A Coach's Notes[1]

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This House would abolish superdelegates.

Contents

- **Introduction**
- **Extending an Argument**
- **How Does Binding Arbitration Work?**
- **Fiat, Solvency and Counterplans**
- **My RFD from the Final Round**

Introduction

This edition relates to the February 4, 2023, CDA tournament and topic. Previous year's editions can be found through the Training Materials page on the CDA web site. Accompanying this document are my notes from the final round at Greenwich presented in two formats, transcript and flow chart.

These Notes are intended for your benefit in coaching your teams and for the students to use directly. I hope that you will find them useful. Please feel free to make copies and distribute them to your debaters.

I appreciate any feedback you have, good and bad. The best comments and suggestions will find their way into subsequent issues. I would also consider publishing signed, reasoned comments or replies from coaches or students. If you would like to reply to my comments or sound off on some aspect of the debate topic or the CDA, I look forward to your email.

Extending an Argument

Whether you call it refutation, rebuttal, clash or something else, the essence of competitive debate is acknowledging and responding to your opponents' arguments, not simply presenting your own. Debaters often do this incorrectly, either by simply asserting that what the other side said is incorrect, or by repeating their own argument to the contrary.

A proper reply extends the line of argument, adding new information or analysis that had not been present before. In the final round at New Canaan, the MG presents a great example of how to do this that is worth examining.

At the end of the LOC we find both teams advocating the same solution—binding arbitration—even though the motion is about the right to strike. In their third contention, Gov notes making strikes illegal doesn't prevent them. In the worst situations there will be contentious, violent, illegal strikes, costly and hard to resolve. A regime permitting strikes in law but including binding arbitration will prevent this. Opp, also in their third contention, argues binding arbitration is better than a strike in satisfying all parties, and so we can dispense with the right to strike entirely.

The MG stands and addresses this now central issue directly: what happens if you legislate binding arbitration, in one instance without the right to strike, and in the other instance with the right to strike. Binding arbitration is still a negotiation, and in a negotiation you need bargaining power, something that compels the other side to consider your position seriously and to be willing to compromise. The MG suggests that without the right to strike you have three situations: an illegal strike, with the consequences given in the third Gov contention; workers quit, and here the MG refers back to the harms presented by Opp at the top of the LOC in their example of a biology teacher who quit; or worker burnout and poor performance due to unsatisfactory pay and working conditions, referring back to the second Gov contention about promoting reform. The threat of a strike gives public sector unions negotiating power without which the government and the arbitrator could ignore the union's concerns and demands.

The MG does an excellent job of moving the issue forward in three ways. First, he identifies it as a central point of clash. Second, he relates it back to the motion: how does the right to strike, or its absence, affect binding arbitration. Third, he includes previous contentions and examples *from both sides* to illuminate the analysis.

A Grace Note

While an excellent analysis, the MG launches immediately into his analysis, rather than explaining where he is going. The contentions should be considered the default organizing principle for every constructive speech. Anyone flowing the round has the contentions listed out. A judge expects you to follow the lead of the previous speakers unless you say you are going to do something different. Surprises are nice, but when speaking it's best to let the audience know where you are going.

It would have been better for the MG to have started with something like this:

> *You have just heard both sides agree that binding arbitration is preferable to having a strike. Gov is advocating for the right to strike, not arguing that a strike is preferable to a settlement that avoids one. So the central issue in the debate is why the right to strike is essential to making binding arbitration work for both the public sector unions, for the government employing them, and most importantly*

for the public. Consider a world with binding arbitration but in which strikes are illegal…

You may know what you are going to say and how it fits with the rest of the debate. Your audience will not unless you tell them.

How Does Binding Arbitration Work?

Both sides suggest binding arbitration is simply a third party enforcing a compromise in a disagreement without providing much detail. One of the judges on the panel voted against Gov and in favor of Opp because they felt the Opp argument was more consistent with how binding arbitration actually works.

Binding arbitration is governed by rules, sometimes in law, sometimes in a contract, and sometimes agreed to ad hoc by both sides when negotiations stalemate. In some cases binding arbitration is used to limit or takes the place of the right to strike: if negotiations deadlock, the rules that apply may mandate binding arbitration, or the rules may allow an outside party such as a Governor, government official, or legislature to invoke binding arbitration.

While not precisely on point, in December Congress passed and President Biden signed a law imposing a contract that railroad union leadership had negotiated with rail companies, but only 8 of 12 railroad unions had ratified. This was done to prevent a rail strike. Because railroads are critical to a functioning economy, and because they operate interstate, both the companies and the unions are heavily regulated under Federal law.

Binding arbitration is also not always "binding". In cases where both sides agree to binding arbitration, the arbitrator's decision usually cannot be rejected. In other cases, the arbitrator's decision may still be subject to a union vote or some form of government approval, so a strike may still occur. In any case, a union unsatisfied with the result may strike illegally, or engage in other job actions such as a slowdown, "work to rule" or a sick-out. (All terms worth looking up if you are unfamiliar with them, and include "blue flu" in your search.)

