problems are the due process problems set forth with deep insight by Willard Wirtz in his paper at the Eleventh Annual Meeting of the Academy in 1958.

Finally, should the Code of Professional Responsibility extend to the other roles played by neutrals? One of the significant changes that has taken place in recent years, primarily because of the growth of public employee bargaining, is the increasing involvement of arbitrators in mediation and fact-finding. I would suppose that most members of the Academy have served in a neutral role other than arbitrator. Consideration should be given to including provisions in the Code relating to these special neutral roles after weighing the differences in practices and procedures of such neutrals and arbitrators.

Conclusion

Each period through which we live seems troubled and beset with difficulties. Today we are overwhelmed with problems that seem insoluble. I will not recite the litany all too familiar to you. The ethics of our profession seem inconsequential by comparison with the major crises that confront the nation, the states, and the cities, but the fact remains that we are the mainspring of an important system of dispute resolution and that the improvement of this system and the functioning of those who profess to arbitrate is one of the primary goals of this Academy. To this end I have attempted to suggest in bare-bone fashion some of the principal factors that should be taken into consideration in the drafting of the new Code. But I am fully aware that the generalities of my remarks mask a morass of difficult and delicate problems which will confront the draftsmen. We have not heretofore avoided challenge, and I trust you will agree that the time has come for a Code of Professional Responsibility for Labor Arbitrators.

II. ARBITRATOR'S DUTY OF DISCLOSURE—A SEQUEL

HERBERT L. SHERMAN, JR. *

The choice of the title for this paper is explained by the fact that it is a sequel to my prior article on the labor arbitrator's duty of disclosure, which was published last year in the

* Member, National Academy of Arbitrators; Professor of Law, University of Pittsburgh, Pittsburgh, Pa.

University of Pittsburgh Law Review [1] and in the *Arbitration Journal.*[2] At the outset of this paper I shall summarize the contents of that article, which will serve as an introduction to a discussion of some developments not covered in the prior article.

Summary of Prior Article

Part I of the prior article covers the basis and general nature of the duty of disclosure. Compliance with this obligation is important because an arbitrator's award may be invalidated by a court if the arbitrator has not properly fulfilled his duty. Part I discusses relevant provisions of the Code of Ethics of the National Academy of Arbitrators, the Rules of the American Arbitration Association, the Regulations of the Federal Mediation and Conciliation Service, the United States Arbitration Act, the three-way split of the Supreme Court of the United States in a commercial arbitration case involving the duty of disclosure, and the Canons of Judicial Ethics. These sources are in general accord with that part of Rule 3 of the Code of Ethics of the National Academy of Arbitrators which requires an arbitrator ". . . to disclose to the parties any circumstances, associations or relationships that might reasonably raise any doubt as to his impartiality . . . for the particular case." However, unlike some of the other sources cited, the Code of Ethics does not require an arbitrator to disqualify himself for any given case. The Code simply requires an arbitrator to comply with his duty of disclosure, and the parties are then free to regard him as qualified or not qualified.

Part II of the prior article notes that there are varying philosophies concerning the function of arbitration. Some see arbitration as primarily a substitute for litigation, while others view labor arbitration as primarily a substitute for the strike. Some consider an arbitrator to be like a judge, but others stress the differences between a judge and a labor arbitrator. These differing views concerning the functions of arbitration and the role of the labor arbitrator frequently affect the position that one takes on the question of what a labor arbitrator must disclose to the parties.

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[1] 31 *U. Pitt. L. Rev.* 377 (1970).
[2] 25 *Arb. J.* 73 (1970).

Part III of the prior article describes a survey, which I made, of the views of arbitrators and of labor and management representatives on what an arbitrator must disclose to the parties. A questionnaire, with 30 questions based on actual situations, was prepared. Each question could be answered by "Yes" or "No" or "It Depends." The purpose of the questionnaire was to give some concrete meaning to the legal, ethical, and moral abstractions that are used to characterize the arbitrator's duty of disclosure. The prior article described the general conditions, assumptions, and limitations involved in the survey, and it reports the comments of many of the respondents.

The results of the survey were tabulated for arbitrators as a category, for union representatives as a category, and for company representatives as a category. An Appendix attached to the prior article also breaks down the returns from arbitrators into four categories: (1) lawyer and teacher, (2) neither, (3) lawyer, non-teacher, and (4) non-lawyer, teacher. For the most part there was no significant variation in the answers of these four categories.

Part IV of the prior article reports the tabulated results of the answers of arbitrators and of union and company representatives to the 30 questions in the questionnaire and analyzes the returns. The 30 questions cover the following 12 topics: prior consulting work of an arbitrator, lectures and conference participation, the professor-arbitrator's role at a university, stock ownership, travel and hotel problems, prior social and civic contacts with representatives of the parties, membership in a "conflict of interest" organization, prior contacts in arbitration, prior memberhip in a union, hortatory expressions to arbitrator, fellow arbitrator as representative of a party, and the role of the arbitrator in political maneuvers.

Subsequent Developments

Several relevant developments have taken place since my prior article was published. During the past year a New York court has invalidated a labor arbitrator's award because of the arbitrator's failure to comply with his duty of disclosure. The Special Committee of the American Bar Association on Standards of Judicial Conduct has issued a preliminary statement and interim report on matters which are relevant to the arbitrator's duty of dis-

closure. I have reviewed a series of cases involving disqualification of a justice or judge and a series of commercial arbitration cases. Moreover, I have made further analyses of the answers of arbitrators and of company and union representatives to my 30-question questionnaire.[3] For example, I have compared the answers of arbitrators from the Northeast, the Midwest, the South, and the Far West to determine whether there is any significant difference in the answers to the questions on the basis of geographical regions. I have also compared the answers of company and union representatives from the Northeast and the Midwest to determine whether there is any significant difference in the answers to the questions from these representatives. This paper will relate these subsequent developments to the specific topics analyzed in the prior article.

As a general observation, however, it should be noted that my recent studies show that there are only a few significant variations in the answers of arbitrators from the various parts of the country to the 30 questions in the questionnaire. And the prevailing views of company representatives from the Northeast are the same as the prevailing views of company representatives from the Midwest (except for answers to two questions concerning ownership of shares of stock). Likewise, the prevailing views of union representatives from the Northeast are essentially the same as the prevailing views of union representatives from the Midwest.

Appendix A to this paper shows the number and percentage of arbitrators in the Northeast, the Midwest, the South, and the Far West who answered each of the 30 questions with a "Yes," a "No," or "It Depends." [4] Appendix B shows the number and percentage of union representatives and company representatives in the Northeast and the Midwest who answered each of the 30 questions with a "Yes," a "No," or "It Depends." [5]

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[3] The author gratefully acknowledges the assistance rendered by Miss Geraldine Sabol, a law student at the University of Pittsburgh School of Law, in connection with these studies.

[4] Responses of Canadian arbitrators were included in the tabulations published in the prior article. However, the number of such responses was insufficient to tabulate them as a separate group, and such responses were excluded from the tabulations contained in Appendix A to this article.

[5] Included in the tabulations for the original article were responses from a few union and company representatives not located in the Northeast or Midwest. These responses have been excluded from the tabulations in Appendix B to this article.

I turn now to the specific topics covered in the prior survey.

Prior Consulting Work of Arbitrator

A majority of the arbitrators and union representatives (but not company representatives) who responded to my questionnaire indicated that a labor arbitrator has a duty to disclose to the parties that 10 years ago he received a consulting fee of $500 from one of the parties for a matter not related to labor relations, but the vast majority of all respondents took the position that an arbitrator has no duty to disclose that 10 years ago he received a consulting fee of $500 from *another* company in the same industry for a matter not related to labor relations.

