Chapter 16

LEGISLATIVE ACTIONS OF THE NATIONAL ACADEMY OF ARBITRATORS

I. The New Directions Committee

A. Interim Report of the New Directions Committee

Jeffrey. B Tener and Barry Winograd, Co-Chairs

December 2006

Introduction and Resolution

This interim report of the New Directions Committee ("NDC") reflects a revision of the draft resolution which was included in the October Interim Report and, in an appendix, updates that Interim Report which was issued shortly before to the Fall Education Conference in New Orleans. The October 2006 report included a draft resolution which the NDC recommended that the Board of Governors adopt and which called for the submission of the resolution to the membership for a vote at the Annual Meeting in San Francisco. The draft resolution was to be revised following the two and one-quarter hour open microphone luncheon discussion of the issues by the membership in New Orleans. The Committee met after that session to consider revisions in response to comments which were made and then spent several weeks revising the draft resolution. Thereafter, the NDC unanimously consented to forward to the Board of Governors for consideration the following revised resolution:

NDC Resolution

Resolved: The Academy should broaden its mission to accept as members individuals engaged in a range of workplace dispute resolution activities, subject to the following:

1. **All applicants to the Academy must continue to: (a) have a substantial core of final and binding labor-management arbitration activity involving collective bargaining relationships; and, (b) maintain in all aspects of their practice the highest standards of integrity, competence, honor and character.**
2. **The Academy should include as members neutrals who, as part of their activities, in addition to having a substantial core of final and binding labor-management arbitration activity, hold hearings and issue written decisions in order to resolve other types of workplace disputes.**
   (a) To carry this out, the Board of Governors should adopt appropriate policies for the Membership Committee to give countable status to decisions that are based on impartial appointments and fair procedures consistent with due process, including decisions such as those rendered in employment arbitration, advisory arbitration, fact-finding, and independent civil service proceedings.
   (b) In reviewing a potential member offering other types of decisions, the Academy should continue to utilize a numerical threshold when considering an application, while also considering the variety, character and relative difficulty of an applicant's arbitration experience, the diversity of parties served, and evidence of professional growth.
3. **The Board of Governors is directed to present for membership approval at the next Annual Meeting any changes in our governing documents that will be necessary to accomplish this objective.**

Thus, it is the recommendation of the NDC that this resolution be put to a vote of the membership at the Annual Meeting in San Francisco. If it is approved at that time, then there would be a vote on the appropriate changes to the Constitution and By-Laws at the Annual Meeting in Ottawa in 2008.

In recommending approval of this resolution, the NDC addressed the question of why the Academy should expand its membership and it asked, "If not us, who?" and "If not now, when?" A summary of the considerations follows.

Why?

The ultimate question is whether members should vote in favor of expansion of the Academy's membership and mission to include other forms of workplace dispute resolution. The NDC believes that we should. A favorable vote will demonstrate that the Academy will continue to have a central voice in the development and protection of arbitration as an institution with a positive societal role in resolving disputes.

As we see it, there are two key questions that, when answered, point to a need for change in the Academy. These questions are: "If not us, who?" and "If not now, when?"

If not us, who? Starting with the first of these, we note that for nearly 60 years the Academy has been the leading, nonpartisan professional organization of neutrals on issues related to labor-management arbitration and, to a much lesser degree, on broad issues concerning workplace dispute resolution. Labor-management arbitration was an appropriate focus when the Academy was founded because, for the most part, that was all there was. History, however, has not been stagnant. The unionized portion of the workforce has dropped from a peak of 35% to just 12.5%; in the private sector, the density rate is less than 8%. Union membership in absolute numbers has dropped about a quarter from its peak. The impact on traditional labor arbitration is obvious.

At the same time as our core activity has been shrinking, judicial decisions beginning with the Supreme Court's 1991 *Gilmer* decision have opened up new possibilities for arbitration. Our members have responded to these developments by expanding their own practices. The Cornell study of 2000 reported that almost half of our members had engaged in employment arbitration and more hoped to do so. Since then, many more members have had some employment arbitration work, and most of our incoming members already work in both fields. They resolve a wide range of non-union arbitration cases dealing with both statutory and contract issues. Unless we recognize our special role in the new and growing field, we risk being confined to a world rooted in the past.

