

APPENDIX C

REPORT OF COMMITTEE ON LAW AND LEGISLATION

January 31, 1959

The various legislation committees of the Academy have been concerned for some eight years with the question of legislation affecting labor dispute arbitration. Following is a chronological record of the results:

1951 annual meeting—the following resolutions of the committee were adopted:

“1. The subject of legislative regulation of labor dispute arbitration is one in which the Academy has an obvious interest. It might seem, then, that the Academy should not hesitate to take a position, not only on the desirability of such legislation, but also on its specific content. In view of the fact, however, that the members of the Academy may be thought to have a personal interest, as arbitrators, in freedom from restriction, except at the instance of the parties who employ them, your Committee believes that any move in the direction of committing the Academy on questions related to such legislation should be approached with great care. The Academy should avoid both precipitous and self-serving opposition and hasty approbation of statutory controls. Your Committee is not yet ready to recommend or suggest an Academy position on the subject, but recommends that it be authorized and directed to continue its examination, and, at the next annual meeting of the Academy, make a recommendation on the question whether the Academy should take a position on the principle of statutory regulation of labor arbitration, and, if so, what that position should be.

“2. The detailed provisions of a regulatory statute are important and deserving of critical attention whether or not the Academy shall decide to oppose, approve, or remain silent with respect to such legislation on principle. Your Committee, therefore, recommends that it be authorized and directed to continue its examination of this phase of the subject and, at the next annual meeting of the Academy, make recommendations as to the substance of such legislation, irrespective of the position, if any, which the Academy may take on the principle of statutory regulation. It is suggested that particular attention be given, in the light of the New York experience, to the problem of

defining the areas of finality of decision as between arbitrators and courts."

1952 annual meeting—The committee reported that it had been unable to complete its 1951 assignment. It was directed to continue its work.

May 2, 1953—The committee reported a set of basic principles which it recommended in connection with the substance of labor dispute arbitration legislation. This report was never acted upon by the Board of Governors or by the membership of the Academy.

1955 annual meeting—The following resolutions were adopted:

"RESOLVED, That the Academy refrain from taking any official position on the question of whether there should or should not be statutory regulation, either at the Federal or State levels, with respect to voluntary labor dispute arbitration.

"RESOLVED, That the Academy may consistently refrain from taking an official position on the principle of statutory regulation, while at the same time indicating its judgment as to the desirable content of regulatory statutes."

At the same time the committee was directed to make its views known to the Commissioners on Uniform State Laws concerning the content of the draft Uniform Act then under consideration. In August, 1955, the Commissioners adopted a Uniform Act and the House of Delegates of the American Bar Association approved such Act a few days later.

1956 annual meeting—The committee reported its appraisal of the Uniform Act. The general conclusion of the committee was that the draft act had many good features, but was nevertheless subject to serious objections as a statute covering labor dispute arbitration. The following resolution was passed:

"At the January, 1955 Annual Meeting it was resolved that the Academy should refrain from taking any official position on the question of whether there should or should not be statutory regulation of voluntary labor dispute arbitration, but that the Academy could, consistently with this policy, indicate its judgment as to the desirable content of regulatory statutes. Since then the proposed Uniform Arbitration Act, covering both labor dispute and commercial arbitration, has been promulgated. An analysis of this proposed Act by our Legislative Committee and certain of our regional groups shows that it contains certain deficiencies and defects insofar as it would apply to labor dispute arbitration. It is therefore the judgment of the Academy that the widespread adoption of the proposed Act in its present form would be a disservice to labor-management relations.

"RESOLVED, therefore, that the Academy oppose the enactment of the proposed Uniform Arbitration Act in its present form insofar as it would apply to labor dispute arbitration;

"RESOLVED, further, that the Board of Governors of the Academy, in consultation with the Academy's Committee on Law and Legislation, prepare a formal statement of the position of the Academy concerning the proposed Uniform Act, such statement to include specific proposals of changes deemed necessary to make the proposed Act acceptable;

"RESOLVED, further, that the Board of Governors take appropriate action to make known the position of the Academy on the proposed Uniform Act."

Subsequently, in August, 1956, the Uniform Act was amended in certain respects.

1957 annual meeting—The committee reported the reactions of certain of its members with respect to the significance of the amendments of the Uniform Act. Subsequently, the Board of Governors constituted a special committee to consider and report on the Uniform Act as amended.

October, 1957—The special committee filed its report, dated September 22, 1957, which included the following recommendations:

"1. Despite the amendments to Section 12 of the Uniform Act made in August, 1956, the Act remains subject to serious criticism insofar as it would apply to labor dispute arbitration. Accordingly, the Academy should continue to oppose the adoption of the Act in its present form. (The Committee's detailed criticisms of the Act are stated in an Appendix to this report.)*

"2. Analysis of the Uniform Act indicates that any attempt to cover both commercial and labor dispute arbitration under a single statute would be unwise and impracticable; accordingly, the Academy should not attempt to prepare and propose amendments which would meet legitimate criticisms of the Act insofar as it would apply to labor dispute arbitration.