Such views are consistent with the recent holding of the Appellate Division of the New York Supreme Court in *Colony Liquor Distributors* v. *Teamsters Local 699*.[6] In that case the arbitrator, who was a staff member of the New York State Board of Mediation, was not a member of the National Academy of Arbitrators. The court vacated his award in favor of a local union because he failed to disclose to the employer that he had been employed as an attorney by other locals of the same international union, apparently within six months of the arbitration hearing, that during the calendar year preceding the arbitration hearing he received $10,000 from these other local unions for his services, and that he had a close relative still employed by the international union as an accountant at the time of the hearing.

The court pointed out, "The mere fact that there has been a prior association of an arbitrator with one of the parties, in and of itself, does not necessarily require disqualification." But even though the employer did not claim that the arbitrator was guilty of actual bias, the court notes that the nondisclosure of the arbitrator's prior association with the other locals of the international union deprived the employer of pertinent information which he was entitled to have to make an independent decision as to whether he would accept the arbitrator in spite of his previous associations. The court correctly finds that the relationship of the arbitrator to one of the parties was more than insignificant. This conclusion is amply supported by the cumulative effect of the *recency* of the association of the arbitrator

[6] 312 N.Y.S.2d 403, 74 LRRM 2945 (1970), *revs'g* the decision below, 74 LRRM 2942 (1970).

with another branch of a party to the arbitration, the *professional* nature of the relationship, and the fact that the *amount of money* which he received for his services indicated that the relationship was significant.

The holding in this case is consistent with the holding in *Commonwealth Coatings Corp.* v. *Continental Casualty Co.*,[7] a commercial arbitration case in which a majority of the Supreme Court of the United States vacated an arbitration award because the neutral member of an arbitration panel for a dispute between a prime contractor and a subcontractor failed to disclose to the subcontractor that he had received $12,000 in consultant's fees from the prime contractor over a period of four to five years and that he in fact had rendered service as a consultant on the very projects which became involved in arbitration. The prior business relation of the neutral arbitrator with one of the parties was clearly significant in that case and should have been disclosed.

In other commercial arbitration cases, state courts have set aside arbitration awards where an arbitrator failed to disclose that business transactions between him and one of the parties increased substantially during the pendency of the arbitration proceedings,[8] where an arbitrator failed to disclose that in a regular course of dealing with one of the parties he had made purchases running into millions of dollars,[9] and where an arbitrator failed to disclose that he had been on the staff of the law firm representing one of the parties within three years of the arbitration hearing.[10] On the other hand, it has been held that a relationship which is "peripheral, superficial or insignificant" need not be disclosed.[11]

It is interesting to note that in an AAA case, disclosure by

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[7] 393 U.S. 145 (1968).

[8] *Dukraft Mfg. Co.* v. *Bear Mill Mfg. Co.*, 22 Misc.2d 1057, 151 N.Y.S.2d 318 (1956). Cf. *Dulien Steel Products* v. *The Ogeka*, 147 F.Supp. 167 (D.C. Wash. 1956) (arbitrator not deemed to be partial merely because prior to his retirement his company had been represented by the law firm representing one of the parties in arbitration) and *Texas Eastern Transmission Corp.* v. *Barnard*, 177 F.Supp. 123 (D.C. E.D. Ky. 1959) (mere fact that counsel for one of the parties was also counsel for bank for which arbitrator was an officer did not establish "evident partiality" of arbitrator).

[9] *Milliken Woolens, Inc.* v. *Weber Knit Sportswear, Inc.*, 202 N.Y.S.2d 431 (1960).

[10] *Id.*

[11] *In the Matter of Cross Properties, Inc. and Gimbel Bros., Inc.*, 225 N.Y.S.2d 1014 (1962).

the arbitrator to the AAA of a prior business relationship may not prevent his award from being set aside. In a commerical case in which the arbitrator advised the tribunal clerk of the AAA of the arbitrator's $2,200 business transaction with one of the parties a little over a year prior to the arbitrator's appointment, a federal court in New Jersey set the award aside because the tribunal clerk had not transmitted the disclosure to the parties.[12]

Lectures and Conference Participation

Over 90 percent of the respondents to the questionnaire agree that an arbitrator has no duty to disclose to the parties that last year he received a free lunch when he gave a general talk to a personnel association meeting which included some representatives of the company now seeking his services, or that last year he participated in a conference, sponsored by the AAA for representatives of various unions, on how to be more effective in labor arbitration, and the conference included a representative of the union now seeking his services. The prevailing view seems to be that service as a lecturer or a conference participant, even on labor arbitration, need not be disclosed and that something with as trifling monetary value as a free lunch need not be disclosed.

The Interim Report of the Special Committee on Standards of Judicial Conduct of the American Bar Association proposes that a judge "should not accept gifts or loans from lawyers or litigants, or any gift of a value in excess of $100 unless it is from a member of his family or is reported by him in the same manner as receipt of outside compensation." [13] Theoretically a gift of a free lunch from a lawyer to a judge would fall within this provision, but it seems probable that such a gift, whether or not the recipient gave a lecture, would be deemed to be de minimis.

One interesting aspect of this interim report is that it applies only to full-time, and not part-time, judges. But most arbitrators serve as such only on a part-time basis. Thus, the provisions of this report are not applicable to the typical arbitrator even if the role of an arbitrator is analogized to that of a judge, since the typical arbitrator is only a part-time judge. This report sim-

[12] *Rogers* v. *Schering Corp.*, 165 F.Supp. 295 (D.C. N.J. 1958).
[13] Interim Report, Section 6 (c).

ply suggests some possible standards which might be considered by the National Academy of Arbitrators.

The Professor-Arbitrator's Role at a University

Although the interim report of the ABA committee provides that a judge should not serve as an arbitrator except under extraordinary circumstances, the report does recognize that a judge "may speak, write, lecture, teach, or participate in seminars on matters pertaining to the law and the legal system" provided that he does not take a position that would affect his impartiality.[14] Likewise, it is clear that an arbitrator may properly perform these normal functions of a professor on matters pertaining to arbitration and that a professor who performs these functions is not doing something that is incompatible with the role of an arbitrator.

But to what extent must a professor-arbitrator disclose his academic contacts to the parties? The vast majority of the respondents to my questionnaire agree that an arbitrator has no duty to disclose to the parties that a company now seeking his services has sent representatives to a university to attend a management training program for various companies, and that the arbitrator teaches a course in industrial relations in that program. And most respondents agree that the arbitrator has no duty to disclose that a representative of one of the parties is a former degree-seeking student of the arbitrator, at least where there was no close relationship between the student and the arbitrator. In fact, many a professor-arbitrator who has taught for many years would not recognize, or be sure, that a representative is a former student. Although the arbitrators from the Far West are closely divided on the proper answer to this question, the prevailing view among arbitrators from other regions, in accord with the view of most company and union representatives, is that there is no duty to disclose that a representative of one of the parties is a former degree-seeking student of the arbitrator. But most respondents believe that an arbitrator does have a duty to disclose that a representative of one of the parties is a former student-research assistant for the arbitrator. The same would probably be true of a representative whose graduate thesis was supervised by the professor-arbitrator.

[14] Interim Report, Sections 2 and 9(a).