More importantly, we need to be able to contribute effectively as an organization to the promotion of fair dispute resolution procedures for the overwhelming majority of workers who are not covered by collective bargaining agreements. We also need to reach out to a greater extent and with more legitimacy to protect

the values of the labor-management arbitration field which are, at times, under attack in other areas of arbitration, including principles related to just cause, arbitrator control over the course and conduct of the hearing, and limited judicial review. Far from jeopardizing our acceptability as traditional labor-management arbitrators, this will increase our acceptability. Non-labor arbitration requires significant case-handling skills and expertise, including expertise in the field of civil rights. We believe that by expanding our jurisdiction, we will demonstrate to our clients that we are keeping pace with the changing times and that we include the outstanding arbitrators who do that work. This is particularly true for the increasing number of union and management attorneys who themselves are engaged in employment arbitration as their traditional labor-management practices have declined.

Only if we recognize and credit work beyond traditional labor-management arbitration will we have the necessary credibility. We cannot say that we have the highest standards and soundest vision on labor matters and beyond but decline to accord real legitimacy to the caseloads of applicants who do such work. No other organization is positioned to carry this out nor has any attempted to do so. The NAA must do so. This will enhance the vitality of the Academy and help to extend the values which we hold dear to other areas of workplace arbitration while at the same time actively protecting the reputation of arbitration including, significantly, traditional labor-management arbitration. That is our heritage and that is our commitment to the future.

If not now, when? The second issue is when, if not now. A review of the timeline demonstrates the Academy's long evolution toward workplace dispute resolution. There was Tony Sinicropi's 1992 Presidential address, the first that recognized the challenges and opportunities posed by the *Gilmer* decision. In 1993, the Beck "If Any" report led to amendments to our Constitution so that several references to "employment" were added to Article II. The Academy helped to create, and then endorsed, the Due Process Protocol in 1994. The preamble to our Code of Professional Responsibility was amended in 1996 to recognize that labor arbitrators are sometimes asked to serve in a variety of employment situations and states that the Code is intended to guide the impartial arbitrator in all of these diverse procedures. A year later, the Academy adopted Guidelines on Arbitration of Statutory Claims under Employer-Promulgated Systems. Dennis Nolan addressed

the issue comprehensively in a paper given in 1999. The Fleischli Committee recommended in 2001 that the Membership Committee count employment arbitration cases as "added weight" when considering applications for membership. In 2006, the Guidelines were revised and expanded. The new Guidelines for Employment Arbitration cover contractual and common law claims as well as statutory claims and reflect recent judicial developments.

There is much ferment in this field on issues such as arbitrability, unconscionability, disclosure requirements and judicial review. The outcome will have a direct impact on arbitration generally including traditional labor-management arbitration. If the Academy expects to speak with authority in this field, we must give credit to the legitimate work that our members and applicants undertake. This will increase our well-earned reputation as the leader in the field.

The Academy has gone as far as it can go toward recognizing employment arbitration cases without actually counting them toward our membership criteria. We have studied and debated employment arbitration for more than fifteen years. It is now time to take the final step on this category of cases as well as other workplace disputes as a reflection of the Academy's commitment to workplace dispute resolution and the values associated with that process.

Appendix

Creation of the New Directions Committee

As described in the October 2006 Interim Report, the Board of Governors held a retreat in Chicago in April 2005 with the Organizational Planning Committee ("OPC"). At that time, the OPC, chaired by Bill Holley, presented its report, *A Comprehensive Strategic Plan*, which was the culmination of a two-year effort. The BOG concluded that membership standards were implicated in a number of the recommendations of the OPC, including those relating to membership models, and that acceptance of a number of the recommendations would have required the Academy to expand its jurisdiction to include employment cases. The Board was well aware of the Academy's history and steady but cautious movement

toward employment arbitration.[1] After extensive discussion, the Board voted unanimously that we should investigate what changes would be necessary in order to accomplish that expansion.

