive but do not slow down a more experienced reader.

Chapter One additionally discusses mistakes and misuses of arbitration that minimize the efficiency of the process; for example, utilizing arbitration to harass the other party or cause monetary harm, not complying with discovery, and so forth.<sup>18</sup> This type of section serves as a warning and a reminder to arbitrating parties.

In this sense, *Fundamentals of Labor Arbitration* proves useful for the parties who are going to be using arbitration in lieu of a judicial procedure; it gives instructions for both arbitrators and the parties themselves. The types of checklists seen throughout Chapter One are very helpful and common throughout the book itself. Many checklists may seem like sheer common sense, but could easily be accidentally disregarded when overshadowed by the process of arbitration. For example, one of the arbitrating parties could rely on the checklist in Chapter One, which describes how to control the costs of arbitration and make the process even more cost-efficient.<sup>19</sup> Some of these include: “not changing the hearing date, not filing unnecessary briefs, coming to the hearing prepared, [and] avoid[ing] unnecessary case citations.”<sup>20</sup> For each party involved, cost-efficiency will usually be a concern, and is often one of the main reasons for defaulting to arbitration instead of litigation in the first place. Guidance on how to keep these costs at a minimum will therefore be useful for the arbitrating parties. The checklists therefore serve as good reminders to parties and arbitrators on how to act properly and make the best possible use of the arbitration process.

## **B. The Second Chapter of Fundamentals of Labor Arbitration**

Chapter Two focuses on the United States Supreme Court decisions regarding labor arbitration and the Labor-Management Relations Act (hereinafter LMRA).<sup>21</sup> Chapter Two specifically emphasizes “the trilogy,” a set of three Supreme Court decisions which reinforced a policy favoring arbitration.<sup>22</sup> This section of *Fundamentals of Labor Arbitration* also provides the reader with a certain topic, such as “breach of contract,” and then quickly provides the applicable case law to the subject.<sup>23</sup> Although the authors mainly give holdings of these decisions rather than facts or procedural history, always included is the citation of the case. An intrigued reader could easily research a case on Westlaw or LexisNexis if he or she thought it applicable to his or her own case. This chapter thus serves as a good inventory of decisions for certain areas of

---

<sup>15</sup> GREINIG & SCANZA, *supra* note 1, at 2–3.

<sup>16</sup> *Id.* at 17.

<sup>17</sup> *Id.* at 2.

<sup>18</sup> *Id.* at 5.

<sup>19</sup> *Id.* at 6.

<sup>20</sup> GREINIG & SCANZA, *supra* note 1, at 6.

<sup>21</sup> *Id.* at 9.

<sup>22</sup> *Id.* at 10.

<sup>23</sup> *Id.* at 11.

arbitration, but again does not slow down the reader with unnecessary facts or information. Because this book is a manual, and not a treatise of arbitration law, sections such as this are very beneficial to give the reader a quick “how-to” while providing the reader with tools to learn more in depth if he or she desires to do so.

This section also provides the reader with a good understanding of how courts generally treat arbitration, and how arbitration has evolved as an autonomous entity. Understanding case law is important to understanding how arbitration works and *Fundamentals of Labor Arbitration* gives the reader just enough information to understand how arbitration works in contrast to the judicial system, but also gives the reader extra information to pursue if he or she desires.

### **C. The Third Chapter of Fundamentals of Labor Arbitration**

Chapter Three expands Chapter One’s initial discussion upon grievance complaints.<sup>24</sup> Generally, grievance claims are resolved before the parties have to submit to arbitration because the procedure provides multiple chances for the parties to settle.<sup>25</sup> Grievances that ultimately end in arbitration usually involve applying or interpreting the agreement’s terms.<sup>26</sup> Chapter Three then continues by focusing its audience on future arbitrators rather than future arbitrating parties, providing a basic “how-to” handle these grievances rather than a guide on the substantive law.