In addition to faculty-student contacts, a professor, of course, has contacts with other faculty members and speakers at the university. Most respondents to my questionnaire take the position that an arbitrator has no duty to disclose that the union or company representative has given a talk to the arbitrator's class at the request of the arbitrator. This position is consistent with the holding in *MacNeil* v. *Cohen*,[15] in which the First Circuit Court of Appeals held that the chief judge of that court was not disqualified to sit on a case against a defendant simply because the chief judge had been a lecturer at Harvard Law School when one of the defendant's partners, James Landis, was dean of that law school. The court found that the relationship of the chief judge and former Dean Landis did not fall within the federal disqualification statute, which states, "Any justice or judge of the United States shall disqualify himself in any case in which he has a substantial interest, has been of counsel, is or has been a material witness, or is related to or connected with any party or his attorney as to render it improper, in his opinion, for him to sit on the trial, appeal, or other proceeding therein." [16]

Stock Ownership and Other Financial Interests

Most respondents to my questionnaire believe that an arbitrator has a duty to disclose to the parties that he or his wife owns 500 shares of the stock of the company now seeking his services, or that he or his wife owns only five shares, or that he owns 50 shares in an affiliate or subsidiary corporation. Although it has been held that ownership by a judge of 20 shares of common stock of RCA, which had issued over 13 million shares, was not a substantial interest,[17] the prevailing view seems to be that any amount of stock ownership must be disclosed by an arbitrator, whether it is significant or insignificant.

The interim report of the special committee of the ABA states that a full-time judge should *disqualify* himself in any case in which he knows that he has an interest, which "includes any legal or equitable interest, no matter how small," in the party

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[15] 264 F.2d 186 (1st Cir. 1959).

[16] 28 U.S.C. § 455 (1948).

[17] *Lampert* v. *Hollis*, 105 F.Supp. 3 (D.C. N.Y. 1952).

or issue in litigation.[18] Apparently ownership of one share of stock requires disqualification under this proposal. Another provision of the report says that a judge "should not hold any investment or other financial interest in an enterprise that is likely to be involved in proceedings in his court." [19] Although the report states that "Ownership of shares in a mutual fund or other entity is also an 'interest' if the mutual fund or other entity holds a substantial interest in a party to the litigation," my correspondence with the reporter for the committee indicates that this provision may be modified. How many judges or arbitrators would know whether a mutual fund in which they hold shares has a substantial interest in a party appearing before the adjudicator?

My correspondence with the reporter for the committee also indicates that special rules may be developed to cover the ownership of government bonds and the ownership of shares in a corporation affiliated with a party to the proceeding.

But again a full-time judge can be distinguished from a part-time arbitrator, not only because the interim report of the ABA committee recognizes a distinction between the role of a full-time judge and that of a part-time judge but also because of the difference in the job security of a judge and the job security of an arbitrator. Senator Birch Bayh of Indiana, a strong advocate of more rigid controls over federal judges to compel them to disqualify themselves on certain grounds, recognizes a distinction between a full-time judge who has lifetime tenure and a member of Congress who has little job security because he is elected for a limited term and his conduct is subject to review by his constituents. He advocates *disqualification* of a federal judge in certain situations, but only a *duty of disclosure* for a member of Congress because of the difference in job security.[20] On the basis of this line of reasoning an arbitrator could be deemed to be more like a member of Congress than a judge.

One point that should be raised is whether a judge should be disqualified to sit on a case simply because he has *some* financial interest in the outcome. If he is disqualified by *any* financial interest, then no judge of the United States could be qualified

[18] Interim Report, Section 8. But a judge who was a depositor in a bank was held not to have a disqualifying pecuniary interest in a suit against trustees of stock of the bank in *Long* v. *Stites,* 63 F.2d 855 (6th Cir. 1933).

[19] Interim Report, Section 6(b).

[20] *Trial,* April-May 1970, p. 48.

to pass on the constitutionality of a broad-based tax such as the federal income tax. The ABA special committee report says that a judge is disqualified if he has any interest in the proceeding, but that when disclosure of the nature of the interest shows that the judge's interest is insubstantial in the opinion of *all* parties, they may waive the judge's disqualification.[21] A literal reading of this section of the report would mean that a party who objected to a suit challenging the constitutionality of a broad-based tax could prevent any court test by refusing to waive the disqualification of all judges.[22] In any event, it has been held that a judge is not disqualified to pass on the validity of bonds of a county of which he is a taxpayer simply because he is a taxpayer.[23]

Compare the status of an arbitrator who is asked to arbitrate a public employee dispute between a state government and a union of its employees. Is every arbitrator who is a *resident* of that state disqualified to serve as a neutral arbitrator because the result of the case could affect his taxes? Is every arbitrator who is a *nonresident* of that state disqualified from arbitrating in that state if there is a business privilege tax applicable to performance of services by nonresidents in that state and the result of the case may affect the amount of the business privilege tax in the future?

Rule 11 of the 1970 Voluntary Labor Arbitration Rules of the AAA states that "no person shall serve as a neutral Arbitrator in any arbitration in which he has any financial . . . interest in the result of the arbitration, unless the parties, in writing, waive such disqualification." But suppose that one party refuses to waive the disqualification. If all judges and all arbitrators are disqualified by any financial interest in the outcome of the case, no matter how small the interest, the judicial process and the arbitration process can be frustrated by the refusal of

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[21] Interim Report, Section 8.

[22] In *Tumey* v. *State of Ohio*, 273 U.S. 510, 523 (1927), the Supreme Court held that there is a violation of due process where the judge has "a direct, personal, substantial pecuniary interest" in the result of the case. But this statement was made in the context of a case involving a criminal trial before a mayor of a village who would receive no fee unless he found the defendant guilty. The mayor received about $100 a month from the procedures in question. Bribery, discussed *infra* in connection with playing poker or golf (under "Prior Social and Civic Contacts With Representatives of the Parties"), is another example of an improper financial interest in the outcome of a case.

[23] *Wade* v. *Travis*, 75 F. 985 (W.D. Texas, 1896).

one party to waive the disqualification. Perhaps the arbitrator may interpret AAA Rule 11 in such a way that it does not cover a remote and very slight financial interest. Under Rule 46 it is provided that "[t]he Arbitrator shall interpret and apply these Rules insofar as they relate to his powers and duties."

Does an arbitrator have a duty to disclose his status as a taxpayer in all public employee disputes, such as disputes involving policemen and firefighters? In a case involving a public utility for gas, electricity, or water, does an arbitrator have a duty to disclose that he is a customer of the utility and that the result of the case could affect his utility bill? Even if he is not a customer of that utility, an award affecting the rates of that utility could have an indirect effect on other similar utilities in the area, including the utilities of which the arbitrator is a customer. From my experience I believe that the parties are already aware of the taxpayer status of the arbitrator and his status as a customer of a public utility when they select him as an arbitrator for these types of cases. It is doubtful whether these matters involve disqualification. If they do, parties who know the location of the residence and office of the arbitrator should be deemed to have waived any disqualification on these grounds when they selected the arbitrator.[24]

Perhaps it is wise for the arbitrator to disclose these matters out of an excess of caution, but undue disclosure can have undesirable consequences. A party has been known to seize upon disclosure of relatively insignificant matters as an excuse for causing delay in the arbitration proceedings, or as an excuse for seeking another list of arbitrators from an appointing agency in the hope that another arbitrator more sympathetic to that party may be selected. Undue disclosure by an arbitrator may cause these undesirable tactical maneuvers, thus promoting injustice under the legal disguise of preserving due process.

