

# **The Labor Arbitration Workshop**

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# The Labor Arbitration Workshop

An Experiential Approach

**Roger I. Abrams**  
NORTHEASTERN UNIVERSITY  
RICHARDSON PROFESSOR OF LAW

**A Lawyering Series Coursebook**  
*Published in Collaboration with  
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# Preface

Lawyers practice law in a variety of settings. While some many spend most or part of their careers trying cases in court, it is more likely that they will be involved in negotiating on behalf of clients and drafting documents that embody understandings reached with other parties. Increasingly, lawyers will find that alternative dispute resolution procedures are preferable to court litigation. One area of practice that has long used arbitration in lieu of litigation is labor and employment law.

This set of materials is designed to introduce students to the ways of arbitration, focusing primarily on the resolution of disputes that arise under collective bargaining agreements. While non-unionized employers have increasingly found arbitration as a preferable alternative to expensive litigation under federal or state statutes, unionized employers and labor organizations representing their employees have had decades of experience with the arbitration process.

It is the purpose of these materials to have students learn lawyering skills through simulation exercises while, at the same time, learning what might be called the “common law” of the labor agreement. Uniting substance with process, the Labor Arbitration Workshop mirrors what lawyers (and non-lawyer advocates) actually do in this field. Unlike trial practice courses, for example, that teach trial techniques, students in the Workshop will combine process with substance. How have labor and management “ordered” the workplace through collective bargaining? During the course of the Workshop, students will learn to apply concepts such as “just cause,” the uses of seniority, and the methods for interpreting contract provisions. There are three basic types of cases brought to arbitration: discharge and discipline decisions, management operational decisions and benefit decisions involving, for example, vacations, holidays and leaves. We will cover all these areas. At the same time, students will practice lawyering skills, such as offering opening statements and doing direct and cross examination of witnesses. Most importantly, students will have at least two opportunities to write briefs based on actual cases—one involving a transcript, the second using facts developed in a full arbitration simulation.

Although it is anticipated that the Workshop will be offered in law schools, the materials are suitable for use in business schools and by unions in training international representatives. The practice of labor arbitration does not require that advocates or arbitrators be lawyers, and increasingly non-lawyers are playing an important role in the field. A student need not have legal training in order to benefit from use of the cases, problems and simulations included here.

These materials include over 120 decisions covering the typical issues that are addressed in arbitration. The notes and questions for discussion that follow each case raise many other issues. The instructor will have to select which cases to assign and the Teacher’s Manual will assist in that process. The Workshop also has a dedicated website that includes seven simulation problems with exhibits, seven transcripts from actual arbitrations, and numerous arbitration briefs and other materials that an instructor will find useful.

When I teach the Workshop, I assign the students a transcript to read for the third week of the course, and we discuss the “theory of the case” from both union and management sides. What arguments and evidence will a party need to prevail? The “theory of the case” construct weaves throughout the Workshop. Students will use it to present opening statements and examine and cross-examine witnesses, as well as in writing their first briefs. The fourth week of the course I have all the students present opening statements based on the same transcript. (They were all pre-assigned a side during the third week of class.) The instructor should critique each student as he or she completes the opening.

During the fifth and sixth week of the class, the students do direct and cross-examination of the witnesses in the transcript case. The instructor plays each witness, but should critique the students during the examination—for example, for asking leading questions on direct examination or open-ended questions on cross. I wear a baseball cap when I am in role playing the witness and take it off when I return to the instructor’s role. During this period, I teach student how to do research into published arbitration cases and how to use the Elkouris’ *HOW ARBITRATION WORKS* and my book *INSIDE ARBITRATION*. During the seventh and eighth week of class, the students write a brief based on the transcript. (Once again, they were pre-assigned to write for either the union or management.) I cancel class for the following week and meet individually with each student to review their briefs, which I consider a “practice” exercise. I redline their briefs, both correcting errors and suggesting how I would have presented the argument. This takes time, but most students consider it the most valuable part of the Workshop.

There is one more major exercise in my Workshops, a complete arbitration simulation based on one of the problems included on the course website. I ask secretaries and administrators if they would be willing to serve as witnesses, and most readily agree. Each simulation package contains a statement of the problem and some documents the students might use in arbitration. (They are allowed to create additional exhibits, but they cannot be outcome determinative, for example, a management memo that says the company agrees with the union’s position.) The package also includes some “secret” information that only the witness should see. I divide the class into teams for the arbitration, each containing three or four students. They schedule a meeting with their witness—one per simulation for each side. At that meeting, they assemble the facts they will present in arbitration, prepare the witness for direct examination and also practice cross-examination with their witness.

At the final simulations, which normally take about one hour, fifteen minutes each, I handle the case as I would handle a real arbitration. The teams will have divided up the tasks—for example, one student doing opening and closing statements, a second doing the direct examination of the party’s witness and the third doing cross-examination of the opposing party’s witness. Following the hearing, I critique their performance.

Everyone takes notes during the hearing and members of each team exchange those notes after the hearing. No formal transcript is taken. The students will then have a week or two to write individual briefs that will be used as a significant measure of each student’s grade when added to an evaluation of their performance in the simulations. I limit their briefs—both the practice and final briefs—to 10–15 pages.

Any instructor who has questions about these materials and how they can be used can contact me at [r.abrams@neu.edu](mailto:r.abrams@neu.edu). I would be pleased to respond to your inquiries.



## A Note about Sources and Citation Form

Arbitration opinions are published by a variety of organizations. The most commonly used source in arbitration is the Labor Arbitration Reports, long published by the Bureau of National Affairs in Washington, D.C., and now owned by Bloomberg. Other publishers include Commerce Clearinghouse and the Labor Arbitration Information System of Thompson Reuters. Many awards appear in more than one of the publications. Arbitrators submit their opinions to these and other services with the permission of the parties.

This book will use arbitration decisions published by Bloomberg/BNA and a few unpublished decisions. The book uses the most common citation form, noting the volume, page number where the case begins and the pin cite where a quotation can be found. In addition, we note the name of the arbitrator and the year the decision was issued. Most law libraries maintain the collection of the Labor Arbitration Reports. It is also available online at <http://www.bna.com/labor-employment-law-resource-center>.

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