Together, Chapters One, Two, and Three “provide the background necessary to understand the labor arbitration process and why labor disputes often end up in arbitration.”<sup>27</sup> These chapters explain the types of arbitration and arbitration’s advantages, and also address the sources of labor arbitration in statutes and case law.<sup>28</sup> Most importantly, the chapters discuss the entire process of arbitration, from beginning to end.<sup>29</sup> These chapters serve as a very important guide to arbitrators and arbitrating parties because it breaks the process down into succinct, understandable detail for the reader to follow. Again, it may serve as a comfort for the reader to know that the authors have extensive experience in this field, and worked together to come up with the perfect manual.

### **D. The Fourth Chapter of Fundamentals of Labor Arbitration**

Chapter Four explains the role of the arbitrator in a grievance procedure and how to properly pick an arbitrator.<sup>30</sup> This chapter also provides for disadvantages and advantages of having one arbitrator as opposed to multiple arbitrators, different methods for selecting an arbitrator, sources of information about arbitrators, and questions to ask about arbitrators.<sup>31</sup> Particularly helpful is the checklist on page thirty, which provides what to look for in an arbitrator, such as prior rulings, availability, and cost.<sup>32</sup> This checklist, as well as the list of

---

<sup>24</sup> *Id.* at 17.

<sup>25</sup> GREINIG & SCANZA, *supra* note 1, at 2, 17.

<sup>26</sup> *Id.* at 18.

<sup>27</sup> *Id.* at xi.

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> GREINIG & SCANZA, *supra* note 1, at 28.

<sup>31</sup> *Id.* at 28–34.

<sup>32</sup> *Id.* at 30.

questions to ask about an arbitrator,<sup>33</sup> provide a great way for a party to learn more about the arbitrator that will be presiding over the dispute, and may even give insight into what the arbitrator deems important in a dispute or how the arbitrator will rule. This type of checklist is common throughout the book and invaluable for those who are unfamiliar with the arbitration process, especially someone who has never before picked an arbitrator. Those who are more experienced of course have the option of skipping over these checklists, or merely using them as a way to double-check they have already done what was needed; in this sense, the checklists often serve as reminders for the more experienced rather than as teachers.

### **E. The Fifth Chapter of Fundamentals of Labor Arbitration**

Chapter Five notes that being organized and ready for the arbitration hearing is “essential to successful advocacy.”<sup>34</sup> The chapter provides multiple checklists in order to prepare: one checklist for reviewing the arbitral clause,<sup>35</sup> one for conducting an investigation,<sup>36</sup> one for reviewing the grievance steps,<sup>37</sup> one for selecting witnesses<sup>38</sup>, and another for preparing witnesses.<sup>39</sup> Again, this is the reason why *Fundamentals of Labor Arbitration* is so useful; its checklists serve as a great reminder or learning tool. The book therefore appeals not only to prospective arbitrators, but also to future arbitrating parties. Anyone who is about to go through the arbitration process could use this book to his or her advantage, even if he or she is not arbitrator. By providing a tool with which arbitrating parties can familiarize themselves with arbitration, the authors have made this book successful.

Combined, Chapters Four and Five explain how to initiate the arbitration process and go through the stages of preparation before the hearing.<sup>40</sup> Chapters Four and Five combined explain how to fully prepare for the arbitration process as either an arbitrator or as an arbitrating party. Chapters One through Five therefore serve as a “crash course” mainly for those unfamiliar with the arbitrating process, though these chapters do have beneficial aspects for even the more experienced readers. However, readers who are newer to the idea of arbitration will most likely find these first five chapters to be the most useful because these chapters break down the process leading up to the arbitration hearing in great detail, and will make someone unfamiliar with the hearing much more comfortable. By understanding what goes into arbitration before the hearing, the reader will have a much more comprehensive understanding of the hearing. The parties will therefore know what to expect, how to voice their opinions effectively, and so forth. It was wise of Grenig and Scanza to break down the process so minutely and spend five chapters explaining things step-by-step, rather than trying to explain during the chapter on the hearing itself.

---

<sup>33</sup> *Id.* at 32.

<sup>34</sup> *Id.* at 37.

