APPENDIX C

ACTIVITIES DIRECTED AT ADVANCING THE ACCEPTABILITY OF NEW ARBITRATORS *

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Since the current Committee for the Development of New Arbitrators was formed in 1970, a good deal of activity has been taking place in the form of programs, articles, and news reports concerned with the problem of the development and acceptability of newcomers to the arbitration profession. In an issue of the *Monthly Labor Review,* the recent General Counsel of the Federal Mediation and Conciliation Service emphasized the obstacle of acceptability and its effect on the supply of arbitrators.[1] Also, a recent issue of *Business Week* featured a story that discusses the concentration of the case load among a small number of older arbitrators, and it makes reference to some of the things being done to meet this problem.[2]

In addition, there is currently more interest in research, as it relates to this topic. As most busy arbitrators are aware, there has been a marked increase in questionnaires from graduate students whose research is being conducted in this area. In an issue of the *Personnel Journal,* Brian L. King reports on the results of a survey relating to the biographical backgrounds of 134 arbitrators who had published decisions during the period September 1963 through August 1968.[3]

A very interesting study recently published was that by two regional directors of the American Arbitration Association.[4]

* Report of the Committee on the Development of New Arbitrators for 1971-1972. Members of the committee are Harold W. Davey, John E. Dunsford, Wayne Howard, David R. Kochery, Seymour Strongin, and John C. Shearer.

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[1] William J. Kilberg, "The F.M.C.S. and Arbitration: Problems and Prospects," *Monthly Labor Review* (Apr. 1971), 40-45.

[2] "The Demand for Arbitrators Outruns Supply," *Business Week* (Jan. 8, 1972), 62, 63.

[3] Brian L. King, "Some Aspects of the Active Labor Arbitrator," *Personnel Journal* (Feb. 1971), 115-123.

[4] Patrick R. Westerkamp and Allen K. Miller, "The Acceptability of Inexperienced Arbitrators: An Experiment," 22 *Lab. L.J.* 763 (Dec. 1971).

This study discusses the failure of the parties to accept inexperienced arbitrators, and it points to some 1970 data from the AAA. In that year, 458 of the 1,475 arbitrators carried on the AAA panels were responsible for all awards issued. The uneven distribution of the case load is illustrated in the accompanying table.[5]

Number of Cases Awarded
Per Labor Arbitrator for AAA in 1970

Number of cases awarded	1	2–5	6–10	11–20	21–30	31
Number of arbitrators	142	149	69	50	24	24

Thus, out of the 458 arbitrators who issued opinions, 167 accounted for the vast majority of cases.

A very interesting experiment was also attempted in the study. An effort was made to determine whether 10 Chicago attorneys, each with at least five years' experience in labor arbitration, could differentiate between the awards and opinions of experienced as against inexperienced labor arbitrators. Needless to say, they could not. Although the study had many weaknesses, it nevertheless represents an important contribution to the need for determining objective differences between experienced and inexperienced arbitrators.

Perhaps the most spectacular and promising results coming from the growing awareness of the shortages of acceptable arbitrators and the problems of delay and expense in arbitration have been the number of expedited arbitration procedures being instituted or considered. General Electric, Bethlehem, and U. S. Steel have already instituted programs that are directed at controlling and reducing the backlog of cases awaiting arbitration. In this process, use is being made of arbitrators whose case loads have been relatively light.

Recently Bethlehem Steel Corp. and the Steelworkers Union requested a panel of 100 new arbitrators from the Philadelphia office of the AAA. They intend to cull these down to about 40 and to have them on cases where no important principles are involved and where no precedents will be established. Apparently, the only training to be given to these individuals will be actual experience.[6] In Cleveland, the Ohio Edison Electric Co. and the

[5] *Id.* at 765.
[6] Report of Committee member Wayne E. Howard, dated Feb. 3, 1972.

