APPENDIX D

THE DEVELOPMENT OF NEW ARBITRATORS: REPORT OF COMMITTEE, 1970-1971 *

THOMAS J. MCDERMOTT, CHAIRMAN**

During May 1970, President Jean T. McKelvey appointed a special Committee for the Development of New Arbitrators. Its basic function was to determine if a type of continuing program for the entry of persons into the arbitration profession could be developed that would be both practical and within the capabilities of the Academy to carry out. In addition, attempts should be made to develop more specific factual data relating to those who seek to enter the arbitration profession. Throughout the year preliminary reports have been submitted to members of the committee, and meetings of the committee were held in October 1970 and January 1971. The following, therefore, constitutes the report for this committee for the year 1970-1971.

Prior Activities

The subject of entry into the arbitration profession is not a new one to the Academy. Almost from its very beginning as a professional organization, it has recognized the problem of a short supply of acceptable arbitrators and the need for some form of orderly process that would enable persons with appropriate talents to move into labor arbitration work. However, the organization has had great difficulty in coming up with much of a specific nature that would be directed at this objective. A summary of what consideration has been given to this problem in the past and what activities have taken place is therefore of importance to emphasize the need for action on the part of the Academy if it is to meet its responsibilities as a professional organization.

The need for the Academy to concern itself with entry into

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the profession was stressed by the late Edwin Witte in his address to the first annual meeting of the Academy in 1948. He stated that further progress in industrial arbitration depends upon a number of factors and among them is the development of "a larger group of qualified and experienced arbitrators." [1] In 1950, the Committee on Research and Education, Charles C. Killingsworth, chairman, issued a "Report on the Education and Training of New Arbitrators." [2] In that report the committee found no shortage of people able and willing to undertake arbitration work, but it did state that there was a shortage of *acceptable* arbitrators in several regions of the country. In pinpointing the basic problem, the report stated:

> "Since experience is unquestionably the best teacher in this field, as in so many others, and since there are many potentially able arbitrators whose services are not being used, the problem of maintaining an adequate supply of arbitrators now and in the future is to a large extent a problem of promoting the acceptability of newcomers." [3]

The committee called attention to the fact that practically nothing had been done with respect to the training of arbitrators; yet it did not feel that at that time it was ready to propose any program for the Academy to adopt. It did, however, point to the real basis why the Academy should concern itself with the training and development of new arbitrators when it stated:

> "If arbitration is to be recognized as a profession, we must give adequate attention to training for this new profession. In the opinion of this committee, it is most fitting that this Academy, the professional society of arbitrators, should make training for arbitration one of its major concerns." [4]

In 1954, a subcommittee on Education and Training, Lloyd Bailer, chairman, was established by the Committee on Research and Education. In an interim report dated October 1, 1955, the committee, in discussing the use of formal courses for training arbitrators, stated that while such courses were desirable for university students to study, ". . . the inherent factor of acceptability to the parties makes it unwise to represent the arbitrator's posi-

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[1] Edwin E. Witte, "The Future of Labor Arbitration—A Challenge," in *The Profession of Labor Arbitration,* Cumulative Selection of Addresses at First Seven Annual Meetings, 1948 through 1954, National Academy of Arbitrators, ed. Jean T. McKelvey (Washington: BNA Books, 1954), 11.

[2] *Id.* at 170-175.

[3] *Id.* at 173.

[4] *Id.* at 175.

tion as one that can be achieved by pursuing a given curriculum —as one may become a civil engineer, for example." [5]

Insofar as to what the Academy should do about education and training of new arbitrators, the subcommittee made several recommendations, among them the following:

1. The Academy encourage the use of interns by such agencies as the Federal Mediation and Conciliation Service, American Arbitration Association, and state mediation boards.

2. The Academy encourage and sponsor conferences on arbitration at which students of arbitration be encouraged to participate.

3. The Academy establish a student advisory program to assist universities in advising students of the labor arbitration profession.

4. That arbitrators be encouraged to bring in apprentices for fixed terms of one or two years.[6]

No particular action was taken by the Academy on these recommendations, although the sponsorship of conferences and the use of apprentices were undertaken by individual members of the Academy.

