Alternatives

TO THE HIGH COST OF LITIGATION

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Arbitration as a Service with Special Features: A Market-Based ADR Perspective

BY ARTHUR PEARLSTEIN

Arbitration is properly understood as a service offered and procured within a market, albeit a specialized one.

A market, after all, is simply "a means by which the exchange of goods and services takes place as a result of buyers and sellers being in contact with one another, either directly or through mediating agents or institutions." Encyclopedia Britannica online (available at https://bit.ly/37yktWX).

The market for the service known as arbitration is unusual in at least one respect: Unlike the case with most other goods or services, customers for arbitration come in adversarial pairs with different, commonly opposing, preferences in the selection of the service provider. This makes a better understanding of the selection of arbitrators especially important.

In Part 2 next month, I will look in more detail at how parties tend to shop for and select arbitrators within the market. This article examines the nature of the arbitration marketplace, with a special focus on the context of labor (union-management) arbitration.

Given similarities that many *Alternatives* readers will recognize, I expect most of the takeaways are easily transferable to arbitration in other business settings, including those involving commercial and employment relationships.

This two-part series is informed through multiple sources. As Director of Arbitration at the Federal Mediation and Conciliation Service, or FMCS (see fmcs.gov), the institution with the largest labor arbitration roster, numbering nearly 1,000 arbitrators, I oversee a major hub of the labor arbitration marketplace. The FMCS is a 73-year-old independent government agency based in Washington, D.C., operating nationwide, that promotes labor-management peace

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COMING NEXT MONTH: Alternatives gets a new look

MORE ON THE FMCS

Headquartered in Washington, D.C., the 73-year-old Federal Mediation & Conciliation Service is an independent government agency that preserves and promotes labor-management peace and cooperation via conflict resolution processes. In addition to its private sector labor relations work, FMCS also provides broad ADR services, not limited to labor cases, across the federal government; it has more than 60 field and home offices nationwide that provide mediation and conflict resolution services to industry, government agencies and communities. The agency's history and mission, as well as its services, are described at www.fmcs.gov.

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Corporate ADR

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gig economy has precedents in the history of U.S. labor relations. The class action suit plays a similar protective, negotiation role for individual employees in low-wage work. For DoorDashers or others in the gig economy, the individual ability to negotiate is limited.

Part of the problem also is that these low-wage earners are not really getting millions of dollars in these cases. The big winners in class-action suits are usually the firms that bring them. Yes, they are fronting the costs, bearing the risk, but that is a different issue entirely.

So fundamentally, we are looking at attempting to even bargaining positions if class actions are untenable. In her *Epic Systems* dissent, Justice Ginsburg spoke clearly about the issue of "take it or leave it" contracts, noting that Congress never endorsed such a policy. She also alluded to the mutual aid or protection language from the NLRA, but offered no real solutions.

There are two parties to the contract negotiating mandatory arbitration—the company and the individual employee. Thus, short of collective action, what else can tip the scales to fairness?

Perhaps the parties should consider tripartite neutral panels to be in place representing all interests. These could be facilitated by outside neutral providers. Permanent rosters could be available. If selected, each side would then agree on a third to chair the panel. This process is frequently invoked, for example, in Railway Labor Act disputes.

How could individuals be fairly represented? Either from a roster pick or by committees established to assist employees. Worker committees are common in many countries. Would they be a precursor to a union? Not necessarily. Employee committees, if established properly, can serve a helpful function in the workplace (see *Airstream Inc. v. N.L.R.B*, 877 F.2d 1291 (6th Cir. 1989) (available at https://bit.ly/37GeBLn) [The author participated in the case].

Alternatively, companies can make a business decision to simply permit—in the agreement—for cases to be handled as class litigation. Case management certainly makes more sense when cases are either consolidated or handled collectively.

Ultimately, these are economic decisions. If the current docket of class-action litigation and arbitration is too costly and too cumbersome, both in time and efficiency, parties will be forced to either devise or accept more effective and streamlined means to resolve workplace disputes.

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The idea of mandatory arbitration is that it is a resolver of workplace disputes. Unfortunately, it appears that the parties need to re-examine the ground rules. While the courts have ultimately backed this approach, a more likely scenario is for legislation to re-set the balance. It would be better for parties to collectively try to adjust the inversion.

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and cooperation via conflict resolution processes.

