

APPENDIX D

SURVEY OF ARBITRATION IN 1964

Following up the survey of arbitrators and arbitration for the calendar year 1962 (published as Appendix C to the proceedings of the seventeenth annual meeting), the Academy decided to conduct a similar survey of arbitration, but not of arbitrators, for the calendar year 1964. The Survey Committee, consisting of William Gomberg, Richard Mittenthal, Frank C. Pierson, Arthur M. Ross, and Irving Bernstein, chairman, had responsibility for this project. With minor changes and additions, the questionnaire used for 1962 was approved by the Board of Governors.

The Secretary of the Academy mailed copies of this form to all the members in early 1965. A procedure was maintained to preserve the confidentiality and anonymity of the responses. They were, in fact, seen only by the person who made the computations and she destroyed the forms when her job was done.* By late May 1965, a total of 119 responses had been received, of which 98 were usable and 21 were from people who were inactive for one reason or another in 1964. Returns were received from 37 percent of the Academy's membership. This was a considerably lower response than the 58 percent on the 1962 survey. The statistical tabulations for 1964 are shown beginning at page 246.

This is the fourth statistical survey conducted by the Academy, others having been made for the years 1952, 1957, and 1962. In so far as possible the narrative summary of the 1964 results that follows will draw comparisons with these earlier surveys.

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*The chairman of the Survey Committee is grateful to Miss Susanne Stout for making these computations.

Ninety-eight arbitrators in 1964 rendered decisions in 3980 cases, of which 3747 were grievance and 183 were contract cases. The average caseload per arbitrator was 40.1, slightly higher than the 39.8 of 1962 and considerably above the 35.7 of 1952. In addition, these arbitrators were designated in 1178 cases in which no award was rendered due to withdrawals, settlements, or cancellations, an average of 12.1 cases per arbitrator, which is above the 9.8 of 1962. The great majority of 1964 cancellations, 91.5 percent, occurred prior to the hearing; only 1.6 percent took place during the hearing and 6.9 percent after the hearing. In the case of cancellations, 60.6 percent of the arbitrators now charge some fee, up from the 57 percent of 1962. The two most common reasons for charging are inadequate notice (usually less than 24 or 48 hours) and actual appearance at the hearing.

Among the issues submitted to arbitration in 1964, the most common in descending order of incidence were: disciplinary (18.8 percent), contract interpretation (16.7 percent), job classification and work assignment (10.1 percent), management rights (7 percent), health and welfare (4.9 percent), overtime and hours (4.6 percent), seniority in demotion and layoff (4 percent), seniority in promotion (3.8 percent), partial writing of new contract (3.3 percent), arbitrability, jurisdiction or grievance (3.2 percent), and vacation and holidays (3 percent).

Of the 1964 caseload of arbitrators, 63.8 percent consisted of *ad hoc*, 32.2 percent of permanent umpire, impartial chairman, or umpire-chairman combined, and 4 percent of permanent panel of arbitrators cases. This is a marked change from 1962, showing a sharp increase in umpire-chairman cases and declines for *ad hoc* and panel cases. Eighty respondents in 1964 served with a "permanent" title under 177 agreements and 57 served on panels of arbitrators under 121 agreements. Umpireships and impartial chairmanships are most common in the following industries: airlines, steel, clothing, rubber, aerospace and missiles, electrical, metal trades, and meat packing. Panels are most common in the airline, electrical, newspaper, oil, and machinery industries.

Seventy-eight arbitrators served in a neutral capacity other than that of arbitrator in labor disputes in 241 cases in 1964. This service was heavily concentrated among Railway Labor Act

emergency boards, state employee relations or mediation boards, and NRAB cases.

The single arbitrator system, especially in grievance cases, continues as much the most popular arrangement, being used in 81 percent of the 1964 cases, virtually the same proportion as in 1962. Over this two year period tripartite boards rose in use from 16 to 18.3 percent, but wholly at the expense of all-neutral boards, which dropped in 1964 to less than 1 percent. In contract cases in 1964 tripartite boards were used almost as frequently as single arbitrators.

