Journal of Accountancy

Volume 36 | Issue 5 Article 2

11-1923

Arbitration

W. F. Weiss

Arbitration

By W. F. Weiss

At the annual meeting of the American Institute of Accountants, held in September, 1923, at Washington, the following resolution was adopted:

Resolved, That the Institute give to the work of the Arbitration Society of America its support; that it communicate with its members throughout the country, urging them to be favorable to the introduction of the system of arbitration in commercial disputes, and generally do everything possible to forward the popularity of arbitration, including service as arbitrators when called upon so to act.

The New York State Society of Certified Public Accountants at its annual meeting May 14, 1923, adopted a similar resolution, providing:

That the president be authorized to appoint a committee on arbitration, to consist of twenty members, to coöperate with the Arbitration Society of America, but without power to commit the society in any way.

Such a committee of twenty members of the New York State Society was subsequently appointed. The committee met in formal session and its report to the board of directors was transmitted by the board to the society at its regular monthly meeting on October 8, 1923, as the result of which the society voted to recommend to its committee on lectures and entertainments that it devote part of its regular monthly meeting on November 12, 1923, to addresses on the subject of arbitration with opportunity for full and free discussion.

A better understanding of the purposes, practices and benefits of arbitration on the part of the members of our profession, and in particular of the members of our Institute, of the New York State Society and other state societies, will no doubt prove of interest and lead to closer touch and contact with the subject of arbitration and its modern application to the lawful determination of business disputes and controversies, in preference to the economic waste of litigation. The substitution of arbitration for litigation is now sanctioned under the statute law of New York. In fact, this short-cut to substantial justice, which may appear to

savor of dangerous radicalism to the uninformed, has not only the sanction of the law, but the support of our courts and the cordial endorsement of many of our foremost judges, ablest lawyers and greatest merchants.

In accountants' growing intimate touch with the administration and pursuit of business, we must observe that the present enormous increase of litigation and consequent congestion of our court calendars have resulted in irksome and vexatious delays in the administration of justice, breeding disrespect of the law and dissatisfaction among the business community.

In 1920 the legislature of the state of New York enacted a law, which was signed by the governor on April 14th of that year, to bring relief from these cumbersome, irritating conditions through arbitration. That law gives to all disputants in New York the right to submit their differences for final determination to arbitrators, selected by themselves. That law also confers upon such arbitrators the full powers of judges; makes an arbitration agreement irrevocable, and gives to the award of an arbitrator the full power and sanctity of the judgment of a court of law.

The great trouble has been that few people know that this law is on the statute book. Only a small percentage of our merchants, and even of our lawyers, have any just and true conception of the really great power which this law places actually within the hands of our business men. Because of these conditions there has grown a skilfully organized movement which aims, through educational work, legislation and a practical operation of the arbitration law, to enlighten the business community and to spread the benefits of arbitration throughout all the other states of the union. This movement has taken corporate form. Its official title is the Arbitration Society of America, and although it is only a year and a half old and still in the beginning of its work in the cause of justice, it is well-known and cordially endorsed where unselfish effort for the common good is understood and honored.

The American Institute of Accountants is one of the many organizations representing great departments of activity in commercial and professional life of our country that have endorsed the movement sponsored by the Arbitration Society, and accountants can therefore now put the full weight of their influence squarely behind it. Not only should we aid the work with

practical support in New York, where we already have the arbitration law, but we should also aid in the vigorous campaign which the society is conducting for a like law in every other state.

What are the possibilities that await the accountant in this new field of arbitration? Will it broaden the scope of his professional services and usefulness?

This will be a practical and very natural query in the minds of many accountants, and as such it merits fair consideration and frank discussion. While I fully realize that the question of profit in dollars and cents will not weigh in the balance against a service for the public good with the members of our profession, yet the accountant, notwithstanding his professional attainments, is essentially a man of business and has a moral and ethical right to consider such a question.

To my mind, the popularizing of this direct and simple method of determining business controversies will doubtless increase the present and open new avenues of service to the accountant. This appears to be the conviction of the closest students of the business situation, who are following every step in the rapid progress of arbitration, analyzing its trend and classifying its requirements as they reveal themselves. The impression is prevalent among skilled observers that the accountant is destined to take rank as one eminently well qualified among trained and competent men of the professions and of business to act efficiently in the semi-judicial rôle of arbitrator, either alone or in association with others, as the disputants may elect.

Acting as arbitrator, however, is only one of the opportunities open to members of our profession. In the development and spread of arbitration practice, the accountant's value as a competent, efficient witness, consultant or advisor to the disputants will materially increase. Similar opportunity in this respect existed hertofore in serving litigants, but it was often limited, whereas in arbitration practice it will naturally expand. The limitation often arose from those rigid and complicated rules of evidence and the regrettably frequent use of objections, on the alleged but purely technical ground that testimony was irrelevant, immaterial or incompetent, whereunder so often truth has been silenced, insurmountable barriers have been raised to the admission of all of the facts, and justice skilfully and effectively sandbagged.