Travel and Hotel Problems

Most respondents to my questionnaire believe that an arbitrator has no duty to disclose that he found himself sitting beside the union representative for the next day's hearing on the plane

[24] Cf. *Newburger v. Rose*, 228 App.Div. 526, 240 N.Y.S. 436, *aff'd* 254 N.Y. 546, 173 N.E. 859 (1930) (court noted that parties could have discovered by reference to a telephone directory that the arbitrator was a broker).

trip to the hearing. But the arbitrators from the Midwest are closely divided on whether the arbitrator has a duty to disclose that he has discovered during the hearing that the union representative has a reservation on the same flight to return to their home city after the hearing and that the union representative plans to sit with the arbitrator. Most arbitrators from other regions, however, and the vast majority of company and union representatives, take the position that there is no duty to disclose this information. And although the arbitrators from the South are closely divided on whether an arbitrator must disclose that the union has arranged for its representative to drive him from the airport to the plant after the arbitrator has asked the parties in a joint letter how to reach the plant, the prevailing view of arbitrators from other regions, in accord with the views of the vast majority of company and union representatives, is that there is no duty to disclose this information.

Most respondents in all categories also believe that an arbitrator has no duty to disclose that the union representative, seeing the arbitrator in the hotel lobby the night before the hearing, offered him a drink, or that one of the parties reserved for the arbitrator a hotel room customarily reserved on a continuing basis for that party.

Prior Social and Civic Contacts With Representatives of the Parties

Most respondents in all categories believe that an arbitrator has no duty to disclose that he and the company representative belong to the same neighborhood civic association, or that a neighbor-friend of the arbitrator is a production superintendent of the company now seeking the arbitrator's services—as long as the superintendent's department is not involved in the case.[25] These relationships are more remote than the relationship in the New York case which invalidated an arbitrator's award because the arbitrator failed to disclose that he recently had been employed as an attorney by other locals of the same international union and had received $10,000 from these other locals dur-

[25] In a commercial arbitration case it was even held that an arbitrator had no duty to disclose that he occasionally bought raw silk from one of the parties. *E. Richard Meining Co.* v. *Katakura & Co.*, 241 App. Div. 406, 272 N.Y.S. 735, *aff'd* 266 N.Y. 418, 195 N.E. 134 (1934).

ing the preceding calendar year. See discussion of this case under "Prior Consulting Work of Arbitrator," *supra.*

Most respondents in all categories believe that an arbitrator has no duty to disclose that the company representative took him out to dinner at the last annual meeting of the National Academy of Arbitrators. The clearly prevailing view is that an arbitrator cannot be "bought" with a drink or a meal. But there is no majority view among arbitrators in any of the regions of the country on whether an arbitrator has a duty to disclose that he has played poker or golf with the union representative on prior occasions. Nevertheless, most company and union representatives believe that there is no duty to disclose this information despite the possible risk of bribery through betting at poker or golf.

If a permanent umpire has not simply won money from a union representative on prior occasions while playing poker or golf but the umpire has been bribed by one of the parties to decide some of his cases in favor of that party, should all of the decisions of that umpire in that bargaining relationship be invalidated? If the holding of a recent Oklahoma case were to be followed, the answer would seem to be no. In *Johnson* v. *Johnson,*[26] Oklahoma Supreme Court Justice N. S. Corn had received bribes over a period of many years to vote as directed by the attorney who was the briber. A specially constituted court in that case stated the issue and answer as follows (at p. 417):

> "Where a judge secretly agrees to take bribes from an individual and does take them consistently, but such fact is unknown except to him and the bribe-giver, does he thereby automatically forfeit his office or automatically become disqualified to participate in any future decision of the Court, so that his every vote thereafter is a nullity, even in cases where no wrongdoing occurred? Our answer is in the negative."

The court noted that over a period of 20 years there were more than 1,000 cases where the bribed judge had cast the deciding vote. The court was concerned about the consequences if all of these decisions were set aside. Thus it held that those cases in which no corruption can be found must be allowed to stand.[27]

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[26] 424 P.2d 414 (1967).

[27] Cf. *Restatement of Judgments* § 124, Corruption of or Duress upon the Court.

Membership in a "Conflict of Interest" Organization

Most respondents to my questionnaire agree that an arbitrator has a duty to disclose that he is a member of an organization which is working against the interest of one of the parties. Examples would be an economist who is working against an increase in milk prices when he is asked to arbitrate for a dairy which wants the increase, or an arbitrator who is a member of a black coalition which is trying to force construction unions to admit more blacks to their membership when he is asked to arbitrate for one of these construction unions.

Tumey v. *State of Ohio* [28] presents a good example of a conflict of interest. In that case the Supreme Court of the United States held that to subject a defendant to a trial in a criminal case before a judge having a direct and substantial interest in convicting him was a denial of due process of law. The judge in that case was the mayor of a village which was in poor financial condition. The greater the fines assessed by the judge, the more he helped the coffers of the village.

Prior Contacts in Arbitration

The vast majority of all respondents to my questionnaire agree that an arbitrator has no duty to disclose that the union representative has presented prior arbitration cases to the arbitrator even though the company representative has not had the benefit of this experience. Apparently this advantage is simply accepted as one of the realities of the arbitration process, and there is no duty to put the other party on notice of it.[29]

However, a commercial arbitration award has been set aside where an arbitrator failed to disclose that his company had received an award for $31,000 in a prior arbitration proceeding, and the president of one of the present parties was the arbitrator.[30]

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[28] 273 U.S. 510 (1927).

[29] But an arbitrator has a duty to disclose that the attorney for one of the parties also represented the arbitrator and a company in which the arbitrator has a substantial interest. *Matter of Atlantic Rayon Corp.*, 277 App. Div. 554, 100 N.Y.S.2d 849 (1950).

[30] *Shirley Silk Co., Inc.* v. *American Silk Mills, Inc.*, 260 App. Div. 572 (1940). Accord: *Knickerbocker Textile Corp.* v. *Sheila-Lynn, Inc.*, 172 Misc. 1015, 16 N.Y.S.2d 435, *aff'd* 259 App. Div. 992, 20 N.Y.S.2d 985 (1939).

Prior Membership in a Union

A majority of the arbitrators in the Far West believe that an arbitrator should disclose that, for a *short period* of time, as a college student *many years ago,* he was an *inactive* member of a local union affiliated with the international union now seeking his services. But most arbitrators in the Northeast, the Midwest, and the South disagree. And the vast majority of company and union representatives also take the position that an arbitrator has no duty to disclose this information. It has aptly been stated that undue disclosure tends to raise unnecessary doubts in the minds of the parties as to the arbitrator's ability to deal with the case objectively and honestly.

Of course, if the arbitrator were an officer of the local union now seeking his services, a different situation would be presented. An arbitrator should disclose to the employer this close and responsible relationship which would be more like the relationship of an attorney for the union—a relationship which the Appellate Division of the Supreme Court of New York has indicated the arbitrator must disclose.[31]

Hortatory Expressions to Arbitrator

Most arbitrators take the position that an arbitrator has no duty to disclose that after the hearing a representative of a party has stated to him that "this is a very important case which we cannot afford to lose." Such oral expressions are viewed as general propaganda. Most company representatives agree that there is no duty of disclosure of such a remark. Although union representatives from the Midwest are fairly evenly divided on the answer to this question, the prevailing view of union representatives from the Northeast is that there is no duty of disclosure.

