

National Academy of Arbitrators
HISTORY COMMITTEE INTERVIEW

Byron R. Abernethy

NAA President, 1982

Interviewed by Gladys Gruenberg

October 27, 1989

BYRON R. ABERNETHY
PRESIDENT OF THE NATIONAL ACADEMY OF ARBITRATORS

. 1982

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THE HILTON HOTEL, INDIANAPOLIS, INDIANA

OCTOBER 27, 1989

Gruenberg 1989 Continuing Education Conference of the National Academy of Arbitrators at the Hilton Hotel in Indianapolis, Indiana. It is October 27, 1989. My name is Gladys Gruenberg. I'm Chairperson of the Academy History Committee. I'm interviewing Byron R. Abernethy who was President of the Academy in 1982. This project is sponsored by the Academy History Committee in order to preserve the account of activities and the background of Academy Presidents.

 First, Byron we're interested in your personal background. Would you just give us a little background on where you were born, raised, educated and that sort of thing.

Abernethy Yes, I was born in North Dakota and reared there. I spent all my childhood, until I was an adult, in Beach. I went to Beach public schools. After

finishing high school, I went to what was then a state normal school, two year teachers normal school for a summer session. At the end of the summer session you could get certified to teach. So I started my teaching career in a one room rural school about 30 miles from where I had grown up.

Gruenberg This is in North Dakota?

Abernethy In North Dakota, near Trotters North Dakota in 1927. At the end of that year, I went back to school the next year for the fall and winter quarters. Then I went home where I helped my dad on the farm in the spring. I went through college alternating teaching the year in rural school and going to school a year.

Gruenberg In what college is this?

Abernethy This was what by that time had become a state teachers college, a four year college. It was still a normal school in Dickinson, North Dakota. I taught two more years in rural schools at Beach in the School system in the rural schools part of the public school system where I had gone to elementary and high school. Then at the end of six

years of three years teaching and three years going to school, I got my bachelor's degree in education with a major in social sciences and minors in physics and english. I got a job as principal of a high school at Dodge, North Dakota. It was a small public school.

Gruenberg

What year is this we are talking about?

Abernethy

This was 1933. I taught there one year. At the end of that year, the Registrar of the college where I had graduated resigned. The President of the college contacted me and offered me the job as Registrar of the college from which I graduated the year before. I went back to Dickinson in North Dakota as Registrar of the college for two years. That takes us up to 1936. Then in 1936 I went from there to the University of North Dakota and started working on my master's degree in economics. I got my master's degree in 1938 with a major in economics and minors in political science and american history. Then I had finished all of the work on my master's except the thesis. I hadn't completed that in the spring of 1937. The head of the political science department at the University of North Dakota . . . Incidentally, I worked as

graduate assistant in political science too that year that I was working on my master's. At that time a graduate assistant got \$25 a month, which made it possible for me to stay in school. But the head of the department hadn't finished his doctorate and he went back to school to get his doctorate during the summer of 1937 and the fall semester of '37 - '38. They asked me to teach his classes for him. During the summer of '37 and the fall semester of '38 I was assistant professor of political science at the University of North Dakota. He came back for the spring semester. At that time I left the University of North Dakota and went to the University of Iowa and started working on my doctorate. I worked on my doctorate in political science at the University of Iowa. I went to school that spring semester at the University of Iowa. That summer I got a job with Del Monte Canning Company over near De Kalb, Illinois in a pea binning station. In the fall I got a job as instructor of social sciences at a new junior college being opened at Albert Lee, Minnesota. That was the fall when Helen and I were married. I taught there two years, but again I taught the academic year '38-'39. In the summer of '39 I went back to Iowa to summer school, back to

teaching the fall and spring semesters of '39 - '40. In the summer of 1940 I went back to Iowa at the summer school again and stayed on through the next year and next summer and completed the work on my doctorate at the University of Iowa at Iowa City in political science with a minor in economics.

Gruenberg Do you remember what your dissertation was on?

Abernethy Yes. I'm not back up to the Master's thesis. I really completed that after I went to Iowa. That was on the feasibility of crop insurance for North Dakota. My doctoral dissertation was on liberty concepts in american industrial relations. Before I had finished that the American Institute of Public Affairs contacted me and they wanted to publish it as a book. It was published as Liberty Concepts in Labor Relations.

Gruenberg One thing we neglected to mention here is the year you were born. When is your birthdate?

Abernethy February 18, 1909.

Gruenberg As far as just a little bit more in your family background, you said you were raised on a farm?

Abernethy Yes.

Gruenberg So you didn't have any contact with unions or labor relations or anything like that in your immediate family?

Abernethy No, not at all. It was strictly an agricultural background: frontier agricultural background. In fact it might be of some interest, I was still in that category of children who were born at home in a three room homestead home out on the prairies of North Dakota.

Gruenberg That is very interesting. Now you've gone into your employment a little bit but as far as after you got your Ph.D., did you go into any kind of employment activity that was related to labor relations.

Abernethy No. I went to Texas Technological College as instructor of political science in the fall of 1941 right after I finished the doctoral work.

Gruenberg And where was that located?

Abernethy That was in Lubbock, Texas,

Gruenberg

So you moved from North Dakota to Texas?

