TRANSCRIPT

The Work Goes On

Guest Host: Harry Katz
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Harry Katz:

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Orley Ashenfelter:

Welcome to The Work Goes On, a podcast from the Industrial Relations Section at Princeton University. I'm your host, Orley Ashenfelter, the Joseph Douglas Green 1895 Professor of Economics emeritus at Princeton University.

In this podcast series of conversations with leading thinkers and practitioners, we are creating an oral history of an entire generation of industrial relations experts and labor economists whose contributions to their fields have been absolutely extraordinary. Our guest today is Harry Katz, the Jack Sheinkman Professor of Collective Bargaining at Cornell University's School of Industrial and Labor Relations. He is renowned for his work in industrial relations and especially for his work on dispute resolution. Harry, welcome to The Work Goes On.

Harry Katz:

Thanks. It's nice to be with you.

Orley Ashenfelter:

Let's begin the discussion by talking about your background. Where did you grow up?

Harry Katz:

Well, I was born in the Bronx, but our family moved to the Bay Area in California. My father was an executive with Seagram's and he got reassigned from the liquor side of Seagram's to the wine side, which I think you'd find of interest given your interest in wines. And he went to work for a small company they had bought at the time called Paul Masson, and I grew up in the Bay Area, first in San Francisco and then in Saratoga outside Los Gatos.

Orley Ashenfelter:

That is a fascinating story. Paul Masson was a very famous old producer in California. I didn't know your father worked for them. Of course, they don't exist anymore.

Harry Katz:

That's right. They got bought by Constellation and my dad eventually became the president, although he reported to the Bronfmans in New York who were still in charge overall.

Orley Ashenfelter:

That's fascinating. So, then I know you went to Berkeley. How did that happen? Where did you go to high school?

Harry Katz:

Yeah, so I went to high school in the San Jose Unified School District and about an hour south of San Francisco and I went to Berkeley as an undergraduate and initially it was a pre-med, but by accident took an economics course and discovered I like to daydream and think about economics more than I thought about biology or physiology. And so, I stayed at Berkeley and continued on to get my PhD in economics there.

Orley Ashenfelter:

That's interesting. So, you did both your undergraduate and graduate degrees. Of course, Berkeley had this phenomenal operation in the labor field. Were all of those people there when you were doing your PhD?

Harry Katz:

Well, yeah, my thesis advisor who had a big effect on my life and career and interest was Lloyd Ulman was there, and George Strauss was there. George was in the business school. Lloyd was in the economics department. Joe Garbarino. And then we occasionally had visits from Clark Kerr who of course was a major figure in our field in the 1950s and had served as a Chancellor of the U.C. system. So, I got to interact or at least get to know a little bit all those people.

Orley Ashenfelter:

That is fascinating. Clark Kerr, of course, is very famous for his line about how to make people out of a university happy. The students want sex, the alumni want sports, and the faculty want parking, which I believe is still true at Berkeley.

Harry Katz:

That's right.

Orley Ashenfelter:

But he was just a giant. I did meet him once or twice in the field. What was your dissertation about?

Harry Katz:

Well, I wrote about public employee labor relations and in particular when I was looking around for a topic… I went to grad school thinking I would write about public finance and the urban fiscal crisis, which was an issue in those days. And then I took Lloyd Ulman's labor economics class and I got really interested in labor issues and in particular Lloyd's perspective. I was looking around for a topic and a strike started in San Francisco by its public employees, and I ended up writing a thesis which sort of traced the post-World War II history of labor relations in the city of San Francisco, how they got to that strike. But I also was interested in a behavioral economics model of budgeting, and I was able to gather

data from San Francisco to basically look over the post-World War II period using econometric analysis, how the city had adjusted its budgets as the relative prices of labor changed over time. So, it was a mixed thesis, mixed methodology. Some of it was qualitative and historical and some of it was basic econometrics.

Orley Ashenfelter:

What did you find out?