Fellow Arbitrator as Representative of a Party

A clear majority of the respondents to my questionnaire believe that an arbitrator has no duty to disclose that he recognizes one of the representatives of the parties as a fellow mem-

[31] See discussion of this case, *supra,* under Prior Consulting Work of Arbitrator. But cf. *Darlington* v. *Studebaker,* 261 F.2d 903 (7th Cir. 1959) (Judge Grant not disqualified merely because several years ago he had served as an attorney for defendant) and *Voltmann* v. *United Fruit Co.,* 147 F.2d 514 (2nd Cir. 1945) (judge not disqualified because his son-in-law, who had nothing personally to do with the case, was a member of the law firm representing defendant).

ber of the National Academy of Arbitrators. Although some arbitrators believe that a member of the Academy should never represent a party in labor arbitration, the Canons of Ethics of the Academy do not contain any such bar. And the membership requirements of the Academy simply state that an applicant must not be "primarily identified" as an advocate or consultant for labor or management in labor-management relations.

By way of comparison it is interesting to note that the Second Circuit Court of Appeals has held that a judge is not disqualified because of the professional relationship of the judge and a defendant in certain international legal associations and common attendance at meetings of such associations.[32]

Role of the Arbitrator in Political Maneuvers

Most arbitrators tend to believe that an arbitrator has a duty to disclose that the union representative has advised the arbitrator that a hearing must be held for "political" reasons, but that he has asked the arbitrator to agree, in advance of the hearing, to adopt the company position because the union representative agrees with the company position. But a substantial number have reservations. Company representatives tend to say that there is no duty of disclosure, and union representatives tend to say that there is a duty of disclosure. Under the Academy's Code of Ethics the arbitrator could not properly agree in advance of the hearing to hold in favor of the company.

Where the union representative does not ask the arbitrator to make a prior commitment on the decision that he will render but simply tells the arbitrator that a hearing must be held for "political" reasons even though the union representative agrees with the company's position, the prevailing view among arbitrators (except in the South) is that there is no duty of disclosure. Most union and company representatives also believe that there is no duty of disclosure in this situation in which the arbitrator has not been asked to make a commitment on how he will decide the case and in fact he has made no such commitment.

In a third situation involving a political maneuver the union representative may hint, after the hearing, that he expects to

[32] *Weiss* v. *Hunna*, 312 F.2d 711 (2nd Cir. 1963).

lose the case. Most respondents to my questionnaire believe that an arbitrator has no duty to disclose that on a plant visit, after the hearing, the union representative who presented the union's case indicates that he has done his best in presenting the case but that he will understand if the arbitrator rules in favor of the company under the contract.

Many arbitrators are concerned about the impact of these political maneuvers on individual rights. In considering the duty of disclosure or withdrawal from the case, some would make a distinction between a discharge case involving a particular individual and a general case of wage determination affecting all employees. Others would make a distinction between an ad hoc arbitrator and a permanent umpire. Still others make distinctions in terms of whether they adopt the philosophy that an arbitrator is "like a judge" or the philosophy that arbitration is an extension of the collective bargaining process. As pointed out by Bob Fleming in 1961 in his article on due process in arbitration, some arbitrators view their handling of an agreed case (also known in some circles as an "informed award" or "rigged award") as an act of statesmanship.[33] Judge Paul Hays clearly disagrees with this view. In his lectures on "Labor Arbitration —A Dissenting View," he maintains that a rigged award clearly should be vacated by a court on public policy grounds.[34]

As yet, however, there are no clearly correct answers to these questions arising out of the agreed case because no clearly defined theory of the nature of the arbitration process has been adopted.

Conclusion

Various canons of ethics, rules, regulations, and court decisions make it clear that an arbitrator has a duty of disclosure. But the nature of the duty is expressed in very general terms. It is my hope that this paper, considered in conjunction with

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[33] Fleming, "Some Problems of Due Process and Fair Procedure in Labor Arbitration," 13 *Stan. L. Rev.* 235, 248-251 (1961), also published in *Arbitration and Public Policy*, Proceedings of the 14th Annual Meeting, National Academy of Arbitrators, ed. Spencer D. Pollard (Washington: BNA Books, 1961), at 87-90. For an earlier study see Wirtz, "Due Process of Arbitration," in *The Arbitrators and the Parties*, Proceedings of the 11th Annual Meeting, National Academy of Arbitrators, ed. Jean T. McKelvey (Washington: BNA Books, 1958), at 26-32.

[34] See 74 *Yale L.J.* 1019, 1033 (1965).

my prior article on this subject, has provided some concrete guidance for the arbitration profession, and for those who use its services, on precisely what the parties can reasonably expect an arbitrator to disclose with respect to many specific situations which arbitrators have encountered in their practice.

APPENDIX A

Arbitrators' Answers by Regions

Does a Labor Arbitrator Have a Duty to Disclose to the Parties at any Stage of the Arbitration Process—

1. That 10 years ago he received a consulting fee of $500 from one of the parties for a matter not related to labor relations?

	Yes	*No*	*It Depends*
Northeast	58 (64%)	30 (33%)	3 (3%)
Midwest	59 (64%)	29 (32%)	4 (4%)
South	17 (49%)	14 (40%)	4 (11%)
Far West	27 (77%)	5 (14%)	3 (9%)

2. That 10 years ago he received a consulting fee of $500 from another company in the same industry for a matter not related to labor relations?

	Yes	*No*	*It Depends*
Northeast	5 (5%)	83 (91%)	3 (3%)
Midwest	2 (2%)	87 (95%)	3 (3%)
South	4 (11%)	29 (83%)	2 (6%)
Far West	2 (6%)	29 (83%)	4 (11%)

3. That last year he received a free lunch when he gave a general talk to a personnel association meeting which included some representatives of the company now seeking his services?

	Yes	*No*	*It Depends*
Northeast	2 (2%)	86 (95%)	3 (3%)
Midwest	1 (1%)	89 (97%)	2 (2%)
South	2 (6%)	32 (91%)	1 (3%)
Far West	0 (0%)	34 (97%)	1 (3%)

4. That last year he participated in a conference, sponsored by the American Arbitration Association for representatives of various unions, on how to be more effective in labor arbitration, and the conference included a representative of the union now seeking the arbitrator's services?

	Yes	*No*	*It Depends*
Northeast	0 (0%)	87 (96%)	4 (4%)
Midwest	2 (2%)	90 (98%)	0 (0%)
South	1 (3%)	31 (89%)	3 (9%)
Far West	2 (6%)	32 (91%)	1 (3%)

5. That a company now seeking his services has sent representatives to a university to attend a management training program for various companies, and the arbitrator teaches a course in industrial relations in that program?

	Yes	*No*	*It Depends*
Northeast	5 (5%)	76 (84%)	10 (11%)
Midwest	10 (11%)	78 (85%)	4 (4%)
South	5 (14%)	27 (77%)	3 (9%)
Far West	3 (9%)	29 (83%)	3 (9%)

6. That a representative of one of the parties is a former degree-seeking student of the arbitrator?

	Yes	*No*	*It Depends*
Northeast	31 (34%)	47 (52%)	12 (13%)
Midwest	34 (37%)	45 (49%)	13 (14%)
South	15 (43%)	17 (49%)	3 (9%)
Far West	15 (43%)	14 (40%)	6 (17%)

7. That a representative of one of the parties is a former student-research assistant for the arbitrator?

	Yes	*No*	*It Depends*
Northeast	59 (65%)	21 (23%)	11 (12%)
Midwest	60 (65%)	18 (20%)	14 (15%)
South	21 (60%)	12 (34%)	2 (6%)
Far West	26 (74%)	7 (20%)	2 (6%)

8. That the union or company representative has, at the arbitrator's request, given a talk to the arbitrator's class at a university?