In the Research and Education Committee report of 1959, it was noted that prior committees had given consideration to three activities. One was the preparation of a periodic casebook of arbitration by members of the Academy. A second was a survey of arbitration courses offered by American universities, and the third was a search for ways to implement the training of new arbitrators. Acting on the advice of the Board of Governors and from the comments of the members of the committee, it was determined that consideration that year would be given only to the first two activities.[7]

While this committee did not concern itself with the question

[5] "Interim Report of Subcommittee on Education and Training," in *Management Rights and the Arbitration Process,* Proceedings of the 9th Annual Meeting, National Academy of Arbitrators, ed. Jean T. McKelvey (Washington: BNA Books, 1956), 231.

[6] *Id.* at 232-234.

[7] "Research and Education Committee Reports and Recommendations," in *Arbitration and the Law,* Proceedings of the 12th Annual Meeting, National Academy of Arbitrators, ed. Jean T. McKelvey (Washington: BNA Books, 1959), 179.

of new arbitrators, the topic was very much alive. At the 1960 annual meeting, Member William C. Loucks presented a paper titled "Arbitration—A Profession." [8] In treating the criteria that mark a profession and applying them to labor arbitration, he stated:

> ". . . [T]here are no clearly marked educational routes generally recognized as preparatory for entering a profession of arbitration. Comparing our field with either the law, medicine, the ministry, or teaching we still have a long way to go in this regard and we probably should be devoting more attention to it over future years." [9]

Jean McKelvey, in her discussion of the above paper, called attention to the fact that the Academy was formed in part "to promote the study and understanding of the arbitration of industrial disputes" and that over the years had been interpreted to include "the education and training of new members of the profession." [10] She deplored the lack of specific progress by the Academy in implementing this function, despite prior concern with the problem.

In the same volume of proceedings appeared a paper by Arnold W. Zack, titled "An Evaluation of Arbitration Apprentices." [11] The paper concerned itself with a description of the nature of apprentice programs in effect at that time and an evaluation of their success. It included five recommendations as to what the Academy could do:

1. Institute a public relations program aimed at graduate and law schools to encourage individuals to enter the profession.

2. Formally endorse the concept of apprenticeship as the most effective means of training competent arbitrators.

3. Develop a clearing house where individuals interested in entering arbitration can obtain information as to the nature of and qualifications for apprenticeship, and availability of employment opportunities.

4. Establish a program of summertime or graduate clerkships with designating agencies.

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[8] In *Challenges to Arbitration,* Proceedings of the 13th Annual Meeting, National Academy of Arbitrators, ed. Jean T. McKelvey (Washington: BNA Books, 1960), 20.
[9] *Id.* at 24.
[10] *Id.* at 32.
[11] *Id.* at 169-176.

5. Develop a pre-apprenticeship program with labor and industry to permit selected individuals to engage directly in work in labor relations.[12]

No specific actions resulted from these recommendations, and the question of what specific measures should be adopted continued to be a matter of discussion.

The American Bar Association also concerned itself with this problem of developing qualified, experienced, and acceptable arbitrators. In 1961, the Committee on Labor Arbitration to the Section of Labor Relations Law of the Association issued a report in which it found the problem to be a three-fold one.[13] First were the difficulties that talented and objective young men encountered in attempting to acquire the experience necessary both to qualify and to be accepted as arbitrators. In this regard the absence of any institution where training and acceptability might be acquired presents a formidable obstacle to any individual seeking to enter the field, no matter how great his qualifications.

The second was the absence of adequate machinery for passing judgment upon the qualifications of arbitrators and the communicating of that judgment to the parties. The report scored the appointing agencies as having failed to develop any standards of background or performance for arbitrators and of not imposing any meaningful restrictions on the admission of arbitrators to their panels. Because of this, the conclusion was drawn that there was no feasible means available to the parties to check the fitness of persons whose unknown names appear on panels of prospective arbitrators. As a result, selection tends to be confined to the familiar arbitrators who have acquired repute. The final facet of the problem was that many clients lack confidence in more youthful arbitrators, regardless of their exposure to industrial life, and many others are fearful of those whose experience was gained in working for the other side. Thus, in addition to the reluctance to entrust their case to the inexperienced, acceptability becomes difficult even for those experienced

[12] *Id.* at 175.