<sup>35</sup> GRENIG & SCANZA, *supra* note 1, at 37.

<sup>36</sup> *Id.* at 39–40.

<sup>37</sup> *Id.* at 38–39.

<sup>38</sup> *Id.* at 41–42.

<sup>39</sup> *Id.* at 42–43.

<sup>40</sup> GRENIG & SCANZA, *supra* note 1, at xi.

## **F. The Sixth Chapter of Fundamentals of Labor Arbitration**

Chapter Six focuses on both the substantive and procedural matters of the arbitration hearing.<sup>41</sup> The chapter outlines the process of selecting the hearing location and date,<sup>42</sup> and then moves on to the order of proceedings in a general arbitration hearing.<sup>43</sup> This section is particularly helpful for those unfamiliar with an arbitration proceeding because the chapter does not merely list the steps of the proceeding, but delves into each step rather thoroughly. An unfamiliar reader therefore learns what each step entails and how it fits into the larger picture of the arbitral hearing. Also, a reader unfamiliar with arbitration can easily see how arbitration both parallels and deviates from the normal judicial process. Similarly, an arbitrator or party more familiar with the hearing can use this chapter to double-check his or her own conduct, and ensure that nothing will be overlooked during the hearing.

Because Chapters One through Five explain the preparation for the hearing in such detail, the chapter on the hearing itself is surprisingly simple to understand. Again, Grenig and Scanza did a commendable job leading up to Chapter Six.

## **G. The Seventh Chapter of Fundamentals of Labor Arbitration**

Chapter Seven focuses on the labor arbitration principles followed by arbitrators.<sup>44</sup> Generally, a contract may be terminated “at-will” by employer or employee so long as the contract does not specify the amount of time for which the employee will be employed.<sup>45</sup> In an attempt to protect the employees from the more unpredictable at-will employment, many collective bargaining agreements state that the employee may only be disciplined for “just cause.”<sup>46</sup>

When faced with a “just cause” arbitration dispute, an arbitrator must initially decide if the facts provide grounds for the employer’s accusation against the employee.<sup>47</sup> The chapter characterizes seven tests for just cause, expanding upon each one and then provides criticism of these seven tests.<sup>48</sup> These tests are particularly helpful for an employee who may want to know the strength of his or her claim. Many of these tests inquire into due process concerns, the relation between offense and disciplinary action, amount of evidence against the employee, and so forth.<sup>49</sup> The arbitrator in this type of dispute often decides whether the worker was given due process,<sup>50</sup> specifically “whether the employee charged with misconduct was given notice of employer work rules, orders, and rules of conduct, and whether the employee...received notice of the charges.”<sup>51</sup> Depending on the seriousness of a violation of due process, a violation may have serious consequences on the award rendered.<sup>52</sup> Also, the arbitrator must determine if the employee’s

---

<sup>41</sup> *Id.*

<sup>42</sup> *Id.* at 46.

<sup>43</sup> *Id.* at 47–55.

<sup>44</sup> *Id.* at 57.

<sup>45</sup> GRENIG & SCANZA, *supra* note 1, at 57.

<sup>46</sup> *Id.*

<sup>47</sup> *Id.*

<sup>48</sup> *Id.* at 58–64.

<sup>49</sup> *Id.*

<sup>50</sup> GRENIG & SCANZA, *supra* note 1, at 57.

<sup>51</sup> *Id.* at 66.

<sup>52</sup> *Id.*

offense is proportionate to the disciplinary action.<sup>53</sup> The arbitrator often looks to whether the discipline imposed is similar to the employer's treatment of other like offenses, or whether this employee has been improperly singled out.<sup>54</sup>

This chapter serves as a good explanation of discipline dispute resolution in arbitration. An arbitrating party will therefore have sufficient notice of what the arbitrator is looking for, what the arbitrator will decide, and what evidence to be sure to present. The arbitrating parties will clearly need to be prepared for this type of dispute, and this chapter certainly helps.

