

APPENDIX C

ANNUAL REPORT OF SPECIAL COMMITTEE ON
DISPUTES SETTLEMENT IN PUBLIC
EMPLOYMENT, NATIONAL
ACADEMY OF ARBITRATORS, 1969-1970 *
(April 1, 1970)

The members of this committee were appointed by President Hill in March 1969. Three meetings of the full committee and two meetings of subcommittees have been held. Interim reports were delivered to the Board of Governors at the May and October 1969 Board meetings. This report summarizes the discussion and action during the year.

I. TRAINING PROGRAMS

A major area of interest, recognized at the outset, was the urgent need for *training* in the new and unaccustomed roles required of the neutral in the public sector. As legislation has been passed, or as unions have expanded their activities in this field absent legislation, large numbers of Academy members have been requested to assist in the resolution of disputes—primarily as mediators or fact-finders (on some occasions as arbitrators) on new contract issues, and, to a lesser extent, as hearing officers in representation and unfair-labor-practice disputes. With a few exceptions, the task was one for which the typical Academy member was completely unprepared.

In addition to Academy members, large numbers of non-members, usually inexperienced in both the public *and* private sector, have been called upon to serve. The size and rapid acceleration of the need, the serious public impact of work stoppages flowing from unresolved disputes in these areas, and the recognition that existing public and private labor relations

* Members of the Committee for 1969-1970 were: Howard Block, Milton Friedman, Howard Gamsler, Ronald Haughton, Charles Killingsworth, Jean McKelvey, Eva Robins, Ralph Seward, William Simkin, Russell Smith, Robert Stutz, Martin Wagner, Arnold Zack, and Chairman Eli Rock.

agencies in this field clearly could not cope alone with the training needs involved led to early recognition by the committee that the matter represented an urgent problem of national scope calling for a type of activism not typically associated with the Academy.

Not surprisingly, the need had begun to produce its own response even before the committee commenced to function. A number of Academy chapters had, it was learned, already sponsored or participated with others in organizing training programs at the local level. Using the experience of the latter, the committee was instrumental in stimulating additional programs by other chapters. In all, there have been a total of approximately nine training programs at the local level to date.

These programs have varied in nature and content, but for the most part they have dealt with procedural and substantive aspects of the problem in the public sector and have provided specific training in the techniques of mediation and fact-finding. Attendance has generally included Academy members plus non-members serving or aspiring to serve as neutrals in this field. In the light of the one-shot nature of the programs thus far, and in apparent recognition of the more pressing nature of the mediating and fact-finding need, little effort has thus far been expended in training for the important bargaining-unit issues which some members are handling.

With an eye to the continuing need for local-level training programs beyond the term of the present committee, there has been discussion of possible university-based research designed to monitor the experiences thus far and to produce new, detailed curricula and other program material to be made available to local NAA chapters and other groups interested in pressing this type of training. The committee has not carried that aspect to fruition, but on a short-run basis has sought to serve as a type of informal clearance house for the chapters by making available to each chapter chairman a summary, prepared by Arnold Zack, of the various local programs held to date, with analysis and suggestions. Attached to the Zack report were copies of some of the materials used, most notably a detailed syllabus prepared by Eva Robins for a six-week, two-hours-per-

week session run by the Office of Collective Bargaining in New York City.

At the national level, the committee has undertaken another new and unprecedented effort. The committee early concluded—in recognition that many chapters would not have had programs of their own and that even for members attending local sessions, the depth of the problems clearly warrant “continuing education”—that an additional, two-day training session specifically devoted to the public sector should this year be considered as a separate part of the Academy’s annual get-together. A mail poll of the membership revealed sufficient interest and, with Board approval, a comprehensive program was arranged for Montreal, on the two days preceding the regular meeting.

Notwithstanding the large effort required (not only a kind of combination program-and-arrangements committee role by several members of the committee, but substantial and unprecedented burdens on Harry D. Woods and his secretary, as well as on Clare B. McDermott and his staff), the feeling, at this stage, is that the program will prove its worth and may well serve as a precedent for future activities of this type. The intention for the Montreal program, again, is for some preliminary overview of the procedural and substantive, with primary emphasis thereafter on techniques of mediation and fact-finding.