Utility Workers Union are in discussion with the AAA's Cleveland office regarding the use of a secondary panel of new arbitrators who would be available to give early dates for the handling of less important grievances. The company and union will call upon the more experienced arbitrators for major problems.[7]

The Automobile Workers Union reports that it is also in discussions with the AAA on the establishment of a procedure for using "so-called apprentice arbitrators" for hearing discipline cases. They would also be used for contract construction cases where the parties agree the results will settle only the grievance at issue and not serve as a precedent for the future. The procedure is also to provide for appeal to a rehearing by a "journeyman arbitrator" if either side is totally dissatisfied with the apprentice arbitrator's award.[8]

Committee Meeting—May 1971

For its part, the Committee for the Development of New Arbitrators has continued to work closely with the American Arbitration Association and the Federal Mediation and Conciliation Service in programs directed at attempting to develop new arbitrators and to get them established. In May a meeting of the committee was held in Boston at which representatives of the AAA and the FMCS were in attendance. A number of topics were considered. Discussions were devoted to the possibility of establishing arbitrator fellowships at various universities. The consensus of all in attendance was that the most serious obstacle to such a program is the relatively young age of the participants. The evidence seems to be quite strong that the chances for young people's gaining acceptance as arbitrators are very small.[9] Also, at that stage in life, both graduate and law school students, who would be serving as arbitrator fellows have not yet finalized their future goals. The committee decided that it would not abandon the idea, but that it would not pursue it further at this time.

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[7] Report from Academy member Edwin R. Teple, dated Nov. 3, 1971.

[8] Letter to Committee member Harold W. Davey from Raymond E. Shetterly, Director, UAW Arbitration Services Department, dated Nov. 8, 1971.

[9] This conclusion appears to be supported by the findings of Brian L. King in his survey of labor and management representatives on their attitudes toward the use of experienced vs. inexperienced arbitrators. In that study, anyone under 40 years of age was viewed as an inexperienced arbitrator. See Brian L. King, "Management and Union Attitudes Affecting Employment of Inexperienced Labor Arbitrators," 22 *Lab. L.J.* 25 (Jan. 1971).

Considerable time was devoted to discussion of the mentor-intern program that was proposed in the 1970-1971 Annual Report.[10] Basically, the idea was acceptable. There were, however, several objections to the adoption of a program that would require close monitoring of the interns by arbitrators, as contained in the Shearer proposal.[11] One was the fact that the amount of time required would be very substantial on the part of the arbitrator. A second was that the type of person who would be selected to qualify for such a program would not need the degree of training provided for in that proposal. A third was the very real point that any arbitrator who would spend that amount of time would do well to consider developing his own apprentices. Finally, considerable skepticism was expressed with regard to the degree to which an arbitrator can get involved in the actual training and control over an individual without that individual's actually becoming apprenticed to the arbitrator.

Discussion was also devoted to the problem of gaining acceptability after the completion of any type of program. A minority position was that it would be a fatal error to make known the neophyte status of any individual, for such information would preclude his ever gaining acceptability. On the other hand, the majority opinion was to the effect that if the development program is to have any meaning, a person who participates in it should be associated with having completed such activity. It is clear that research relating to the attitudes of the parties with respect to such identification would be helpful. The committee was in agreement that the ideal situation would be to gain a commitment from labor and management representatives, who agree to support any development program, that they would accept as arbitrators those persons completing such programs.

In view of the fact that several activities devoted to the development of new arbitrators are currently under way, the committee agreed that no specific recommendations for the adoption of a mentor-intern program by the Academy would be made to the Board of Governors at this time. Instead, the activities of the committee would be directed toward supporting in every way

[10] Thomas J. McDermott, "The Development of New Arbitrators: Report of Committee, 1970," in *Arbitration and the Public Interest*, Proceedings of the 24th Annual Meeting, National Academy of Arbitrators, eds. Gerald G. Somers and Barbara D. Dennis (Washington: BNA Books, 1971), 318, 319.

[11] *Id.* at 319.

possible the AAA and the FMCS in their current programs for developing new arbitrators. It was the view of the committee that the experience gained from those programs would be extremely helpful in determining what can actually be done to achieve entry into the profession by persons qualified to perform as arbitrators but who lack acceptability.

