

APPENDIX D

1977 REPORT OF COMMITTEE ON  
DEVELOPMENT OF ARBITRATORS\*

EDWIN R. TEPLE\*\*

During the past year the committee has observed a number of significant developments that indicate a continuing interest in the training of labor arbitrators.

The Labor Arbitration Committee of the American Bar Association's Section of Labor Relations Law conducted a survey of its members, designed to determine a policy position and an active program concerning the qualifications and training of labor arbitrators. The leadership of this committee had reached the conclusion that the growth of labor arbitration in both the public and private sectors was outstripping the supply of "acceptable" arbitrators. The responses to the survey apparently were inconclusive, and it was decided that a revised survey would be sent to all members of the section, as well as to a group of nonlawyers involved in the arbitration process.

The revised survey was prepared by a newly created subcommittee on qualifications and training of arbitrators. The questions dealt with such matters as the possibility of requiring a law degree or admission to the practice of law as a qualification for labor arbitrators, the advisability of administering certification examinations, and the bearing which representation of management or union interests might have upon an arbitrator's qualifications. Viewpoints were sought concerning any differences in qualifications for arbitrators who hear disputes in the private sector as compared with those in the public sector, or between disputes over rights and those involving interest issues. Other questions concerned whether the ABA should (1) take part in, or encourage, programs for the development of arbitrators, (2) issue policy statements concerning the qualifications of labor arbitrators, (3) poll section members about

---

\* Members of the Committee on Development of Arbitrators are Howard G. Gamser, Jean T. McKelvey, Charles A. Myers, Paul Prasow, Paul H. Sanders, Dallas M. Young, Arnold M. Zack, and Edwin R. Teple, chairman.

\*\* Lecturer in Law, Case Western Reserve Law School, Cleveland, Ohio.

those qualifications, or (4) declare that the qualifications necessary to interpret collective bargaining agreements do not necessarily apply to the interpretation of statutes.

Robert Coulson, president of the American Arbitration Association and one of the chairmen of the Labor Arbitration Committee, reported on this latest survey at the Academy's annual meeting in Toronto (see Chapter 6).

The American Arbitration Association scheduled a meeting for April 19, 1977, in New York City which was to include a discussion of the training of parties and neutrals. Later in the spring a second Wingspread Conference was to be held in Racine, Wisconsin, on the "state of the art of dispute-resolution training." Several members of this committee were expected to take part in that conference.

All of this underlines the importance of the work of this committee and the need to keep members of the Academy fully informed concerning the potential need for further and better training efforts. From its inception, the Committee on Development of Arbitrators has encouraged and helped carry out formal training programs that have thus far been undertaken, and it goes without saying that this cooperation will continue. The committee believes that the Academy should continue studying the best and most practical methods of training labor arbitrators, developing programs for this purpose, and publicizing the availability of people who are trained and qualified.

The committee is presently giving consideration to the establishment of a continuing program for training based on the internship concept. The basic idea contemplates arranging for attendance of qualified candidates, who may be referred to members of the committee, at actual hearings conducted by Academy members, followed by practice opinions and awards drafted by the candidates for review after the decisions of the arbitrators have been issued, and supplemented by informal dialogues between candidates and Academy members patterned after the tutorial sessions utilized by Paul Prasow and Frederic Meyers at UCLA and in the GE-IUE program, as well as others. Referrals could be made by the AAA and FMCS, who might then place the candidates on their panels after three to six practice opinions and a committee recommendation. At its meeting in Toronto, the committee discussed the feasibility of this idea and the advisability of enlisting the cooperation of the American Arbitration Association, the FMCS, and the Section of Labor Relations Law of the ABA for this purpose. Such a program

might be supplemented by any relevant courses available in law, business, or industrial relations schools of local universities.

The current status of formal training programs discussed in the 1976 report of this committee has been checked and may be outlined as follows:

### **The UCLA Arbitration Practicum**

The practicum was an apprenticeship-type program which began with a three-month series of weekly discussions with two Ph.D. candidates majoring in industrial relations at the University of California, Los Angeles. The program was conducted by Professors Frederic Meyers and Paul Prasow, both members of the Academy. The initial sessions were based on assigned readings, many of which were taken from the Academy's annual proceedings. During the initial period, the candidates also attended a course on evidence at the UCLA Law School. Tutorial time was then devoted to the connection between arbitration concerns and legal rules concerning the admission of evidence.

In the second phase of the program, which also covered a three-month period, the candidates accompanied Howard Block, Meyers, or Prasow to both traditional and expedited arbitration hearings in both the public and private sectors. The issues arising in these hearings then provided the focus for continuing weekly tutorial sessions. The subject matter in these cases covered discipline, seniority questions involved in promotion and transfer, job classification and overtime issues, and arbitrability. The candidates conducted their own research and wrote opinions and awards on the issues raised in the hearings they attended. The directors of the program analyzed the decisions written by the candidates, and discussions were held revolving around comparisons with the decisions and awards actually rendered by the arbitrator whom the candidate accompanied.

Finally, both candidates accompanied Meyers and Prasow to a meeting with Tom Stevens, regional director of the Los Angeles office of the AAA, to acquaint him with the program and the availability of the two candidates. Applications for membership on the American Arbitration Association labor panel were completed and processed with the understanding that both candidates would be included on future lists submitted to parties. The Los Angeles County Employee Relations Commission is also considering one of the candidates for appointment as a hearing officer in that program.