Following the retreat, President George Fleischli, President-Elect Margery Gootnick, and President-Elect Designate Dennis Nolan drafted a resolution to that effect. The resolution proposed creation of a New Directions Committee with this charge:

> To review and make recommendations regarding any changes in the foundation documents, policies and practices of the Academy that will be necessary in order to expand the membership – consistent with fostering the highest standards of integrity, competence, honor and character – to include as members neutrals who, as a significant part of their activities, hold hearings and issue written decision in order to resolve workplace disputes.

Unlike the OPC, which placed emphasis on its projected decline in membership, the BOG was not motivated to act based on those projections. Rather, because the issue had been touched on but not resolved for years, the BOG believed that the Academy should deal directly with the question of whether to expand its jurisdiction to include employment and other workplace disputes, regardless of any impact on total membership in the Academy.

The Presidents appointed Jeff Tener and Barry Winograd to serve as Co-chairs of the Committee and appointed as members Sara Adler, Margie Brogan, William Marcotte, and Janet Spencer. Serving as ex-officio members were the three presidents, Bill Holley, Chair of the newly named Strategic Planning Committee, Michel Picher, Chair of the Committee on Issues in Employment Related Dispute Resolution, and Secretary-Treasurer David Petersen.[2]

Following preliminary communications and planning, the Committee met in Philadelphia in September 2005. (Like the Board retreat, attendees paid their own expenses.) The Committee decided to use a bottom-up rather than top-down approach to its

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[1]Significant among there were the amendments to the Constitution in 1993 to include references to "employment disputes" and "employment relations" (which followed the recommendations of the committee chaired by Michael Beck in 1993 in its *Report of the Committee to Consider the Academy's Role, if any, with Regard to Alternative Labor Dispute Resolution Procedures*), and the 2001 *Report of the Special Committee on the Academy's Future*, a committee chaired by George Fleischli, which recommended giving "consideration" to certain employment cases in determining "substantial and current experience" and "general acceptability."

[2]The membership has since been expanded and now includes President-Elect Barbara Zausner and members Jacqueline Drucker, Mark Lurie, Dan Nielsen, Rosemary Townley, and David Vaughn. Michel Picher is now President-Elect Designate.

work at every stage. It created several working groups consisting of any NAA member who wished to participate. The working groups were to consider the main issues implicated in the Committee's charge.

The Membership Standards Working Group ("MSWG") led by Margie Brogan focused on the number and types of activities other than traditional labor-management arbitration that we might count toward membership. The Professional Standards Working Group ("PSWG"), led by Janet Spencer and Barry Winograd, debated the standards to be applied before counting any non-traditional cases. The External Relations Working Group led by Sara Adler was to coordinate our work with other interested organizations. The Education Working Group, originally led by Barry Winograd and now led by Dan Nielsen, would consider the types of education and training we would have to offer our members. The Canadian Working Group led by Bill Marcotte would ensure that none of the changes considered would adversely affect our Canadian members. Finally, the Governance Working Group led by the Presidents would determine what changes would be necessary in our foundation documents to accomplish the Board's objectives.

In October 2005, the NDC invited members to join these groups. A renewed invitation for the PSWG in June 2006 further increased membership. In all, about 35 members joined the MSWG and 65 joined the PSWG, the two most active working groups. The intent was to involve as many members as possible in order to obtain the thinking and views of a wide range of the membership.

Activities to Date

A. Communications

The Committee has used a variety of means to provide members as much information as possible about its activities. Our hope is that members will be fully informed about the rationale, means, and consequences of expansion by the time they vote on the question in San Francisco. Each issue of the Chronicle since the Spring of 2005 has had at least one article on this topic. More are planned, including a point/counterpoint debate in the Winter 2006 issue between Ted St. Antoine and Arnold Zack.