Abernethy

I moved from North Dakota to Minnesota to Iowa to Texas. I was there as instructor of political science in the year of 1941-42 and again in the fall of 1942. By that time the war had gotten under way, World War II. I tried to get into various military service and was rejected as a 4-F. I decided I would try to get some civilian employment in the war effort. I filed a civil service Form 57 and that's what got me into the National War Labor Board. In January of '43 I was offered a job as wage analyst with the National War Labor Board in the Dallas Regional office and went to Dallas. That is my beginning with the War Labor Board.

Gruenberg

Who was the regional director at that time there?

Abernethy

The regional director was Floyd Megallen. He wasn't from Texas, but he had worked in Washington. I don't remember what he'd been doing in Washington, but he had been working in the field of labor relations. I believe in the coal industry. He came to Dallas as regional director. The regional office was just opening when I went there.

There were very few of us to start with. I went in as a wage rate analyst and two weeks later I was made a section chief. After five or six weeks, I became assistant regional wage stabilization director. Later, the regional wage stabilization director left, and I became acting regional wage stabilization director for a while. Later I was made regional wage stabilization director and continued that until August 1945 when I was promoted to Vice Chairman of the Regional Board. I stayed as Vice Chairman of the Regional Board from August through December of '45. At the end of the year, the War Labor Board was discontinued and was immediately succeeded by the Wage Stabilization Board. The twelve-man board was reduced to a six-man board. There were two full-time Vice Chairman on the Regional War Labor Board. When it went to the Wage Stabilization Board there was only one. I did not have civil service status and the other did, so I was out of a job. They offered me a per diem public member job, so I got paid on days when I worked.

Gruenberg

Is that when you started to do arbitration work?

Abernethy

That's when I started to do arbitration. I spent

two, sometimes three, days a week, most every week, as a public member of the Regional Wage Stabilization Board. I heard my first arbitration case in February of 1946. During the spring and summer of 1946 I served as a public member of the Regional Wage Stabilization Board, arbitrated some. In the fall I went to Western Reserve University in Cleveland as associate professor of economics. I continued after I went to Cleveland combining teaching and arbitration as I had combined Wage Stabilization Board work and arbitration earlier.

Gruenberg

What year was that?

Abernethy

That was fall of 1946. I stayed in Cleveland one year. We did not like living in Cleveland much. In the fall of 1947 we moved back to Texas Tech as associate professor of political science. I was associate professor for two years. In 1949 I was promoted to full professor of political science at Texas Tech College. I continued teaching there. In the summer of 1951, July '51, Bob Fleming, interestingly enough, called me one Monday morning and the National Wage Stabilization Board had been formed. They were setting up the Regional Boards and Bob on behalf of the Board . . .

Gruenberg This was the beginning of the Korean War?

Abernethy Yes, the Korean War. The Board wanted me to go to Dallas and set up the Regional Office as Regional Director and Chairman of the Regional Wage Stabilization Board in 1951, which I did. I worked as Chairman of the Regional Wage Stabilization Board and Regional Director for the National Wage Stabilization Board in Dallas and the four state region from 1951 to 1953 when the National Wage Stabilization Board was abandoned. Then I went back to Tech and remained at Tech as professor of political science until 1957. From July 1957 I have spent full-time on arbitration.

Gruenberg When did you first get on the list of the Federal Mediation Service or any of the other appointing panels? Do you recall that?

Abernethy When I started in January and February of 1946, being only partially employed with the new War Labor Board, the U.S. Conciliation Service was the predecessor of the Federal Mediation Conciliation Service.

Gruenberg They were under the Department of Labor.

Abernethy They were under the Department of Labor. I did let the Director of the U.S. Conciliation Service know I was interested in arbitrating. That was in early 1946. I also went and saw the Regional Director for the American Arbitration Association and let him know I was interested. I think Williams was his name.

Gruenberg Was Ed Warren the person that was in the U.S. Conciliation Service?

Abernethy No, not at that time. Ed Warren became Director of the Federal Mediation Conciliation Service when it was first set up in 1947. One of the interesting things in the A.A.A. I went to see Mr. Williams, the Regional Director.

Gruenberg This was in Texas?

Abernethy In Dallas, yes. They were looking for arbitrators. They commented that they were expecting expansion of arbitration work. I have a letter from Joe Murphy who the old timers remember. There's one interesting thing about the A.A.A.'s attitude at that time that I think is best expressed if I just read the statement from it. "Arbitrators appointed

on our labor panel usually prefer to serve on an honorary basis, but where compensation is desired it generally can be arranged for an amount agreed upon by the disputing parties." Mr. Williams emphasized to me that really arbitrators ought not to expect to be paid. This was a public service. Later that summer they asked me to take a case in Waco that was a gratis service which I declined because I couldn't afford to work for nothing. That was the way we started out as far as pay was concerned with the A.A.A. I contacted both A.A.A. and U.S. Conciliation Service when I first started wanting cases.

Gruenberg

As far as your developing cases, were your cases mostly from the agencies or did you get any direct requests from the parties?