In this round, both teams agreed on a simple interpretation of binding arbitration, a third party enforcing compromise when negotiations deadlock. Gov explains the threat of strike is necessary to bring public sector employers to the table and to consider union demands seriously. While not entirely accurate in all situations, it's not entirely inaccurate either. Opp might have argued binding arbitration replaces the right to strike, and consequently by advocating it Gov was not accepting the burden of the resolution, but that would have been a different debate. Opp has an opportunity to challenge, but does not, so I am comfortable voting as I did.

Fiat, Solvency and Counterplans

Debate theory can be useful in understanding how arguments interact and whether they will be effective. In this round both sides had options they may not have been aware of and which would have changed the debate.

Fiat

In presenting its case, Gov fiat—the right to propose change—is limited to the terms of the motion and anything that might be reasonably expected or required as part of the motion. Here the motion is about the right to strike. It says nothing about binding arbitration. Yet by the MGC it is implicitly clear that Gov's "plan" includes both the right to strike and binding arbitration. The MG's analysis makes no sense otherwise.

Opp proposes binding arbitration as a sort of counterplan in their third contention. So we have the odd situation of both sides supporting the same solution. Opp could have contested the MG's analysis that it is the threat of strike that makes binding arbitration work, but doing so accepts that Gov has the right to propose binding arbitration.

A better argument for Opp to make is that Gov lacks fiat to propose binding arbitration, just as Gov would have no justification to propose raising public sector worker pay or increasing school spending. None of these are part of the motion. If public sector workers are given the right to strike, in some cases law or contract may currently include binding arbitration, in other it may not.

Gov could argue that the right to strike requires binding arbitration in the case of public sector unions. Given the importance of keeping police, fire, etc., on the job, government bodies that grant the right to strike are highly likely to also mandate binding arbitration. That logic is a bit thin. Opp can also argue that imposing binding arbitration neuters the right to strike, and so Gov isn't really implementing the motion.

Solvency

Fiat is important because Gov's burden is to persuade the Judge to adopt the motion. Gov does this by claiming adoption will gain benefits or reduce harm. If the benefits Gov claims from adopting the motion come not from the right to strike but rather come from binding arbitration, Opp should argue there is no reason to adopt the motion, in other words that Gov has no solvency.

On my flow, Opp's failure to reply to the MG's analysis was fatal. Both sides agree binding arbitration is good. Gov explains the right to strike is needed to make binding arbitration effective, linking the benefits of binding arbitration to adoption of the motion. Opp only replies that binding arbitration is better than a strike. Gov wins solvency.

Counterplan

There is another way to look at the positions of the two sides in this debate. Opp makes a potentially fatal mistake by offering binding arbitration as a sort of counterplan. In a debate Gov is proposing the motion while Opp is defending the status quo. If Opp offers a counterplan, Opp is abandoning the status quo for a world with the counterplan to oppose Gov's world with the motion. But there is another possibility: do both the motion and the counterplan, unless there is some inherent reason that prevents adopting both. If either the motion alone, or the motion plus the counterplan, is better than the counterplan alone, then one should vote to adopt the motion and Gov should win the

round! In this case, the MGC should thank Opp for proposing binding arbitration and proceed with an analysis of the synergy between it and the right to strike.

Unless of course Opp argues that binding arbitration actually takes away the right to strike, and so the two options are mutually exclusive…

Complicated? Yes! But a good debater should understand fiat, solvency and counterplans and be able to apply and explain them in the context of a round.

RFD

This is my RFD written after judging the final at New Canaan.

This was rather an odd round, in that both sides agree that binding arbitration is preferable to a strike. Both make this argument in their third contention, Gov that it is a way of reducing the risk of catastrophic--they mean violent, prolonged--strikes, and Opp that it is a way of avoiding strikes all together.

What wins the debate for Gov is the analysis in the MGC that the threat of a strike is necessary to make binding arbitration effective in achieving workers goals as well as protecting the public by achieving reforms. The MG suggests three cases where workers enter binding arbitration without the ability to threaten a strike: an illegal strike to enforce their demands; workers steadily quitting their jobs due to unsatisfactory conditions; or poor job performance as a result of burnout. Opp' reply is mostly that binding arbitration is better than having a strike, which Gov essentially concedes but which is also beside the point Gov is making. (Opp also states a few times that it is better to have tired workers suffering from burnout rather than no workers at all, which is a bit tone deaf.)

As one judge on the panel noted noted, the analysis of binding arbitration isn't entirely correct. Binding arbitration is kind of a soft prohibition to strikes: yes, you can strike, unless the government or the law or the labor contract requies binding arbitration to prevent a strike, in which case your strike would be illegal. The details vary from state-to-state, by industry, and by union contract. My decision is based on the the debate as presented by the two teams, not how greater knowledge might have affected some of the arguments.

I think the most common Opp mistake I see in debates is for the LOC not to spend nearly equally time on the Opp and Gov case, at least 3 of the 8 minutes on Gov. The LO presents a good Opp case, but barely touches the first Gov contention and ignores the rest of the Gov case. The MO then spends almost the entire MOC on the Gov case, barely coming back to the MG's replies to the Opp case. But at this point the MG has moved the issues on, so Opp is one step behind. Opp might still have lost even if the LOC presented replies to each of the Gov contentions, but they would have been in a better position to deal with the new analysis in the MGC.