However, this chapter seems slightly out of place. It appears as though the authors wanted to insert this section into the book, but were unsure of exactly how to incorporate it in with the rest of the text. In general, this book is sometimes a little disjointed, but it seems as though this is the nature of a manual. The text does not always flow together logically, because *Fundamentals of Labor Arbitration* is not a narrative but more of a "how-to," causing some sections to feel out of place.

## H. The Eighth Chapter of Fundamentals of Labor Arbitration

Chapter Eight explains the rules used by arbitrators in order to interpret contracts, specifically labor agreements.<sup>55</sup> This chapter sets forth the "primary rules of interpretation," such as the "plain meaning rule" and other staples of contract interpretation.<sup>56</sup> That short section gives an excellent "crash course" for either an arbitrator or an arbitrating party in the basics of how to interpret a contract. The authors have also provided a checklist of "other rules of interpretation" and things to look for when reading through a contract.<sup>57</sup> Another beneficial aspect of this chapter is its short summary of the parol evidence rule, and an explanation of when it may apply to contract terms.<sup>58</sup>

One good tip to arbitrating parties that this chapter provides is to look to both court decisions and previous arbitration awards in order as guidance on cases involving the same contract provisions.<sup>59</sup> Though a previous arbitration award will not be binding on an arbitrator, he or she may still be persuaded to rule in the same fashion if the facts and issue in the case are very similar.<sup>60</sup>

Overall, this chapter was fairly useful, but will be more beneficial to arbitrators and arbitrating parties who have specific disputes over contracts. This chapter therefore appeals to a more specialized group, while the other chapters serve more as a manual. Again, this is why sometimes *Fundamentals of Labor Arbitration* seems disjointed; the authors try to give as much preliminary information as possible, but the information does not always fit together perfectly.

---

<sup>53</sup> *Id.* at 57.

<sup>54</sup> *Id.* at 65.

<sup>55</sup> GRENIG & SCANZA, *supra* note 1, at xii.

<sup>56</sup> *Id.* at 69–70.

<sup>57</sup> *Id.* at 71–72.

<sup>58</sup> *Id.* at 74.

<sup>59</sup> *Id.*

<sup>60</sup> GRENIG & SCANZA, *supra* note 1, at 75.

### III. THE NINTH CHAPTER OF FUNDAMENTALS OF LABOR ARBITRATION

Chapter Nine lists the requirements of arbitration awards, and discusses these awards in depth.<sup>61</sup> The book explains, “An arbitration award is the decision of the arbitrator on the issue or issues the parties agreed to submit to arbitration.”<sup>62</sup> Typically, the arbitration award is a sole sentence merely proclaiming whether or not the grievance was granted;<sup>63</sup> surprisingly, the arbitrator is under no duty whatsoever to explain the reasoning for his or her grant or denial of the grievance.<sup>64</sup> This is one way arbitration is significantly different from litigation, and arbitrating parties would therefore find this section useful. Those unfamiliar with the process may feel slighted by a one-sentence award, but sections such as this truly help a party prepare for the arbitration process and its unexpected nuances.

The gravity of this chapter proves to be cautionary to arbitrating parties. For example, if a party does not appear for a hearing, the arbitrator is allowed to hear testimony and issue a decision as though the party had indeed appeared.<sup>65</sup> An inexperienced arbitrating party needs to be aware of important details in order to strengthen and continue a claim, and *Fundamentals of Labor Arbitration* provides those necessary details.

Chapter Nine also stresses that under the Federal Arbitration Act, there are few grounds upon which vacatur will be granted:

[W]here the award was procured by corruption, fraud, or undue means; where there was evident partiality or corruption in the arbitrator; where the arbitrator was guilty of misconduct in refusing to postpone the hearing, upon sufficient cause shown; or where the arbitrator refused to hear evidence material to the controversy.<sup>66</sup>