	Yes	*No*	*It Depends*
Northeast	19 (21%)	63 (70%)	8 (9%)
Midwest	20 (22%)	61 (67%)	10 (11%)
South	8 (23%)	23 (66%)	4 (11%)
Far West	9 (26%)	20 (57%)	6 (17%)

9. That the arbitrator owns 500 shares of stock of the company now seeking his services?

	Yes	*No*	*It Depends*
Northeast	78 (86%)	5 (5%)	8 (9%)
Midwest	88 (96%)	3 (3%)	1 (1%)
South	31 (89%)	0 (0%)	4 (11%)
Far West	31 (89%)	1 (3%)	3 (9%)

10. Five shares?

	Yes	*No*	*It Depends*
Northeast	61 (67%)	25 (27%)	5 (5%)
Midwest	70 (76%)	17 (18%)	5 (5%)
South	23 (66%)	10 (29%)	2 (6%)
Far West	24 (69%)	5 (14%)	6 (17%)

11. That his wife owns 500 shares?

	Yes	*No*	*It Depends*
Northeast	71 (78%)	12 (13%)	8 (9%)
Midwest	82 (89%)	6 (7%)	4 (4%)
South	29 (83%)	2 (6%)	4 (11%)
Far West	30 (86%)	4 (11%)	1 (3%)

12. That his wife owns five shares?

	Yes	*No*	*It Depends*
Northeast	55 (60%)	32 (35%)	4 (4%)
Midwest	63 (68%)	23 (25%)	6 (7%)
South	20 (57%)	12 (34%)	3 (9%)
Far West	23 (66%)	8 (23%)	4 (11%)

13. That the arbitrator owns 50 shares in an affiliate or subsidiary corporation?

	Yes	*No*	*It Depends*
Northeast	58 (64%)	19 (21%)	13 (14%)
Midwest	66 (72%)	16 (17%)	10 (11%)
South	21 (60%)	11 (31%)	3 (9%)
Far West	25 (71%)	6 (17%)	4 (11%)

14. That the arbitrator found himself sitting beside the union representative for the next day's hearing on the plane trip to the hearing?

	Yes	*No*	*It Depends*
Northeast	24 (26%)	57 (63%)	10 (11%)
Midwest	27 (29%)	51 (55%)	14 (15%)
South	8 (23%)	23 (66%)	4 (11%)
Far West	8 (23%)	18 (51%)	9 (26%)

15. That the arbitrator has discovered during the hearing that the union representative has a reservation on the same flight to return to their home city after the hearing and that the union representative plans to sit with the arbitrator?

	Yes	*No*	*It Depends*
Northeast	28 (31%)	48 (53%)	15 (16%)
Midwest	41 (45%)	38 (41%)	13 (14%)
South	11 (31%)	20 (57%)	4 (11%)
Far West	11 (31%)	18 (51%)	6 (17%)

16. That the company representative took the arbitrator out to dinner at the last annual meeting of the National Academy of Arbitrators?

	Yes	*No*	*It Depends*
Northeast	13 (14%)	60 (66%)	17 (19%)
Midwest	22 (24%)	63 (68%)	7 (8%)
South	6 (17%)	23 (66%)	6 (17%)
Far West	7 (20%)	21 (60%)	7 (20%)

17. That the union representative happened to see the arbitrator in the hotel lobby the night before the hearing and offered him a drink?

	Yes	*No*	*It Depends*
Northeast	8 (9%)	79 (87%)	4 (4%)
Midwest	11 (12%)	75 (82%)	6 (7%)
South	3 (4%)	30 (86%)	2 (6%)
Far West	1 (3%)	31 (89%)	3 (9%)

18. That upon the arbitrator's asking the parties in a joint letter how to reach the plant, the union has arranged for its representative to drive the arbitrator from the airport to the plant?

	Yes	*No*	*It Depends*
Northeast	35 (39%)	41 (46%)	14 (16%)
Midwest	38 (41%)	44 (48%)	10 (11%)
South	15 (43%)	14 (40%)	6 (17%)
Far West	14 (40%)	18 (51%)	3 (9%)

19. That one of the parties reserved a hotel room for the arbitrator and he later learned, after using the room, that this room customarily is reserved on a continuing basis for that party? (But assume that the arbitrator pays for the room.)

	Yes	*No*	*It Depends*
Northeast	14 (16%)	68 (76%)	8 (9%)
Midwest	15 (16%)	72 (78%)	5 (5%)
South	8 (23%)	24 (69%)	3 (9%)
Far West	7 (20%)	26 (74%)	2 (6%)

20. That the arbitrator has played poker or golf with the union representative on prior occasions?

	Yes	*No*	*It Depends*
Northeast	28 (31%)	38 (42%)	25 (27%)
Midwest	37 (40%)	35 (38%)	20 (22%)
South	16 (46%)	13 (37%)	6 (17%)
Far West	15 (43%)	13 (37%)	7 (20%)

21. That the company representative and arbitrator belong to the same neighborhood civic association?

	Yes	*No*	*It Depends*
Northeast	21 (23%)	66 (73%)	4 (4%)
Midwest	17 (18%)	54 (59%)	21 (23%)
South	8 (37%)	20 (57%)	7 (20%)
Far West	8 (23%)	23 (66%)	4 (11%)

22. That the arbitrator is a member of an organization which is working against the interest of one of the parties (*e.g.*, opposition to milk price increase, black coalition, etc.)?

	Yes	*No*	*It Depends*
Northeast	56 (62%)	16 (17%)	18 (20%)
Midwest	63 (68%)	13 (14%)	16 (17%)
South	20 (57%)	8 (23%)	7 (20%)
Far West	26 (74%)	5 (14%)	4 (11%)

23. That a neighbor-friend of the arbitrator is a production superintendent of the company now seeking the arbitrator's services (but the superintendent's department is not involved in the case)?

	Yes	*No*	*It Depends*
Northeast	24 (26%)	57 (63%)	10 (11%)
Midwest	34 (37%)	51 (55%)	7 (8%)
South	8 (23%)	18 (51%)	9 (26%)
Far West	8 (23%)	20 (57%)	7 (20%)

24. That the union representative has presented prior arbitration cases to the arbitrator (but the company representative has not)?

	Yes	*No*	*It Depends*
Northeast	8 (9%)	81 (89%)	2 (2%)
Midwest	6 (7%)	85 (92%)	1 (1%)
South	0 (0%)	34 (97%)	1 (3%)
Far West	1 (3%)	34 (97%)	0 (0%)

25. That, for a short period of time, as a college student many years ago, the arbitrator was an inactive member of a local union affiliated with the international union now seeking his services?

	Yes	*No*	*It Depends*
Northeast	32 (36%)	52 (58%)	6 (7%)
Midwest	39 (42%)	51 (55%)	2 (2%)
South	12 (34%)	19 (54%)	4 (11%)
Far West	19 (54%)	12 (34%)	4 (11%)

26. That a representative of a party, after the hearing but before issuance of the decision, has advised the arbitrator that "this is a very important case which we cannot afford to lose"?

	Yes	*No*	*It Depends*
Northeast	20 (22%)	56 (62%)	14 (16%)
Midwest	24 (26%)	50 (54%)	18 (20%)
South	13 (37%)	18 (51%)	4 (11%)
Far West	7 (21%)	18 (53%)	9 (26%)

27. That the arbitrator recognizes one of the representatives of the parties as a fellow member of the National Academy of Arbitrators?