In all the umpireships reported for 1964 the parties chose their own umpire. Among sources for naming *ad hoc* arbitrators in 1964, the parties led with 42.5 percent, a continuing slide from 64.7 percent in 1952 and 44 percent in 1962. In 1964, FMCS ranked second with 24.9 percent, a marked rise from its third rank and 17 percent in 1962. AAA was third with 19.2 percent, a decline from second and 20.6 percent in 1962. The state agencies came in fourth with virtually the same percentage as 1962, 9.7. The slide of railroad work since 1952, noted for 1962, continued for 1964 to 3.5 percent.

Twelve arbitrators reported service in 48 nonlabor disputes in 1964, of which 12 were commercial arbitrations.

Ninety-four arbitrators published a total 609 awards in 1964. This appears to be an increase in both the proportion of arbitrators publishing and the number of awards published per arbitrator.

In the cases before respondents in 1964, 53.8 percent of the employers were represented by attorneys or consultants and 30.2 percent of the unions were so represented. There is little change from 1962. Stenographic records were made in 20.1 percent of the 1964 cases, a decline from 24 percent in 1962.

In 1964, 28 arbitrators attempted mediation in one or more arbitration cases before them while 70 did not. Only 3 arbitrators in 1964 served in 61 cases in which the parties had agreed on the outcome in advance and the arbitrator rendered their decision as his award. Two others refused to accept such cases when offered to them.

Of 97 arbitrators who responded for 1964, only 9 had their awards appealed to the courts, 3 to be confirmed and 6 to be set aside. The former were all confirmed. Of the 6 appealed to be set aside, 3 were confirmed, 2 were pending, and 1 was set aside. In 1962, as well, only 1 award was set aside.

The average daily rate charged in grievance cases in 1964 was \$142, up from \$126 in 1962. In contract cases there was virtually no change: \$151 in 1964 and \$152.60 in 1962. In 1964, 25 arbitrators served in 41 cases for which they received no fee and 34 arbitrators were unable to collect 136 fees.

The time elapsed in 1964 cases between the date of filing the grievance and the date of arbitration hearing clustered at 1 to 3 months (38.9 percent) and 3 to 6 months (28.8 percent). Both of these figures are higher than 1962, suggesting that the parties may be a bit quicker in getting into arbitration. The time elapsed from the final submission to arbitration to the date of issuance of the award concentrated at 16 to 30 days (58.2 percent), 31 to 60 days (17.7 percent), and 1 to 15 days (16.4 percent). Though arbitrators in 1964 got out fewer decisions within 15 days than they did in 1962, the proportion issued within 30 days (74.6 percent) in 1964 was virtually the same as 1962.

The overwhelming majority of the decisions (96.2 percent) were issued in the form of an award and an opinion. Only 2 percent were awards without opinions and 1.8 percent were memorandum or summary statements. This was little change from 1962. Only 16 percent of the arbitrators offered the parties customarily a choice of these forms, up slightly from 1962.

SURVEY STATISTICS

1. 1964 arbitration cases in which decisions rendered (98 responses)

	<i>Number</i>	<i>Average per Arbitrator</i>
Grievance cases	3747	38.2
Contract cases	183	1.9
	—	—
Total	3980	40.1

2. *Distribution of 1964 caseload by issue (96 responses)*

	<i>Number</i>	<i>Percent</i>
Partial writing of new contract	160	3.3
Total writing of new contract	7	0.1
Contract interpretation	823	16.7
Arbitrability, jurisdiction or grievance	157	3.2
Auxiliary pay	65	1.3
Disciplinary	925	18.8
Guaranteed employment	21	0.4
Incentive rate standards	136	2.8
Job classification and work assignment	496	10.1
Job evaluation and workloads	140	2.9
Management rights	342	7.0
Overtime and hours	227	4.6
Pay for time not worked	80	1.6
Health and welfare	241	4.9
Seniority in promotion	187	3.8
Seniority in demotion or layoff	196	4.0
Union security	47	1.0
Vacation and holidays	149	3.0
Working conditions	92	1.9
Miscellaneous*	426	8.7
Total	4917	100.0

3. *1964 arbitration cases in which designated as arbitrator but did not render decisions due to withdrawals, settlements, or cancellations (97 responses)*

Number of cases	1178
Average per arbitrator	12.1

4. *Timing of these cancellations (97 responses)*

	<i>Number</i>	<i>Percent</i>
Prior to hearing	1074	91.5

*Including the following: fact finding (50), NRAB (49), subcontracting (14), medical rejections (6), pay for arbitration hearing (2), crew consist (1), termination of profit sharing plan (1), representation (1), appropriate bargaining unit (1).