Although these are the only statutory grounds upon which a court may review the award, the authors also note that some courts have vacated arbitration awards for “manifest disregard of the law.”<sup>67</sup> “Manifest disregard” is not commonly applied to arbitration awards, but when it is the court applies a very strict test: the arbitrator must have been aware of a clear, definitive law and purposefully not applied it, thereby failing to give the party a fair hearing.<sup>68</sup> This section on vacatur is very useful to arbitrators as a guideline for what not to do throughout the process of arbitration. If an arbitrator provides reason for a party to seek vacatur, it may reflect poorly on that arbitrator and possibly his or her institution. Similarly, this section again proves cautionary to parties arbitrating; the arbitrator’s decision is going to be binding upon the parties unless one of the extreme statutory grounds arises. Parties may not always realize just how final the arbitration award really is, and knowing this ahead of time will prepare the parties for what otherwise may come as a serious shock.

---

<sup>61</sup> *Id.* at xii.

<sup>62</sup> *Id.* at 77.

<sup>63</sup> *Id.*

<sup>64</sup> *Id.* at 78.

<sup>65</sup> GRENIG & SCANZA, *supra* note 1, at 80.

<sup>66</sup> *Id.* at 82.

<sup>67</sup> *Id.* at 83.

<sup>68</sup> *Id.*

## A. The Tenth Chapter of Fundamentals of Labor Arbitration

Chapter Ten details “labor arbitration in the public sector.”<sup>69</sup> In the public sector, the employee-employer relationship is generally subject to statutes rather than a union’s conditions.<sup>70</sup> As a result, a policy favoring arbitration is not always fostered; courts often restrict what may or may not be arbitrated, reasoning that governmental decisions should not be decided in such a private and confidential setting.<sup>71</sup> Public sector arbitration may also raise constitutional issues, and because some government employees also possess a “property interest in their employment,” due process from the government employer may be required.<sup>72</sup>

Chapter Ten proves useful to point out the differences between private and public sector employment arbitration. A government employee in the process of arbitration would find this chapter enlightening, especially if he or she has had no experience with arbitration before. This section may also be helpful to an arbitrator, though if the arbitrator is presiding over this type of dispute, it is possible that because of this arbitration niche, the arbitrator would already know much of what is in this chapter. However, as always, the chapters would prove useful to even experienced arbitrators because they could always use the book as a reference or a reminder as to what they are supposed to do and how they are supposed to conduct themselves.

## IV. FUNDAMENTALS OF LABOR ARBITRATION APPENDICES

One of the most helpful aspects of this book is the appendices beginning on page ninety-five. These appendices serve as very good references, and are incredibly helpful when reading through the book itself because the authors often do not pause to explain things easily found in the appendices.

For example, Appendix A consists of a table of court decisions and arbitrations awards.<sup>73</sup> The table lists the cases and the awards in alphabetical order, complete with the case or award’s full citation, and where it can be found in the book itself.<sup>74</sup> A reader could therefore easily look up an applicable case on Westlaw or LexisNexis to learn more about the case. However, one issue with this appendix is that it could easily become outdated if a court made a significant decision that perhaps overturned another decision. Although information such as that would show on Westlaw or LexisNexis, if the reader looked the case up in a print source, the reader might think the case was still good law. Also, even if the reader just saw the case mentioned in *Fundamentals of Labor Arbitration*, the reader may think the case is still good law even though it may have been overturned.

Appendix B contains a “glossary of labor arbitration terms” commonly used in labor arbitration.<sup>75</sup> This section is particularly helpful for those not fully acquainted with the labor arbitration process. By having this glossary of terms in an appendix rather than explaining each term as it is used throughout the book, Grenig and Scanza allow for fluidity throughout the text, not stopping to enlighten unfamiliar readers but also not slowing down the more familiar readers

---

<sup>69</sup> *Id.* at xii.

<sup>70</sup> GRENIG & SCANZA, *supra* note 1, at 85.

<sup>71</sup> *Id.* at 86.

<sup>72</sup> *Id.* at 89.

<sup>73</sup> *Id.* at 95.

<sup>74</sup> *Id.* at 95–97.