I am regularly in contact with myriad parties and neutrals, and receive considerable direct feedback regarding how arbitrators "market" themselves, what parties and arbitrators prefer for how the hub works, and the how the reputation and selection of individual arbitrators plays out in the marketplace.

I have also gleaned much information through designing and conducting courses for arbitration advocates and participating in the training of new arbitrators, most of whom were previously advocates involved in tribunal selection. Additionally, I have attended hundreds of conference sessions with party and arbitrator participants, in which market and selection factors are often directly or indirectly discussed and have presented at many of them. To gather more statistically based information, I have also reviewed aggregate data from FMCS records and have examined most of the study literature on arbitrator marketing and selection.

I. THE ARBITRATION MARKET'S GENERAL FEATURES AND SPECIAL CHARACTERISTICS

Market Principles—There is a great deal of study and debate as to what makes for a "perfect" marketplace. Let it suffice to say that for arbitration, as for most goods and services, there is no such thing.

For discussion purposes, some concise principles that describe how markets work under the right circumstances are as follows:

- Markets involve incentive structures—individual players seek to sell their goods or services to the highest offeror and buyers seek to acquire goods or services of the highest quality for the least cost—weighing costs and benefits in the process.
- Competition is present among those offering goods or services, especially when there are multiple buyers and sellers who can enter and exit the market without great difficulty, and this results in more efficient allocation of goods and services through supply and demand factors.
- Market participants enjoy relatively equal access to information helpful to making their decisions.
- Government may play a limited regulatory role in a market, but rules are generally set by custom and/or agreement among the participants.

Arbitration markets embody each of these principles to varying degrees, as will be discussed more thoroughly in sections below that focus on the labor arbitration context. At the same time, arbitration markets exhibit some special features distinguishing them from many other types of markets.

Special Features—Two arbitration market characteristics are especially worth noting.

The first, as mentioned, involves the fact that customers are not individual entities making their own buying decisions but rather adversarial pairs of parties who must come to terms on their purchase selection.

While the parties may agree on certain broad criteria, each has its own selfish goal—presumably to prevail in the case. In addition, such aspects as arbitration cost and timing may be more important to one rather than another party, to the extent there may be a

perceived tactical benefit to place a counterintuitive weight on such factors.

For example, if one party has substantially more resources than another, it may be willing or even prefer to have a more expensive arbitrator in hopes that it could help persuade the other party to more readily capitulate in settlement. For a similar reason, a party with fewer time constraints may be happy to choose an arbitrator known to have a very busy schedule or be slow in issuing decisions, when time is more critical to the other party.

Another special feature of the arbitration setting is that it involves a type of framework known as a "matching market." The ordinary focus when markets are discussed tends to be on commodity markets, in which who gets what goods or services is dictated by prices alone.

Matching markets are different, as Nobel Prize-winning economist Alvin E. Roth describes: "[I]n many markets, you care with whom you are dealing. In matching markets, you can't just choose what you want, even if you can afford it: you also must be chosen. So prices don't do all the work of deciding who is matched to whom: marketplaces that serve matching markets must be able to do more than price discovery." Alvin Roth, "Marketplaces, Markets, and Market Design," 108(7) *American Economic Review* 1609 (2018) (available at https://bit.ly/3maySgf).

In arbitration markets, participants are concerned with whom they are dealing. Parties want to select an arbitrator likely to understand their side of the case and decide in their favor. Arbitrators tend to want to avoid certain kinds of cases that overtax their expertise or that involve parties that could create a conflict of interest, or that may be likely to undermine their reputation or fail to pay for their services.

Because the adversarial customer pairs go through their own "matching" selection and arbitrators are free to turn down or withdraw from a case, I maintain that arbitration is a special instance of a matching market.

The Labor Relations Context—The relations between U.S. unions and employers revolve around their collective-bargaining agreements that generally cover wages, benefits, and working conditions for a specified period of years.

CBAs tend to be quite lengthy and most often include generalities and ambiguities. With respect to discipline or firing, for example, the CBA typically requires the employer to show that there was "good cause," with both parties aware that such language leaves the development and application of standards to arbitrators.

Moreover, it is impossible for parties bargaining a labor contract to contemplate all within the wide range of problems that may arise in their relationship. As a result, it is inevitable that disputes about the meaning and/or application of contract terms are common.