	Yes	*No*	*It Depends*
Northeast	30 (33%)	51 (57%)	9 (10%)
Midwest	28 (31%)	56 (62%)	6 (7%)
South	7 (20%)	27 (77%)	1 (3%)
Far West	8 (23%)	21 (60%)	6 (17%)

28. That a union representative has advised the arbitrator that he agrees with the company's position (but that a hearing must be held for "political" reasons), and that the union representative has asked the arbitrator to agree in advance of the hearing to adopt the company position?

	Yes	*No*	*It Depends*
Northeast	40 (45%)	32 (37%)	15 (17%)
Midwest	46 (52%)	24 (27%)	18 (22%)
South	21 (60%)	10 (29%)	4 (11%)
Far West	19 (54%)	6 (17%)	10 (29%)

29. Same question as #28 except that the arbitrator is not asked to make a commitment on the decision that he will render.

	Yes	*No*	*It Depends*
Northeast	25 (29%)	48 (55%)	14 (16%)
Midwest	35 (38%)	39 (42%)	18 (20%)
South	18 (51%)	13 (37%)	4 (11%)
Far West	11 (31%)	15 (43%)	9 (26%)

30. That on a plant visit, after the hearing, the union representative, who presented the union's case, indicates that he has done his best in presenting the case but that he will understand if the arbitrator rules in favor of the company under the contract?

	Yes	*No*	*It Depends*
Northeast	4 (4%)	79 (87%)	8 (9%)
Midwest	9 (10%)	68 (74%)	15 (16%)
South	6 (17%)	23 (66%)	6 (17%)
Far West	3 (9%)	28 (80%)	4 (11%)

APPENDIX B

Company and Union Answers (Northeast and Midwest)

Does a Labor Arbitrator Have a Duty to Disclose to the Parties at any Stage of the Arbitration Process—

1. That 10 years ago he received a consulting fee of $500 from one of the parties for a matter not related to labor relations?

	Yes	*No*	*It Depends*
Company (Northeast)	48 (39%)	66 (54%)	8 (7%)
Company (Midwest)	8 (22%)	27 (75%)	2 (5%)
Union (Northeast)	51 (58%)	36 (41%)	1 (1%)
Union (Midwest)	15 (48%)	11 (35%)	5 (16%)

2. That 10 years ago he received a consulting fee of $500 from another company in the same industry for a matter not related to labor relations?

	Yes	*No*	*It Depends*
Company (Northeast)	10 (8%)	108 (89%)	4 (3%)
Company (Midwest)	2 (5%)	35 (95%)	0 (0%)
Union (Northeast)	11 (13%)	75 (85%)	2 (2%)
Union (Midwest)	4 (13%)	26 (84%)	1 (3%)

3. That last year he received a free lunch when he gave a general talk to a personnel association meeting which included some representatives of the company now seeking his services?

	Yes	*No*	*It Depends*
Company (Northeast)	1 (1%)	120 (98%)	1 (1%)
Company (Midwest)	0 (0%)	37 (100%)	0 (0%)
Union (Northeast)	5 (6%)	81 (92%)	2 (2%)
Union (Midwest)	1 (3%)	29 (94%)	1 (3%)

4. That last year he participated in a conference, sponsored by the American Arbitration Association for representatives of various unions on how to be more effective in labor arbitration, and the conference included a representative of the union now seeking the arbitrator's services?

	Yes	*No*	*It Depends*
Company (Northeast)	3 (2%)	118 (97%)	1 (1%)
Company (Midwest)	2 (5%)	35 (95%)	0 (0%)
Union (Northeast)	9 (10%)	77 (88%)	2 (2%)
Union (Midwest)	2 (6%)	29 (94%)	0 (0%)

5. That a company now seeking his services has sent representatives to a university to attend a management training program for various companies, and the arbitrator teaches a course in industrial relations in that program?

	Yes	*No*	*It Depends*
Company (Northeast)	1 (1%)	120 (98%)	1 (1%)
Company (Midwest)	2 (5%)	34 (92%)	1 (3%)
Union (Northeast)	10 (11%)	70 (80%)	8 (9%)
Union (Midwest)	4 (13%)	26 (84%)	1 (3%)

6. That a representative of one of the parties is a former degree-seeking student of the arbitrator?

	Yes	*No*	*It Depends*
Company (Northeast)	30 (25%)	76 (62%)	16 (13%)
Company (Midwest)	7 (19%)	27 (75%)	3 (8%)
Union (Northeast)	30 (34%)	49 (56%)	9 (10%)
Union (Midwest)	9 (29%)	21 (68%)	1 (3%)

7. That a representative of one of the parties is a former student-research assistant for the arbitrator?

	Yes	*No*	*It Depends*
Company (Northeast)	76 (62%)	36 (30%)	10 (8%)
Company (Midwest)	18 (49%)	17 (46%)	2 (5%)
Union (Northeast)	59 (67%)	25 (28%)	4 (5%)
Union (Midwest)	18 (58%)	11 (35%)	2 (6%)

8. That the union or company representative has, at the arbitrator's request, given a talk to the arbitrator's class at a university?

	Yes	*No*	*It Depends*
Company (Northeast)	30 (25%)	86 (70%)	6 (5%)
Company (Midwest)	2 (6%)	32 (89%)	2 (6%)
Union (Northeast)	23 (26%)	62 (70%)	3 (3%)
Union (Midwest)	3 (10%)	25 (81%)	3 (10%)

9. That the arbitrator owns 500 shares of stock of the company now seeking his services?

	Yes	*No*	*It Depends*
Company (Northeast)	90 (74%)	16 (13%)	16 (13%)
Company (Midwest)	25 (68%)	8 (22%)	4 (11%)
Union (Northeast)	74 (84%)	9 (10%)	5 (6%)
Union (Midwest)	30 (97%)	1 (3%)	0 (0%)

10. Five shares?

	Yes	*No*	*It Depends*
Company (Northeast)	64 (53%)	41 (34%)	15 (13%)
Company (Midwest)	20 (54%)	12 (32%)	5 (14%)
Union (Northeast)	62 (70%)	21 (24%)	5 (6%)
Union (Midwest)	26 (84%)	4 (13%)	1 (3%)

11. That his wife owns 500 shares?

	Yes	*No*	*It Depends*
Company (Northeast)	86 (70%)	20 (16%)	16 (13%)
Company (Midwest)	27 (73%)	7 (19%)	3 (8%)
Union (Northeast)	66 (75%)	13 (15%)	9 (10%)
Union (Midwest)	29 (94%)	2 (6%)	0 (0%)

12. That his wife owns five shares?

	Yes	*No*	*It Depends*
Company (Northeast)	62 (51%)	39 (32%)	21 (17%)
Company (Midwest)	18 (50%)	15 (41%)	3 (8%)
Union (Northeast)	56 (64%)	23 (26%)	9 (10%)
Union (Midwest)	23 (74%)	5 (16%)	3 (10%)

13. That the arbitrator owns 50 shares in an affiliate or subsidiary corporation?

	Yes	*No*	*It Depends*
Company (Northeast)	62 (51%)	35 (29%)	25 (20%)
Company (Midwest)	18 (49%)	13 (35%)	6 (16%)
Union (Northeast)	59 (67%)	22 (25%)	7 (8%)
Union (Midwest)	26 (84%)	4 (13%)	1 (3%)

14. That the arbitrator found himself sitting beside the union representative for the next day's hearing on the plane trip to the hearing?

	Yes	*No*	*It Depends*
Company (Northeast)	14 (11%)	104 (85%)	4 (3%)
Company (Midwest)	4 (11%)	27 (75%)	6 (16%)
Union (Northeast)	19 (22%)	59 (67%)	10 (11%)
Union (Midwest)	6 (19%)	23 (74%)	2 (6%)

15. That the arbitrator has discovered during the hearing that the union representative has a reservation on the same flight to return to their home city after the hearing and that the union representative plans to sit with the arbitrator?

