

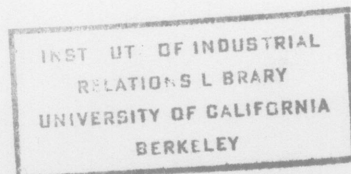
National academy of arbitrators

National academy of arbitrators, Ethics Committee
REPORT OF THE ETHICS COMMITTEE for 1954

1955?

During 1954 the Committee on Ethics considered one question, and drafted an opinion thereon. That opinion, numbered 2, has been placed before the Board of Governors for its approval, and as of the end of the year was pending.

Harry H. Platt
Harry H. Platt
Chairman



MAR 24 1955

Ethics Opinion No.2

The Committee has been asked to give its opinion on the ethical obligations of an arbitrator under the following circumstances:

An arbitrator served in dispute #1 between a national company and a local union in one of its plants. So far as he knew, his award in that case was not published. Subsequently, he was asked to serve as arbitrator in dispute #2 between the same company and another local union affiliated with another international in a different plant. After accepting the appointment, he learned that the issue to be arbitrated appeared to be identical with that in dispute #1, and that the union apparently did not know of his participation as arbitrator in the earlier case.

- (a) Under these circumstances, was the arbitrator under an ethical obligation to disclose to the union the facts concerning dispute #1 ?
- (b) Would a different ethical standard apply if the award in dispute #1 had been published, or if the local involved in dispute #2 was affiliated with the same international as the local involved in dispute #1 ?

Canon 3 of the Code of Ethics makes it "incumbent upon the arbitrator at the time of his selection to disclose to the parties any circumstances, associations or relationships that might reasonably raise any doubt as to his impartiality or his technical qualification for the particular case." Thus, the question presented is whether the circumstances related above "might reasonably raise" a doubt as to the arbitrator's impartiality. In the judgment of the Committee they do not.

It should be noted, initially, that it is virtually impossible for an arbitrator to know, prior to the actual submission of a case, whether it is in fact identical with one he has previously decided. Even when an issue is fundamentally the same as others he has determined before, the arbitrator usually finds that each new case has some unique, distinguishing feature that requires special consideration.

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In any event, the fact that an arbitrator has issued a prior decision on a similar or identical case has by itself no necessary significance. The decisive ethical question for the arbitrator is not whether he has considered a similar issue before, but whether he is still open to persuasion either way. If the arbitrator feels free to revise his prior decision, no disclosure would seem necessary; but if for any reason the arbitrator feels bound by a prior decision, then he should certainly disclose that fact.

In conclusion, it may be stated that parties to an arbitration are entitled to an honest, rather than an uninformed, decision. A contrary conclusion would lead to the disqualification of arbitrators solely on the basis of their experience.