Abernethy

The first case I heard was by direct appointment. It was in February of 1946. It was really a substitute for the War Labor Board. It was an interest case, a contract case, involving 17 contract issues they had been unable to resolve. The parties had gotten into the habit of turning to the War Labor Board to resolve disputes they couldn't resolve. The War Labor Board dispute

function was gone as of December of 1945. The company and union asked the fellow who had been in the disputes division on the Regional Board and had made, by the time I left, Vice Chairman of the Board. To serve as public members we had a six-man Board comparable to the old War Labor Board: the old tripartite board. We resolved the seventeen issues on that contract. That was the first case I heard.

Gruenberg Did you try to do any mediation in that connection?

Abernethy In the Board, just as in the War Labor Board, there were some mediation efforts. We talked about it. We actually worked out agreement, I think, on almost all - that is within the Board - the issues should be resolved at unanimous decision of the Board on I believe almost all of them.

Gruenberg So it was a three man Board made up of you as the impartial and a representative of each party.

Abernethy It was a six man tripartite Board with two on each side.

Gruenberg All of them were appointed by the War Labor Board

rather than the parties?

Abernethy No, not the parties. The parties selected their own and the two neutrals were selected by the parties. They just created their own private War Labor Board.

Gruenberg The members of the Board representing the parties were also sort of impartial or what?

Abernethy They weren't impartial. They were representing the interests of the parties.

Gruenberg But were the employees of the . . . ?

Abernethy I don't remember. I suspect the company members were employees. The union members were members of the union or a union. I just don't recall. It's 43 years ago.

Gruenberg How did your caseload increase after that in terms of numbers?

Abernethy I checked that up here the other day in looking this over and I believe that I heard 28 cases during the first year that I was arbitrating in

1946 along the Wage Stabilization Board work and with my teaching after I went to Cleveland.

Gruenberg You were busy.

Abernethy Yes. I received appointments through the U.S. Conciliation Service in Dallas before I moved to Cleveland and in Cleveland after I went to Cleveland. Another interesting side life developed here. One of the cases in Cleveland I heard out at Lima, Ohio. The employer lost the case. He didn't want to pay my fee and said that it was his understanding that the U.S. Conciliation Service paid the arbitrator. We were in that stage when the U.S. Conciliation Service was going out of the arbitration business and starting to ask the parties to pay their own fees. Now the U.S. Conciliation Service had some arbitrators on their staff that did some arbitration along with conciliation that they sponsored. Those arbitrators were actually paid by the U.S. Conciliation Service. This was the beginning of the transition toward private arbitration. Aaron Horvitz was one that I believe was on the old U.S. Conciliation Service. I think Saul Wallen I believe worked with them too at one time as an

arbitrator.

Gruenberg Did you ever get paid?

Abernethy Oh yes. I insisted that things were changing and they had agreed to pay. They did.

Gruenberg Let's start talking about the beginnings of the National Academy. I understand that you were in on the ground floor on that. I know this may be somewhat of a repetition of some of the things that you said when you were on this panel for the founding of the Academy. Let's repeat it here as if we had never said it before. Tell me about how you got the first notice of the founding meeting and that kind of thing.

Abernethy In April of 1947 when I was in Cleveland, Ed Warren was Director of the F.M.C.S. By that time the Independent Federal Mediation Conciliation Service had been established replacing the old U.S. Conciliation Service. I got a letter from Ed. He was inviting 30 some of us to Washington for a meeting of private arbitrators. I was invited to come to this meeting. The Mediation Conciliation Service provided our transportation to come to

Washington. Out of the group of around 37, as I recall on this list, probably 15 or 16 or so actually came to Washington. We met on Friday and Saturday morning. We talked about arbitration and the problems we were having. Bill Simkin was there. Saul Wallen was there. Aaron Horvitz was there. Carl Sadler was there along with Ben Aaron, Alex Elson. Those are all that I remember right at this time. We talked about the problems we were having as arbitrators. All of those of us who were there were actively engaged in private arbitration by that time. On Saturday morning after we'd finished the program that had been outlined and planned for us, I think it was Ed Warren that brought up the idea that maybe we ought to think about the advisability of our forming a professional organization where we could have this kind of meeting from time to time. There are persons actively engaged in arbitration. Generally, it met with a favorable response. There was just discussion. Then in the summer of 1947, we moved from Cleveland back to Lubbock. There was another meeting, as I recall, August 2, 1947. These dates I think I have them outlined specifically in the video tape. They can be checked there. My recollection is August 2nd there was another

meeting in Washington. I was not at that meeting. Some of the same people who were at the April meeting were present. Bill Simkin I know was there. I don't know who else. Anyway at that meeting again the basic meeting was for a different purpose. But the idea of forming a professional organization where we could get together and compare notes was discussed again. It was decided to go ahead with some action. A committee was appointed to arrange for an organizational meeting in September. That meeting was then held at the Stevens Hotel on September 17th or something of that sort. That's the time when the first officers were appointed. Bill Simkin Chaired a Membership Committee. A tentative committee out of this group met in August and made up a list of some people who ought to be invited to the September meeting. Whit ley McCoy was, I think, the person who was designated to head up the planning for the meeting. Whit, as I recall, didn't get to the meeting in Chicago in September. The September meeting was when a tentative organization was set up which Ralph Seward was elected temporary President until our first annual meeting.

