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# Introduction: Labor Arbitration in Central America

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## SPECIAL FEATURES

### INTRODUCTION: LABOR ARBITRATION IN CENTRAL AMERICA

MARK E. ZELEK\*

The articles in this section are English translations of papers originally presented at a series of conferences on labor arbitration held in El Salvador, Costa Rica, Honduras, and Guatemala from 1987 through 1989. The American Bar Association sponsored this program in conjunction with the bar associations of these four nations. The primary purpose of the conferences was to encourage labor and management in Central America to use arbitration, rather than resort to already over-burdened judicial systems or engage in strikes or lockouts which can disrupt the national economies, to resolve their disputes. The seminars were further designed to train members of the bar in these countries in the use of labor arbitration and to assist them in identifying areas of domestic arbitration law which require reform.

Each of the articles presented describes the law and practice of labor arbitration in the author's own country. As an employment law practitioner in the United States, I was struck by three fundamental differences between our system of labor arbitration and the Central American systems. My article on Labor Grievance Arbitration in the United States and the other articles emanating from the conference reflect these differences which are rooted in the diverse political cultures of our respective nations. One can summarize these differences as follows:

1. *Grievance versus Interest Arbitration.* When one speaks of labor arbitration in the United States one is referring generally to

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“grievance” arbitration. In grievance arbitration, a neutral third party resolves disputes involving the interpretation of the terms of an existing collective bargaining agreement between a union and an employer. “Interest” arbitration, the process in which the arbitrator determines the terms and conditions of a new collective bargaining agreement, is seldom used in the United States, except in the public sector where employees frequently are not permitted to strike. In Central America, conversely, the focus is on “interest” arbitration (which is often referred to in the conference papers as arbitration of collective disputes of an “economic” nature) rather than “grievance” arbitration (often referred to as arbitration of individual or collective disputes of a “legal” nature).

2. *Contract versus Statute.* In the United States, arbitration is largely a creature of private contract between labor and management. There are very few statutes or court decisions (other than several basic legal principles enunciated by the U.S. Supreme Court) which impact on the arbitration process. In contrast, in Central America, each nation typically has an elaborate set of laws which specifically govern the arbitration process.

3. *Widespread versus Infrequent Use.* Probably because it is a creature of consensus between labor and management rather than imposed by law, labor arbitration is routinely used in the United States to resolve disputes which arise during the term of the collective bargaining agreement. Virtually all U.S. collective bargaining agreements provide for some form of grievance procedure ending in arbitration to resolve all disputes over the application or interpretation of the agreement and prohibit strikes or lockouts over arbitrable issues. In Central America, however, arbitration is rarely used in the labor context despite specific laws providing for such arbitration. It was evident at the conferences that organized labor in Central America, in particular, is reluctant to submit to arbitration. This characteristic appears to result from labor’s concern that arbitrators will be partial to management (in Central America there seems to be a lack of trained, impartial arbitrators, unlike the situation in the United States) and labor’s unwillingness to relinquish its ultimate and most powerful weapon—the strike—as a means of achieving its objectives.

The collection of articles that follows represents one of the few sources on Latin American labor law which is available in English.<sup>1</sup>

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1. These articles were translated from Spanish by Prof. Alejandro M. Garro and co-

I hope that these articles will encourage the publication of additional materials in English and promote discussion on comparative labor law. Most important, I hope that the success of this project will stimulate the future exchange of ideas between lawyers in the United States and our colleagues in Central America.