Indeed, in a seminal case regarding labor arbitration, the U.S. Supreme Court noted that "[t]he processing of disputes through the grievance machinery is actually a vehicle by which meaning and content are given to the collective bargaining agreement." *Steelworkers v. Warrior & Gulf*, 363 U.S. 574, 581 (1960) (available at https://bit.ly/37CUvSx).

Matters subject to arbitration tend to fall in one of two general categories:

(1) Grievances that require an arbitrator to adjudicate rights of union members and/or interpret and apply terms created under an existing agreement; or

(2) "Interest arbitrations," where a third-party neutral is empowered by the parties to determine specified terms and conditions of a new labor agreement.

The Marketplace

The view: One of Washington's highest-profile ADR professionals—both a neutral and an administrator—analyzes the business of arbitration practice, and why it works as it does.

The principle you know: The Matthew Effect—the source of the all-purpose phrase 'the rich get richer'—operates in arbitrator selection.

The Effect's effect: An analysis of costs, using labor arbitration but transferable to other business settings, shows pricing doesn't make the decision. More on selection in Part 2 next month.

Most labor arbitrations are brought as rights or contract interpretation grievances, though interest arbitrations tend to involve much higher financial stakes.

Parties look to the roster of an administering body such as FMCS or the American Arbitration Association by requesting a panel of arbitrators from which to select one to hear and rule upon their unresolved labor dispute. Unless the parties can readily agree on a selection, an arbitrator is chosen from a panel through a process of elimination or ranking specified in their CBA. Under some contracts, parties instead will agree in advance on a limited list of acceptable arbitrators who are rotated through cases or otherwise selected, often referred to as a "permanent panel," though there is generally nothing truly "permanent" about them.

II. MORE ON THE LABOR ARBITRATION MARKET

Motivations and Costs—Even the very provision for arbitration in a contract has an economic motivation. Inclusion of an arbitration clause in the collective bargaining agreement is motivated by the parties' goal of reaping maximum gains from a productive and mutually satisfactory relationship between union and management by incentivizing compliance with the agreement's terms, and providing a relatively clear and efficient path to handle disputes that may arise. Similarly, in the broader business context, arbitration is designed to maximize gains from smooth and steady commercial transactions.

Arbitrators set their fees on a daily, not hourly, basis, referred to as their "per diem" (this can be a bit confusing since in more common parlance "per diem" refers to daily expense allowances). For arbitrators, expenses such as transportation, meals, and hotels are itemized separately from the per diem fees. All fees and billing policies must be provided by an arbitrator in the biography that is sent out by administering entities such as FMCS.

Arbitrators bill for time spent in the hearing, and for "study" time spent reviewing the record, researching, and preparing the award. Most arbitrators do not bill for hours spent scheduling the hearing and handling minor preliminary matters unless the time involved

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becomes substantial.

Some arbitrators, however, charge a so-called "docketing fee" to cover such administrative matters regardless of whether any time ends up being involved. Such a fee is decidedly unpopular among most parties, and while FMCS allows it provided it is set forth in the arbitrator's bio, I personally discourage it.

Most arbitrators charge a cancellation fee, typically based on a full day, when a scheduled hearing is cancelled within a set amount of time (commonly 30 days or 21 days) before the date that had been set. In general, arbitrators have quite low overhead.

It is noncontroversial to say that labor arbitrators wish to receive the highest level of compensation possible for their work, and that parties typically wish to minimize their cost. But there are nuances, reflected in the fact that pricing for arbitrators is relatively inelastic: There is not great sensitivity to an arbitrator's fee basis.

Arbitrators' fees tend to vary based on their location, experience, and popularity. Nationwide, the average FMCS labor arbitrator charges just under $1,500 per day, with fees ranging from a low of $700 to a high of $3,200.

Around 10% of FMCS arbitrators charge under $1,000 and only 7% of them charge $2,100 or more per day, meaning there is less variation than might appear. When the parties exhibit price sensitivity, in my experience it tends to emerge after the arbitrator's invoice is submitted showing the total number of hours spent.

The Code of Professional Responsibility for Arbitrators of Labor-Management Disputes expressly provides that a "fixed ratio of study days to hearing days, not agreed to specifically by the parties, is inconsistent with the per diem method of charges for services." Code at 2K1b(2)(c) (available at https://bit.ly/37AE2xZ).

