APPENDIX D

1976 REPORT OF COMMITTEE ON DEVELOPMENT OF ARBITRATORS*

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At the 1975 Academy meeting in San Juan, the Committee on Development of Arbitrators decided to undertake a survey of the individuals admitted to the Academy between 1970 and 1975 in an effort to identify how they achieved acceptability as arbitrators. Of the just under 100 arbitrators admitted to the Academy during that five-year period, 50 responded to the questionnaire—a fair return considering the number of questionnaires that everyone receives, asking for information or opinions on a variety of issues. Half of the group, moreover, should afford an accurate sample of background and ideas on the subjects of concern to the committee.

It used to be said that a person under 35 years of age could not reasonably expect to be selected as a labor arbitrator. From our data, however, it appears that a few people are now getting their first cases before they reach their thirtieth birthday. Three of the 50 respondents were in this youthful category, and at least two of the most recent group of applicants (Table 1) apparently began arbitrating before they were 30. An additional 14 had begun to arbitrate by age 35 (Table 2). Apparently these individuals are exceptions, as the data indicate that most arbitrators do not get their start in the profession at an early age, and those who aspire to it directly or soon after finishing law school or other graduate programs may well be disappointed. One respondent, who has taught law school seminars for hopeful young arbitrators, noted the lack of early acceptance of his students.

By and large, a career in arbitration seems more likely to be a long-run goal in conjunction with, or following, a professional ca-

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Table 1

NEW APPLICANTS
(October 1975 and March 1976)

	Number of Respondents
a. Age range:	
30-39	6
40-49	8
50-59	11
60 and over	8
b. Education:	
Law	19
Industrial relations	3
Psychology	2
Industrial engineering	1
Economics	1
c. Occupation:	
Law practice	11
Teaching	12
Government	4
Consultant	4
Other	4
d. Number of cases in past five years:	
50-60	8
61-100	8
101-200	7
Over 200	10
e. Types of cases:	
Mostly private industry	30
Mostly public sector	2
Fairly even mixture	1

reer in teaching, law practice, or government work in a related field. As one of the committee members suggested, it may be that later entry into the arbitration profession can be attributed in part to initial preoccupation with one's original career and not entirely to inability to gain early acceptance. Economically, of course, the average aspirant also needs an "anchor" to provide income while breaking into arbitration. The data show rather clearly that it normally takes at least three years, and often much longer, to gain wide acceptability.

There is some evidence from the data obtained, as well as from more recent applications to the Academy (Table 1), that a fair number of people are now getting their start in public-sector

Table 2

AGE STATISTICS

Age Bracket	Number in Bracket at Time of First Decision	Number in Bracket at Time of Admission to NAA
25-29	4	0
30-34	10	4
35-39	14	4
40-44	10	13
45-49	6	7
50-54	5	9
55-59	1	7
60-64	0	3
65-69	0	2
70 or over	0	1

cases under state or federal programs (including those in Canada). Several respondents indicated that they had gained acceptance in a particular industry—coal, for example. As yet we have no solid data from the younger, inexperienced people who have been placed on various expedited arbitration panels, but it seems likely that such panel service may provide a significant means of gaining experience and acceptability.

It is well known that exposure to the parties is an extremely important aspect of gaining acceptability. In the past, one of the most successful methods of achieving exposure was by serving an apprenticeship in one of the national umpire offices, but other isolated examples have appeared from time to time—experience on the staff of the American Arbitration Association, the Federal Mediation and Conciliation Service, and, more recently, state agencies. The most unusual method was cited by one of the respondents. He had been a court reporter before becoming a labor arbitrator. Other unusual examples of arbitrators who achieved exposure to the parties, and acceptability as an arbitrator—although not a part of these data—are (in one case) the wife and (in two cases) the sons of well-known members of the Academy.

Sixteen (over 30 percent) of the respondents had received some formal arbitration training, which is a hopeful sign that the courses and training programs sponsored by the Academy and other agencies in various sections of the country are beginning to reach a substantial number of those entering the profession. As these efforts continue, the proportion may be expected to increase

to the point where some basic training may eventually become a requirement for entry into the profession.

