

APPENDIX D

1. Report of the Committee on Research and Education: EDUCATION AND TRAINING OF ARBITRATORS *

The report of the Committee on Research and Education is necessarily a tentative one. The committee decided to stress the educational or training aspect of its function this year since Professor Witte presented a most comprehensive report on research in arbitration at the last meeting of the Academy.¹ Accordingly, the committee undertook to initiate a discussion of "Training for Arbitration" in the regions. To carry out this plan a discussion outline on this subject was prepared and distributed to all members of the Academy. All regional chairmen were requested to hold meetings on the outline and to send minutes of their meetings to the committee for compilation. However, in most regions this request collided with the request of the Committee on Ethics that the proposed code of ethics be discussed, and the regional chairman quite properly gave priority to the code of ethics. Now that the code of ethics is ready for final action, the Committee on Research and Education is hopeful that the more active regional groups will be able to turn their attention to the matter of "Training for Arbitration."

* Presented at Third Annual Meeting of the National Academy of Arbitrators (Washington, D. C., January, 1950).

¹ Several members of the Academy have expressed the belief that the Committee on Research and Education should continue to act as a clearing house of information concerning research projects on arbitration that are planned, under way, or recently completed. This suggestion was received too late to be acted upon in time for this meeting, but it does seem desirable to gather such information within the next few months for distribution to the membership through the Secretary's office. Hereafter, such information might well be made a part of the report of the committee to the annual meeting.

Two regional groups—those in Michigan and Southern California—have already discussed the subject. In addition, the committee held a meeting in New York last month to discuss the training problem, and it has been discussed with several individual members of the Academy. It is possible, therefore, to present here some tentative conclusions which we hope may serve as a springboard for further discussion in regional meetings.

It seems unlikely that there is at present a shortage of people who are able and willing to undertake arbitration work. There is a shortage of *acceptable* arbitrators, however, in several regions of the country. The pattern in most regions appears to be that the lion's share of arbitration work—especially *ad hoc* arbitration—goes to a relatively small number of individuals, with the rest scattered among a large number of others who may be potentially as able as the more popular arbitrators, but are less well known, and therefore less experienced. Officials of designating agencies have indicated that there is a definite need for larger panels of acceptable arbitrators to permit easy replacement of those who become temporarily or permanently unacceptable. Many of those who are now on the periphery of acceptability might well benefit from some training in the finer points of labor arbitration. In the long run, moreover, replacements will obviously be needed as those who are now active leave the field through death, retirement, election to the United States Senate, or by other means.

It appears, therefore, that the training problem is two-fold. On the one hand there is the problem of providing some means by which people who have an appropriate background and temperament for arbitration, and perhaps some experience, can achieve a greater mastery of the techniques—in other words, helping the amateurs to become less amateurish—and on the other hand there is the problem of making some provision for the training of a new generation of arbitrators. Let us turn our attention first to the latter group. There seems to be general agreement that such academic courses as labor law, contract law, labor economics, trade unionism, accounting, etc., cer-

tainly do not harm would-be arbitrators, even more certainly do not by themselves qualify him to serve as an arbitrator. There is also a feeling that there is some danger in university courses in labor arbitration because the person who successfully completes such a course may feel that he is fully qualified to arbitrate. However, such courses are valuable if they are directed primarily at those who may participate in arbitration proceedings as representatives of parties rather than as an arbitrator.

Most of those who have discussed this subject feel that some kind of apprenticeship or internship arrangement is the ideal training technique. Obviously, however, the number of such arrangements is quite limited. Discussion has revealed great variety in the arrangements now in effect. There is one arrangement under which a full-time arbitrator permits a law student to read the transcripts, briefs, and other documents in cases currently before the arbitrator, and to discuss the cases and decisions with him. The student receives no pay and of course has no responsibility for decisions. On the other hand, in one large permanent umpireship the parties have agreed to the appointment of an assistant umpire, who is a man with some arbitration experience and who is expected to assume a large share of responsibility for the actual handling of cases. Perhaps the latter type of situation can hardly be called training, but the experience is certainly invaluable for the junior member, and even more valuable are the contacts that the less experienced arbitrator is able to make through such an arrangement.