Gruenberg

Were you on any of the committees that were formed?

Abernethy

I didn't go to the September meeting. I was in transition moving from Cleveland to Lubbock. I didn't participate in that meeting. At that meeting it was decided to have our first annual meeting in January of 1947. I did attend that meeting. I should point out that the committee, or tentative organization, that set up in Chicago in September of 1947 included a membership committee. Bill Simkin headed that up. The August meeting had told Bill to think of people who ought to be invited to be members of this planned academy. I don't think they even thought the name academy yet at that time. He continued as Chairman of the Membership Committee to get a list of names of people who are arbitrating who ought to be invited to the first annual meeting in Chicago in January of 1947. As I indicated on the video tape - and as is indicated in one issue of The Chronicle - I received a rather formal invitation from Ralph Seward inviting me to come to the first annual meeting in Chicago and to accept charter membership. I think what they did is they sent that kind of invitation to all the people that Bill's Committee had decided should be invited. I sent The Chronicle a copy of that some years ago and it was published in The Chronicle. I forget

what issue that is. It's my understanding that all of those invited to the Chicago meeting got that kind of an invitation from Ralph. I believe there were 105 people that were invited to the first annual January meeting. There were 40 some people who actually attended. Everybody who came to that meeting was automatically a charter member of the Academy. In addition to that it was decided that everyone who had been or was invited and who joined up through first or end of February 1948 would be charter members of the Academy. That started the Academy and provided the list of charter members. I believe there was 60 some charter members in the Academy.

Gruenberg You were a charter member of the Academy and then, as I started asking about, were you on any committees after that that you can remember?

Abernethy Yes. I was on the first Ethics Committee that was appointed in Chicago at the first annual meeting. I served on that committee. Of course, committees couldn't get together then. Everybody was on their own. I think a small group of the Ethics Committee met and did most of the work on the ethics. Some of us would get letters from far away and we would

make what contribution we made only by correspondence. It was a fairly large committee, but it was a small group that did most of the work on that.

Gruenberg What were some of the types of things you did on that committee?

Abernethy I don't recall and I don't have any file on what went on at that time. Two or three that really were doing most of the planning came up with the ideas. They were sent out to the other members of the committee for their reaction and comment by letters. That would be them most that I would have done.

Gruenberg Did you start working on the Code? Were you on a committee then when they first started working on the Code too?

Abernethy Yes. In 1949 at our second annual meeting my recollection is that at that time the committee's report was to the effect that it was really premature to try to present a Code of Ethics to the Academy to be adopted by the Academy. We needed more time. I think it was another year before we

came out with a Statement of Ethics which later was built into the Code of Ethics. The first Code of Ethics was sent out by the American Arbitration Association, and I forget the year that came out. As the A.A.A. pointed out, it probably was the first code of ethics in history for private professional arbitrators.

Gruenberg What other committees were you on? Do you recall?

Abernethy I served on the Ethics Committee again in 1975-76. I was a member of a Special Committee on Guest Policy in 1977-78. I was a member of the Program Committee in 1978. I Chaired the Nominating Committee in 1978. I served on the Membership Committee in 1979-80 and 1980-81. I think there have been a number of committees since. I think those are the only committees prior to the time I was elected as President Elect.

Gruenberg Were you ever Regional Chair?

Abernethy Yes, I was Regional Chair for most of the time in the first ten years of the Academy history. Then later, two or three times for one year as we began having other members in the Southwest region and

began rotating.

Gruenberg Finally, in terms of the membership in the Academy, what do you feel was the major contribution that that made to your professionalism, if you will?

Abernethy I would think probably the major contribution was that it gave us in those early days a chance for the arbitrators to get together, compare notes and discuss the kinds of problems we had and get the benefit of the thinkings of others who were having similar experiences. I learned a lot by talking to guys like Ralph Seward, Bill Simkins, Saul Wallen and guys who were doing a lot of arbitration.

Gruenberg Did you get appointed to any arbitration panels that you did work on on a regular basis?

Abernethy Yes, in the early days. You find out after you've been on one for awhile that they had had each other on the panel. Later I served on the panel for some of the copper companies; then airlines. I did quite a little railroad work; Railroad Adjustment Board work in the 1940's and 1950's.

Gruenberg How did the Railroad Adjustment Board work compared

to the other private arbitration you got involved in? How would you make a comparison of the two in terms of case handling, presentation and that kind of thing?

Abernethy They were quite different. Your private arbitration was really, what the lawyers called it, a no bill handling of the suit. The Railroad Adjustment Board work was appellate procedure. You worked from records almost entirely. The records were made in the case on the property. Sometimes there would be hearings at which the parties would come in at the Railroad Adjustment Board. Mostly you worked out of a record. Then the Board members would argue the case before you. I found the private industrial arbitration more interesting. You have more complicated rules on the Railroad. It's a rule bound industry.

Gruenberg Did you do any fact finding in the public sector, for example, not during your War Labor Board Days but in public employment?