Harry Katz:

Well, what was interesting about the strike was that the strike was really led by the craft workers who had a lot of bargaining power, and they did quite well even though they were up against Dianne Feinstein, who was then the head of the city council.

Orley Ashenfelter:

Is that right? Diane Feinstein was trying to suppress their wages.

Harry Katz:

That's right, that's right. There was a whole scandal about, and the newspapers that had led up to the strike of janitors getting, I remember 17,000 dollars a year, and this was interesting to me because it was a part of the beginnings of a taxpayer's revolt, as you may recall. In the mid-1970s, that kind of revolt started in the New York City actually six months before events heated up in San Francisco and then it moved to San Francisco, which historically was known as a real labor town. Nonetheless, a strike took shape and ended up that the employees suffered deep cuts in their pensions in particular. And then also when I traced in my budget model was over the period of time, I learned that the police and fire and the craft workers had done very well over the post-World War II period. And I noticed in the budget that what happened was there were sort of a constant shares rule by department.

So, even though the price of labor was skyrocketing for police, fire, and craft workers, what the city did was keep budgets shares constant. And therefore what happened was employment didn't grow very much at all in those departments, whereas for the cheaper employees, miscellaneous employees, janitors and gardeners and others who worked for the city, their price and wages hadn't gone up over that post-World War II period. And there was a great expansion of employment because their share of the budget stayed constant. So, basically, I was telling a story about labor relations, but also looking at its consequences on the budgeting process.

Orley Ashenfelter:

It must've been exciting. Our podcast last week was with Hank Farber, and I know the two of you arrived at MIT at around the same time. That must have been, and in fact, I'll mention it before we even start. One of my favorite papers of all in the whole field of labor is the paper you did with Hank. It must've been like the first year that you arrived, the two of you started working on *Final Law for Arbitration* and laid out a really, I think to this day, an extraordinary model that I myself have used in empirical work. But how did you end up at MIT?

Harry Katz:

Well, I was on the economics market looking for an academic job. I wasn't married at the time, so I was single and ready to go anywhere, and to be honest, many economics departments didn't quite know

what to make of me because I was kind of an institutional labor relations person, even though I had some econometric components in my thesis. And then I got a call from MIT from Mike Piore, and said they had an opening. Actually, what had happened was Quinn Mills had abruptly left MIT and moved to the Harvard Business School, and they were looking for someone to fill the slot vacated by Quinn. I went out there thinking I didn't have a ghost of a chance to get a job at MIT. I thought they were interviewing me basically as a courtesy to Lloyd, who was a renowned figure. And everybody knew Lloyd, and yet I went and gave my seminar.

They offered me the job that afternoon. I accepted it on the spot, and you're right. Then I started the very same day Hank Farber did and we became really close friends and still are. And then one day we were at a seminar where a paper was being presented, one actually written by Dave Lipsky and Tom Barrocci. They were trying to understand the effects of interest arbitration using data for Massachusetts and I was kind of bothered by the analysis and walking home, I kept thinking about the Hicks Theory of disputes. I had read "The Theory of Wages" because Lloyd had encouraged us to do that, and I really loved the Hicks miscalculation model. And I just started applying and thinking how did that help explain interest arbitration? And then Hank and I were close friends by then and I was actually over at his house that very night. We were doing laundry together and we started talking. As you know, the result we came up with was that the threat of interest arbitration drove negotiated outcomes in states where interest arbitration was available, and therefore it wasn't appropriate as the research had done to sort of compare interest arbitrated outcomes versus negotiated outcomes without recognizing that the negotiated outcomes would respond to that threat point.

And anyway, we built that model on the spot. Hank cleverly sketched it out and we wrote the paper and yeah, I'm pleased to say it became fairly well known in the field.

Orley Ashenfelter:

We should probably explain for those who don't study arbitration and there aren't that many who do that interest arbitration is when the arbitrator makes the decision about the terms of a contract and the other kind of arbitration called grievance or rights arbitration is about arbitrators making decisions about outcomes within the terms of a contract. So, interest arbitration is still pretty rare, I guess, wouldn't you say?