	Yes	*No*	*It Depends*
Company (Northeast)	25 (21%)	95 (79%)	1 (1%)
Company (Midwest)	12 (32%)	22 (58%)	4 (11%)
Union (Northeast)	19 (22%)	64 (73%)	5 (6%)
Union (Midwest)	4 (13%)	24 (77%)	3 (10%)

16. That the company representative took the arbitrator out to dinner at the last annual meeting of the National Academy of Arbitrators?

	Yes	*No*	*It Depends*
Company (Northeast)	14 (11%)	106 (87%)	2 (2%)
Company (Midwest)	3 (8%)	34 (92%)	0 (0%)
Union (Northeast)	18 (20%)	61 (69%)	9 (10%)
Union (Midwest)	1 (3%)	28 (90%)	2 (6%)

17. That the union representative happened to see the arbitrator in the hotel lobby the night before the hearing and offered him a drink?

	Yes	*No*	*It Depends*
Company (Northeast)	2 (2%)	114 (93%)	6 (5%)
Company (Midwest)	1 (3%)	35 (95%)	1 (3%)
Union (Northeast)	14 (16%)	68 (77%)	6 (7%)
Union (Midwest)	0 (0%)	28 (90%)	3 (10%)

18. That upon the arbitrator's asking the parties in a joint letter how to reach the plant, the union has arranged for its representative to drive the arbitrator from the airport to the plant?

	Yes	*No*	*It Depends*
Company (Northeast)	24 (20%)	95 (78%)	3 (2%)
Company (Midwest)	8 (22%)	28 (76%)	1 (3%)
Union (Northeast)	28 (32%)	55 (63%)	5 (6%)
Union (Midwest)	9 (29%)	21 (68%)	1 (3%)

19. That one of the parties reserved a hotel room for the arbitrator and he later learned, after using the room, that this room customarily is reserved on a continuing basis for that party? (But assume that the arbitrator pays for the room.)

	Yes	*No*	*It Depends*
Company (Northeast)	12 (10%)	107 (88%)	3 (2%)
Company (Midwest)	5 (14%)	30 (81%)	2 (5%)
Union (Northeast)	15 (17%)	68 (77%)	5 (6%)
Union (Midwest)	4 (13%)	26 (84%)	1 (3%)

20. That the arbitrator has played poker or golf with the union representative on prior occasions?

	Yes	*No*	*It Depends*
Company (Northeast)	42 (34%)	66 (54%)	14 (11%)
Company (Midwest)	6 (16%)	27 (75%)	4 (11%)
Union (Northeast)	31 (35%)	50 (57%)	7 (7%)
Union (Midwest)	11 (35%)	15 (48%)	5 (16%)

21. That the company representative and arbitrator belong to the same neighborhood civic association?

	Yes	*No*	*It Depends*
Company (Northeast)	34 (28%)	81 (66%)	7 (6%)
Company (Midwest)	4 (11%)	32 (86%)	1 (3%)
Union (Northeast)	16 (18%)	69 (78%)	3 (3%)
Union (Midwest)	1 (3%)	29 (94%)	1 (3%)

22. That the arbitrator is a member of an organization which is working against the interest of one of the parties (*e.g.*, opposition to milk price increase, black coalition, etc.)?

	Yes	*No*	*It Depends*
Company (Northeast)	94 (77%)	15 (12%)	13 (11%)
Company (Midwest)	24 (65%)	10 (27%)	3 (8%)
Union (Northeast)	70 (80%)	10 (11%)	8 (9%)
Union (Midwest)	24 (77%)	3 (10%)	4 (13%)

23. That a neighbor-friend of the arbitrator is a production superintendent of the company now seeking the arbitrator's services (but the superintendent's department is not involved in the case)?

	Yes	*No*	*It Depends*
Company (Northeast)	26 (21%)	88 (72%)	8 (7%)
Company (Midwest)	6 (16%)	28 (76%)	3 (8%)
Union (Northeast)	31 (35%)	54 (61%)	3 (3%)
Union (Midwest)	8 (26%)	19 (61%)	4 (13%)

24. That the union representative has presented prior arbitration cases to the arbitrator (but the company representative has not)?

	Yes	*No*	*It Depends*
Company (Northeast)	4 (3%)	115 (94%)	3 (2%)
Company (Midwest)	1 (3%)	34 (94%)	1 (3%)
Union (Northeast)	16 (18%)	69 (78%)	3 (3%)
Union (Midwest)	1 (3%)	29 (94%)	1 (3%)

25. That, for a short period of time, as a college student many years ago, the arbitrator was an inactive member of a local union affiliated with the international union now seeking his services?

	Yes	*No*	*It Depends*
Company (Northeast)	24 (20%)	93 (76%)	5 (4%)
Company (Midwest)	7 (19%)	30 (81%)	0 (0%)
Union (Northeast)	34 (39%)	52 (59%)	2 (2%)
Union (Midwest)	10 (32%)	21 (68%)	0 (0%)

26. That a representative of a party, after the hearing but before issuance of the decision, has advised the arbitrator that "this is a very important case which we cannot afford to lose"?

	Yes	*No*	*It Depends*
Company (Northeast)	44 (36%)	70 (57%)	5 (4%)
Company (Midwest)	9 (24%)	25 (68%)	3 (8%)
Union (Northeast)	40 (46%)	38 (44%)	9 (10%)
Union (Midwest)	11 (35%)	15 (48%)	5 (16%)

27. That the arbitrator recognizes one of the representatives of the parties as a fellow member of the National Academy of Arbitrators?

	Yes	*No*	*It Depends*
Company (Northeast)	28 (23%)	91 (75%)	3 (2%)
Company (Midwest)	8 (22%)	28 (76%)	1 (3%)
Union (Northeast)	29 (34%)	53 (62%)	4 (5%)
Union (Midwest)	9 (29%)	22 (71%)	0 (0%)

28. That a union representative has advised the arbitrator that he agrees with the company's position (but that a hearing must be held for "political" reasons), and that the union representative has asked the arbitrator to agree in advance of the hearing to adopt the company position?

	Yes	*No*	*It Depends*
Company (Northeast)	50 (41%)	58 (48%)	14 (11%)
Company (Midwest)	10 (27%)	23 (62%)	4 (11%)
Union (Northeast)	44 (50%)	30 (34%)	14 (16%)
Union (Midwest)	16 (52%)	12 (39%)	3 (10%)

29. Same question as #28 except that the arbitrator is not asked to make a commitment on the decision that he will render.

	Yes	*No*	*It Depends*
Company (Northeast)	30 (25%)	82 (67%)	10 (9%)
Company (Midwest)	8 (22%)	25 (69%)	3 (8%)
Union (Northeast)	37 (42%)	43 (49%)	8 (9%)
Union (Midwest)	9 (29%)	18 (58%)	4 (13%)

30. That on a plant visit, after the hearing, the union representative, who presented the union's case, indicates that he has done his best in presenting the case but that he will understand if the arbitrator rules in favor of the company under the contract?

	Yes	*No*	*It Depends*
Company (Northeast)	14 (11%)	106 (87%)	2 (2%)
Company (Midwest)	3 (8%)	33 (89%)	1 (3%)
Union (Northeast)	23 (26%)	61 (69%)	4 (5%)
Union (Midwest)	6 (19%)	23 (74%)	2 (6%)