At the May 1971 meeting of the Board of Governors, the Executive Committee was directed to prepare a statement defining the role of the Academy in its cooperation with other agencies for carrying on programs directed at developing new arbitrators. That statement, as set forth by President Lewis Gill, is as follows:

> "It is the established policy of the National Academy of Arbitrators not to endorse or recommend individual arbitrators, whether or not they are members of the Academy. Accordingly, Academy sponsorship and cooperation in programs of training new arbitrators must not be taken as endorsement or recommendation by the Academy of any individuals involved in the training."

Current Programs Directed at the Development of New Arbitrators

Since the establishment of this committee, a number of activities directed at the development of new arbitrators have been instituted by the appointing agencies. The committee and members of the Academy have been actively cooperating with the agencies in these programs. The following constitutes a report on the status of those programs.

Arbitrator-in-Residence

In December 1971, the American Arbitration Association announced the appointment of Academy member Eric J. Schmertz as the first recipient of the J. Noble Braden chair for the development of labor arbitration.[12] Funds to establish the chair were contributed by the Educational and Cultural Trust Fund of the Electrical Industry. This fund, jointly operated by Local 3 of the International Brotherhood of Electrical Workers, AFL-CIO, and the companies with whom it bargains collectively, was established in 1943.

According to President Donald B. Straus, who made the announcement, Schmertz would be "available to consult on

[12] AAA, *Arbitration News* (Dec. 1971).

procedures, on training programs, on the development of improved or innovated arbitration techniques, and on the recruitment and maintenance of the labor panel." In addition, he may also serve as an arbitrator under special circumstances for the purpose of developing or testing new procedures. At the end of the year he is scheduled to submit a report on his activities and recommendations, and those recommendations may become the basis for a similar grant to another arbitrator in the following year.[13] Schmertz is one of three public members of the New York City Office of Collective Bargaining. He is also a professor of law at Hofstra University Law School and is a long-time member of the Academy.

Machinist Program—New York City

Another activity of the American Arbitration Association that gives considerable indication of a successful outcome is the agreement that was worked out with District 9 of the Machinists and a group of management attorneys who service companies in the district's jurisdiction. Approximately 25 names were picked from the rolls of the AAA panel; this list was later whittled down to 18 persons. They were mostly individuals who have had a few cases, although some have had none at all. In making its selections, the Selection Committee, for the most part, tried to pick individuals who had had some cases. Thus, the program was more one that aimed at launching individuals who already had some acceptability rather than attempted to create brand new arbitrators. A three-day formal seminar was conducted for the participants. One day was an internal session between the AAA and the participants, a second day was a meeting with labor and management representatives, and a third day was a meeting between experienced arbitrators and the participants.

The important thing about this program is that prior to its installation, the AAA was able to obtain a commitment from both the Machinists' district and the company representatives that persons selected for the program would be accepted as arbitrators in specific cases. To date, most of the selected individuals have been used to some extent as arbitrators by the parties.

The St. Louis Program

A development program in St. Louis was initiated by the Bar

[13] *Id.*

Association of Metropolitan St. Louis in conjunction with the local office of the FMCS in 1970.[14] Seven individuals were selected by three members of the Bar Association. They included a retired business executive, a retired career man from the NLRB, a university professor of management, a university professor of labor economics, a clergyman, and two practicing attorneys. One is the son of a practicing arbitrator and Academy member.

Committee member John Dunsford reports that a formal program never was introduced.[15] There was no training phase to the program, and administrative details relating to notices of appointments from the FMCS and AAA in the area and formal arrangements for attendance of candidates at hearings were never fully or satisfactorily developed. Three trainees, with the assistance of the local FMCS commissioner, arranged to attend four or five hearings each with several arbitrators, while two made arrangements with individual arbitrators to be present at their hearings.

Of the seven candidates originally chosen, two evidently withdrew. The other five have been listed on the FMCS panels, and two have succeeded in getting sufficient cases that they no longer consider the observer role as being of any value to them. One, a practicing attorney, has received 10 cases, while three others have each had a few appointments. Dunsford reports that the program may have given some exposure to these four, but it is difficult to determine if it was directly responsible for the emergence of the three or four persons who may gain acceptability or whether they would have been able to make it on their own.