Parties, however, tend to figure on roughly two study days for every one day of hearing, which happens to be close to the average time reflected in FMCS statistics. They understand this may vary depending on the case's complexity and factors such as the quantity of exhibits.

When arbitrators bill well in excess of this, it frequently leads to complaints that land in my office. Some parties believe that arbitrators with higher fees tend to be more experienced and proficient and therefore bill for fewer hours; this is perhaps part of the reason why there is not great sensitivity to the price as reflected in daily fees—parties may be more mindful of expected *total* costs.

A larger reason for the lack of price sensitivity is likely to be found in considering how parties view the stakes of each case as compared to the expected cost of an arbitrator's services. Typically, the financial cost of losing a case is alone far more than any conceivable bill from the arbitrator.

Furthermore, there is ordinarily more at stake than financial costs. A case outcome can affect morale, confidence in a party's representatives, and even the perception of the balance of power between union and management. In some situations, a case can have direct or indirect precedential value as well. Parties therefore tend to be willing to pay for the arbitrator they think will be best, not necessarily the one they can "afford."

Competition—*Supply and Demand*: FMCS alone has opened between 10,000-15,000 cases for each of the past 10 years based on requests by thousands of parties to collective bargaining agreements—well over 100,000 cases for the decade. With close to 1,000 arbitrators on the FMCS Roster, there is clearly no shortage of buyers and sellers in the marketplace. Competition among arbitrators to be selected by the parties is robust.

Importantly, however, labor arbitration is not a growth market.

Most labor arbitrators find ways to market themselves, although approaches vary and many resist at least calling it "marketing." For new arbitrators, this often includes sending out announcements.

Beyond that, arbitrators participate in conferences and seminars by attending and, preferably, presenting or appearing on a panel. They engage in networking at such functions, despite aversion of many to doing so through social media. Many seek to publish books or articles, and rarely turn down an opportunity to give a speech. Most arbitrators relish occasions to offer training to advocates.

In general, they tend to aim for anything they can do to enhance their visibility and improve the possibility of being selected without creating an appearance of bias.

Barriers to Entry: In market terms, there are significant barriers to entry for labor arbitrators, not unlike those for arbitrators in other types of business-to-business settings. In most instances, being a labor arbitrator is a second career following years of professional service as a labor relations advocate or neutral, or is concurrent with an existing career, such as in academia or as a lawyer representing clients outside the labor and employment arena—labor arbitrators are generally required to give up advocacy roles in the workplace relations setting.

There is no requirement that arbitrators be attorneys unless specified by the parties in a specific case, and many of them are not.

As described above, arbitrators must be carefully vetted before even appearing on FMCS's arbitration roster or that of other major administering entities. Even after being admitted to one or more widely used rosters of arbitrators, there is a further hurdle seriously hampering an arbitrator's ability to be selected, and that has to do with reputation and another special characteristic of the labor arbitration market.

The "Matthew Effect" on Arbitration Market Competition: In the world of science research and scholarship, it is well known that scientists who have previously been successful tend to succeed again, gaining even more prestige and, in turn, still more success. Even those with backgrounds and skills that are virtually the same as those most successful can be left far behind.

This is known as the "Matthew Effect," a theory that "identifies a self-reinforcing dynamic in academic stratification borne out of the tendency for a scientist's past success to positively affect success in the future. The theory is that, if only one of two equally talented young scholars is given an award, the award-winning scholar will go on to have the more successful career. This happens because the winner enjoys resource and status advantages over the nonwinner. These advantages cause differences in future success to further grow, setting in motion a cumulative advantage process of increasing distinction. …" Thijs Bol, Mathijs de Vaan, and Arnout van de Rijt, "The Matthew Effect in Science Funding," 115(19) *Proceedings of the National Academy of Sciences* 4887 (May 8, 2018) (available at https://bit.ly/3jpTZt8). The market for labor arbitrators displays a similar effect.

The Matthew Effect is not unlike what has been variously described with such terms as a "superstar market" or a "winner-take-all market." Consider that only around 50 arbitrators on the FMCS Roster were picked in 10 or more cases in fiscal year 2019, whereas hundreds of

arbitrators had only one or two cases if they had any at all—bearing in mind that a great many labor arbitrators handle additional cases off permanent panels or other rosters.

