Preface

This book is not an academic or philosophical presentation on the subject of labor arbitration. It is designed to be a handbook to guide lawyers as well as lay employer and union advocates in preparing and presenting their cases to a neutral arbitrator or board of arbitration. The closest analogy one might make between this volume and other types of books on arbitration is to compare it to a cookbook. This book attempts to lead the reader through each step of the labor arbitration process, much as a cookbook is used to guide a cook through each step, for example, of baking a cake. For an advocate inexperienced in labor arbitration, a thorough reading of most, if not every, chapter may be necessary. An experienced advocate, however, may only need to refer to selected portions of the book much as a skilled chef might periodically check a cookbook merely to confirm the need for a particular ingredient and/or its quantity. In short, this volume is designed so that all advocates—novice and seasoned—can find value within its pages.

Arbitrators, too, might find this volume useful—particularly to see the arbitration process from the perspective of the advocate and to evaluate the strategies and tactics often employed by experienced advocates in case preparation and presentation. For these same reasons, students should find this to be an important resource in their studies of labor relations and arbitration advocacy. Lastly, those assisting the presenting advocate in the preparation of cases will find much that is relevant to their duties.

The pages that follow address the labor arbitration process, not substantive labor arbitration principles. Although there are occasional references in the text and its footnotes to substantive labor arbitration principles and issues, the intended scope of this volume is limited to the process of preparing and presenting a labor arbitration case.

This handbook is a spin-off from an earlier treatise entitled *How to Prepare and Present a Labor Arbitration Case: Strategy and Tactics for Advocates* published by Bloomberg/BNA Books. The material in that volume has been updated in this book and two chapters have been added. One of those two additions is Chapter 20, which reviews advocates' best and worst practices as seen and assessed by very experienced labor arbitrators who are fellow members of the prestigious National Academy of Arbitrators who responded to a survey conducted by the author. These assessments are from the perspectives of a number of neutrals. Such assessments are rarely found in other publications on labor arbitration.

This volume is designed for union and management lawyers and lay advocates alike. In virtually all aspects of case preparation and presentation, the tasks and skills of a union advocate are mirror images of those of his or her employer counterpart, and vice versa. Although union advocates almost always represent the individual(s) bringing the grievance (the "grievant(s)" or "complainant(s)") and the union that represents him/her/them (which is defending the case), the specific steps in preparation and presentation of the case are identical for each side. In the many examples and practical tips found throughout the book, both union and employer perspectives are reflected.

No attempt is made to distinguish between processes and procedures used in the private versus the public sector, or among the differences from industry to industry or between one public service and another. The author has had experience in both public sector and private sector arbitrations, as well as among a wide variety of private industries and public entities. He has found that although some differences do exist, they don't change the basic character or techniques of labor arbitration advocacy.

Despite the increasing prevalence of attorneys acting as labor arbitration advocates, particular care has been taken in the book to avoid excessive legalisms and technical jargon. Notwithstanding, some readers may feel that hearing procedures discussed in some chapters (particularly Chapter 12 (Rules of Evidence) and Chapter 13 (Making and Defending Against Objections)) are more technical than necessary on the basis of their own experience. As explained in several chapters, the author has experienced a rather wide range of formality followed by different arbitrators. As a result, he has opted to include more technical advice and guidance on such matters as rules of evidence, on the theory that the reader may encounter arbitrators who follow or apply litigation rules and procedures that are more common in a court of law than in typical labor

arbitration settings. The rationale underlying this approach is to forewarn and prepare the advocate to cope with somewhat technical rules and procedures in the event they are encountered. It is easier and more comforting to discard what is surplus than to be surprised and disadvantaged by new and unfamiliar procedures.

This book deals solely with *labor* arbitration, and no attempt has been made to address other types of arbitration, such as non-collective bargaining employment disputes and commercial arbitration. It is felt that justice could not be done to other related fields of arbitration in the same book as labor arbitration, without critically sacrificing adequate treatment of the latter subject. Nevertheless, advocates finding themselves with a case in other related arenas, such as employment disputes in non-union settings, may find relevant and useful information in most of the chapters of this book.

After serving as an advocate for many years in arbitration and other types of hearings, the author became an arbitrator and in that capacity served as a neutral arbiter for 17 years in disputes between unions and employers . The view from "the bench" changed his perspective somewhat, although not nearly as much as might be imagined. Without question, however, witnessing the advocacy process from the arbitrator's seat at the table has provided the author with an even greater appreciation of the value of excellent advocacy skills and thorough case preparation. Hopefully, insights gained over the years both from an advocate's outlook as well as a neutral's vantage point have found their way into this volume.

Having been a labor arbitration advocate and neutral in hundreds of cases spanning a career of 55 years and having labored in the legal litigation arena for a portion of those years, the author is absolutely convinced that labor arbitration as it is commonly practiced in the United States and Canada is a far superior means of resolving labor disputes than civil litigation. The speed, simplicity, economy, and finality of labor arbitration has allowed unions and employers in the United States, at least those with mature collective bargaining relationships, to co-exist, if not thrive, in a relatively stable and harmonious environment.

Contrary to the European experience, strikes during the term of an existing labor agreement are extremely rare in this country. Moreover, lawsuits about the meaning and application of existing labor agreements are few and far between. This is due almost exclusively to the wide acceptance and proven effectiveness of labor arbitration. It is a process

that has served unions, employers, employees/members and the public extremely well, and one about which the author is delighted to share his own lessons and experience in the hope that this book will enhance the skills of advocates and make some lasting contribution to the field of labor arbitration.