However, it should be noted that formal training has not yet been generally accepted as a major factor determining acceptability. So far as the chairman has learned, the expedited panels set up by the Steelworkers did not require formal training as a criterion for appointment. On the other hand, the program for GE–IUE, presently in progress at the University of Michigan, is a most interesting recognition of the desirability of formal training. Recent experience in Cleveland suggests that background and exposure of the candidates seem to be more significant than formal training for eventual acceptability. The first Cleveland program was limited almost entirely to attendance at hearings with experienced arbitrators; the group was composed of several academicians and others who had gained experience and exposure through close association with established Cleveland arbitrators. About half of this group are now Academy members. In contrast, the second training group, in addition to attending hearings with Cleveland arbitrators, also were enrolled as students in a full-semester course designed specifically for labor arbitrators and given at the Case Western Reserve College of Law. Only one person in the latter class was an academician; most of the others were practicing attorneys with little or no prior exposure or association with established arbitrators. There is a current impression that several of the latter may be handicapped in their efforts to achieve acceptability because they are engaged in personal injury practice, which apparently is raising questions in the minds of some parties. With the exception of two class members who took part in both training programs, the acceptance of those in the second training group has been much slower, although it now appears that three or four of them may eventually become established arbitrators.

With reference to general educational background, the survey indicates that almost without exception the respondents had had postgraduate study. Legal educaton is the most common graduate background, but a substantial number listed graduate work in business, economics, or industrial relations (Table 3). Interest in arbitration was kindled largely by a professor, an established arbitrator, or the parties (Table 4).

One rather surprising statistic is that roughly half of the re-

Table 3

EDUCATION

	Number of Respondents
Undergraduate major:	
Political science	13
Economics	11
Industrial relations	3
Business administration	3
Other	18
Graduate field (some had graduate degrees in more than one field):	
Law	35
Economics	5
Industrial relations	5
Business administration	5
Other	5

Table 4

SOURCE OF INITIAL CONTACT WITH ARBITRATION

Source	Number of Respondents
Academic	22
Arbitrators	17
Advocates	17
Other	16

spondents had attended no hearings conducted by other arbitrators before receiving their own first cases (Table 5, a).

According to the survey data, more than half of the respondents qualified for membership in the Academy within six years following their first cases (Table 5, c). One committee member, who happens to be in the group surveyed, suggested that, in the light of this information, the current admission standards of the Academy do not appear to be unreasonable. Another interesting statistic is that 21 of the respondents (41 percent) were under 45 years of age at the time of their admission.

A rather small proportion of the respondents took time to furnish information about their sources of income. Of those so indicating, the largest percentage were in law practice before hearing their first case. The next most frequently mentioned income

Table 5

INDOCTRINATION

	Number of Respondents
a. Attendance at hearings conducted by others:	
Number of hearings attended:	
0	25
1-5	12
Over 5	14
Role at such hearings:	
Observer	17
Advocate	8
Assistant	1
Number of different arbitrators observed:	
1-2	13
3-5	2
Over 5	10
Years between first attendance and own first case:	
Less than 1	3
1-3	11
4-8	4
9 or more	6
b. Occupation between first attendance and own first case:	
Law practice	11
Academic	8
Advocate	7
Government	2
Other	5
c. Years between first case and admission to the Academy:	
1-3	3
4-6	23
7-10	13
More than 10	11
d. Number receiving formal arbitration training:	16

source was teaching, but advocacy in labor relations was a close third. The sequence shifted, however, in the period between the time of their first cases and their admission to the Academy, with the largest number of respondents reporting being in academic careers. Apparently, a number of the former advocates became teachers. The group in government also increased (Tables 5, b and 6).

Respondents noted an initial dependence on one or two principal sources of cases, such as appointments by the FMCS or the AAA (Table 7). There appears to be a declining dependence upon the appointing agencies after four or five years of arbitration experience.