Harry Katz:

Yeah, I mean when I last tried to update my textbook, which has a chapter… textbook with Tom Kochan and Alex Colvin, I counted 19 states that have at least some public employees covered by interest arbitration. But as you know, more often than not, it's a procedure that covers police and firefighters and only a few states extended among those 19 to other public employees. But nonetheless, it got my interest going. You mentioned in the introduction I'm interested in dispute resolution, and that had heightened my interest. I learned along the way about interest arbitration, an interest that continues to this day. My current research is looking at employment arbitration and the whole debate about whether in the non-union sector employment arbitrated outcomes are better, worse or no different than litigated outcomes. So, I've continued to sort of think about things…

Orley Ashenfelter:

Work on it. Yes, and we'll come to that because I'd like to spend some time discussing… I read your most recent paper, which is with, I've forgotten who the co-author…

Harry Katz:

Was, the Dave Sherwyn and Paul Wagner one in the law journal? Yeah,

Orley Ashenfelter:

No, this one is actually, I think it might be in the ILR Review, but I can't remember. But it's a long survey of work in many areas that are associated with the way disputes are resolved in the union sector and then the non-union sector. I think it covers a pretty remarkable developments that I'm not sure anybody would really have predicted. You've obviously been involved in negotiations. Actually, I see you're on one of the public interest committees for the Auto Workers. What does that involve?

Harry Katz:

Yeah, so it's actually a board called the Public Review Board. I'm one of four members of the board. It's a really fascinating panel. It was created in the mid-1950s by the brilliant Walter Reuther, the then president of the UAW, and the Public Review Board was given the authority to hear appeals by workers or local unions challenging the decision, any decision, of the International Executive Board of the UAW. And we are authorized. We have appeals come to us. We hold hearings. We actually have unlimited authority if we conclude that the Executive Board of the UAW acted inappropriately. So, for example, some of the…

Orley Ashenfelter:

Well, I was going to ask you now, we should say the UAW is United Auto Workers. I realize you know that, but maybe not everybody does. I was going to ask you, well, give me an example. I never heard of this organization before. It seems it does sound like Walter Reuther though, doesn't it?

Harry Katz:

That's right, exactly. The brilliant Walter Reuther. And so, some of the basic boilerplate cases, which we often don't hold hearings about, they're so simple, is duty of fair representation cases that might otherwise go to the National Labor Relations Board where a worker files a grievance, then wants that grievance to go all if it's not settled in negotiation to go to a grievance arbitrator. And the union, as you know in most grievance arbitration systems, owns the grievance. So, the union decides whether to bring a case ultimately to arbitration or settle it or drop it in all. And some workers are dissatisfied. And so, we get appeals from those kinds of cases. They're not particularly interesting. The more interesting cases are when a local union gets put in receivership by the International Executive Board of the UAW, and the locals often disagree with that decision and appeal to us, and we make a judgment about whether it was really appropriate to put them in receivership… to take over basically their operation.

Orley Ashenfelter:

Now receivership means that the international union takes over the operation of the local union.

Harry Katz:

At least for a while, and often they kind of conduct a new election for new officers and they straighten out the finances of the local. So, we've had some cases like that that are really interesting, about all the politics going on. We try to separate internal politics from more rational decision making and we hold about three or four hearings a year and then we issue a decision. Our decisions, again, are binding. We've occasionally made awards to individuals who we think were treated unfairly, perhaps inappropriately punished, or their case should have been brought to arbitration. We've made awards up

to a hundred thousand dollars that are paid for by the International to a worker if we think the treatment has really been unfair.

Orley Ashenfelter:

Can I ask you, are there any other unions that have systems like this?

