

ARBITRATION CLASS 2

September 2, 2009

WHO ARE THEY *GUYS*? (AS OF 1986)

- 97% WHITE
- 91% MALES
- 56% LAWYERS
- AVERAGE AGE IS 59



WHAT DO THESE **GUYS** CHARGE?

- \$750-\$1,500 PER DAY
- THEY CHARGE GENERALLY FOR 2 DAYS RESEARCH AND WRITING FOR EACH DAY IN A HEARING
- THE PARTIES GENERALLY SPLIT THE COST

THE USUAL ADVOCATES

- NOT ALWAYS LAWYERS
 - LABOR CONSULTANTS
 - HR FOLKS
 - UNION REPS

THE HEARING

- VARYING DEGREES OF FORMALITY
- THE ARBITRATOR GENERALLY KNOWS NOTHING ABOUT THE CASE EXCEPT IN UNUSUAL CIRCUMSTANCES
- STATEMENT OF THE ISSUE
- ALLOCATION OF BURDEN OF PROOF
- EXHIBITS

LABOR ARBITRATION
AS AN EXAMPLE OF THE
FORM OF ARBITRATION

TYPES OF LABOR ARBITRATION

- RIGHTS OR GRIEVANCE ARBITRATION
 - DEALING WITH THE VIOLATION OF THE LABOR AGREEMENT
- INTEREST ARBITRATION
 - DEALING WITH THE CREATION OF THE LABOR AGREEMENT

INTEREST ARBITRATION

- THE STATUTORY EQUIVALENT OF A STRIKE
- TAKES POWER OUT OF THE BARGAINING RELATIONSHIP
- INSERTS LOGIC (IN THEORY AT LEAST)
- GENERALLY NOT FAVORED BY LABOR OR MANAGEMENT, WHOEVER IS MORE POWERFUL IN A GIVEN CIRCUMSTANCE

ALTERNATIVES TO GRIEVANCE ARBITRATION

- STRIKE
- COURT ACTIONS FOR BREACH OF CONTRACT

EVOLUTION OF THE GRIEVANCE ARBITRATION SYSTEM

- WAS AN AD HOC PROCESS
- THIS GAVE WAY TO PERMANENT
- PANELS
- EVOLVED INTO MULTI STEP GRIEVANCE PROCEDURES
- WHY WOULD MULTIPLE STEPS BE PREFERRED?

LIMITS ON ARBITRATION

EMPLOYMENT ARBITRATION IN THE UNION SETTING

- MUTUALLY BARGAINED
- REPRESENTATION IS PROVIDED THROUGH UNION REPRESENTATIVE OR ATTORNEY
- EXTERNAL LAW IS RARELY AN ISSUE
- INDEPENDENT LEGAL REMEDIES REMAIN
 - OR DO THEY—SEE **ALEXANDER**

EMPLOYMENT ARBITRATION IN THE NON-UNION SETTING

- OFTEN PRESENTED AS SIGN IT OR BE FIRED
 - MOST AGREEMENTS ARE PRE-DISPUTE AT TIME OF HIRE
- EMPLOYEE MUST FIND THEIR OWN COUNSEL OR DO IT THEMSELVES
 - IF THEY GET A LAWYER WHO PAYS?
- EXTERNAL LAW IS ALWAYS A FACTOR
 - WHAT ARE WE ARBITRATING ANYWAY?– EMPLOYMENT AT WILL
- DESIGNED TO PRECLUDE LEGAL OPTIONS
 - WHY WOULD A CORPORATION WANT TO DO THAT?

PRECLUDING THE COURTS

- FROM AN EMPLOYER POINT OF VIEW- WHY WOULD THEY RATHER BE IN FRONT OF AN ARBITRATOR THAN A JURY?
 - THAN A JUDGE?