The answers varied considerably with respect to the last three survey questions concerning acceptability. The most common theme as to what makes an individual acceptable as an arbitrator was a combination of the person's qualifications and excellence of product. As one committee member noted, arbitrators (no doubt with cause) tend to exhibit considerable confidence in their abilities, suggesting that this confidence may be an essential ingredient of acceptability. There also were rather frequent references to familiarity with the parties. Several respondents felt that their prior experience as advocates or some other identification with

Table 6

OCCUPATION BETWEEN FIRST CASE AND ADMISSION TO NAA

Occupation	Number of Respondents
Academic	28
Law practice	12
Consultant	2
Government	7
Other	2

Table 7

SOURCES OF CASES

	FMCS	AAA	Parties Directly	Public-Sector Panel or Agency
a. Number of respondents receiving cases from:	37	38	41	20
b. Percentage of respondents receiving cases from:				
1-10 percent	8	15	8	6
11-30 percent	9	10	13	5
31-50 percent	3	2	4	2
Over 50 percent	13	6	10	2

the parties had detracted from their initial acceptability as arbitrators.

The respondents' suggestions of the best ways to gain entry into the profession had very little in common. Although several respondents stressed patience and a recurrent theme was that acceptability cannot be forced or hastened, the answers convey the general impression that gaining acceptability is a highly individualistic endeavor. For this reason, the answers to the three survey questions in this area are quoted verbatim in the last section of this report.

The committee is convinced that the survey produced interesting and worthwhile information that should be useful in formulating future programs that may achieve greater success in developing new arbitrators. Particular recognition must be given to Arnold Zack, John Thomas Conlon, Dallas Young, and Jean McKelvey (along with her assistant, Jill Goldy), who spent substantial time creating the survey (Zack) and analyzing the answers.

University of Michigan Training Program

The University of Michigan training program for GE–IUE warrants continuing attention and analysis, as it is an effort by parties within a particular industry to develop their own arbitrators. Reports received thus far indicate that the 15 candidates selected had a week of training sessions in early fall of 1975 on the Michigan campus; their second week of sessions was scheduled for June 1976 in Ann Arbor. In the interim, they attended three hearings and wrote and submitted their own awards in two of the three cases, for review and comment by faculty members. Their final week was to be a review of their experience, after which they were to be assigned their own cases by the parties for whom the program was designed. Both the AAA and the FMCS took part in screening candidates and developing the curriculum.

Rutgers University Training Program

The Institute of Management and Labor Relations of Rutgers University and the AAA jointly conducted a training program for 18 candidates selected from several hundred applicants in New Jersey, eastern New York, and Pennsylvania. The New Jer-

sey State Bar Association, along with labor and management organizations, assisted in making the selections. Three-hour weekly classes began in the fall of 1975 and continued through May 1976. Jonas Aarons and Daniel House, both members of the Academy, lectured to the group, and the candidates attended two hearings a month with "master" arbitrators, most of whom are Academy members. Candidates prepared their own opinions and awards following each hearing, for review by the arbitrators they accompanied. They also were introduced periodically to union and management representatives. The candidates ranged in age from 30 to 60.

UCLA Training Program

The UCLA Institute of Industrial Relations and Graduate School of Management have been continually involved in training programs for new arbitrators on the West Coast. Their latest venture was a program designed specifically for two advanced and mature Ph.D. candidates, majoring in industrial relations at UCLA, who had expressed an interest in serving as arbitrators in connection with future academic employment.

Frederic Meyers and Paul Prasow prepared the program which included (a) a course in evidence at the law school; (b) seminars to review the literature and to discuss arbitration practices and procedures; (c) sitting-in and observing actual arbitrations; (d) writing opinions and awards based upon their observation and independent research; and (e) having these practice opinions/awards evaluated.

This experimental effort also deserves Academy support so that its future achievement may be evaluated.

Responses to Survey Question C–3:

What do you believe may have facilitated your acceptability?

This is a mystery I leave to the parties, and the Lord.

(1) Law training; (2) knowledge of parties; (3) "friends."

First time (with party) recommendation of full-time arbitrator; thereafter merit (apprentice).

Academic status as law professor and personally known to lawyers, government officials, or others in a position to appoint, sug-

gest, or recommend. Also publicity from very large case in early period involving over 20 grievances, which received widespread newspaper coverage.

No idea. However, I never needed income from arbitration to live on, and thus never pushed for more cases.

Constant exposure.

Participating in training program.

I teach labor relations subjects to practitioners, and I served as mediator or fact finder in a great many New York State PERB cases.

I believe my first decisions were well done. Prior to my first case, I believe I established a local reputation lecturing on industrial relations.