Harry Katz:

I don't know of anyone that gives so much authority to this board. There are some unions that sort of on an ad hoc basis, the SCIU for example, has turned to some outsiders when there's certain issues inside the union and ask for their advice. But we actually have binding authority on the leadership.

Orley Ashenfelter:

You're kind of like a private version of the National Labor Relations Board.

Harry Katz:

That's right. That's a good way to put it. That's right.

Orley Ashenfelter:

And of course, as you know, there's lots of controversy about the NLRB and because it has political appointments, I gather the result of the election will probably change somewhat what the rulings are like. I'm not going to ask you about that at this point. Maybe we could talk about the election at the end, but I'm sure it will have some effect on labor relations. It may be a surprising effect. Now the other thing I wanted to ask you about, have you ever been an arbitrator?

Harry Katz:

So, I've handled just one or two cases, just special cases that I was asked to participate in, but I'm not a regular arbitrator, so I kind of view my role on the public review board as being like an arbitrator. We hear cases, the arguments aren't so different. I mean the difference is that these are disputes as you pointed out sort of within the union, not disputes between union and management, but it kind of feels like an arbitration process.

Orley Ashenfelter:

You've written about the National Academy of Arbitrators I know. And about how difficult it is basically to find diversity within the arbitration ranks, just I guess because of the fact that you need a lot of experience. What is your take on that?

Harry Katz:

No. That's an issue I have been working on and others of us at the Scheinman Institute, which I direct, we're trying to increase that diversity. As you've sort of suggested, the national academy, the average age of the arbitrator is over 70. And so, the parties, they want to pick people that they know well, that they feel comfortable with, and they're very hesitant for that and maybe some other reasons, maybe implicit bias and all, to accept arbitrators who are of a different race or even to accept female arbitrators have only gradually risen to become sizable members within the NAA. And we have data surveying the NAA at their request. The NAA is a National Academy of Arbitrators. There's 500 members in the US and Canada. They're kind of renowned, really high-quality arbitrators that again, have a lot of

experience. And we've been working with that organization and also some of our own initiatives to have some training programs to be more inclusive, to provide ways…

The hardest thing is not just training people how to be an arbitrator. That's kind of easier. They shadow existing arbitrators. Those arbitrators give them feedback. It's getting acceptance of the parties. So, the hard part is getting people chosen initially for simple basic cases so they can build a pedigree and a reputation and then get selected. You can kind of understand the positions of the union management, often attorneys representing unions or management. They're very worried that they're going to get blamed if the decision goes against their party's interest. And then the party says, “oh, there was this arbitrator we're not familiar with. It's your fault for picking them.” So, that leads to, along with other factors, a real conservative bias in the selection process.

Orley Ashenfelter:

Yes. I imagine, of course, the workforce is more diverse probably than the arbitrators. So, that must cause some difficulty.

Harry Katz:

That's right. And part of the reason we motivate why the field should be more open is just for that very reason for the legitimacy of the process. Many of the employees are very diverse given the changes underway in the U.S. workforce. And I think to sustain the reputation and legitimacy of the arbitration profession, at least this is what we say to the parties, is they've got to be more inclusive. The arbitrators have to look more like the workforce.

Orley Ashenfelter:

And the arbitration, of course, has become more common in part because, and I think we should talk about this. It's something I wasn't quite aware of until I read your paper. I was not aware that something like half of American employees who are not in unions, therefore they don't have any agent to represent them unless they hire a lawyer, they don't have an agent to represent them. If there's a dispute, something like half of them are now covered by mandated arbitration. In other words, the employer won't hire you unless you agree to use arbitration rather than the court system. Now I suppose part of this is because the court system is expensive. I didn't realize that half of all employees were covered by these.