Abernethy Not in public employment. I did a fact finding job for the Mediation Conciliation Service on the beef industry. I forget what year that was. It was

sometime in the 1960's I guess. Iowa Beef had a dispute. They were about to go on strike. Bill Ustry was Director of the F.M.C.S. at that time and called and asked me if I would take it. I did. A strike was inevitable. There was nothing you could do about it, but I went ahead and made a report. The big four meat packers wouldn't proceed with their negotiations until I got my report out of the Iowa Beef. It was a rather interesting complicated case.

Gruenberg

You were a single arbitrator on that?

Abernethy

Yes. I was the single fact finder. I was not to make any decision on that as to how the Iowa Beef dispute should be resolved. The basic question that we had to work on was the relationship of the Iowa Beef type of processor to the big four packers. The company was contending that it was a totally unique process, and they shouldn't be required to pay wages comparable to what the major packers were having to pay. The union was trying to get them. I couldn't resolve the question about what they should do about wages, but I was to make findings of fact as to what correlation there was between the break down packers like Iowa Beef and

the big four meat packers.

Gruenberg During this time did you do a lot of traveling around the country?

Abernethy Oh yes. I did more arbitration in the Southwest in the early years. Then I got to where I was traveling all over the United States for the last 25 or 30 years. I had A.A.A. and F.M.C.S. stop sending my name out I think 25 years ago. Somehow or other that changed the people I was serving. That took me all over the country and I quit doing much arbitration locally in the Southwest.

Gruenberg Let's move into when you became President Elect of the Academy. At that time do you recall how you were told that you had been selected and what was the procedure that was used?

Abernethy The Chairman of the Nominating Committee called me and said that the Nominating Committee had met and wanted to nominate me for President Elect and was I agreeable.

Gruenberg This was in 1981?

Abernethy Yes 1981. My first reaction was my age probably had reached the point where I ought to give serious thought whether if I took that it would be fair to the Academy for me to do it. He said "would you like 30 minutes to sort of think about it?" I said I would. He said that they would be there for another 30 minutes. I thought hard for 30 minutes and called back and said I would.

Gruenberg As far as the President Elect was concerned at that time what kinds of duties did you have? How did you ease into the job? What were the requirements of you while you were President Elect?

Abernethy There are some Constitutional and By-law requirements. A President Elect during his term as President Elect is automatically a member of the Executive Committee, ex officio member of the Board, and I think that's all that is specifically required.

Gruenberg Who was President at the time?

Abernethy Ted Jones was President while I was President Elect.

Gruenberg Did you work him at all?

Abernethy Oh yes. I was elected President Elect at the time Ted took over as President at the Hawaii meeting in 1981. Ted and I talked. Ted had developed the idea of the Directions Committee as his area of concentration. It is obvious that a proper job couldn't be completed in one year. He asked me if I would like to join him on that. As we talked about it I decided I would. We made that a joint two year project. It was his and my primary area of concentration during the two years. We worked closely together. Ted kept me advised of things that were going on. Being on the Executive Committee, of course, every time a problem came up with the Executive Committee he contacted me along with the other members of the Executive Committee. On the Executive Committee I was completely in touch. On meeting with the Board of Governors, I was fully in touch with everything that went on that year, which is important.

Gruenberg What about future directions of the Academy?

Abernethy Ted had a problem that became even worse than my administration with the finances of the Academy.

We were getting into bad shape financially. I remember that was one of the problems that he was concerned about. I don't think of any other specifics ones. I'm sure there were others that we talked about, but specifically I don't recall. I'm more conscious of those that I faced. Let me add since you asked about the duties. I've talked about these duties that are by-law or constitutionally required of President Elect. I undertook duties on my own responsibility that I thought I should be doing as President Elect. One of them was that I attempted to acquaint myself with the whole background policy of the Academy. I read all of the minutes of every annual meeting that I could get a hold of and every Board of Governors meeting. I couldn't get a hold of all of them. Rich was unable to provide me with all of them, but I read all of them that we could get. I tried to familiarize myself fully with all of the policy so I didn't start recreating the wheel when I took over as President. I think that was one of the most valuable things I did during that time. I also started working immediately on picking who I wanted for committees. That's a big job and I did a lot of work on that during the year as President Elect. As far as planning for the presidential

year and what things I wanted to do during my presidential year, I was invited by the Canadian group to come to their Regional meeting in Ottawa which Helen and I did. There wasn't money enough in the treasury, so we did it on our own expense. It was a busy year during the President Elect year too. Another thing in the matter of one of the problems that came up while I was President was should we file amicus briefs in the cases before the Supreme Court. The Board in 1979, I think it was, was asked by the electrical workers to file an amicus brief. The Board adopted a policy at that time that they would not intervene as legal advocates in anything. We declined to proceed with a request to file an amicus brief, the Executive Committee did. We didn't feel we should overrule a Board policy as the Executive Committee. Everybody had forgotten about that. Those are just two examples that led me to conclude that we really needed a policy handbook that would outline all of these policies that I was running into. It could be kept up-to-date as a looseleaf handbook that every Board member and possibly committee chairs could have. That was another thing I told the Board I would like to try to do during my administration. That was get a policy handbook. The Board agreed

with that. One of the major things that was a policy was to try to get the finances of the Academy on a sounder basis than they were when I took over. Everything I wanted to do during the President Elect year and everything I wanted to do during my year as President I continually met the answer we don't have money to do it. I guess we didn't have. It was necessary to do something to get the finances in order. It was impossible to find out where the money was going. The Academy was virtually broke. We did during my presidential year increase the dues from \$200 to \$250. I think we got some better controls on how money was being spent and the accounting of it. Ted started that by appointing an Auditing Committee, which was the first time in some time that there had been an Auditing Committee appointed. That was a goal I set to get the finances in a little better shape. I think we did by the end of the year.