[13] "Report of Committee on Labor Arbitration to the Section of Labor Relations Law of the American Bar Association," in *Collective Bargaining and the Arbitrator's Role,* Proceedings of the 15th Annual Meeting, National Academy of Arbitrators, ed. Mark L. Kahn (Washington: BNA Books, 1962), 243-248.

in labor relations but whose experience was in the form of advocacy.[14]

In answer to these problems, the committee set forth three basic recommendations. The first was that the American Bar Association should take the initiative in organizing a tripartite structure made up of representatives of labor, management, and arbitrators for the establishment of a pilot program for the training of new arbitrators under the guidance and supervision of experienced and respected arbitrators. It was suggested that the model for this experiment be the program under the contract of Bethlehem Steel Corp. and the United Steelworkers of America, Ralph Seward, chairman. With respect to the problem of standards, the committee proposed that the Bar Association collaborate with the National Academy of Arbitrators, the Federal Mediation and Conciliation Service, and the American Arbitration Association in the formulation of certain minimal standards for labor arbitrators, and that these standards be used to condition admission to the panels of the appointing agencies. Finally, as a device for securing acceptability of those trained under the proposed training program and those admitted under the new set of minimal standards, it was recommended that an impartial group made up equally of labor and management representatives be established for the purpose of inducing client acceptance of the new arbitrators so approved.[15] To date, nothing concrete resulted from this report, although at the 1962 meeting of the Academy it engendered considerable discussion.

It was, however, in 1962 that the Academy, under the leadership of President Benjamin Aaron, moved from discussion to action. In conjunction with the AAA and the FMCS, a training program for potential arbitrators was initiated in Chicago. The program began with 14 trainees and ended with 10. It consisted of a one-day training institute and of arrangements for attendance at hearings conducted by Academy members. While the trainees were requested to prepare their own opinions and awards for analysis by the arbitrators, only a few chose to participate in this aspect of the training.[16]

[14] *Id.* at 244.
[15] *Id.* at 246.
[16] Committee on Training of New Arbitrators, "Report to the Membership, 1964," in *Labor Arbitration—Perspectives and Problems,* Proceedings of the 17th Annual Meeting, National Academy of Arbitrators, ed. Mark L. Kahn (Washington: BNA Books, 1964), 322.

Similar programs were initiated in Pittsburgh in 1963 and in Cleveland in 1965. Out of these there were approximately three persons who were successful in gaining a fair degree of acceptability as arbitrators. Thus the conclusion cannot be made that these programs were a total success, but neither were they a complete failure. Besides the few who were assisted in making the grade, some other benefit resulted. Former Director William Simkin of FMCS states:

> "If nothing else has been accomplished it has been worth something to get labor and industry people together to talk about the need to break in some new people. Even though few of the potential arbitrators have 'made it,' I suspect that there is a better awareness of the need, and it is possible that other new people—not in a training program—have benefitted." [17]

Current Programs

Currently several other comparable types of programs are in effect or are being initiated. During 1970, the Labor Law Committee of the Bar Association of Metropolitan St. Louis, in conjunction with the FMCS and the AAA initiated a program aimed at developing and training new arbitrators for that area. The central and immediate purpose of the program is to acquaint selected "trainees" with the arbitration process by arranging for their presence at hearings conducted in the St. Louis area.

Because the AAA does not have a regional office in St. Louis, the administration of this program is being conducted by John Canestraight, an FMCS commissioner in the St. Louis office. Initially Academy Member Father Leo Brown assisted in the determination and selection of the potential trainees. Currently Committeeman John Dunsford is serving as the Academy liaison to this program. His report on the nature of the program and its progress may be summed up as follows:

The names of approximately 20 potential arbitrators were solicited from various sources, and a committee from the Bar Association narrowed the list down to seven persons. That committee was made up of an attorney who represents unions in the St. Louis area, another who represents companies, and Commissioner Canestraight. The factors used for selecting the trainees included the availability of an individual to attend hearings,

[17] Letter to chairman, Committee for the Development of New Arbitrators, dated June 11, 1970.

current listing on the AAA or FMCS rosters, degree of interest in the project, lack of direct connection with either labor or management, and general acceptability of the individual.