No difficulties were reported in obtaining the cooperation of local arbitrators, and the Arbitration Subcommittee of the Labor Law Section of the St. Louis Bar Association intends to select a new panel of candidates and to attempt a reactivation of the program.

The Cleveland Program

In Cleveland, the program that was developed grew out of the individual efforts of Academy member Edwin Teple, in cooperation with the regional manager of the AAA and the local director of the FMCS. It consisted of an approved course conducted at

[14] See McDermott, *supra* note 10, at 311 for details relating to that program.
[15] Reports from Committee member John Dunsford, dated Feb. 7 and 14, 1972.

the Western Reserve University Law School, for which academic credit was given. The class was limited to 18 people who had both a background and an interest in labor relations. Particular efforts were made to attract both black and female candidates, but only one of each was enrolled. Two members of the class were from the previous Cleveland program conducted from 1965 to 1968. Only two of the group are nonlawyers, while one is a professor of law at another law school. Six members of the Academy assisted in the program by attending class sessions and taking part in discussion of topics under consideration for each session. All candidates attended one or more arbitration hearings held in the Cleveland area, and mock opinions are being written by the candidates for review.

Like all attempts that have been made in the past to develop new arbitrators, the hang-up becomes the question of how to gain acceptability for the candidates. In this respect, the local offices of the AAA and FMCS are cooperating. An attempt was made to initiate a system of direct referral of new arbitrators by established ones. This would take place when an arbitrator received a direct request for his services and he was unable to provide a day within the time period requested. In such a situation he would suggest the names of several of the candidates as being available. In one or two cases, the parties have accepted the suggestion, although there is some question if sufficient occasions arise for such referrals to be made.[16] Another is an attempt to gain the support of cooperating parties for the acceptance of the new arbitrators for the handling of less critical grievances. In connection with the latter objective, the Cleveland group, when requested, will arrange for review of a draft of the opinion by a member of the Academy before it is issued by the arbitrator from this special panel. At the present time efforts are being made to reach labor and management representatives in the Cleveland area in order to obtain their cooperation in the acceptance of these new arbitrators.

The Philadelphia Program

In Philadelphia, the regional manager of the American Arbitration Association has been actively working with a committee of representatives of labor, management, and local Academy members to establish a program directed at the development of new

[16] Teple, *supra* note 7.

and acceptable arbitrators. Approximately 39 persons who are currently on the local panel of the Philadelphia office were proposed to a joint subcommittee of labor and management representatives for selection for the training program. Of these 39, 15 were selected. Efforts were made to interest several black attorneys in participating in the program, but, because of busy schedules, only one was able to take advantage of the invitation.

Of the group of candidates selected, nine are from academic faculties. One is a clergyman, and another is a retired academician. Three are practicing attorneys, one a company executive, another a business consultant, and the 15th has a minimum labor relations background.[17] Nine of the candidates have never had any arbitration experience, six have each had a few cases, while one has had one public sector case.

At a meeting of the sponsoring committee in April 1971, it was agreed that the trainees would be required to prepare a draft of an opinion and award for the cases he attended and that the arbitrator would be asked to evaluate critically that opinion and award. It was also proposed that "some type of certification be drawn up by the experienced arbitrator stating that the trainee is ready to go out on his own, and have this certification submitted to labor and management people in order to get them to use these trainees." [18] It was believed that this would be an effective means of achieving acceptability because several attorneys present at this meeting said that they would not be reluctant to use a trainee-arbitrator "if he had been certified by any member of the committee, an arbitrator, or another attorney who had observed the trainee." Any certification that might be made will have to be a matter for an individual arbitrator to decide.

