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2013

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Recommended Citation

St. Antoine, Theodore J. "The Bible of Labor Arbitration: Tribute to Professor Frank Elkouri." *Oklahoma Law Review* 65, no. 3 (2013): xiv-xvi.

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THE BIBLE OF LABOR ARBITRATION

*Theodore J. St. Antoine**

Each of the three traditional learned professions has had its “bible.” Divines had the progenitor, the *Holy Bible* itself; medical doctors had *Gray’s Anatomy*; and lawyers had *Blackstone*. What could be more fitting than that the sprightly newcomer to the ranks of the learned professions—labor arbitration—should also have its own bible: *Elkouri & Elkouri, How Arbitration Works?* But while *Blackstone*, *Gray’s*, and perhaps even the King James Version have largely been supplanted by sleeker, more contemporary models, nothing of the sort has happened to *Elkouri*. It just sails on majestically from one edition to another, now heading into its seventh.¹

In the process, of course, *Elkouri* took on added propulsion in the form of the redoubtable Edna Asper Elkouri, Frank’s spouse, as co-editor. Then, beginning with the fifth edition in 1997, editing responsibility passed to the Committee on Alternative Dispute Resolution in Labor and Employment Law of the American Bar Association’s Section of Labor and Employment Law.

As a graduate and faculty member of the University of Michigan Law School, I take a special pride in *Elkouri & Elkouri*. Frank Elkouri’s 1951 SJD dissertation at Michigan Law was the basis for the first edition of the famous work. In addition, our mutual mentor, Russell A. Smith (a Past President of the National Academy of Arbitrators), penned these prescient words in his Foreword to that first edition:

The next decade should disclose whether the recorded and published decisions of arbitrators have developed some generalized thinking about collective bargaining problems Some may view this prospect with alarm, based on a fear of stereotyped thinking and undue reverence for precedent. This attitude seems to me to show a lack of understanding of the judicial process. It is simply contrary to every canon of progress to refuse in this field or any other to conserve the accumulated

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1. ELKOURI & ELKOURI, *HOW ARBITRATION WORKS* (Kenneth May et al. eds., 7th ed. 2012). The first edition was a mere 271 pages long; the seventh edition checks in at 1896 pages. Although the title, like that of the National Academy of Arbitrators, suggests a comprehensive coverage, the Elkouri treatise, like the Academy membership, is confined to labor and employment arbitration. That lack of specificity reflects the preeminence of labor issues at a certain stage in the development of arbitration in this country. *See, e.g.*, DENNIS R. NOLAN, *LABOR AND EMPLOYMENT ARBITRATION IN A NUTSHELL* 1-9 (1998).

wisdom and experience of the past and make such use of it for the solution of present problems as sound judgment may dictate.²

In the late 1990s the National Academy of Arbitrators was divided over whether to sponsor what became *The Common Law of the Workplace*,³ a shorter statement of the major principles developed in labor arbitration. The very same fears of “stereotyped thinking” identified by Russ Smith were voiced by a number of Academy members. In that discussion, I found much comfort in Russ’s reassuring thoughts. When the decision was finally made to proceed with *The Common Law*, I wrote Russ, then in his 90s, that I deeply appreciated having such a youthful-spirited person on my side in that great debate. I got back a charming note from him, telling me how much he enjoyed learning that something he wrote almost a half-century earlier was still being read and heeded. But it was Frank Elkouri who had the vision and fortitude to embark on what could have been a lonely and fruitless voyage.

Today it is the rare arbitrator or advocate who, when confronted with a novel arbitration problem or the need for some good authority to support a particular position, does not turn first to *Elkouri & Elkouri*. It has indeed become a byword—the veritable “bible” of the arbitration profession. There are other, crisper profiles of the subject, multivolume encyclopedic treatments, and works dealing more deeply with specific topics like discipline and discharge or winning advocacy or arbitral decision-making (and I myself have been involved with several of these). But when one seeks a clear, sound, comprehensive overview of the whole field in a single volume, *Elkouri & Elkouri* remains supreme.

For the most part, the Elkouris and their successor editors have avoided the trap of taking too strong a stand on one side or the other of sensitive, controversial issues in labor arbitration. They generally have been satisfied with describing the opposing views, citing the cases supporting them, and then letting the reader (or the arbitrator) decide. An example of an exception may have been the Elkouris’ seeming endorsement of the outworn “plain meaning” rule of contract interpretation, but they had plenty of company among distinguished arbitrators.⁴ Yet even Homer nodded, and

2. Russell A. Smith, *Foreword* to FRANK ELKOURI, *HOW ARBITRATION WORKS*, at xi, xi (1952).

3. *THE COMMON LAW OF THE WORKPLACE: THE VIEWS OF ARBITRATORS* (Theodore J. St. Antoine ed., 1998).

4. See FRANK ELKOURI & EDNA ASPER ELKOURI, *HOW ARBITRATION WORKS* 348-50 (4th ed. 1985). Compare Carlton J. Snow, *Contract Interpretation: The Plain Meaning Rule in Labor Arbitration*, 55 *FORDHAM L. REV.* 681, 704 (1987) (“Arbitrators’ continued invocation of the plain meaning rule is anomalous in light of the trend to reject the rule by

it may simply have been Frank and Edna's respect for a clearly prevailing view among arbitrators that led them too into nodding on this occasion. Recent editions, I should mention, have been far more receptive to criticisms of the plain meaning rule. In any event, a possible lapse here and there in providing fully rounded reporting can hardly detract much from a work that has been so indispensable to so many in enlightening them about such a highly important, practical field as labor arbitration.

the courts, the U.C.C., the Restatement, and treatise writers."); *see also* 6 CORBIN ON CONTRACTS §§ 25.4-25.5 (Joseph M. Perillo ed. 2012).