II. OTHER ASPECTS OF THE PROBLEM

The above represents a summary of the specific or tangible accomplishments of the committee during the past year—all in the area of training. Nevertheless, a number of other important, related considerations have been discussed, some or all of which may require further Academy treatment in the coming year. These may be summarized as follows:

A. *Relationship to Overall Shortage of Arbitrators*

The effort expended on training has stemmed not alone from a recognition of the need to prepare our members in these new roles and from a recognition of our professional responsibility to help fill the gap in a pressing new area of public concern, but also from an awareness that the public sector, with its great shortage of trained manpower, might furnish an ideal laboratory for training and experience, from which new recruits might also be furnished for the increasingly pressing

shortage of arbitrators in the private sector. There are important overlaps of experience in the simple art of conducting a hearing, in both sectors. Although subject matter is often different on the public side, it is also often similar. Acquaintanceship with parties, a helpful ingredient for almost any newcomer, may be derived from contact with management or union representatives who appear in both sectors. The art of decision-writing can be advanced, at least in part, by the experience of writing fact-finding reports. Of particular importance, the conspicuous shortage of black and female arbitrators can, *possibly*, begin to be alleviated by the training experiences available in the public sector.

Whether these developments can in fact materialize, or whether they represent an idle dream that will only point up the need for more drastic steps, it is too early to know. The committee itself has little information at this stage on which to base any conclusions as to the actualities of the experience thus far. This entire aspect, perhaps as only one part of the larger subject of shortage in the profession, clearly merits further consideration by the Academy during the coming year.

B. *Relationship to Membership Standards—Constitution and Bylaws*

The Academy may very well receive an increasing number of applications for membership from individuals whose experience is largely public sector mediation and fact-finding. The overlap of interest may require joint consideration of that problem by this committee and the Membership Committee. Possible changes in membership standards, and indeed the activity of the instant committee up to now in such new, “non-arbitration” fields as mediation and fact-finding, may both require consideration of possible changes in the Academy’s constitution and/or bylaws. Further consideration of these aspects appears warranted.

C. *Liaison With Other Agencies*

Since various state agencies, as well as the AAA and the FMCS, are now directly concerned in the appointment of neutrals in the public sector, as well as in their training, consideration was given to the establishment of a liaison group between the Academy and other agencies, collectively or separately. There is some precedent in the past liaison relationships with the AAA, FMCS, and the NLRB. Given its other burdens this year, the instant

committee was unable to proceed in that direction, but the matter may warrant further consideration.

D. *Academy Role Regarding New Public Sector Legislation in the States*

Only a minority of states have thus far enacted definitive legislation for public sector labor relations, and a sizable number of the acts passed reveal major deficiencies. Individual members of the Academy have played a role in some of the legislative processes, but the Academy as such has played no role. It is the view of the committee that notwithstanding the likely extension of this type of legislation, and the legitimate interest of the Academy in at least certain portions of the state acts, future contributions in this arena must be limited to the role of the individual member. Any comprehensive step in this direction is regarded as beyond the practical means and capacity of a small, limited membership organization like the NAA.

E. *Arbitration of New Contracts
Labor Relations in the Federal Sector*

Little or no attention has been given thus far to the training of neutrals for the arbitration of "interest disputes" in the public sector. At the same time, at least one state, Pennsylvania, has enacted a compulsory arbitration act for policemen and firemen, under which many Pennsylvania members of the Academy have already served. It is not beyond possibility that arbitration may eventually become a widely accepted pattern for the resolution of new contract issues in other sectors of public employment. The individual arbitrator's role in this connection may flow naturally from his experience already gained in mediation and fact-finding, but it may also require an additional type of training. The matter should warrant further exploration, particularly considering the potential dimensions of this aspect of the problem in the future.

At the federal level, Academy members have thus far played a role under the Kennedy Executive Order (10988). That role may be expanded under the recent Nixon Executive Order (11491). Little attention has been given by the Academy thus far to possible training and other aspects of the neutral's role at the federal level, but this field too may conceivably present new demands on very short notice. Some advance thought, at

least, may be warranted for that sector at this point in history, and before the New Jersey PERC-type of "overnight crisis" materializes. One conclusion seems certain on the whole experience thus far: When a new program has been instituted, there is almost always an immediate turning-for-assistance to the experienced neutrals in the field of labor relations—to wit, members of the Academy. To date, we have fallen short in meeting that demand, both in terms of experience and in terms of available numbers.

III. CONCLUDING REMARKS

There is no intent here to suggest that the Academy can possibly meet all the demands, present or potential, that have suggested themselves in the course of this committee's exploration of the problem. Very possibly the public agencies and the universities will shoulder the future brunt of much of what has been discussed in this report. Nevertheless, given its role as the only national organization of professional arbitrators, the Academy will not easily be able to stand aside from a phenomenon that is clearly of unprecedented scope and importance both for the Academy and its individual members.

The exact dimensions of the problem and the desirable future role of the Academy are still not clear. One thing is clear, however: The special committee should be continued during the coming year, and the nature and scope of its function, reexamined in the light of the committee's past year of experience, should receive the high-priority attention of the incoming officers and Board of the Academy. The members of the committee so recommend.

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