There are no technicalities in arbitration. Arbitrators, while they will exclude unrelated matters, which are time-consuming and may becloud the issue, are not bound by the rules of evidence, and all evidence bearing upon the case may be freely admitted. It is a simple, democratic procedure in which every disputant and every witness gives his evidence in his own way, before arbitrators selected by the disputants themselves for their integrity, intelligence, trustworthiness and special fitness to decide the particular issue.

By virtue of these provisions arbitration is bound to grow and, it does not seem visionary to say, will eventually largely divert from our courts those thousands upon thousands of cases, which embody on real analysis merely simple issues of fact yet sadly clog the court procedure and calendars and retard the administration of justice. I refer to cases involving only an issue of fact, where it seems a waste of time for a judge to hear the evidence, when he could be better engaged in consideration of questions of law, while at the same time there are men available better qualified to pass upon the particular question of fact than the average jury.

All things considered, it is not an unreasonable prophecy to predict for the accountant, skilled in the affairs of business, and experienced and accurate in the disclosure and demonstration of facts, a continually expanding field for his professional services and usefulness as witness, consultant and advisor.

As to the question of emoluments, and not referring to the services which may be rendered to either of the disputants on customary retainer arrangements, it may be expected that the arbitrators, unless they have registered their willingness to serve without compensation, will be remunerated in proportion to the importance of the issues upon which they sit in judgment, with some regard also for the economy in expense and expeditious procedure afforded to the disputants. But apart from the question of the financial emoluments for the arbitrator, the honor, dignity and benefit of such service to the business public will naturally constitute distinct and separate recompense and credit of great value.

The work of the Arbitration Society of America in providing arbitrators has revealed the significant fact that the invitation to this service is regarded as a distinction and high tribute to the

arbitrator's standing in the community and to his reputation for integrity and intelligence and to his sense of public duty, and the society has not had a single record of a refusal to serve.

A few more details as to the Arbitration Society of America, its aims, purposes and achievements, should serve to bespeak for it our profession's increasing staunch and substantial support.

The society owes its inception to the vision and effort of one man—Judge Moses H. Grossman—prominent among the lawyers of New York. It was his unselfish work—himself the head of one of the large and prominent litigating law firms in the country —that brought the society into being under a board of governors, the personnel of which commands the widest confidence and respect. This public-spirited group of men, who have unselfishly set out to put simple justice within the easy reach of their fellow-citizens in the settlement of business controversies upon issues of fact, includes such men as Frank H. Sommer, dean of the law school of Columbia university; Samuel McRoberts, president of the Metropolitan Trust Co.; Thomas J. Parkinson, vice-president of the Equitable Assurance Co.; Franklin Simon, merchant; Jules S. Bache, banker; Justice Charles L. Guy, justice of the New York supreme court; Almet F. Jenks, former presiding justice of the appellate division of the New York supreme court; William B. Joyce, president of the National Surety Co.; Henry Ives Cobb, architect; Robert G. Cooke, president of the Fifth Avenue Association; William C. Redfield, former secretary of commerce in the cabinet of President Wilson; David A. Schulte, of the tobacco trade; Samuel McCune Lindsay, of Columbia university and president of the Academy of Political Science; former United States Senator James A. O'Gorman; Robert Lee Hatch, former president of the New York Rotary Club; Marion McMillin, vice-president of the American Light & Traction Co., and Frederic Kernochan, chief justice of the court of special sessions, New York. Charles M. Schwab is chairman of the general committee.

The society, created as a membership corporation, so that no member can ever profit financially through its activities, started out under a charter which defines the purposes substantially as follow:

First: to conduct a national campaign of education in the cause of arbitration.

Second: to work for legislation designed to extend the benefits of arbitration throughout the country; and,

Third: to operate in New York, and other centers of population, public tribunals of arbitration conducted under a common-sense code of procedure, absolutely free from the technicalities and rules that make the machinery of litigation so cumbersome, so slow and so expensive.

This new tribunal of justice, established in New York by the society, has now been operating for one year and six months. Hundreds of controversies have been before it, and many of these have been determind in the preliminary stages of the arbitration. The issues determined have covered a wide range of business subjects and have involved individual amounts ranging from hundreds up to many thousands of dollars. But in every case the proceeding has been the simple bringing together of men in dispute who told their stories in their own way, and through the mouths of their witnesses, before arbitrators who disregard technicality and aim at justice.