On June 25, 1971, a half-day session was scheduled for the purpose of bringing the candidates together in order to meet members of the committee and to give the candidates an opportunity to ask questions and to provide suggestions as to what they would like to obtain from the program. Then, on October 30, 1971, an all-day training session for the candidates was conducted at Temple University. The program covered such topics as conducting a hearing, the arbitrator's relationship to the parties, and

[17] Howard, *supra* note 6.
[18] Report of Arthur R. Mehr, regional director, AAA, dated Apr. 22, 1971.

making the decision and writing the opinion. Academy members participating in this program were Eli Rock, Lewis M. Gill, S. Herbert Unterberger, and Wayne Howard. Following this session, a reception was held to give the candidates an opportunity to meet various management and labor representatives.

Candidates are being scheduled to sit in on hearings with experienced arbitrators in the Philadelphia area. The extent of the relationship between the candidate and an individual arbitrator will be dependent upon what they themselves develop.[19] In this respect there is some disagreement among the cooperating arbitrators as to the best approach to this relationship. One opinion is that the arbitrator can have from three to five candidates sitting in on a hearing, and at its close he will discuss the procedural aspects of the case with them as a group. Another is that the relationship should be more personal, with the arbitrator assuming responsibility for only one person, preferably an acquaintance, colleague, or friend. This, then, would entail attendance at several hearings with that arbitrator, discussions between them, the writing of mock opinions, and personal evaluation of those opinions by the arbitrator.

It should be noted that to date there have been no difficulties encountered in obtaining the cooperation of experienced arbitrators in this program. As noted above, there is, however, a difference on the merits of the approach to the training.

The Western New York Program

By far the most important and most detailed program for developing new arbitrators is the one being conducted in western New York. The Academy is actively cooperating with the FMCS, the AAA, and the Western New York Chapter of the Industrial Relations Research Association. At the Boston meeting in May of the committee with FMCS and AAA representatives, the basis for the program was established. On June 8, 1971, another meeting was held at the General Counsel's office in Washington which was attended by the chairman of this committee (Thomas J. McDermott), Sy Strongin, and Jean McKelvey, along with Joseph Murphy of the AAA, William Kilberg, Lawrence Schultz, and James Power of the FMCS. At the meeting the basic structure for the initiation of the western New York program was discussed and tentatively adopted.

[19] Howard, *supra* note 6.

It was determined that the training program would be confined to the western New York area, to include Buffalo, Syracuse, and Rochester. One part of the program would consist of academic training under the direction of Jean McKelvey and Alice Grant of Cornell's School of Industrial and Labor Relations. A second part of the program would involve the assignment of the candidates to hearings with experienced arbitrators who have cases in the general area. These arbitrators would be asked to work as closely as possible with the candidates through discussion and through critical evaluations of the decisions that the candidates will prepare from their own notes and will submit to the arbitrator after he has completed and released his decision. In addition, the AAA and the FMCS are working very closely with a joint labor-management committee, representing the Western New York Chapter of IRRA. The committee consists of seven attorneys who are active in representing company and union clients, plus 20 others who are union and company representatives. It is under the direction of Robert R. Logan, president of the IRRA Chapter and secretary of the Western New York Master Builders Association.

In August 1971 the chairman of the Academy's Committee for the Development of New Arbitrators circularized 99 Academy members in New York State and in the contiguous regions of Philadelphia, Pittsburgh, and Cleveland in order to secure the names of individual arbitrators who would assist in the training program. Specifically, the members were asked if they would agree to have the selected candidates sit in on a hearing and that, following the hearing, they would spend some time with the candidates answering questions and discussing some of the various procedural questions that may have arisen during such hearing. They were also asked if they would at a later date review the copies of the decisions that will be written by the candidates. The willingness of members to cooperate was excellent. Of the 99 surveyed, 57 offered their services. In addition, several wrote their regrets, either for reasons of health, of not being available at this time for arbitration, or of the fact that their activities are limited and they would not, therefore, be in the western New York area.