Almost 40 years ago, labor economist Sherwin Rosen described the types of activities in which "superstars" reign. He explained that "demand for the better sellers increases more than proportionately: hearing a succession of mediocre singers does not add up to a single outstanding performance. If a surgeon is 10 percent more successful in saving lives than his fellows, most people would be willing to pay more than a 10 percent premium for his services." Sherwin Rosen, "The Economics of Superstars," 71(5) *American Economic Review* 845 (December 1981) (available at https://bit.ly/3dMEvyj).

The phenomenon comes down to the matter of reputation, and the question with respect to labor arbitrators is how the dynamics of reputation works.

Though parties and their advocates generally report positive experiences with our arbitration program at FMCS, probably the single most common complaint we get is "I am often sent panels of arbitrators I am not familiar with."

Advocates crave a choice of arbitrators with whom they have personally dealt, or who are well known to them by their prominence, or about whom they can readily obtain pertinent information through their network of connections.

The reputation of arbitrators involves knowledge or conclusions about such aspects as their integrity, fairness, competence, approaches, and ability to run a hearing. Their visibility results from prior experience as well as activities that expose an arbitrator's name to the parties, such as the marketing activities previously mentioned.

Essentially, it is name recognition. Reputation and visibility, of course, can be closely tied to an arbitrator's experience: the more cases an arbitrator has heard over the years, the more likely the arbitrator will become known to the parties. It's the Matthew Effect in action.

The difficulty with gaining a good reputation is a kind of "barrier to entry," discussed above. There appears to be a bandwagon effect in arbitrator selection: "We want this arbitrator because so many others do."

The dynamic is what is often described through the "epidemic model," where an element such as disease or reputation spreads from one person to another. See, for example, Jiyoung Woo & Hsinchun Chen, "Epidemic model for information diffusion in web forums: experiments in marketing exchange and political dialog," *SpringerPlus* 5(66) (2016) (available at https://bit.ly/2HpBGqI).

This helps explain the underrepresentation of minorities among labor arbitrators, as new minority arbitrators struggle to get appointments early on and find it difficult to become visible and establish reputations.

In 2019, FMCS created an apprenticeship program where new arbitrators can work with one or more highly experienced arbitrators from the National Academy of Arbitrators—not only as a valuable learning experience, but as an opportunity for early exposure to parties. It is too early to gauge the success of the program with respect to gaining visibility.

The reputational contagion that helps create "superstar" arbitrators can at least partly be ascribed to imperfect information. Parties may not be able to learn enough about arbitrators who are not superstars to confidently select them.

III. ACCESS TO MARKET INFORMATION ABOUT ARBITRATORS

Information is critical to a well-functioning market; "information asymmetries" usually refer to an imbalance between buyer and seller, such as an individual and a car dealer where the dealer has access to more knowledge.

In the labor arbitration setting, the same concept is more applicable to the balance between the two disputing parties, and there is relative symmetry of information access between the adversaries: Unions and employers tend to be repeat players and/or part of a network of large, repeat players who are capable and productive collectors of information about arbitrators.

To be sure, there are frequently situations where a party may be relatively small and not "plugged in" to the best information sources, however, there are few complaints that unions or employers in general suffer from information asymmetries. Indeed, unions and employers both tend to expend considerable time and money gathering intelligence on arbitrators aimed at making selections that will advantage them.

This does not mean that both parties to a given case have the same information, or that either party can access all the information it would like. In fact, despite the parties' best efforts, information about an arbitrator can be limited, especially when the arbitrator has not yet established a reputation and track record.

The initial source of information is usually the arbitrator biographies maintained by administering agencies and provided to both parties in connection with issuance of requested panels. At FMCS, roster arbitrators must provide, among other items, education and employment history, affiliations related to labor relations and legal practice, experience with specific industries and issues, and daily fees and policies to which they are bound if selected.

Experienced party advocates look to a network of contacts as sources of intelligence. These include union or management groups that track and maintain data, often including narratives, on the experience, approaches, and biases of arbitrators, as well as contacts with individual union representatives and advocates or individual managers, human resources officials, and management advocates.

Often, direct communication with an advocate having appeared before an arbitrator under consideration is the best source of information, because it allows for specific questions regarding how an arbitrator may have handled issues resembling those in the case at hand.

