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PAUL SELBY: COAL INDUSTRY
LABOR ARBITRATOR

STEPHEN B. GOLDBERG*

Among the most enduring of Paul Selby's accomplishments is the role he has played as an arbitrator in the coal industry. Beginning in 1967, Professor Selby has heard hundreds of cases throughout all of Appalachia, in settings as diverse as a mine office, a union headquarters, the back room of a bowling alley, a corner table in a restaurant, and a county courthouse. Regardless of the locale, Professor Selby always conducted the hearing in a friendly, courteous, efficient manner. And, after the hearing, he invariably provided the parties with a carefully thought-out opinion examining their positions against principles of logic, contract interpretation, labor law, and, most notably, the history and practices of the coal industry. Justice Oliver Wendell Holmes once wrote, "A page of history is worth a volume of logic," and nobody has exemplified the wisdom of that statement more than Paul Selby. Where other arbitrators might struggle with a maddeningly imprecise contract clause for which normal principles of interpretation suggested two or more equally implausible results, Professor Selby was frequently able to construe the clause in light of industry history and practices so that a sound and reasonable interpretation could be found.

* Professor of Law, Northwestern University School of Law; A.B., Harvard College, 1954; LL.B., Harvard Law School, 1959. The author was a staff attorney for the National Labor Relations Board from 1961 to 1965, when he joined the law faculty at the University of Illinois. In 1973, he was appointed Visiting Scholar to the American Bar Foundation, and in 1974, he took up his current position at the Northwestern University School of Law. His tenure there has been interrupted only in 1979-80 when he was appointed Visiting Professor at Harvard Law School, and consultant to President Carter's Commission on Coal.

Professor Goldberg is the author of numerous scholarly articles dealing with mediation, arbitration, wildcat strikes in the coal industry, and NLRB regulation. He also is the author, with Frank Sander of Harvard and Eric Green of Boston University, of Dispute Resolution, (1985), the first comprehensive description and analysis of the entire alternative dispute resolution field. His most recent book, with Jeanne Brett of the Kellogg Graduate School of Management, Northwestern University, and William Ury, Harvard, is entitled Getting Disputes Resolved: Designing Systems to Cut the Costs of Conflict (Jossey-Bass Publishing Co., 1988).
Perhaps the capstone of Paul Selby's career as a coal industry arbitrator occurred in 1978, when he was chosen by the United Mine Workers and the Bituminous Coal Operators to serve as the Chief Umpire of their industry-wide Arbitration Review Board, one of only four persons ever to hold that position. As Chief Umpire, it was Professor Selby's task to review the decision of other coal arbitrators and to affirm or reverse those decisions. The decisions of the Chief Umpire were binding on the entire industry, vesting an enormous responsibility in Professor Selby.

While summarizing Professor Selby's decisions as Chief Umpire would extend this piece beyond the space I have been allotted, some idea of their significance can be gleaned from considering the issues presented in just a few: When do employees have seniority rights with a successor employer? What principles of work distribution applies to idle day work—seniority or equal sharing? What is the effect of an arbitrator's decision when the same issue involving the same parties is presented in a different dispute to a different arbitrator? What is an arbitrator to do when one party raises an issue that the other party alleges was not previously raised in the grievance procedure? These are vexing questions, and they are illustrative of the many such questions to which Professor Selby provided clear and thoughtful answers, establishing binding precedents that guide coal arbitrators to this day.

To the dismay of some, Paul Selby's decisions are not known for their brevity. It is the mark of the man, however, that he has never sought to mollify the groaners and has always striven to illuminate. The easy road is not his way. Professor Selby's decisions demonstrate his deep concern that all issues be considered, that no effort be spared in the search for a sound result, and that both parties, as well as many others affected by his decisions, fully understand how and why he reached his results. That Paul Selby succeeded so well in that effort is one reason why this tribute to him is so richly deserved.