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During hearing	19	1.6
After hearing but prior to award	81	6.9
Total	1174	100.0

5. *Fee policy with regard to cancellations* (94 responses)

	<i>Number</i>	<i>Percent</i>
No charge	37	39.4
Do charge	57	60.6
Total	94	100.0

Circumstances under which charges made:

Inadequate notice (usually 24-48 hours)	35
If appears at hearing	34
If withdraw after prehearing work	7
If day not available for other use	4
Repeated postponements	2

6. *1964 caseload by tenure of arbitrator* (98 responses)

	<i>Number</i>	<i>Percent</i>
<i>Ad hoc</i>	2584	63.8
Permanent umpire	573	14.2
Impartial chairman	194	4.8
Permanent umpire and impartial chairman combined	535	13.2
Permanent panel of arbitrators	163	4.0
Total	4049	100.0

7. *1964 service as umpire or member of panel of arbitrators* (98 responses)

80 arbitrators served as umpire or with some other "permanent" title under 177 agreements; 57 arbitrators served on panels of arbitrators under 121 agreements

8. *1964 industry distribution of umpireships and panels* (93 responses)

	<i>Umpireship</i>	<i>Panel</i>
Aircraft and airlines	9	10

	<i>Umpireship</i>	<i>Panel</i>
Steel	7	3
Clothing	7	0
Rubber	7	2
Aerospace and missile	6	3
Electrical	5	10
Metal trades	4	2
Meat packing	4	0
Chemical	3	3
Newspaper	3	4
Restaurant	2	0
Steel fabrication	2	3
Auto	2	2
Office equipment	2	0
Furniture	2	3
Utility	2	2
Railroad	2	1
Textile	2	3
Food distribution	1	2
Camera manufacturing	1	0
Transit	1	3
Laundry	1	0
Building trades	1	0
Food chains	1	2
Paper	1	1
Dry cleaning	1	0
Auto parts	1	0
Auto supplier	1	0
Ordnance	1	0
Tacks	1	0
Precision testing equipment	1	1
Handbag	1	1
Hat manufacturing	1	1
Ceramics	1	1
File and binder manufacturing	1	0
Wholesale distribution	1	1
Appliances	1	0
Aluminum	1	0
Hospital	1	0

	<i>Umpireship</i>	<i>Panel</i>
Bars	1	0
Trucking	1	3
Nonferrous mining	1	0
Shipbuilding	1	1
Plastics	1	1
Jewelry manufacturing	1	0
Paint	1	2
Agricultural equipment	1	1
Oil	0	4
Machinery	0	4
Sugar refining	0	3
Brewing	0	3
Atomic energy	0	2
Brass	0	1
Department stores	0	1
Glass	0	1
Bowling equipment	0	1
Firearms	0	1
Candy and confectionery	0	1
Flour milling	0	1
Trailer manufacturing	0	1
Tool and die	0	1
Municipal government	0	1
Longshore	0	1
Forgings	0	1
Screw and bolt	0	1

9. *1964 cases in which served as neutral but not as arbitrator in labor dispute (95 responses)*

78 persons had 241 cases

10. *Breakdown of these cases:*

Railway Labor Act emergency board	86
Taft-Hartley Title II board	0
Other Presidential board	2
Other:	
State employee relations board	52
NRAB	49
N. Y. S. Board of Mediation	35

System board of adjustment for airlines	7
Card checks	3
Minimum wage board (Puerto Rico)	2
Actor vs. agency	1
Executive order	1
Representation	1
AFL-CIO dispute	1
Informal	1
	<hr/>
Total	241