<sup>75</sup> GRENIG & SCANZA, *supra* note 1, at 99.

with superfluous definitions. The ability of the authors to cater to a wide range of audiences is truly one of the major strengths of *Fundamentals of Labor Arbitration*.

Appendix C provides the “Code of Professional Responsibility for Arbitrators of Labor-Management Disputes.”<sup>76</sup> This appendix is useful as a reference, mainly for arbitrators rather than arbitrating parties (although arbitrating parties may want to see a model on how their arbitrator is supposed to conduct himself or herself).

Appendix D is a copy of the Federal Arbitration Act.<sup>77</sup> This appendix provides a useful tool for those unacquainted with the arbitration process and laws. Because the Federal Arbitration Act (hereinafter FAA) is referenced throughout *The Fundamentals of Labor Arbitration*, having an unabridged copy of the act right in Appendix D is very convenient, allowing the reader to see the FAA as a whole, rather than being given small snippets of it throughout the text without any way to understand how a specific section of the FAA fits with the rest of it. Although it can sometimes be distracting to have to flip to the appendix to receive a definition or look at a section of the FAA, the authors are consistent in their approach of providing both inexperienced and experienced readers with information without slowing down the more veteran with extra information that can easily be found at the end of the book.

Appendix E is the Labor-Management Relations Act.<sup>78</sup> This appendix omits certain chapters from the Labor-Management Relations Act, leaving only the sections relevant to the *Fundamentals of Labor Arbitration*. However, this appendix is not referenced much throughout *The Fundamentals of Labor Arbitration*, so a reader unfamiliar with the Labor-Management Relations Act would not be highly confused or left in the dark because of the omissions.

Appendix F provides a list of “AAA Labor Case Management Offices,” including names, telephone numbers, addresses, and email addresses of labor case managers throughout the country.<sup>79</sup> However, an issue with Appendix F may arise if these employees resign, or any of the information changes. Simply by one change in the telephone numbers or employees, this book could become outdated and no longer as useful or credible.

## V. THE STRENGTHS OF *FUNDAMENTALS OF LABOR ARBITRATION*

### A. Grenig and Scanza’s Accomplishments

The authors note in the preface that their goal is to “provide a solid base of information about grievance and arbitration procedures, while also explaining what advocates and arbitrators actually do.”<sup>80</sup> Grenig and Scanza were incredibly successful in accomplishing their objective, for this would be a very useful book in practice. It serves as a near-perfect guide for both those unfamiliar and familiar with the process of arbitration. Grenig and Scanza have done a commendable job breaking down the complicated arbitration process into sizable, comprehensible chunks of material.

---

<sup>76</sup> *Id.* at 117.

<sup>77</sup> *Id.* at 137.

<sup>78</sup> *Id.* at 145.

<sup>79</sup> *Id.* at 165.

<sup>80</sup> GRENIG & SCANZA, *supra* note 1, at xi.

As stated before, the most beneficial aspect of *Fundamentals of Labor Arbitration* is its appendices. Having a table of court decisions and arbitration awards,<sup>81</sup> a glossary of labor arbitration terms,<sup>82</sup> a copy of both the Code of Professional Responsibility for Arbitrators of Labor-Management Disputes<sup>83</sup> and the Federal Arbitration Act,<sup>84</sup> and a list of contacts from the American Arbitration Association<sup>85</sup> all in one place is invaluable. It serves as a perfect “go-to” for referencing any of these, and would most likely be used often in practice.

There is much to be learned from *Fundamentals of Labor Arbitration* (as its title may suggest). For example, Chapter One states how arbitration and mediation are two separate entities, but that there is also a hybrid alternative dispute resolution known as med-arb, a combination of mediation and arbitration.<sup>86</sup> In the med-arb process, the mediator becomes the arbitrator if the parties cannot come to an agreement during mediation.<sup>87</sup> The mediator-turned-arbitrator then resolves the conflict through the arbitration process.<sup>88</sup> This process may not be as well-known as traditional mediation or arbitration, and can provide arbitrators, mediators, or parties looking to resolve a dispute with a different form of dispute resolution that is possibly better tailored toward their particular needs.