A conference on labor arbitration, conducted by the FMCS and the AAA and sponsored by the Western New York Chapter of the IRRA, was held in Buffalo on October 15, 1971. The purpose of

the conference was to introduce to the western New York area the plans for the new program for the development of arbitrators. Participating in this program were Academy members George Hildebrand, who is also president of IRRA, Bernard Meltzer, Lewis Gill, and Jacob Seidenberg. The conference was attended by more than 500 persons, most of them being representatives from labor and management. The receipts from the conference were expected to cover a good part of the expenses connected with the development program. In addition, it resulted in substantial favorable publicity in the area for the development and training program.

One very favorable factor was that applications were received from over 100 persons seeking selection as candidates. Copies of all resumés were circulated among all members of the labor-management committee, who were requested to list 25 choices in preferential order on the basis of criteria established by a criteria committee. These lists were then turned over to a special subcommittee of four members who had the task of narrowing the group down to 20 candidates.

The criteria used for the selection of candidates was as follows:

> "*Age:* Every consideration and encouragement should be given to younger individuals who have some experience or to those in older age brackets who have any immediate chance of acceptability because of their standing in the labor relations community.
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> "*Experience:* At least 5 years' experience in Labor-Management relations with labor, management or both, including exposure to a wide range of labor relations problems and activities; appropriate government service in the labor field; college level teaching experience in pertinent subjects including labor relations, collective bargaining, labor law, and related subjects. Consideration should also be given to experience in research in labor relations fields or in educational or non-profit organizations having contact with the labor relations community. Education degrees in industrial relations, law, personnel, management, industrial engineering, or related fields, or the equivalent in training or experience. Actual degrees are unnecessary in instances where there is appropriate and extensive experience in diversified phases of labor relations work; e.g., 10 years as a union representative, labor relations representative, or a combination of both.
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> "*Occupation:* Candidates should normally be selected from those currently engaged in (1) labor relations and/or related industrial relations work, (2) attorneys with an interest and experience in labor relations, or (3) educators with qualifications and experience

in teaching labor relations and collective bargaining and related industrial relations courses. Before final selection of any candidate, determination should be made that the individual will be available as required for training and subsequent use as an arbitrator with no remuneration during training.

"*Geographical Area:* Candidates for the recruitment program should be located in the Western New York State area, preferably in the Rochester, Jamestown, Buffalo, Syracuse, Ithaca, and Niagara Falls area.

"*Nondiscrimination:* In consideration and selection of applicants there shall be no discrimination based upon race, creed, color, national origin, age, or sex.

"*Waiver:* In those instances where a candidate's total qualifications are clearly exceptional, yet in fact do not meet each of the listed criteria, the Selection Committee may, by unanimous vote, find such candidates to be qualified for the training program."

This set of criteria was based upon specific proposals made by the AAA and the FMCS to the subcommittee on criteria.

A profile of the 20 arbitrator-designates finally selected for this program is as follows: The accent is on youth, as arbitrators go, with one man under 30; 11 between 30 and 35; two between 35 and 40; and six between 40 and 50. One female and two Negroes are among those selected. It is also interesting to note that a large majority, 14, are nonattorneys. Of the six with legal backgrounds, three are practicing attorneys, while the other three are full-time law school faculty. A total of nine candidates are from university faculties, one being a dean of a business school and another a chairman and professor of history. Law, business administration, economics, and industrial relations are the specialties of the others.

Only six of the designates have had any prior arbitration, fact-finding, or mediation experience. Two of them each had a few arbitration cases in the public sector, and two had a few cases in the private sector. The majority, 14, had no prior arbitration, fact-finding, or mediation experience. However, nine are presently listed on an appointing agency panel of arbitrators, with most of them being on the panel of the Public Employment Relations Board of New York.

The 11 nonacademic designates have a wide variety of backgrounds. Besides the three practicing attorneys, one is an indus-

trial relations director, while another is a former one. One is a PERB member and another is an employee of PERB. Another is executive director of the Urban League of Rochester. Another is a hearing officer for the State Education Department, and one is a coordinator of employer-employee relations for a university. All in all, the group presents very impressive credentials for a program of this nature.