11. *Arbitration systems in 1964 cases (92 responses)*

<i>Single Arbitrator</i>		
	<i>Number</i>	<i>Percent</i>
Grievance cases	3177	97.9
Contract cases	68	2.1
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Total	3245	100.0
<i>Neutral Board</i>		
	<i>Number</i>	<i>Percent</i>
Grievance cases	22	78.6
Contract cases	6	21.4
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Total	28	100.0
<i>Tripartite Board</i>		
	<i>Number</i>	<i>Percent</i>
Grievance cases	668	90.9
Contract cases	67	9.1
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Total	735	100.0

12. *Method of selecting umpires (28 responses)*

Of 28 persons who held 45 umpireships, all were selected by the parties

13. *Sources of 1964 ad hoc arbitrations (93 responses)*

	<i>Number</i>	<i>Percent</i>
Parties	1102	42.5
FMCS	646	24.9
AAA	497	19.2

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State agencies	251	9.7
NMB and NRAB	91	3.5
Courts	3	0.1
Other	5	0.2
Total	2595	100.1

14. *Service in nonlabor disputes in 1964*
12 persons reported such service in a total of 48 cases of which 12 were commercial arbitrations
15. *1964 awards published*
94 arbitrators had a total of 609 awards published
16. *1964 cases, representation of parties by attorneys or consultants (95 responses)*
- | | <i>Number</i> | <i>Percent of total cases</i> |
|--------------------------|---------------|-------------------------------|
| Unions so represented | 1200 | 30.2 |
| Employers so represented | 2142 | 53.8 |
17. *1964 cases, reporter present to compile stenographic record (98 responses)*
798 cases, or 20.1 percent of total
18. *1964, attempted to mediate settlements (98 responses)*
28 arbitrators attempted mediation in one or more cases;
70 arbitrators made no attempt
19. *1964 cases, parties agreed on outcome in advance and selected arbitrator to render their decision as award (94 responses)*
89 arbitrators had no such cases; 3 arbitrators had 61 of these cases; 2 arbitrators reported that the parties tried to get them to serve but they refused; several arbitrators expressed indignation over this process
20. *1964 cases, appeals to courts to set aside or confirm (97 responses)*
88 arbitrators had no cases appealed to the courts; 6 had
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cases appealed to be set aside and 3 to be confirmed; the outcome of the appealed cases was as follows:

<i>To Set Aside</i>		<i>To Confirm</i>	
Confirmed	3	Confirmed	3
Pending	2	Pending	0
Set Aside	1	Set Aside	0
	—		—
Total	6	Total	3

21. *1964 ad hoc cases, usual daily rate charged*

	<i>Number</i>	<i>Average</i>	<i>Range</i>
Grievance cases	90	\$142	\$ 75 - 200
Contract cases	24	151	100 - 300

22. *1964 free arbitrations (98 responses)*

25 arbitrators had 41 free arbitrations

23. *1964 cases in which arbitrator unable to collect fee (98 responses)*

34 arbitrators were unable to collect 136 fees

24. *1964 cases showing time elapsed from date of filing grievance to date of arbitration hearing (82 responses)*

<i>Months</i>	<i>No. of Cases</i>	<i>Percent of Total</i>
Less than one	110	4.0
1 - 3	1065	38.9
3 - 6	789	28.8
6 - 12	433	15.8
12 - 18	188	6.9
18 - 24	59	2.2
Over 24	95	3.5
	—	—
Total	2739	100.1

25. *1964 cases, showing time elapsed from final submission to arbitration (hearings or briefs) to issuance of award (97 responses)*

<i>Days</i>	<i>No. of Cases</i>	<i>Percent of Total</i>
1 - 15	612	16.4
16 - 30	2170	58.2

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31 - 60	661	17.7
61 - 90	126	3.4
Over 90	160	4.3
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Total	3729	100.0

26. 1964 cases, form of decision (98 responses)

	<i>Number</i>	<i>Percent</i>
Award and opinion	3780	96.2
Award without opinion	79	2.0
Memorandum or summary statement	69	1.8
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Total	3928	100.0

27. Those with custom of offering parties choice of alternatives given in No. 26 (98 responses)

	<i>Number</i>	<i>Percent</i>
Do not offer choice	82	84
Offer choice	16	16
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Total	98	100