Harry Katz:

Yeah, well, let me first proudly say that that number is produced by my former student who's now my dean, Alex Colvin. That's what his dissertation was about. And the number is 56 percent, very close to what you said. To the surprise of many myself included, in the early 1990s, the U.S. Supreme Court extended the use of mandatory arbitration, which had been allowed through a law passed in the 1920s dealing with securities disputes between stockbrokers and their clients. And they said that firms could create mandatory employment arbitration. And just to sort of emphasize the point, these are cases not so much about discipline, although that occasionally arises. It's about basic employment rights, discrimination cases, sexual harassment cases. So, by being mandatory, what the court said is corporations could create the procedure. By the way, they can choose the arbitrator. They could pay for the arbitrator. They could limit the damages. And the Supreme Court, I think mistakenly, said firms could do that. I'm firmly a believer in the value of employment arbitration. I just think it should be voluntary. And I also would prefer that there be due process protections, and you'd have to have either legislation

from Congress or mandates from the courts to get those sort of due process protections, to get the kind of protections that exist in the unionized sector where you at least have some input.

Orley Ashenfelter:

Don't you think that is the problem, right? I mean, for example, there has been mandatory arbitration for credit card disputes.

Harry Katz:

That's right.

Orley Ashenfelter:

And in fact, there were some very shady operations that were just stamping out decisions, one after another, that had nothing to do with the facts. No one listened to anything. They just stamped them out. They were just a way to avoid the fact that they want to take these cases to court. And I suppose in the employment area, it's much more serious. I mean, credit card disputes can be very serious, but I imagine it's more serious.

Well, first of all, and I appreciate by the way, I didn't realize he was your student, Alex Colvin, but I appreciate it. Now was wonderful. You're absolutely right. Wonderful work. By the way, we'll come back to the business about sexual harassment because I think requiring mandatory employment arbitration when there's a dispute about sexual harassment has become an issue that Congress has finally started to take up.

Harry Katz:

That's right.

Orley Ashenfelter:

It's pretty obvious. Harvey Feinstein, I mean people like this, Donald Trump himself, many people who've resorted to this arbitration to avoid any public accusation of sexual… We'll come back to that. But first of all, what kind of dispute resolution systems do these mandated arbitration in the non-union sector, which we should add. I think the problem is in the union sector, you have an agent, you have the union who acts on your behalf. You don't have anybody like that when you're all by yourself. I know this well because my wife often would act as an agent for some of my graduate students when they had to try to negotiate with their university, and she did it for me too. She has a few rules like don't say yes until you've thought about it for a day or two. There's like half a dozen rules that she would give to them. But tell me what kind of operation do they have?

Harry Katz:

You mean what exists commonly in the United States? Well, firms have created mandatory procedures. There's a lot of variation. I will add that the American Arbitration Association, which is the main body that administers procedures and provides lists of arbitrators, they did create with input from arbitrators a so-called protocol that provides guidelines regarding protections that provide more due process for the employees. By now, there are many of the cases, but not all unfortunately, many do follow the protocol, even though they're quote "mandatory." The arbitrators require that the employee have some say about the procedure and there's more fairness in the use of evidence and the awarding of penalties and all. So, the system is partially corrected. The sort of the flaw that the Supreme Court said, the

corporation could sort of willy-nilly do whatever it wanted and create procedures. Many, many employment arbitration hearings are conducted under the rubric of the AAA protocol, but unfortunately not all of them are.

And so, some of them are very imbalanced in the way you've suggested where the company picks the arbitrator, pays the arbitrator, and limits the damages. I think there should be, again, statutory reforms encouraging voluntary employment arbitration. So, let me just talk a little bit about that. There are some firms, I'm doing research on them, particularly in the hospitality sector, Lowe's and Four Seasons for example, they have voluntary employment arbitration, and they offer the employee, not require it, the employee has a choice. They don't have to accept. This is pre-dispute procedures, if you want. We get into that issue pre-dispute versus post. Pre-dispute, they decide whether they're going to be under the rubric of employment arbitration, and if they agree to it, they get just cause. The employer agrees to not follow and abide by employment at will. And we've studied those firms, and they have found that over 95 percent of employees accept voluntary employment arbitration in exchange that they can't go to court with their claim, but they no longer are bound by employment at will. They have a just cause procedure governing their potential layoff. So, there's those kinds of things emerging among some firms, not widespread, but some firms.