The seven trainees included two practicing lawyers, two university professors (one in labor economics, the other in management), a retired NLRB staff member, a retired business executive, and a Presbyterian minister. Four of the trainees have law degrees, although two (the business executive and the minister) have apparently not practiced. Two of the seven are in their sixties, one is in his fifties, two are in their forties, and two are in their thirties.

No formal training program was scheduled, as the main thrust of the program was to attempt to gain exposure of trainees to the parties and the process by having them accompany arbitrators to actual hearings. Commissioner Canestraight has assumed the responsibility for the administrative details connected with arranging with arbitrators and the parties for attendance at the arbitration hearings. Also, the intention is to have the trainee draft a mock award which the arbitrator would then evaluate. After the trainee has had an opportunity to sit in on six hearings, the committee will review these awards and evaluations. Then, a majority approval of the trainee will automatically result in his being placed on the FMCS roster.[18] Actual appearances by trainees at hearings was to have begun during December 1970 and to continue through 1971. Evaluation of this program will, of course, have to be made at some future date. This program is likely to serve as a prototype for one that the FMCS hopes to initiate in Los Angeles.[19]

The AAA has a program under way in New York that was inspired by the International Association of Machinists through Steven Vladeck, Counsel for District 15.[20] Under this program, a special labor-management committee will select a group of arbitrators from those persons who have had only one or two arbitration cases, or who indicate good possibilities for gaining acceptability. These applicants will be in the age bracket of

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[18] Letter to Committee Member Seymour Strongin from William J. Kilberg, General Counsel, FMCS, dated Jan. 4, 1971.

[19] *Id.*

[20] Letter to Committee Member Harold W. Davey from Joseph Murphy, Vice President, AAA, dated Mar. 15, 1971.

30 to 50, and the ones selected will be given a two-day orientation program followed by a period of internship. This internship will be mainly in the form of attendance at hearings with established arbitrators. Also, with the permission of the parties, the interns will write decisions which will be reviewed by the arbitrator conducting the hearing.

The AAA and the FMCS are also sponsoring a program in the Cleveland area, which is related to work being done by Academy Member Edwin R. Teple. Details on this program are not available at this time. Finally, the AAA is also seeking to initiate a program in the Philadelphia area, but as yet nothing concrete has been established for that program.

The Need for Arbitrators

The recent and rapid growth in the use of arbitrators in the public sector on top of a long-time-continuing increase in demand for arbitration in the private sector presents serious problems with respect to the future supply of arbitrators to meet this burgeoning demand. As this need for arbitrators continues to grow, the average age of the members of the arbitration profession continues to increase. As reported in the "Survey of the Arbitration Profession in 1969" (Appendix C), the average age of members of the Academy is more than four years greater than it was in 1962; the percentage of members over 60 years of age has doubled since 1962; and less than 2 percent of the members are under age 40, compared to 4.6 percent in 1962.[21]

In terms of age alone, the problem of developing and training new arbitrators appears to be growing more acute. Perhaps the last to recognize this potential shortage would be the profession itself. However, even here the realization is growing that a shortage may become a problem in the immediate future. In the 1969 survey, in answer to the question, "Will there be a shortage of qualified arbitrators when the 'war-labor-board' arbitrators retire?" slightly more than half of those responding thought that there would be and gave reasons for their opinions.[22] The 47.2 percent who did not foresee a shortage also backed their assertions with opinions.[23]

[21] See Appendix C for this volume, at 275-276.
[22] *Id.* at 279-280.
[23] *Id.* at 280.

Exclusive of the War Labor Board, which was a unique training ground for new arbitrators, one other important institutional source for the supply of new arbitrators has been through apprenticeship programs conducted by experienced arbitrators. These programs have long been the most successful method for insuring that persons with good potential backgrounds will gain the necessary degree of acceptability that insures their successful entry into the arbitration profession. Such programs are, however, limited by a number of serious restrictions. For the most part they are very costly and time-consuming for the experienced arbitrator who takes on an apprentice. As a result, such programs have been restricted mainly to umpireships with heavy case loads and with a willingness on the part of the parties both to finance the program and to agree to the use of the apprentice for hearing cases and writing decisions. In addition, there have been a few other full-time arbitrators who have been willing to sacrifice time and money in order to get particular individuals started in the field, but such persons have been the exception.