Parties also tend to check on any awards published by arbitrators for insight into what they consider, how they give relative weight to different kinds of evidence and testimony, and how they reach their reach decisions. Arbitrators, however, many of whom are not eager to have their decisions published, are required to have the consent of both parties before submitting an award to a publisher.

Most arbitration decisions, by far, remain unpublished. Advocates can access unpublished awards if others representing the union or employer with which they are affiliated have previously been before the arbitrator.

Many advocates research arbitrator tendencies in other ways, such as by reviewing articles an arbitrator may have written and attending conferences to observe arbitrators' presentations and panel discussions. A frequent occurrence at arbitration symposiums is a "red light/green light" exercise, where a panel is given a series of hypothetical scenarios and

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asked to "rule" either to uphold a grievance (green light) or deny a grievance (red light).

While part of the superstar phenomenon involves a lack of information about a newer arbitrator, this may be dampened by the nature of the arbitrator-matching market involving adversarial pairs of customers, since both parties may not have the same information about an arbitrator or may interpret that information differently. Moreover, when an advocate perceives its case as very weak, it is worth asking if the goal of prevailing is best served by selecting the potentially least-known arbitrator on the assumption that a more experienced one would more readily recognize the shakiness of the case. Anecdotally, I have heard this sometimes happens, though I have no evidence of frequency.

IV. MARKET REGULATION

Labor arbitration is subject to the National Labor Relations Act and law and precedent arising under it, though this is primarily applied to overarching policy questions.

For example, the NLRA, sometimes along with the Federal Arbitration Act, is cited in court precedent giving great deference to labor arbitrators' decisions.

In most respects, however, labor arbitration is largely self-regulating. Many of the rules are typically written into the collective bargaining agreement, and there is considerable custom and accepted practice that also applies, especially regarding how a hearing is run.

Parties may write their own rules or select a particular body of rules on hearing conduct, such as that of AAA, but most often parties defer to the rules set by the arbitrator which are, in turn, based on interpretation of accepted practice. For example, arbitrators are generally very relaxed about rules of evidence.

FMCS has little in the way of rules about hearing conduct. It does apply the Code of Professional Responsibility—see link above—to which it is a co-signatory along with the National Academy of Arbitrators and AAA.

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Arbitration operates in a setting with all the features of a market. The arbitration marketplace exhibits some special characteristics, including as a matching market with adversarial pairs of customers and as a superstar market with a Matthew Effect, that skews competition and restricts the ability of many knowledgeable and talented arbitrators to become visible and establish a reputation leading to frequent selection.

This demonstrates the importance of a closer look at the arbitrator selection process, which is taken up in Part 2 next month.

ADR Advocacy

Ten Tips for Writing a Winning Arbitration Brief

BY ZEE CLAIBORNE

At the close of hearings in a complex commercial case, the arbitration panel will request closing briefs. The process for submitting briefs is often the subject of discussion between the arbitrators and counsel, with the panel making the final determination on the handling of this important step.

Recently, the best practice has included the simultaneous submission of final briefs followed by closing arguments a few days later. That way, the panel has time to review the briefs and prepare questions about the most significant or contentious issues.

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The following are tips for writing a strong closing brief:

1. The closing briefs most persuasive to the arbitrators focus on the key issues and are written in a clear and succinct style. Outline a concise factual background and then move on to a discussion of the issues that are at the heart of the case. Your arguments should flow from the relevant facts and applicable law. Prepare a draft and then review it with an eye to omitting any peripheral matters and unnecessary words. And, by all means, avoid exaggeration of the strengths of your case as well as disparagement of the opposing side. Remember that your professionalism and credibility are important to the persuasiveness of your arguments.
2. Do not try to summarize all the evidence. The court reporter will have prepared a transcript for that purpose. Focus on a limited number of important issues and review the testimony and documents that support your arguments on those issues. Cite to the transcript with specific page and line references and to the documents by exhibit number.

3. Bolster your position with references to key cases. Again, focus on specific excerpts from the most important cases that support your arguments. Blanketing the arbitration panel with dozens of cases will not serve your interests at this late stage in the process. The arbitrators already will have seen the cases cited by both sides. Point the panel to the few cases that you believe will be most persuasive.
4. Attach significant exhibits. While there may be hundreds or thousands of documents that have been introduced into evidence at the hearings, there will be only a limited number that are key to your case.