The Committee also has communicated with significant parts of the membership by means of several e-blasts to those of the membership who have provided e-mail addresses to the Opera-

tions Center. E-blasts on the Academy's official list reach approximately 84% of our members. Other members requesting copies of documents have had those sent in hard copy form. The unofficial mail list run by Doug Collins has had extensive discussions on many related issues. All NAA regions have been asked to discuss the NDC's draft resolution during their meetings over the next year and a list of questions has been provided which is intended to help focus discussion. The NDC reported to members at the 2005 FEC in Savannah. At the May 2006 annual meeting in Washington, D.C., members had an opportunity to offer questions, comments and suggestions. Those who attended the FEC in New Orleans in October 2006 had two and one-quarter hours to make comments and express their opinions on the issues. Over 30 members addressed the issues. Finally, virtually the entire business meeting in San Francisco will be devoted to a debate and vote on the NDC's final report and resolution.

To help members focus on some of the key issues, Dan Nielsen prepared and distributed a list of frequently asked questions (FAQs). These not only pose the questions but also provide possible pro and con answers to these questions. Mark Lurie prepared an interactive timeline which traces the Academy's relationship with employment arbitration. The timeline, which is available on the member side of the Academy's website at www.naarb.org and which is updated periodically, provides immediate access to over 20 documents which deal with these issues. This is an excellent resource for those interested in reviewing the relevant papers, documents, Presidential addresses, reports, etc.

B. Working Group Reports

The MSWG has completed its work and prepared a comprehensive report which traced the flow of the debate among the members of the group dealing with the kinds and numbers of cases beyond traditional labor-management arbitration cases which might be counted toward membership. The report was sent to all members with e-mail addresses and was also posted on the NAA website. An insert in the New Orleans registration materials informed those who do not use e-mail that they could get a copy of this report by calling or writing the operations center. Moreover, the entire MSWG exchange of 232 e-mails is available on the website under NDC Membership Standards Correspondence.

The MSWG reached a strong consensus on the following "bedrock principles":

> We must include the goal of maintaining the highest standards of integrity, competence and ethics, and demand a demonstration of general acceptability of the parties, and diversity of those parties, as well as demand the following: 1. Professional service as a neutral, not advocate; 2. Joint, mutual selection under the auspices of a non-partisan designating agency or by direct appointment; 3. Adherence to minimum standards of fairness and due process as set forth in the Code of Professional Responsibility, the Protocol, and any other appropriate ethical guidelines; and 4. Presiding at a hearing, and rendering a written decision with rationale.

Within that framework, the MSWG reported a "very widespread acceptance of counting employment cases for purposes of meeting the threshold for admission to the Academy." Almost all members of the group who expressed an opinion favored counting either 15 or 20 employment cases toward membership. There also was "very strong support" for considering other types of labor work akin to labor arbitration such as fact-finding, advisory arbitration, and work as an independent hearing officer for a labor or civil service agency.

The PSWG accepted the MSWG's bedrock principles as the framework for its own analysis of professional standards consistent with the Academy's practice of maintaining high objectives for arbitration practice. The PSWG has completed its initial work and developed potential case-counting guidelines in the event the Academy votes to expand the types of cases that can be considered for applicants. A report from the PSWG was distributed prior to the fall 2006 meeting in New Orleans and also is posted on the member side of the web site.

Beyond this aspect of the PSWG's work, there may be further discussion within the group about whether additional ethical guidelines would be appropriate for the organization. In considering this facet of PSWG activity, the group is mindful that these are matters of concern as well to other committees within the Academy, particularly the Committee on Professional Responsibility and Grievances and the Committee on Issues in Employment Related Dispute Resolution. The latter is a special committee which recently issued, and the Board of Governors approved, revisions to the case-handling guidelines for employment arbitration developed in 1997.

Bill Marcotte prepared a report of the Canadian Working Group. This group was created in part to assure that any changes in the Academy do no damage to the interests of Canadian members but experience with the working groups has shown that Canadian members bring useful insights and experience to bear on the issues with which we are grappling.