The academic program for the group will consist of six days of workshop-seminars which have been arranged to be held on one Saturday a month. The first of the seminars was conducted in Buffalo on February 5, 1972. Participating as faculty were Joseph Murphy of the AAA, James Power and Lawrence Schultz of the FMCS, and Thomas J. McDermott and David Kochery representing the Academy. Topics covered included procedural problems in arbitration and the relationship of arbitration to law. Other seminars will be devoted to substantive issues that arise in arbitration. One day will treat arbitration in the public sector, while the last session will be devoted to the presentation of a mock arbitration session and the writing of opinions.

Arrangements are being made for the scheduling of the designates to sit in on hearings with the Academy members who expressed their willingness to assist. Only one designate will be assigned to a given hearing. It is hoped that the arbitrator will discuss with him any questions relating to procedural aspects of the case. The designate will be expected to write a mock decision based upon his notes taken at the hearing. This decision will be routed through the administrative offices and sent to the arbitrator after he has completed and issued his decision. A relatively simple evaluation form will accompany the decision, which the arbitrator will be asked to complete. It is also hoped that, where possible, the arbitrator will make available a copy of his decision for the designate.

The administration of the program, which includes the notifying of the designates, the obtaining of clearances from the parties, and practically all other details, will be carried out by Samuel Sackman, commissioner of conciliation, Buffalo office of the FMCS, and Robert Meade, regional director, AAA, Syracuse. The latter will be responsible for administration of cases in the Rochester-Syracuse area, while the former will handle cases in the Buffalo area. For FMCS appointments, three postcards will be

sent to the cooperating arbitrator along with his notice of appointment. One will be used by the arbitrator to notify the appropriate office of the date for which he arranges his hearing to be scheduled. A second may be used should that hearing subsequently be cancelled, and a third is for notification by the arbitrator of the date of release of his decision.

The evaluation of the designates will be based upon confidential recommendations received from the cooperating arbitrators, the faculty from Cornell, and ultimately by the FMCS and AAA before admission to the roster. It is believed that the problem of acceptability will be overcome because of the close cooperation and support being given to the program by the IRRA Arbitration Development Committee. Since this committee is composed of the principal arbitration users in the western New York area, they are committed to a substantial extent to ensure that the successful candidates will be given the opportunity to hear arbitration cases. It is also expected that the PERB will be very much interested in using these people for public sector work.

Conclusion

From the above it would appear that at long last the apathy of all parties toward the problem of a diminishing supply of acceptable arbitrators is over. Most importantly, it is the attention of the users of arbitration that now appears to have been aroused, for it is they and they alone who hold the key to acceptability. The willingness of the larger unions and firms to accept inexperienced arbitrators and the support by smaller unions and smaller firms for programs like the one in western New York is the ultimate key to the solution of the problem of acceptability. The important aspect of these developments is that it is giving into the hands of the parties a joint voice in the selection of the candidates for admission into the program. This represents a substantial advance from the past where the AAA and the FMCS made the determination of who would be available, and the parties were limited in their selection of arbitrators only to the names appearing on the panel provided to them by the appointing agency. It remains to be seen what successes will result from these activities and the extent to which they can be transferred to other sections of the country where genuine shortages exist. It is, however, a hope that the Academy in cooperation with the AAA and the FMCS will find, through programs like that in western

New York, a continuing method for providing a door to the profession of arbitration.

The basic problem, however, remains with the parties themselves. It is they who can make contract administration work better so that grievances are resolved in the early steps of that procedure. Arbitrators can assist in the improvement of the arbitration process, but it must always be viewed as a last resort. So, too, must the responsibility for the use of new faces remain with the parties, particularly among those employers and unions in what Harold Davey refers to as the "vast wasteland of ad hoc arbitration." [20] It is they who, alone, hold the key to that all-important prerequisite for what makes a qualified arbitrator—namely, acceptability. If one or both parties are unwilling to accept persons fully qualified to become arbitrators, all programs, no matter how well developed and administered, will go for naught.

[20] Harold W. Davey, *Contemporary Collective Bargaining* (3d ed.; Englewood Cliffs, N.J.: Prentice-Hall).