Quality and promptness in my decisions.

Urging by a well-known arbitrator to try a new person.

Unquestionably, it was the fact that I was already well known as a neutral through my five years with NLRB and three years with MERC, all of which was spent in Michigan. I obtained immediate acceptability.

Reliability, speed of decision, impartiality.

Time.

Availability and reputation.

Neutrality recognized as Vice Chairman of Ontario Labour Relations Board.

(1) Experience and getting known; (2) years away from industry.

(1) Strong endorsement by established arbitrator; (2) much personal time spent meeting active labor practitioners.

Coal mining industry was desperate for good arbitrators!

Having represented both sides.

Background in teaching labor law and labor relations; published awards; careful analysis of cases and analytical decisions.

Prompt decisions and maintained a stance of neutrality.

Legal background (and availability).

Wide acquaintanceship with labor and management representatives and other arbitrators.

Reputation for impartiality and quality opinions enhanced by observation of students in labor law classes; participation in IRRA activities locally.

Continuing increase of selection and acceptability by parties.

Initially, highly specialized; then just time and exposure.

Conduct of hearings and work product.

Ability to make decisions after conducting an orderly hearing.

Experience on both sides and middle as mediator, fact finder, and teacher; possibly service as judge.

I have become well known in the Northwest as an arbitrator.

Thorough qualifications and reputation for impartiality.

Parties accepted the reasoning of the opinion and award.

Affiliations, background, good response to work in field.

There is no doubt but work as a neutral on a government agency in labor relations directly influenced my acceptability—and by being a lawyer.

Help from other arbitrators, contact with parties, own competence, increasing exposure (visibility), fortuitous circumstances.

My awards.

My long experience in labor relations, and carefully explaining in detail the reasons for my decisions.

Exposure—NAA members doing their utmost for this exposure.

A recommendation from a respected arbitrator gained initial acceptance; acceptable decisions maintained it.

Government position on a labor relations board.

Family background, legal training, and friendship with known arbitrators.

Unbiased occupation; write detailed opinions—take pains; try not to antagonize parties in hearing or in written opinion.

Arbitration sole work since 1967.

My prior training and experience in practice; my experience in the steel industry; my academic base.

Relationship with management and union representatives and labor lawyers while in Federal Government service.

Running seven to eight annual one-day arbitration conferences on my campus for approximately 300 participants each year; serving as presiding officer of each greatly increased exposure. Also regular attendance at local chapter IRRA meetings.

Written opinions.

(1) Reputation for fairness; (2) background and experience; (3) advanced study in labor law (appeals to lawyers).

NLRB background and identification with neither side.

I believe my acceptability flowed primarily from the opinions in prior cases, many of which were published in reports of BNA and CCH; in recent years I have not taken the time to submit any of my decisions for possible publication. With this background, I have suggested to my students in the labor arbitration seminar which I conduct that they may gain acceptability as arbitrators by participating in labor-management conferences and through published articles dealing with labor arbitration problems, stressing the importance of carefully written opinions once they have been accepted as an arbitrator.

Responses to Survey Question C–4:

Was there anything you feel may have detracted from your acceptability?

Apparently not yet.

Probably lack of experience as arbitrator, especially at beginning, and lack of expertise in industrial relations at outset. Also unknown to the parties—hadn't acted frequently in labor matters earlier.

Former attorney for union (major number of rejections from unions, probably because of being ex-union).

Possibly being in part an "academician."

Nothing of which I am aware.

My former union employment may have a negative effect on some employers.

Female sex and lack of legal practice and degree.

Conceivably, the "prolabor" reputation of NLRB could have discouraged some management representatives from selecting me at the beginning.

Advocacy.

Early decision not well received.

Previous work in industry.

Most companies and unions think (wrongly) their cases are so difficult they necessitate experienced arbitrator.

Earlier in my career, my control over the presentations could have been tighter.

Tendency to approach early decisions too "legalistically."

Yes. Having to "live down" a reputation of having been a successful business executive. (Oddly, I think this caused more resistance from management than unions!)

Cases were slow in coming initially because of lack of familiarity with labor relations representatives in area and stigma of association with management law firm.

The specialized background for full-coverage acceptability.