The 1969 survey indicates that some progress is being made in the movement of individuals into the profession via the apprenticeship route,[24] but despite these improvements, the small numbers involved prevent this avenue from being a primary source for the training and development of any substantial quantity of new arbitrators. The problem of a shortage of acceptable arbitrators will continue to be present, and the need for the adoption of a continuing program or programs aimed at alleviating this shortage will continue to be a matter of serious concern to the National Academy of Arbitrators.

Possible Programs for Consideration by the Academy

To date, the past activities of the Academy in the training and development of new arbitrators have been through participation with the appointing agencies in programs that primarily stressed training. While training is important, the route to acceptance as an arbitrator can come only through experience, for the problem has been in the past and will continue to be that the parties generally do not want to accept as an arbitrator anyone who has not had experience. Therefore, any program that is to be sponsored by the Academy must go beyond mere

[24] *Id.* at 277-278, for survey results on apprenticeship.

training and must seek to provide some channel for the gaining of experience.

Such a program should take into consideration those attributes which the parties believe distinguish an experienced arbitrator from an inexperienced one. Unfortunately, very little research has been carried out in this area. However, in a recent survey of attitudes of union and management representatives toward experienced versus inexperienced arbitrators by Brian L. King, several conclusions were drawn.[25] Not surprising, the first was that a significant preference prevailed in the attitudes of both labor and management representatives that was in favor of the experienced arbitrators. On the other hand, while union representatives favored the experienced arbitrator over the inexperienced, they had significantly more favorable attitudes toward the inexperienced arbitrator than those held by the management representatives. Finally, with respect to attributes upon which the respondents based their conclusions, it was believed by both sides that the inexperienced arbitrator would be less likely to base his decision on the specific facts of the particular case. Second, and related to the first, they were of the opinion that the experienced arbitrator would be more likely to develop pertinent information through his questions and his conduct of the hearing. Finally, both groups were convinced that inexperienced arbitrators were significantly less consistent in their rulings than were the experienced arbitrators.

While these three attributes were the only ones that the union respondents found to be significantly different as between experienced and inexperienced arbitrators, management representatives were convinced that, in addition, inexperienced arbitrators were more likely to accept a case despite an overloaded schedule, were more likely to attempt to improve the contract through arbitration, and were less likely to have as broad a viewpoint as the experienced arbitrator.[26]

This study emphasizes the point that any program aimed at developing new arbitrators must be directed at increasing the supply of persons who will become acceptable, rather than being solely concerned with training. To date, experience has shown

[25] Brian L. King, "Management and Union Attitudes Affecting the Employment of Inexperienced Labor Arbitrators," 22 *Lab. Law J.* 23-28 (1971).
[26] *Id.* at 25-27.

that the one proven method for accomplishing this objective has been through some form of apprenticeship relationship. Therefore, any continuing program adopted by the Academy should provide, in some degree, for such a relationship.

Several possible programs are currently under consideration by the Committee for the Development of New Arbitrators. One relates to the establishment of a program for arbitration fellowships. This would be done on a regional basis and in conjunction with university law schools and graduate schools of business and industrial relations. Under such a program, arrangements would be made with selected universities to provide for the appointment of one or two graduate or law students to serve as arbitration fellows in the last year or two of their graduate programs. Such students would be compensated under the fellowship program of the university. However, the individual would be relieved of most assistantship or fellowship duties at his university, and instead would be assigned to work as an assistant with one or two Academy members in the region. As an assistant, the fellow could work with the arbitrators in researching prior awards and cases. Under some circumstances, he might be used for preparing drafts of opinions and awards for the arbitrator's use, or even as a hearing officer.