"3. While the Academy should continue to oppose the enactment of the Uniform Act, it should nevertheless recognize that the subject of arbitration legislation is a matter of increasing general interest, and that the Academy has a responsibility to be constructive, rather than simply negative, on this subject. This general interest is manifestly heightened by the decision of June 3, 1957, by the U.S. Supreme Court in *Textile Workers Union v. Lincoln Mills*, 40 LRRM 2113, holding that agreements to arbitrate grievances are enforceable by the federal courts under Section 301 of the Taft-Hartley Act and that the substantive and other law to be applied is "federal law" (though, by fairly clear implication, not the U.S. Arbitration Act).

"4. The Academy should discharge its responsibility by developing, promulgating and proposing a Labor Dispute Arbitration Act, which could be enacted at either federal or state level, and at the federal level

* Editor's Note: For the text see THE ARBITRATOR AND THE PARTIES (Washington: BNA Incorporated, 1958), Appendix B, pp. 192-199.

by amendment of the Taft-Hartley Act or otherwise. The Academy's Committee on Law and Legislation, or a special committee, should be given such research and other technical assistance as may be necessary, within reasonable limits, to enable it to discharge this task as expeditiously and competently as possible."

The Minutes of the meeting of the Board of Governors include the following notation with respect to this report:

"... Although the Board approved the recommendations and accepted the report without a resolution of approval, the report and the recommendations will be printed and distributed to the entire membership of the Academy prior to the annual meeting. A resolution was adopted discharging the committee with the thanks of the officers and members of the Board of Governors. The President was thereupon authorized to appoint a special committee charged with the responsibility for implementing the recommendations of the Russell Smith Committee. A fund will be established to cover the necessary costs which will be incurred. The Board of Governors voted to appropriate the sum of \$1,000 as an initial contribution to the fund, and the problem of seeking additional funds was to be placed before the Board of Governors at the next meeting in January, 1958."

1958 annual meeting—The Minutes of the meeting contain the following:

"Bob Howard reported on the Special Committee on Legislation. His report was read and it was suggested that it be mimeographed and distributed to the Membership. He stated that the committee had met on two occasions and had been allocated the sum of \$1,000 to carry out its program. It was suggested that a subcommittee be appointed to work on a preliminary draft of an act which would meet the criticisms leveled at the Uniform Arbitration Act. The President stated that Russell Smith, Gabe Alexander and Louis Crane had been appointed as members of the subcommittee of the special committee to develop an act along the lines suggested and recommended by the members of the Special Committee on Legislation.

"Howard further reported that only a small portion of the funds allocated to the committee had been expended. It was the intention of the committee to retain a young attorney to do the preliminary basic research required. Among the matters considered by the committee were the following questions:

- "A. Should the Norris-LaGuardia Act be amended or limited?
- "B. Should the proposed statute provide for exclusive jurisdiction in the Federal Courts?
- "C. Should the proposed act serve to amend the U. S. Arbitration Act?
- "D. Should it permit unions to sue on behalf of employees directly in the courts?

"In view of the fact that the report was a progress report, no formal action by the membership was taken."

The Committee on Law and Legislation, appointed for the past year, has considered that it should begin the preparation of a draft labor disputes arbitration act which the Academy might wish to promulgate as expressing the best judgment of the Academy with respect to the content of a statute regulating labor dispute arbitration. The tentative conclusion of the Committee is that, in view of the *Lincoln Mills* decision (353 U.S. 448), such statute should be proposed for enactment as a federal statute. The Committee now has before it for consideration a second draft of such proposed statute.

The complexities of this project are considerable, and the Committee has not yet been able to resolve all of the questions involved. Accordingly, the Committee can simply report "progress" at this time.

It may be desirable that the preparation of such proposed act be expedited so that, if the opportunity becomes available, the proposal could be considered in the 86th Congress. As a practical matter, this will be possible only if the membership decides to invest the Committee, subject to approval of the result by the Board of Governors, with the authority to proceed to develop the proposed act on behalf of the Academy. The alternative will be simply to direct the Committee, if this is desired, to continue its work and present a draft act for consideration by the membership at the next annual meeting. The Committee makes no recommendation on this matter, but refers the matters to the Board of Governors and to the membership for instructions.

An additional question which has been raised is whether, irrespective of the development and promulgation of a federal labor disputes arbitration act by the Academy, the Academy should, on appropriate occasions, seek to be represented as *amicus curiae* in important instances of litigation in which are involved issues of transcending importance to the labor dispute arbitration process. Such litigation is likely to be increasingly important, especially in the federal courts. The Committee makes no recommendation on this matter, but refers it to the Board of Governors and to the membership for consideration.

Respectfully submitted

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