Prior union background.

Interest of parties in my television program.

Not over the long haul. Being a delegate to the Central Labor Union detracted initially.

Until my retirement from the university, my caseload was relatively small, but has grown greatly in recent years.

Labor-law case representation of management clients during 1966–68.

Initial problems with conduct of hearing.

Being young and female.

Past job in labor education—management suspicion.

I cannot judge; I've had more cases than I can easily handle since about the third year. I think prior to my actual beginning I might have become involved, but had no entrée through past, specialized training and introduction as a would-be arbitrator.

In some cases, family background.

Not an attorney—makes a difference to some parties. Not a rigid disciplinarian, but keep things in hand. Youth—only 30 when had first case.

I am unable to handle most umpireships because I teach full time.

Antipathy of some parties to NLRB background.

Once serving as a consultant to a small local union in negotiations may have deterred some selections by management.

Early activity at NLRB—this was misunderstood by unions.

Past identification as a management representative, but it cuts both ways; parties also know I have labor relations background.

I find that many of my former students lose acceptability as arbitrators shortly after beginning their practice of law through their becoming involved in litigation in the labor-management field.

Responses to Survey Question C–5:

Have you any suggestions as to what approach should be taken to facilitate entry into the field by aspiring arbitrators?

(1) Secure a long-term endowment; (2) marry a rich wife; (3) be content with a part-time job—*i.e.*, professor, fire fighter, etc.; (4) wait.

One-on-one apprenticeships.

Training programs and apprenticeships for those desirous of entering the field as a means of getting on approved lists for appointments.

(1) Personal contact with parties (by attendance at hearings with arbitrators); (2) neutral employment and involvement; (3) primary employment adequate to avoid any suggestion of "soliciting" business as arbitrator.

Something like the Arbitrator-in-Training Program held once by AAA-FMCS-NAA.

Formal training program which requires attendance at several seminars, attendance at arbitration hearings, and the writing of an award to be reviewed by the arbitrator at whose hearing trainee attends. Exposure to at least five experienced arbitrators and writing at least 10 to 15 practice awards.

I helped conduct the Western New York Arbitrator Development Program which included seminars and on-the-job training. I think that this kind of model is the best, *i.e.*, combining substantive and apprenticeship training.

Work as assistants to nationally established arbitrators.

In view of the present advanced state of arbitration and arbitration law, it is my feeling that nonlawyer arbitrators, with inconsequential exceptions, are no longer fully qualified to enter this field.

Education of the parties, and urge too-busy arbitrators to share their work and personally vouch for the less experienced.

My own formula was to work several years in government agencies which are involved in labor relations, *i.e.*, NLRB and state agency. Stay in one state so as to gain recognition among the lawyers and representatives who select arbitrators. Be as fair and competent as possible. Be active in IRRA and, if an attorney, be active in state bar labor law section.

Assistantships, apprentice-participation in hearings.

Try to get young arbitrators on a rotating panel.

Direct assistance by accepted arbitrators.

Obtain employment as neutral in government agency.

(1) Internship training, accompanying experienced arbitrator; (2) training course in arbitration.

I feel the problem is a personal one for the aspirant. He should make himself known to people who select arbitrators. This takes time and effort; not many aspirants are willing to work at getting established. I think trainee programs are a waste of time.

Attrition among the established arbitrators! (Based on my years of waiting, for no good reason, I am rather cynical!)

Writing articles.

Maintain a tight control over hearings from the beginning of your career.

The single most valuable asset for me was the ability to work closely with an experienced arbitrator. He thoroughly reviewed and constantly and carefully criticized every sentence I wrote.

(1) Gain broad industrial relations experience; (2) acquire wide acquaintanceship among IR and labor representatives and arbitrators; (3) if not an attorney, learn a working knowledge of procedural rules and rules of evidence. This answer is probably conditioned by my own age and experience (age 56), but I feel a *minimum* age should be established for arbitrators. Arbitration assumes some experience and judgment on the part of the arbitrator, and it takes some time to acquire it. (A remark from a respected Steelworker representative, speaking about the young attorneys on the expedited (steel) arbitration panel, might be illustrative: "They had to load them all up on a bus and take them on a tour to show them what a steel mill looks like on the *outside*.")