Bill also conducted a survey of Canadian members to determine the types of work being performed by Canadian members. Based on the survey results, it would appear that non-union employment arbitration is not a significant part of Region VII members' practices. Indeed, very few Region VII members do this type of arbitration. The only forum for non-union arbitration of any magnitude is appointment under Part III of the *Canada Labour Code* and here NAA members average about one case per year. Further, the survey results indicate that the majority of Canadian members take no position on expanding membership in the NAA by way of including employment arbitrators. However, if the membership criteria include employment arbitration awards for membership application purposes, the core activity of the applicant must remain clearly union-management arbitration.

At the Annual meeting in Washington, D.C. this past May, there was a suggestion that the NDC make an effort to determine the reaction of major users of labor arbitrators to a possible expansion of the mission of the NAA to include employment arbitration. Several posters on the unofficial mail list worried that surveying our clients might cause serious problems.

As a middle course between these opposing views, NDC Member Sara Adler and DALC Chair Ira Jaffe were asked to make some discreet inquiries. Sara, whose inquiries are continuing, had informal discussions with advocates at the ABA Section of Labor and Employment Law, the College of Labor and Employment Lawyers, and the FMCS Labor-Management Conference. Ira spoke with representatives of the AAA and the FMCS. Neither the advocates, including a senior person at the AFL-CIO, nor the AAA and the FMCS expressed any concerns. As a practical matter, even if one believed – as we do not – that we were somehow diluting our standards by including employment arbitration cases, there will still be no better source for the best and most acceptable labor arbitrators than the National Academy of Arbitrators. We have discovered that few of the advocates are even aware of the current admission standards of the Academy and there is no reason to expect that

a modest change in those standards will have any effect on their perception of the Academy's members or qualifications.

Conclusion

Since the *Gilmer* decision, courts and a few academics have taken the lead in debating and developing arbitration policy. The Academy as an organization has fallen behind. Our voice has been intermittent, at best, and hardly heard. Policy changes in the field of ADR will continue and intensify, affecting our core field of labor arbitration.

It is vitally important, both for our own individual and organizational interests and for the interests of the workers in the new environment, that we engage with emerging forms of workplace dispute resolution to make them as fair as possible. If the Academy is a sideline participant or an armchair critic, why, on pressing questions, should anyone listen to us? Because of the changing nature of the workplace dispute resolution system and the diminishing role that traditional labor-management arbitration plays in that system, it is time for the Academy to decide whether it will remain the leader in workplace dispute resolution or whether we are content to remain the dominant force in a shrinking subfield. If we are to be the leader in the broader field of workplace dispute resolution, we must expand our jurisdiction. The sooner we change course, the better.

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II. Report and Recommendation—New Directions Committee

Jeffrey B. Tener, Chair
August 30, 2007

This Report picks up the activities of the NDC beginning with a recommendation it made to the Board of Governors in December 2006.

The NDC recommended to the BOG and the BOG adopted on January 17, 2007 a Resolution which was to go to the membership and which called for an expansion of the Academy's jurisdiction to include employment and other workplace dispute cases. A copy of that Resolution can be found at Appendix A.

To assist the membership in assessing the impact of the NDC Resolution, the BOG adopted a Resolution on January 18, 2007 which indicated how it would implement the NDC Resolution if it was approved by the membership and if any necessary Constitutional amendments were adopted. A copy of the BOG Resolution can be found at Appendix B.

The NDC Resolution was voted on by the membership at the Annual Meeting in San Francisco on May 26, 2007 and approved by a narrow vote of 72 in favor and 65 against. That vote is considerably shy of the two thirds vote which would be required simply to approve an amendment to the Academy's Constitution to add employment and other workplace dispute cases to the Academy's purposes in Article II of the Constitution as initially planned.

At the May 27, 2007 BOG meeting, the day after the business meeting, the Board directed the NDC, through its Governance Working Group, to prepare a recommendation for submission to the BOG. The Governance Working Group consists of the five past, present and future presidents who have been involved in this project from its inception: George Fleischli, Margery Gootnick, Dennis Nolan, Barbara Zausner and Michel Picher. In addition, Ted St. Antoine, also a past president, serves as an *ex officio* member in his capacity as Chair of the Employment Dispute Resolution Committee (formerly chaired by Michel Picher).