It should be noted, however, that several limitations are present in the adoption of such a program. One is the problem of age. Most graduate school fellows would be in their late twenties at the oldest. In view of the fact that the parties tend to view anyone under 40 years of age as being inexperienced,[27] the chances of these assistants' gaining acceptability after their graduation would be minimal. Another would be the limited period of experience that any one individual would be able to achieve in such a program. Still another is that if the assistant is used only for research purposes, it is unlikely that such duties would contribute anything to his gaining any degree of acceptability, and the extent of experience obtained would be minimal. On the other hand, if he is used for preparing preliminary drafts of opinions and awards, his value to the arbitrator would be considerably enhanced. Also, the assistant would gain experience in writing decisions that would be invaluable. However, it is questionable if such experience could be trans-

[27] *Id.* at 25.

lated into acceptability, unless his name appeared on those decisions. Furthermore, there is a serious question of ethics involved in such use of assistants without the knowledge and consent of the parties. This question is presently under consideration by the Committee on Ethics and Grievances.[28]

Obviously the fullest use and best exposure for the assistant would be where he is used as a hearing officer and where, under the supervision of the arbitrator, he would prepare the opinion and award. Such use of assistants would actually make it an apprenticeship program, and it is doubtful that a system of using graduate fellows would permit time for the individual to develop to the stage of serving as a hearing officer.

In view of these limitations, it is improbable that a program for utilizing graduate fellows as arbitration assistants would be successful in increasing the supply of acceptable arbitrators. Perhaps the only contribution that the Academy could make with respect to the use of assistants would be to have the Committee for the Development of New Arbitrators serve as a clearing house for matching members who are seeking assistants with applicants who wish to serve in that capacity. In view of the growing demand for mediators, fact-finders, and arbitrators that is taking place in the public sector, such a program might render a genuine service to those persons working in that sector and at the same time serve as a training source for providing qualified personnel to serve in the public employment sector.

Another possible program is one that is under consideration by the AAA. That organization is interested in establishing a position of arbitrator in residence. The Association would seek money to finance a program wherein each year one of our senior and more respected arbitrators would be given the opportunity to serve a year in residence and to work with a selected group of new arbitrators carefully culled from the ranks of those persons recently added to the panel of the AAA. Such a program would be primarily an endeavor of the AAA, but it would require the cooperation of the Academy in the obtaining of members to assist the arbitrator in residence by advising and instructing those persons selected who live in their geographic areas.

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[28] Letter from Russell A. Smith, chairman, Committee on Ethics and Grievances, dated Jan. 18, 1971.

Perhaps the most effective program that could be carried on by the Academy and which would be within its capabilities would be a continuing program of interns and mentors. The program would be conducted on a regional basis, and it would involve the selection of from five to eight persons to serve as interns.

The selection process for determining eligible candidates will require the working out of a number of details. It is likely that a joint labor and management committee should be appointed to pass on the applicants. This committee would have the further responsibility of seeking to gain acceptance of the graduates of the program as arbitrators by labor and management. Criteria for determining eligibility of persons for the internship program must be developed. Such things as age limits to be applied, the backgrounds to be sought, the manner in which the names of prospective applicants would be obtained, and the standards to be used for evaluation of the applications are all details that would have to be determined.

At any rate, once the list of interns was determined, the assistance of both the AAA and the FMCS would have to be secured. In addition, members of the Academy would have to volunteer to serve as mentors in those cases they would be hearing in their local areas. The lists of interns and mentors would be maintained in the regional AAA office. When an AAA case arose to be heard by one of the mentors in the regional office hearing room or in the city itself, the regional manager would obtain the necessary clearances, and he would send out a copy of the "Notice of Hearing" not only to the parties concerned but also to not more than three persons from the intern list. For FMCS cases, a system of interchange would have to be worked out between the FMCS, the AAA regional office, and the arbitrator.

The interns would attend the hearing as auditors. At its close, they would get together with the arbitrator for purposes of discussion that would, of course, avoid the merits of the case. During the hearing the interns should take copious notes, and each should prepare a draft of a decision. These drafts should be mailed to the regional manager of the AAA office, who would hold them until the arbitrator's decision was received.

A copy of his decision would then be sent to the interns, and their drafts would be released to the mentor-arbitrator. It is hoped that the mentor would then read these drafts and prepare a critical evaluation for the benefit of the intern.