Gruenberg

Was there a great deal of opposition to this increase in dues?

Abernethy

No, I don't recall that there was any serious opposition at all. Nothing like what happened during "Buzz" Wood's administration.

Gruenberg

Did you have any great disappointments that some of your goals were not reached during this time?

Abernethy

Yes. I was disappointed that we didn't make more progress than we did on the Archives Committee. But I was not terribly disappointed because they were working and we were making progress. The biggest disappointment I suppose was on the Handbook Committee. Nothing at all happened. Nothing happened the next year when Mark Kahn was President. Fortunately, the other Presidents kept the Handbook Committee alive. Finally, Dallas Jones sent me the handbook just a few weeks ago, so that I would feel that that project has now come to fruition. The Archive Committee deal has come to fruition too. I might add that the thing that interested me in the handbook was apparently in Paul Guthrie's administration, Paul had the same idea. There is one record in the minutes of his having proposed forming a handbook or preparing a handbook like this. Nothing apparently came of it. Gabe Alexander as President also set out to do this and had Pat Fisher working on it. Pat Fisher did turn in some stuff but it never materialized into anything such as we have now. My hope is now that they will keep that alive and keep it up-to-date by

turning it into a looseleaf notebook that can just be revised every time the Board of Policies adopts a new policy. They can put it in and the people can be up-to-date on policy all the time.

Gruenberg You mentioned the effect on your caseload when you were President Elect. Was there a more serious effect on your caseload when you were President?

Abernethy Yes. I pretty well quit arbitrating during the year that I was President. There were some other reasons too. I had some health problems, but I pretty much devoted all of my time to the Academy that year. I did some arbitration but not that much.

Gruenberg Did you visit the Regions?

Abernethy There was one Region. Again I was unable to visit Regions because we had no money for travel. I visited some Regions. I did go to Kansas City one time to meet with the Future Directions Committee when it was having one of its final meetings.

Gruenberg As far as the committees are concerned, do you recall anything special that came out of the

committees that you had appointed during your presidency? Anything that was especially noteworthy?

Abernethy

I think probably the greatest accomplishment was the Report of the Future Directions Committee that happened. Again I don't take credit for that. It's Ted's and mine jointly. The guys that are really entitled to credit that did the work are Jack Dunsford and Bill Murphy and the people on their committee. The Academy had accomplished, during my administration, the most significant one I would say was the Report of the Future Directions Committee and the adoption of most of its recommendations. One of the most important of those recommendations, I think, was the provision for the Fall Continuing Educational Conference which we are at right now. I think that's one of the great achievements that came from the Academy as a whole at the time when I was fortunate enough to be President. Another accomplishment, I think, is that we did begin to make progress in getting the financial situation on a sounder basis than it had been. I think the handbook and the archives situation were important. I'm proud to having had something to do with those. I think those were

real accomplishments. It took a long time for them to finally materialize but I'm glad we got them underway.

Gruenberg How did your relationship with the Secretary and Treasurer go on during the time you were President?

Abernethy It was good. There was no personal antagonisms at all. It's just a lot of money had been spent with the Los Angeles meeting when we brought lots of judges out there. That was a very expensive meeting. It really reduced the . . .

Gruenberg Did you pay the travel expenses?

Abernethy The Academy paid a lot of travel expenses. There was lots of expense for that at that time. That's another thing we did in my administration. We adopted a policy so that the Program Committee Chairman or the Arrangements Committee Chairman had the Board of Governor's policy to go by with regard to inviting various speakers for the annual meeting. I think it has been changed since then but at least they had a policy that they knew what they should and should not do.

Gruenberg When you were deciding on a Program Chair, did you give any guidance to the Program Chair about the kind of program you sought?

Abernethy No, I asked Frances to serve as Chairman. I didn't give her much guidance. I asked her to advise me. She carried that load very largely by herself. We talked about things. After she had some suggestions to make we would discuss it over the telephone.

Gruenberg What do you think you consider to be the most important qualifications for an Academy President?

Abernethy That's a hard one to answer. Every one of us has our own peculiar characteristics, which particularly fit us at the time perhaps. Certainly some executive ability is important. I think a very important qualification would be a real dedication to the concept of professionalism in so far as arbitration is concerned, and a concern for professionalism. This is a unique profession. I think a President needs to provide leadership in that field. The ability to work with people and motivate them is a qualification. That certainly should be important. I think it ought to be

somebody who has done significant work and is a well recognized arbitrator who is known for arbitration and his ability to have large acceptability. I think it's essential to command the respect of parties in the country.

Gruenberg

As far as the Membership in the Academy, do you have any comments about how you think that membership is changed or whether you see any trends that are occurring that you would like to comment about?