### GE-IUE Arbitrator-Training Program

In the November-December 1976 issue of *Arbitration News* (No. 6), it was reported that the GE-IUE arbitrator-development program had entered its third and final phase. Originally there were 15 participants, but one withdrew after being appointed to a judicial position. Each of the others will serve as the arbitrator-of-record in at least three GE-IUE disputes before the end of 1977. It is understood that their decisions will not be cited by the parties in any other cases, but they will be compensated at an agreed rate and their awards are to be publicized. In addition, each participant has been added to the AAA roster of labor arbitrators and will be listed on current panels submitted to parties in various areas of the country. One participant has already been placed on the Postal Expedited Panel.

As previously reported, two separate weeks of formal training at the University of Michigan were part of this program, and the second phase included attendance at actual hearings conducted by the regular GE-IUE arbitrators, followed by practice opinions by the participants which were then reviewed by each arbitrator-of-record and discussed with the participant.

In the selection of candidates for this program, particular emphasis was placed upon minority representation. The final selection of the 15 participants, made by Dean Theodore St. Antoine, included seven white and three black male candidates and three white and two black female candidates.

Members of the Academy who took an active part in this training program were Rolf Valtin, Edgar A. Jones, Jr., Harry Edwards, Charles Gregory, Jean McKelvey, R. W. Fleming, William Haber, Robert Howlett, Charles Killingsworth, Richard Mittenthal, Charles Rehmus, Jack Stieber, and Arnold M. Zack.

### New Jersey Arbitrator-Development Program

According to a brochure issued by the administrators of the New Jersey training program, the idea grew out of a conference conducted in the fall of 1974 by representatives from the New Jersey State Bar Association (Labor Law Section), the New Jersey State Board of Mediation, the New Jersey Public Employment Relations Commission, the New Jersey regional office of the AAA, and Rutgers University. The program began in September 1975 and was conducted over a period of one year. After considerable joint study,

it was determined that training would be given in three distinct phases. The rationale was that the arbitration process could be effectively perceived by the candidates from a legal perspective, and thus the first segment consisted of a 16-week period of orientation covering the legal aspects of arbitration: framing the issue, rules of evidence, standards for interpreting contract language, the arbitrator as jurist or pragmatic legislator, and postaward actions. Academy member Jonas Aarons was selected as the chief instructor for the first segment.

The second phase of the program, also designed to continue for 16 weeks, combined classroom study with field observation of actual arbitration hearings. The academic and practical aspects were interwoven so they would complement each other. The focus was on causes of grievances, labor-management dynamics, how the parties prepare for arbitration, the conduct of the hearing, award preparation, and special problems related to different categories of grievances. Arrangements were made for the candidates to audit a series of hearings, after which each of them prepared a sample award and opinion for critique by Academy member Daniel House, who served as the chief instructor for the second segment. This phase was augmented by a series of tours of industrial plants to foster firsthand understanding of American industry.

The third segment was designed as an apprenticeship period during which each of the candidates was assigned to a member of the Academy who then arranged for the candidate's attendance at not less than two arbitration hearings. Practice opinions and awards prepared by the candidate were then analyzed by the arbitrator who conducted the hearing, followed by a conference to compare the practice award with the actual decision made by the arbitrator and to permit an interchange, probing all facets of the case.

The biographies of the 18 candidates who successfully completed this program were included in a printed brochure issued by the sponsors. Five of the candidates were already on the labor panel of the American Arbitration Association. After completing the training, five additional candidates were accepted on the AAA panel, and the applications of four were still being processed at the end of January 1977. Four other graduates had not applied for panel membership at the time of the most recent report received by the committee. The regional director of the New Jersey office has indicated that some of these people are now beginning to receive cases. The 18 graduates included two females and one black male.

In a letter to the committee, Daniel House commented that greater success might have been achieved if the class had been substantially smaller and more homogeneous as to the level of experience with arbitration, and if the candidates had had more time to attend arbitration hearings and to write opinions which could be discussed with the arbitrator who had conducted the hearing.

Jonas Aarons reports that the ages of the candidates ranged from 27 to the mid-50s. He also commented on the variation in labor-arbitration background. After the official termination of the classroom segment of the program, Aarons organized an informal discussion group to continue the training process. In this group the graduates discuss the cases they have heard, some members of the group having already received several appointments. Methods of becoming more acceptable were also discussed with AAA and State Mediation Board personnel.

### **Western New York Training Program**

The most recent report concerning the acceptability of graduates of the Western New York program indicates that five received appointments to hear cases in 1975—three of them having heard one case each, one with five cases, and one with seven. During 1976 the number receiving cases increased to eight, ranging from two cases heard and decided to a maximum of 10 by one of the candidates who had heard only one case the previous year. Thirty-eight cases in all were heard and decided in 1976 by these eight graduates. One of the graduates who had received one case in 1975, however, was not selected in 1976. Jean McKelvey reports that these figures are based solely on AAA records. She also reports that the graduate of this program who was the first to develop wide acceptance is now a member of the Academy. Three of the 13 graduates, she indicates, have demonstrated no acceptability. One of the latter had been a management consultant, and the other two were faculty members who have been out of the state on leave of absence. The experience of this group during the first two years after graduation has been covered in committee reports published in earlier Academy proceedings.