Committee Member John Shearer proposes adding two additional phases to the program, which would take effect after each trainee had audited from two to four cases with each of three arbitrators in the region, thus making a total of from six to 12 auditing experiences. On the basis of their acquaintanceship with the particular intern, the arbitrators would recommend that he be advanced to the next phase, which would be to serve as an assistant to a particular arbitrator. The comments with respect to the use of assistants as given above would, of course, apply to this relationship, referred to as Phase 2. In addition, Mr. Shearer's proposal includes the requirement that the decision be signed by the arbitrator, followed by the notation "Assisted by" and the name of the assistant. This service as an assistant should be with two or three mentors for from two to four cases each.

Upon the recommendation of these mentors, the assistant would then be proposed for listing by the AAA and the FMCS which would be Phase 3. In this phase it is hoped that the intern would be selected by the parties for particular cases. A system of monitoring is then proposed whereby, for a period of two years, each of the three mentors would review from two to four cases with the intern, in the function of a monitor. At completion, the new arbitrator would be designated by the agencies as having completed the Academy training program.

With respect to remuneration for the intern, Mr. Shearer proposes that in the auditing phase the trainee would cover his own expenses. While serving as an assistant, one half of the arbitrator's fee would be paid to the assistant. During the monitoring stage, the trainee would receive his full fees and expenses.

Activities by Appointing Agencies

While emphasis in this report has been given to the need for establishing a continuing program that would provide for entry of qualified arbitrators into the profession, it is not intended that this will be the only avenue for entry. It is hoped that

entry via regular established apprenticeship programs will continue to grow. Also, entry as now provided for through the American Arbitration Association and the Federal Mediation and Conciliation Service is assumed to continue.

With respect to this latter form of entry, there are certain things which could be done by the appointing agencies that would do much to improve acceptance of new panel members by the parties. One would be the collecting of more specific data with respect to the numbers of persons added to the panels of the appointing agency each year, the extent to which the names are used by the regional offices in the case of the AAA and the Washington office in the case of the FMCS, and the extent to which the individuals are selected (1) by management, (2) by labor, and (3) by both. Also, there is a need for establishing a system of follow-up for the purpose of determining the reasons for acceptance or rejection of specific individuals. It would appear that more success in the introduction of new names to the profession might be achieved if criteria for acceptance were more specifically determined and applied. In the case of admission to the AAA panels, a reduction in the number of persons accepted and a more uniform program for insuring the more frequent use of those accepted might result in more success in the introduction of new arbitrators. In the case of the FMCS, the basic criterion for admission to its roster is acceptability by labor and management representatives. For the most part, actual arbitration experience has been viewed as absolute proof of such acceptance. It may be that a review of its qualifications, with less emphasis on the need for actual experience, might lead to an increase in the number of new names accepted by the FMCS, and to an increase in the number of persons with satisfactory acceptability ratios.[29]

Regardless of what program may be adopted by the Academy, the ultimate question is, "Will he or will he not be jointly picked for a case by the parties?" In this regard it may be possible that some use could be made by both the AAA and the FMCS of the power of direct appointment. In general, the practice has been to give these appointments only to experi-

[29] A satisfactory acceptability ratio, according to Committee Member Davey, is an acceptance by the parties in 10 percent or more of the times the person's name is submitted to the parties.

enced arbitrators. On the other hand, if a small number of these appointments were given to graduates of an Academy-approved program, it would get them started with their first cases. However, the appointing agency would want some sort of control over the issuance of the decision, so that it could feel confident that no major mistakes would be made. Here, a committee of Academy members in each region could agree to serve as a board of review and go over with the intern the decision and award before it was released to the parties. This, however, may be too much to expect from individual Academy members and also might evoke considerable opposition from the parties.

It is evident, therefore, that through the years the Academy has been concerned with the problem of insuring a steady supply of qualified persons into the labor arbitration profession. To date, however, it has not been able to devise a continuing program that would achieve this objective. To some extent this has been due to the apathy of the membership with respect to this problem, but to a greater extent it has been because no practical program has been proposed that is within the capabilities of the Academy and its members to carry out. The matter of need for such a program is no longer in question. If the Academy is to fulfill its function as a professional organization, it must play some positive role in providing for the development of new arbitrators. The job for this committee for the year 1971-1972 will be one of determining what specific programs should be recommended to the Board of Governors for adoption.