APPENDIX C

ANALYSIS OF RETURNS OF THE 'LEGISLATIVE SURVEY'

On November 1, 1954, the Secretary, upon the direction of the Board of Governors, sent to all members of the Academy a form requesting the following information:

Question:

Based on *your experience* as an arbitrator, do you think that there are any problems with reference to *voluntary labor arbitration* as practiced *in your State,* which should be remedied by the enactment of new legislation or the repeal of existing legislation?

Answer: NO..... YES.....

(If "Yes", please describe very briefly the problems.)

68 forms were returned. Of these, 11 checked "yes" and 57 checked "no." Of the "no" group, 4 indicated that their answer was based on the form of the question asked, and that they are of the opinion that attention to the legislative problem is desirable.

Analysis Of Eleven "Yes" Returns

These came from members of the following states:

California (1)
New York (2)
Ohio (3)
Pennsylvania (1)
Rhode Island (1)
Utah (1)
Not indicated (2)

Paul Prasow (California) stated that the answer to the question has been covered adequately by Sam Kagel of San Francisco in his article "Labor and Commercial Arbitration under the California Arbitration Statute," 38 Calif. L. Rev. No. 5 (1950).

The Ohio returns referred attention to the fact that §2711.01, Ohio Revised Code, excludes collective bargaining and employment agreements from a general provision making arbitration agreements valid and enforceable. The opinion is expressed that this law should be amended. Thomas C. Begley reports:

> I have had a recent experience where a company in this State did not wish to follow the arbitration procedure as set up in the contract but the union insisted that the controversy be taken to arbitration. I was appointed as arbitrator, set down a hearing date, and the company filed a petition in the Court of Common Pleas of this County, asking for a permanent injunction against me from hearing the matter. This litigation is now in the Common Pleas Court of Cuyahoga County and in order for the union to have it properly heard, it would be necessary to ask that the case be removed from the State Court to the Federal Court as the Federal Court is specific that the provisions of the Taft-Hartley Act prevail over the arbitration Sections of the Code of the individual States.

Joe Stashower states:

> There have been occasions when companies refused to proceed with arbitration even though their contract with the union contained an arbitration clause.

The New York returns mention as problems the fact that judicial review in New York is unduly broad and, on the other hand, that the New York statute, as interpreted, provides inadequate means of preserving the right to raise the issue of arbitrability.

The Pennsylvania return indicates as problems the lack of legal means to enforce agreements to arbitrate, the non-enforceability of awards, and the lack of status of the arbitrator.

The Rhode Island return mentions that the Rhode Island statute authorizing arbitration to a limited degree excludes arbitration agreements in the employer-employee field.

The Utah return, from Sanford H. Kadish refers to his article in 3 Utah Law Review 403 (1953) on "Labor Arbitration and the Law in Utah." This article recommends the amendment of the Utah

statutes relating to arbitration, pointing to a number of problems, the most important of which is stated to be the failure of the Utah law to make enforceable and irrevocable agreements to arbitrate future disputes.

Analysis of Returns Giving "No" Answers, But Indicating Other Views Based on General Information and Experience

These returns were received from Archie Cox, Bill Simkin, Bill Wirtz and Gerald A. Barrett. Their comments are quoted below:

> *Cox*—The form of the question requires a negation answer. If I could take other information and experience into account the answer would be affirmative.
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> *Simkin*—As question is phrased, my answer is No. The underscored words "Based on *your experience*" explain the answer because I do not happen to have any personal experience that indicates a problem. The answer appears not so clear on the basis of over-all appraisal of voluntary arbitration in the state. We have discussed this matter among Phila. arbitrators, based on a report of a special committee, (headed by M. Herbert Syme) appointed by the Governor and the Phila. group has reached no final conclusions.
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> *Wirtz*—I have answered this question narrowly and only in the terms in which it is put. I have not, *in my experience as an arbitrator,* encountered problems which seemed to me to require legislative attention. My more general reaction would still be that legislation making agreements to arbitrate enforceable, and limiting very strictly the judicial review of arbitration awards would be desirable. I can not, however, testify that any actual experiences of my own would confirm the desirability of such legislation.
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> *Barrett*—There were many problems in North Carolina prior to 1951, but they were substantially remedied in 1951 by the passage by the State Legislature of a new law.