Since the number of new arbitrators who can be trained by the foregoing methods is necessarily very limited, the chief source of new blood in the profession will probably continue to be established lawyers, professors, and others who do not look upon arbitration as their primary source of income. Today there are undoubtedly hundreds of people who had some experience as panel chairmen for the War Labor Board and who may have handled one or two arbitration cases. Many of these people might make quite acceptable arbitrators with further experience or training. However, they cannot get the needed

experience unless they are acceptable and, generally speaking, they are not acceptable unless they have had experience. Thus far the discussion has not turned up any method of training that seems to give much promise of being very helpful for such people. There is general agreement that the study of reported arbitration decisions and most of the available books on arbitration have very limited usefulness for this purpose. The only suggestion so far that seems to hold much promise is that established arbitrators arrange with the parties for less experienced people to attend arbitration hearings as observers. Along the same line, it has been suggested that less experienced arbitrators, and probably even those with considerable experience, might find it most helpful and enlightening to sit in on mediation conferences. One regional director of the FMCS has volunteered to arrange for such attendance and others might be willing to do likewise.

Since experience is unquestionably the best teacher in this field, as in so many others, and since there are many potentially able arbitrators whose services are not being used, the problem of maintaining an adequate supply of arbitrators now and in the future is to a large extent a problem of promoting the acceptability of newcomers. As everyone knows, most present-day arbitrators broke into the profession through the War Labor Board. We can hardly depend on another world war to give us a new crop of arbitrators, though it might happen that way. Barring such a catastrophe, the entry of new arbitrators into the profession presents difficult problems. There is general agreement that it is improper for a busy arbitrator to refer a specific case to another arbitrator, although most people see nothing wrong with proposing the names of other arbitrators when the parties so request. Designating organizations may be able to do something to facilitate entry by continuing to place on their lists the names of newcomers who seem to be qualified, with the hope that somebody might possibly give the newcomer a case and thereby start him on the road to success (or failure, as the case may be). It has also been suggested that those who are trying to enter the profession

might be brought into contact with employer and union representatives at regional meetings of the Academy. Another suggestion is that less experienced or less well-known arbitrators might offer their services at rates considerably below prevailing levels, especially in less important cases. Designating agencies like the American Arbitration Association and the Federal Mediation and Conciliation Service might maintain a special list of less experienced and less costly arbitrators for cases that the parties were willing to designate as being of minor importance. Possibly these suggestions are not practicable, but some discussion and experimentation along these lines would undoubtedly be worthwhile.

The training of arbitrators is only a part of the overall problem of training for arbitration. There is general agreement that training is badly needed by many representatives of labor and management. While some larger unions and larger companies have done something to train arbitration representatives, the great majority could undoubtedly benefit from some suggestion or even instruction from arbitrators. There is also agreement that an individual arbitrator can do very little before, during, or after a hearing to improve the presentation of particular parties. There is considerable sentiment for some kind of program, preferably under university auspices, to enable arbitrators to help the parties to improve their presentation. A few universities have conducted such programs, and the response to them has been quite enthusiastic. The committee believes that the numerous industrial relations centers, and colleges and universities in general could perform a real public service by conducting more conferences of this kind. We believe that individual members of the Academy and the Academy itself might appropriately sponsor such conferences in cooperation with educational institutions.

The training of arbitrators and arbitration representatives is a field in which practically nothing has been done and in which a great deal should be done. Aside from our recommendation that universities be encouraged to offer special training to arbitration representatives, this committee is not ready to propose

a program of action. Such a program should be developed primarily as the result of regional discussions, and we hope there will be a number of these during the coming year. Any profession worthy of the name devotes a great deal of attention to the training of practitioners in the field. If arbitration is to be recognized as a profession, we must give adequate attention to training for this new profession. In the opinion of this committee, it is most fitting that this Academy, the professional society of arbitrators, should make training for arbitration one of its major concerns.

Respectfully submitted,

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