The Governance Working Group has unanimously endorsed a proposal which is largely the work of George Fleischli. (Barry Winograd, the Co-Chair of the NDC for the prior two years, also has endorsed this proposal.) That proposal, which recommends changes in the Academy's Constitution and By-Laws, appears as Appendix C.

The proposal has a number of points to recommend it. First, it is straightforward. Second, it accomplishes the major goal of the New Directions Committee which was to permit the counting of some employment and other workplace dispute resolution cases towards membership in the Academy. Third, and most importantly, it enjoys the unanimous endorsement not only of the six Presidents identified above and of the eight (out of nine) members of the NDC who have registered their vote but it has been endorsed by thirteen of the sixteen former Presidents who wrote a letter, published in the winter 2007 issue of *The Chronicle*, in which they opposed any change in membership standards. Of the sixteen signatories, only Jim Harkless and Arnold Zack have

expressed their opposition and Bill Murphy asked to be recorded as abstaining.

In addition, there are other former Presidents who did not sign the letter which appeared in The Chronicle who support this proposal.

We believe that George has constructed a delicate balance, which, in the best tradition of dispute resolution, permits each major group to protect that which it deems as vital for the Academy. Thus, it has the potential of permitting this issue to come to a satisfactory conclusion without dividing the Academy.

As you review the proposal, you may see language or concepts which you would like to see changed. While you are, of course, free to make whatever changes you deem appropriate, we are fearful that any changes would jeopardize the support which has been obtained from the former Presidents. We deem this support to be vital not only to approval of the proposal by the membership next May in Ottawa-Gatineau but also to maintaining a united Academy.

Appendix A

NDC RESOLUTION

Resolved: The Academy should broaden its mission to accept as members individuals engaged in a range of workplace dispute resolution activities, subject to the following:

1. All applicants to the Academy must continue to: (a) have a substantial core of final and binding labor-management arbitration activity involving collective bargaining relationships; and, (b) maintain in all aspects of their practice the highest standards of integrity, competence, honor and character.
2. The Academy should include as members neutrals who, as part of their activities, in addition to having a substantial core of final and binding labor-management arbitration activity, hold hearings and issue written decisions in order to resolve other types of workplace disputes.
   (a) To carry this out, the Board of Governors should adopt appropriate policies for the Membership Committee to give countable status to decisions that are based on impartial appointments and fair procedures consistent

with due process, including decisions such as those rendered in employment arbitration, advisory arbitration, fact-finding, and independent civil service proceedings.

(b) In reviewing a potential member offering other types of decisions, the Academy should continue to utilize a numerical threshold when considering an application, while also considering the variety, character and relative difficulty of an applicant's arbitration experience, the diversity of parties served, and evidence of professional growth.

6. The Board of Governors is directed to present for membership approval at the next Annual Meeting any changes in our governing documents that will be necessary to accomplish this objective.

Appendix B

RESOLUTION OF THE NAA BOARD OF GOVERNORS CONCERNING IMPLEMENTATION OF THE NEW DIRECTIONS INITIATIVE

Should the Membership of the National Academy of Arbitrators approve the New Directions Committee resolution, or an amended version of the resolution as the case may be, and any necessary changes in the Constitution and/or By-Laws, the Board of Governors establishes the following numerical threshold for Membership Committee review of applications:

The Membership Committee shall apply as a threshold for considering an application for membership a minimum of five years of experience as an arbitrator, and 60 written decisions in a time period not to exceed six years, at least 40 of which must be countable labor-management arbitration awards. In addition to the labor-management arbitration awards, up to 20 decisions in the field of workplace disputes resolution (including, for example, advisory arbitration, fact-finding, and teacher tenure and civil service cases under statutes or rules closely analogous to traditional arbitration) shall be countable in accordance with the standards established by the Membership Committee. No more than 10 countable workplace disputes resolution decisions shall involve employment arbitration pursuant to an individual contract, handbook, or other agreement between an employer and an employee who is not represented by a labor organization.