Abernethy

I don't know that I want to comment too much about it. I think you can see the thing, I suppose, inevitably happens in any organization and anybody who sits here at this time 42 years after and organization starts and looks back over it. We look at it with something of a jaundiced eye perhaps. Those of us who were active in the initial days of this Academy knew one another. Those of us who participated in the formation of the Academy, most of us had gotten acquainted with one another and worked with one another in some capacity during the War Labor Board. All of people who is starting something new, the arbitration was new, I guess most of those guys held a great

dedication to the process of arbitration. I think people who come in now into a profession that is established - a going occupation that is accepted everybody knows what it is and it's working - probably come into it with less reverence for the professionalism perhaps. They accept it a little more casually than the old guys who started it. I don't say that critically of them. I think it's a natural development of coming into a profession that is an ongoing understood profession. Some of the guys like Ralph Seward, Bill Simkin, Saul Wallen, Dudley Whiting and those guys who were getting it under way.

Gruenberg

Did you find that you did engage in social life with the members of the Academy outside of the meetings or was it mainly confined to meetings?

Abernethy

We engaged in social activity at the meetings outside the meetings, Yes. Father Brown always had his sessions with the poker games and so on, which were delightful. I didn't participate, not knowing how to play poker, but obviously they were highlights of the Academy meetings when Leo was around. Socializing other than at Academy meetings, in so far as I was concerned, no because

there were no other arbitrators within several hundred miles. I didn't have the occasion to. When some of us got together at the regional meetings we did. In so far as there was any socializing concerned it was associated with the meetings as far as I was concerned. I know that some of the people in New York, for example where there were a number of them, got together and knew one another and socialized.

Gruenberg When you went to a community where you knew there were Academy members, did you feel free to call them on the telephone?

Abernethy Yes, if I hit one where there were Academy members. In the early days there weren't. Even in Cleveland when I started arbitrating there I don't think there was another arbitrator in Cleveland. I guess there was one other one that I found out about after I had left Cleveland. There just weren't many arbitrators anywhere. In Chicago, of course, there was Peter Kelliher and I guess Bert Luskin maybe was arbitrating back at that time. I'm not sure. There was a fellow who was in Bert's office with him who is no longer living and I forget his name now that had an umpireship somewhere around

Abernethy

Chicago. I think he was arbitrating by that time.

Gruenberg Give us your thoughts on what changes you feel have taken place in the procedure and mechanism of arbitration? Do you see any broad trends?

Abernethy The one that we always hear about the formalization and legalization of the process is a valid comment on it. In the initial days of arbitration you would go and there was a Director of Labor Relations and the local union business manager handled the cases. One example: I heard a case in Pennsylvania when I was in Cleveland. I heard 17 cases in one day. What it was was the business agent of the union and the labor relations director came in. They had brief statements of the essence of the each case. They gave it to me. They talked maybe five or ten minutes or maybe a half hour discussing their problem, what they needed to have solved and "solve it." We heard seventeen grievances in a day. I haven't experienced anything like that in many many years. For a number of years I have rarely heard a case where there weren't lawyers on both sides, at least on the company side; where there weren't transcripts

and post hearing briefs. I think that's a very real change. It has changed the process considerably since it was in the first days when we were arbitrating.

Gruenberg You can't object to the witnesses and cross examination . . . ?

Abernethy Yes and the attempt to introduce legal rules into the procedure that arbitrators now have to be prepared to know how they're going to answer them. I don't think the arbitrators need to rule on them like a judge would rule on them. I don't mean that. I do mean that they're going to be confronted with them. They better be prepared to say how they are going to face this kind of problem because it is going to arise.

Gruenberg Have you had any interns or people who were working with you on any cases?

Abernethy No I haven't.

Gruenberg Did you involve your students?

Abernethy I haven't taught for over 30 years. In 1957 was

the last I taught. So I haven't had students since then. It hasn't lent itself to that readily. I haven't had the kind of umpireship that lent itself to it either, like Ford, Chrysler, General Motors, Bethlehem Steel or U.S. Steel umpireships that lend themselves to that sort of thing more readily than my mostly ad hoc work.

Gruenberg Were you on the Atomic Energy Panel?

Abernethy Yes I was on the Atomic Energy Panel,

Gruenberg How long were you on that panel?

Abernethy I went on that in about 1960 or 1961, something like that. For a long time Leo, Ralph and I were the only ones handling those cases.

Gruenberg And that was primarily in Tennessee and Vegas and Washington?

Abernethy Yes, Tennessee. We would meet in Washington, Tennessee, Las Vegas and Ohio. We had hearings in Columbus and I forget the place Ohio where there is an installation. Rocky Flats in Colorado. There is a place in New Mexico where they developed the

atomic . . . and out in California and in Long Island there is another installation.

Gruenberg Were the three of you on cases or did you take them individually?

Abernethy No, most of the time there were three of us. We heard a lot of cases. We worked for six weeks or more out at a test site in Las Vegas. Leo, Ralph and I were the only ones and we handled them. I shouldn't say that because Russ Smith came and joined us part of the time on that Las Vegas assignment.

Gruenberg How did that appointment occur?