Orley Ashenfelter:

We should explain that most people don't know even this, even though they're covered by it, that the American system at will employment basically means that an employer can fire you for any or no reason. There are of course exceptions now in statutes. Employer can fire you for any or no reason and you can quit for any or no reason unless there are exceptions that are made. So, the idea would be that you agree to voluntary arbitration, but then that means the employer no longer can just fire you at will.

Harry Katz:

That's right. It's not widespread. Again, I wish it was, and again, I'd want to have a system in which this was more widespread, that the procedure was not mandatory. It was voluntary, and then the parties themselves could develop, what's the trade off? What do I get if I give up the right to go to court with my employment right claim, discrimination, or some other claim. What do I get in exchange? Is it just cause or do I get something else? Again, I don't want to oversell it. It's not used widely. It's just I think a good example of some of the adaptiveness that exists in our system.

Orley Ashenfelter:

Do you know what prompted someone like Four Seasons to adopt this?

Harry Katz:

Yeah, I think some of it was… It was public relations. They wanted to be known as an employer that respects employee input. I think for recruitment purposes, they went on to be able to say, "we're not requiring it. It's not mandatory. We're not like those other bad firms that require that you give up those rights to litigate. We have this alternative." And again, they just started experimenting with it and they found that many employees were quite happy with it.

Orley Ashenfelter:

Well, we were helping to give them some publicity too. Four Seasons hotels are not really the ones that my budget normally fits.

Harry Katz:

That's right. Well, you could sleep better if you're in there knowing that those employees don't have mandatory employment arbitration. That's voluntary.

Orley Ashenfelter:

That's true, absolutely true. I know now that Congress has started to intervene to some extent with respect to the sexual harassment issue because this is just so, it's such a hot button issue.

Harry Katz:

Right.

Orley Ashenfelter:

What do you think of what's happened there because it still seems to be a lot of litigation about it?

Harry Katz:

Yeah, so Congress did pass a bill that essentially said you can't have mandatory employment arbitration cases dealing with sexual harassment. I actually think the bill said you can't even have voluntary employment arbitration over that. I'm sympathetic like you are as to why people didn't want mandatory employment arbitration for sexual harassment. I would also just say, I don't think mandatory employment arbitration for any issue is fair, not just for sexual harassment, but at the same time what I'm getting at, I think employment arbitration, if it's accompanied by due process protections and is voluntary, can be an effective way of settling disputes. Particularly think about individuals who have a claim that has relatively modest value. You're not going to be able to find a plaintiff attorney to pick up your dispute dealing with 30,000 dollars or 40,000 dollars in a claim. Our research shows plaintiff attorneys usually don't take cases until they're much larger than those numbers and all. So, what's the recourse to those employees… there, employment arbitration can be quite healthy. It's quick; it's less costly; it's pretty efficient. Arbitrators, you know them as well as I. They can be very fair as long as they're not perversely selected only by the firm, but if they come out of the AAA roster or other reputable places. So, I'm one of those who's basically promoting a third way. I don't like mandatory employment arbitration. I don't want to ban it. I want to encourage voluntary employment arbitration with protections over due process.

Orley Ashenfelter:

It's quite interesting. I was aware of your interest in this, but I think it's a much more important subject than most Americans appreciate because of the fact that the mandatory arbitration has been built into so many employment arrangements. I was totally unaware of that, where people really are at a loss, I think, to decide how they would promote themselves.

Harry, it's been an absolute blast talking with you today.

Harry Katz:

Thanks. I've enjoyed it too, Orley.

Orley Ashenfelter:

Our guest today has been Harry Katz, the Jack Sheinkman Professor of Collective Bargaining at Cornell's School of Labor and Industrial Relations. Please join us again for the next episode of The Work Goes On:

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