I think many new arbitrators will be developed out of "mini-arb" procedures being employed by AAA with inexperienced arbitrators who are willing to accept $150 per diem fee for the experience.

Without being facetious, just time and patience. Having an area of special knowledge, such as insurance, pensions, etc., should help in opening the door.

Haven't we (the Academy, AAA, Cornell, IMCR, UCLA, and U. of Cal., among others) tried everything? We have to try harder.

But I for one just don't know how to convince parties that don't want to be convinced.

Study, patience, confidence; read, digest, and develop an acceptable style; meet the people—all kinds of people—and find out their loves, hates, and concerns. Parties look for maturity in a neutral. They want someone with a broad background—not just a technician with no sense of humor . . . or humanity.

Get acquainted with union representatives and management organizations.

It is difficult for a new arbitrator to become known to the parties and to gain their confidence. It would be helpful if there were some way new arbitrators could make known their qualifications and availability.

Let them fend for themselves and stop coddling, under the euphemistic label of "training," the aspirants, the parties, and the institution itself!

(1) Follow the same 1967 NAA-FMCS-AAA Arbitrator Training Program structure; (2) assign qualified trainees directly to responsibility of practicing labor arbitrators.

To work with a neutral government agency in labor relations, to have the requisite scholarship and academic background, and, in the case of a lawyer, to have some general-practice experience in litigation—courts and labor relations.

Meet other arbitrators and have them (us) introduce you to parties and mention your name and refer you. It is largely a word-of-mouth profession.

Primarily "formalized" apprenticeships.

Work in the labor-management field as an employee for the company or a union; intern with an experienced arbitrator, or [work in] a law firm as an advocate.

It is my belief that a formal class should be started with automatic entry into FMCS and AAA panels. The entrants should be screened at the outset.

The problem is initial selection and continuing selection as necessary to build a reputation. The willingness of an established arbitrator to recommend me was enormously helpful.

Employment with government agencies involved in labor relations; teaching at a university; writing.

Obtain the necessary training through schooling (law, business, economics) or through industrial experience; a combination of

both is best. Then get to know some people who can help you get initial cases. Then attempt to get on FMCS list and, later, on AAA. Publish cases if permitted.

Making members familiar with their ability, work, and acceptability.

I do not have a good feel for the problems faced by nonacademics and full-timers. The academic base helps a lot. Otherwise I think that it surely helps to have someone launch you into the arbitration practice via industry. My experience probably is not a good one from which to generalize.

Courses in labor relations and arbitration at recognized colleges and universities, on a full-time or part-time basis. Apprenticeship with established arbitrators. Attendance at seminars, etc., conducted by AAA, FMCS, and other organizations, coupled with employment by companies or unions in positions utilizing the arbitration process.

Formal qualifications (law degree, teaching labor relations, etc.) are threshold requirements; beyond that point you must become known personally to parties who choose from panel roster. Sitting home waiting is to invite sure failure.

Intensive study of labor relations.

(1) Discourage idea that it is a field for retired persons; (2) permit a lawyer to practice law and arbitrate; and (3) take another view of R. Howlett's distinction between an advocate and a partisan and help the parties understand that since there is no War Labor Board, persons must be exposed to the field on one side or the other and can later act as a neutral. I am convinced that a solid background in labor relations/contract administration is of first importance. How else can an informed judgment be brought to bear on the meaning of an agreement? On the personal side, I am convinced that my experience in negotiating and administering agreements is of importance to my understanding of the cases I hear. I see no sense in taking raw, new law graduates and asking them to bring an informed judgment to bear in a labor relations matter. They cannot do so; they have no labor relations background. I think the best source for new arbitrators are persons in labor or management who show an aptitude for decisionmaking. They have the expertise to apply. However, as long as a past association with one side or the other is thought to make a person biased toward that side, such persons cannot be acceptable. The Academy and the agencies, particularly AAA, foster that

point of view. Instead, a concentrated program of education to dispel it should be undertaken. Then persons who have experience in the field can move into arbitration more easily.

Since I never have occasion to select arbitrators, I cannot answer.

Recently the great majority of my cases have involved the coal industry which, I believe, resulted from distribution of my opinions in that field.