## VI. THE WEAKNESSES OF FUNDAMENTALS OF LABOR ARBITRATION

### A. The Authors’ Approach to the FAA

One shortcoming of *Fundamentals of Labor Arbitration* is that it fails to address how truly important the FAA is to arbitration as an autonomous entity separate from the courts. Carbonneau notes in *Cases and Materials on Arbitration Law and Practice*<sup>89</sup> that the FAA, enacted in 1925, “is a landmark piece of legislation that ended the era of would-be hostility to arbitrating in the United States.”<sup>90</sup> The FAA creates a policy of favoring arbitration and enforcing arbitration awards by limiting the role of the judicial system in arbitration.<sup>91</sup>

A helpful tactic in Appendix D’s copy of the FAA would be to mark the changes made through case law after every section. For example, in *Cases and Materials on Arbitration Law and Practice*, Carbonneau gives each section of the FAA, followed by a commentary explaining what each section has come to mean by way of case law.<sup>92</sup> It would have been beneficial for Grenig and Scanza to address how the FAA has progressed over time, and how the FAA has affected arbitration. Providing the reader with an easy-to-read guide of the FAA complete with applicable case law would prove very beneficial to current and future arbitrators, as well as arbitrating parties. However, Scanza and Grenig may have chosen not to delve into the FAA

---

<sup>81</sup> *Id.* at 95.

<sup>82</sup> *Id.* at 99.

<sup>83</sup> *Id.* at 117.

<sup>84</sup> *Id.* at 137.

<sup>85</sup> GRENIG & SCANZA, *supra* note 1, at 165.

<sup>86</sup> *Id.* at 3.

<sup>87</sup> *Id.*

<sup>88</sup> *Id.*

<sup>89</sup> THOMAS E. CARBONNEAU, *CASES AND MATERIALS ON ARBITRATION LAW AND PRACTICE 1* (West 2009).

<sup>90</sup> *Id.* at 51.

<sup>91</sup> *Id.*

<sup>92</sup> *Id.* at 57–91.

because they did not deem it essential to understanding labor arbitration. As stated before, Scanza and Grenig often reference certain things throughout the text of *Fundamentals of Labor Arbitration* and give the reader enough information to independently research, so as not to slow the rest of the book down with extraneous information. Mostly, this tactic is smart because the manual is a “crash course” rather than a treatise of the law, but sometimes it leaves the reader wanting a little more information.

### **B. The Sequence and Flow of the Text**

Another drawback of *Fundamentals of Labor Arbitration* is that it sometimes tends to seem disjointed. Although the authors seem to have taken great care in compiling the chapters, there is a lack of “flow” between the subsections of each chapter and between the chapters themselves. To someone unfamiliar with arbitration, this may seem somewhat overwhelming because it appears as though there is an abundant amount of information that comprises the “bigger picture” of arbitration. However, it is possible that because this book is intended to be a manual, it would be very difficult for the chapters and subsections to have better flow. As it stands now, the book is not conducive to be “read” in a narrative fashion, but should rather be “consulted” during the course of practice or during arbitration. Although inexperienced arbitrators or arbitrating parties may wish to read it in one sitting, doing so proves to be overwhelming because of the amount of information in this book, some of which may not be useful or applicable to certain arbitration claims. It is therefore most helpful as a reference for smaller issues, rather than for learning all about arbitration in one shot.

## **VII. CONCLUSION**

Overall, *Fundamentals of Labor Arbitration* would be a helpful book in practice for arbitrators in any stage of their career, and for arbitrating parties in any stage of the arbitration process. Despite a few small shortcomings, Scanza and Grenig have done a commendable job in breaking down the material into comprehensive sections that are easy to reference. Although this book is not always perfect in its sequence and sometimes seems disjointed, its strengths greatly outweigh its weaknesses. The book is quite impressive and the extensive experience of the authors seeps onto the pages themselves. The authors have written a very good guide to labor arbitration that will likely be a manual for years to come.