Lawyers are welcomed by the society either as arbitrators or as counsel for disputants. In the first instance, the lawyer is the potential judge, trained in the weighing of evidence and, hence, a valuable arbitrator. Again, as the representative of the disputant, he can render effective service in the presentation of his client's cause before the arbitrator and in the questioning of witnesses, but he goes into the contest stripped of some of his legal weapons—those technicalities and rules that rigidly govern litigation.

I dwell upon this feature of the society's tribunal, because in the arbitration boards which are now operating in so many trades the lawyer is excluded. He is barred from participation in such proceedings. But under the broader policy of the Arbitration Society, the coöperation of the lawyer is regarded as of prime importance to the future of the movement, and lawyers following the lead of able judges are turning to arbitration, properly conducted, as the one great hope of relief from the intolerable conditions revealed in our crowded courts and in the law's delays which work for so many that greatest of evils, a denial of justice. The energetic championship of arbitration by foremost lawyers of New York aided quite materially in the passage of the arbitration law now in force.

Notwithstanding the individual policy employed by the society in the conduct of the public tribunal, the work it is doing is dedicated to the service of every trade organization that has arbitration machinery of its own, as well as to the service of the general public. Its tribunal is operated for the service of business men in dispute who either do not belong to trade organizations equipped for arbitration, or, if they do belong to such an organization, for some reason prefer to go before a public tribunal.

Moreover, there are some forms of controversy—questions arising out of accountings between partners, the determination of loss and compensation for damages in actions of tort, etc., which cannot be arbitrated in trade boards, but can be determined in the society's tribunal under the assurance and guarantee of responsibility which the distinguished character of its governing board provides beyond question.

The Rubber Association Board irons out disputes among rubber manufacturers and merchants. The Silk Association Board, and the Cotton Board, and many other boards concern themselves with the activities of their respective trades.

In that work, the society is rendering all possible aid by direct advice to disputants and by its broadcast educational work. Its own tribunal serves no particular trade. It is open to all trades and to the public—to all alike on equal terms—and at a trivial expense as compared with the expense of litigation. It is not operated for profit but is a public institution, designed to confer its benefits upon the public at large.

To detail the progress of the arbitration movement under the impetus which this powerful society has given it would far exceed the limits of this article, but certain outstanding facts in the record of the past year which strikingly show the development of the movement and reveal its promise of public benefits may be very briefly told.

Taking the field alone in May, 1921, to spread the gospel of arbitration, the society today has the official endorsement of sixty-two trade organizations, the Commercial Law League of America and many civic bodies. Only a few months ago, seventy influential trade organizations joined the society in celebrating throughout the state of New York an arbitration educational week (May 14 to May 20, 1923). It was the society's plan and it did earnest and effective work in carrying it out. That week stands out as

one of the most remarkable in the history of educational movements. There were sermons on the subject in the churches; talks on the theme in the schools; trailers on the news reels of the motion picture theatres; meetings of experts in arbitration procedure; breakfast, dinner and luncheon discussions in clubs and hotels and in the homes of the New York Chamber of Commerce and the Merchants' Association, and observances in the courts of New York in which leading jurists took an active part.

Such a demonstration in sympathy with a substitute for litigation attests beyond doubt that arbitration has taken a firm foothold and is here to stay and to grow. Our business men are waking up to the fact that the statute law of the state provides a way to justice in the settlement of many controversies—a short and inexpensive road—and that it also provides a way of escape from the fearful waste, in time and money and peace of mind, that flows inevitably from long-drawn-out litigation.

Another significant event of the year was a dinner last winter at the New York home of Mrs. Vincent Astor, who acted as hostess for the society. Sixty-four judges, representing all the courts of the state of New York and all local branches of the federal courts, attended this dinner. At its close, the diners met 250 representative men of the trades and industries who had been invited to join in an after-dinner discussion of arbitration. The outcome of this gathering was the passage of a resolution strongly endorsing the work of the society, and the appointment of a committee, made up of judges of our higher courts, to act in support of the movement.

The brief recital of these events will serve as evidence that there is no conflict between the law and arbitration—between the courts and the tribunal which the society is operating. On the contrary, the tribunal of arbitration will serve alike the courts and the cause of justice in lifting a mighty burden of unnecessary litigation, where issues of fact are involved, from the shoulders of our judges—and the judges bid it hearty welcome.

The recent enactment of the New Jersey arbitration law, which closely follows the New York statute, marks the first step towards the fulfillment of the society's national programme for a uniform arbitration law.

In concluding this brief outline, it should not be overlooked that one of the strongest auguries for the future of arbitration is

to be found in the support of the press. Arbitration has been editorially endorsed by leading newspapers of every state, just as it has been approved by leading men in every trade and industry. We, as accountants, can bring credit to our profession by active assistance and support of the movement. A practical step in this direction is coöperation with the Arbitration Society of America, with the advocacy of arbitration whenever and wherever opportunity affords.