Abernethy I don't know. It had to be okayed by the White House as I understand it, but I didn't get word from the White House directly. Maybe it was Leo who called me to see if I would be willing to serve. Or maybe it was Jim Reynolds who was under the Secretary of Labor. I believe either Jim or Bill may have contacted me on that. It was worked through them at the time.

Gruenberg How many years were you on that panel?

Abernethy From about 1960 up to the time it quit functioning very much.

Gruenberg Was there anything else you would like say about the profession or the Academy or anything like that?

Abernethy I don't think of anything. Have we hit everything you have on this list?

Gruenberg Well, pretty much so. I think that's the way we'll end it if that is okay with you.

Abernethy That's fine thank you.

The following was added to this interview.

Gruenberg Let's add this to that.

Abernethy What we're talking about is under the Fair Labor Standards Act, Puerto Rico, the Virgin Islands and Samoa had their wage and hour regulations fixed at a minimum wage rate below the continental wage rate. The Labor Department, Wage and Hour Division, would set up industry committees in those places to hold hearings and make recommendations to

the Secretary of Labor as to what the minimum wage should be for that particular industry in that location. I served on a number of industry committees in Puerto Rico as Chairman of all of them except the first one. The first one Art stark was Chairman of that. They were tripartite committees. Sometimes 12 of us on a committee, sometimes 9 and so on. We would hold hearings for the industry and come with a recommendation to the Secretary of Labor as to what the minimum wage for that industry and that location should be below the continental minimum wage.

Gruenberg What were some of the industries you worked on?

Abernethy Agriculture, various clothing industries, knitting industries, cigar industry and a whole bunch of different ones.

Gruenberg How were the appointments made?

Abernethy I got word from Jim Reynolds under Secretary of Labor.

Gruenberg In the same way that the A.E.C. did it?

Abernethy I think I got the A.E.C. position by Jim Reynolds,

Gruenberg Were you working on a per diem basis?

Abernethy Yes that was on a per diem basis, and at a considerable lower rate than the private industrial arbitration. It was very interesting work. On the industry committees you really did some mediation with a clout. At the end of the hearing we had to have a majority vote. That usually meant the neutral member siding with either the industry or the labor. By giving them a part in mediating between the two sides I was successful in having lots of unanimous decisions. They worked toward the same point to get the public neutral members to agree with them. Many times they worked to the same point. It was very interesting work. I served on three Presidential Emergency Boards: two appointed by President Kennedy and one appointed by President Johnson.

Gruenberg In what industries were those?

Abernethy The first one was a railroad. I believe it was the Milwaukee Railroad. I can't be certain about that. The U.T.U. although it wasn't the U.T.U. at that

time. It was one of the U.T.U. components. Then Eastern Airlines with the flight engineers. Those two President Kennedy appointed me to. In 1968, shortly before he left office, President Johnson asked me to serve on a Presidential Emergency Board which involved a railroad. I'm not sure I remember which one that was now. Those were set up under the National Railroad Labor Act where strikes were threatened that the National Mediation Board or the Labor Department had to find constituted a threat to interstate commerce. Then the President would appoint a Board. That averted the strike for 30 days while hearings were held and recommendations were made to the President. Then they had to negotiate again for another 30 days before they could hold a strike. It was a delaying process. It usually worked out and resolved the dispute.

Gruenberg And there were three impartial persons who were on that Board?

Abernethy On the three Boards that I served on there were three impartial members.

Gruenberg Were you ever Chairman of the Boards?

Abernethy No.

Gruenberg How did you go about arriving at your recommendations?

Abernethy We sought to mediate with the partisan members of the Board or the representatives of the sides. I guess it wasn't a Board, it was just three impartial members. We would try to mediate with the sides. If it wasn't successful we just had to call it as we saw it and write a report to the President what the dispute was about and what we recommended.

Gruenberg What was the time pressure involved in that? Did you have to work long hours?

Abernethy Yes, in some of them we did. You have 30 days to hold a hearing, complete the report and send the report to the President unless you get extensions. There is time pressure on those.

Gruenberg And the meetings were usually in Washington?

Abernethy No, the meeting for the first Board I was on was in Chicago. Then the three Board members met in

Washington to write the report to the President. Partisan members came to Washington too and we met with them some to try to see if we could mediate some kind of resolution. The Eastern Airlines case we held the hearings in Miami and the Board members met in New York. Ted Keel was Chairman of that Board. Paul Guthrie and I were on the Board. We wrote the report in New York, then took it to Washington and turned it in to the White House. The third Board that President Kennedy appointed me on, that hearing was held in Washington. We wrote the report in Washington.

Gruenberg These hearings were the same sort of hearings? Were they documentary hearings?

Abernethy There were lots of documents and witnesses, both. That has gone on so long that the proceedings fall into a pattern that both sides are ready for with innumerable exhibits. A lot of material would come in on those cases.

Gruenberg One of the major accomplishments of Byron Abernethy was the appointment of an archives committee because during his presidency he found that many of the records of the Academy had been misplaced and he wanted to be sure, at least from here on out,

all of the committee reports and the minutes and records of the Academy were kept in one place. He developed the first committee that established contact with Cornell University. Since that time he has developed an archives situation where Cornell has taken care of the Academy's records. That was one of his major accomplishments.