Appendix C

PROPOSED REVISIONS

Constitution

Article II

Section 1. The purposes for which the Academy is formed are: To establish and foster the highest standards of integrity, competence, honor, and character among those engaged in the arbitration of labor-management disputes on a professional basis, *including those who as a part of their professional practice hold hearings and issue written decisions in other types of workplace disputes;* to secure the acceptance of and adherence to the Code of Professional Responsibility for Arbitrators of Labor-Management Disputes prepared by the National Academy of Arbitrators, the American Arbitration Association and the Federal Mediation and Conciliation Service, or of any amendment or changes which may be hereafter made thereto; to promote the study and understanding of the arbitration of labor-management [and employment] disputes *and other workplace disputes;* to encourage friendly association among the members of the profession; to cooperate with other organizations, institutions and learned societies interested in labor-management and employment relations, and to do any and all things which shall be appropriate in the furtherance of these purposes. (As amended April 29, 1975 and June 1, 1993).

Bylaws

Article VI

Membership

Section (New) (Adopted in San Francisco, May 26, 2007)

In considering applications for membership, the National Academy of Arbitrators will apply the following standards: (1) the applicant should be of good moral character, as demonstrated by adherence to sound ethical standards in professional activities. (2) The applicant should have substantial and current experience as an impartial neutral arbitrator of labor-management disputes, so as to reflect general acceptability by the parties. (3) As an alternative to (2), the applicant with limited but current experience

in arbitration should have attained general recognition through scholarly publications or other activities as an important authority on labor-management relations.

The Academy shall adopt, maintain and publish a policy on membership which shall set forth a threshold number of countable cases for consideration of an application. Meeting such threshold does not guarantee admission or that an applicant has satisfied the criterion of general acceptability. *The policy on membership may provide that awards in cases involving workplace disputes other than labor-management disputes shall be counted toward the threshold requirement, provided that any change in the number of such awards beyond that provided in the resolution of the Board of Governors dated January 18, 2007 has been approved by the membership at an annual meeting.*

Section 6. (Added by Amendment April 21, 1976).

Pursuant to the membership policy adopted on April 21, 1976, the Academy deems it inconsistent with continued membership in the Academy:

a) for any member [who has been], *except one who was* admitted to membership [since] *prior to* April 21, 1976, to undertake thereafter to serve partisan interests as advocate or consultant for Labor or Management in labor-management relations *or for an employee or employer in any other workplace dispute proceeding*, or to become associated with or to become a member of a firm which performs such advocate or consultant work;

b) for any member to appear, from and after April 21, 1977, in any partisan role before another Academy member serving as a neutral in a labor-relations arbitration or [fact-finding proceeding] *any other workplace dispute proceeding*.

Any charges or complaints alleging a violation of either of these policy statements shall be referred to the Committee on Professional Responsibility and Grievances under Article IV, Section 2. (As amended May 20, 1991).

II. Code of Professional Responsibility Amendment

Revision of Part 6 of Code of Professional Responsibility for Arbitrators of Labor-Management Disputes, as ratified on May 26, 2007 by the members of the National Academy of Arbitrators

after being cleared by the American Arbitration Association and the Federal Mediation and Conciliation Service.

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Add new section E (below) and redesignate existing section E as section F:

E. Retaining Remedial Jurisdiction

1. An arbitrator may retain remedial jurisdiction in the award to resolve any questions that may arise over application or interpretation of a remedy.

a. Unless otherwise prohibited by agreement of the parties or applicable law, an arbitrator may retain remedial jurisdiction without seeking the parties' agreement. If the parties disagree over whether remedial jurisdiction should be retained, an arbitrator may retain such jurisdiction in the award over the objection of a party and subsequently address any remedial issues that may arise.

2. The retention of remedial jurisdiction is limited to the question of remedy and does not extend to any other parts of the award. An arbitrator who retains remedial jurisdiction is still bound by Paragraph D above, entitled "Clarification or Interpretation of Awards," which prohibits the clarification or interpretation of any other parts of an award unless both parties consent.