

APPENDIX E

Report of the Committee on Research and Education: SURVEY OF THE ARBITRATION PROFESSION IN 1952*

This report on recent activities is being submitted to the Board of Governors by the Chairman of the Committee. The whole Committee, unfortunately, has not had an opportunity to review the report in advance. This is because the Chairman wanted to include the results of the Committee's survey, which did not become available until very recently.

The Committee this year agreed upon a three-point program:

1. Survey of Academy members to establish the "vital statistics" of arbitrators and arbitration.
2. Arbitration bibliography to provide all members with a comprehensive up-to-date list of written materials.
3. Research clearinghouse to supply members with the results of research and to provide students with the opportunity to consult experienced arbitrators.

The Committee felt that these projects could be most effectively administered at universities with labor relations centers. The Institute of Industrial Relations at UCLA agreed to assume responsibility for the survey.

The Cornell School of Industrial and Labor Relations agreed to do the bibliography. When work was about to begin, however, it was discovered that the American Arbitration Association had just completed a comprehensive bibliography. In light of this fact, Cornell was asked to drop the project. The Chairman recommends that the Academy ask the AAA to supply

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each Academy member with a copy of this bibliography, scheduled for publication in January 1954.

The clearinghouse responsibility has not thus far been finally placed. At the time of writing negotiations are under way with Cornell to do the job. This School, unquestionably, is better situated than any other to undertake the responsibility because of its library and publication facilities. The Chairman hopes for the success of these negotiations.

The results of the survey of arbitration conducted by UCLA are incorporated in this report. A description of the method employed, a narrative statement of the results, and some questions about future policy follow immediately. The appendix sets forth the tabulations in detail. Mrs. Anne P. Cook of the Institute's staff made the tabulations.

The survey was drafted by the Chairman and was approved by the whole Committee. It was mailed with a covering letter from the President to the list of 197 members supplied by the Secretary. It went out in two parts, the first general and the second financial. This was done to preserve anonymity with respect to the latter. The membership cooperated very well; 115 (58.4%) returned the general form and 113 (57.4%) the financial form.

The results must be regarded as suggestive rather than precise for a variety of reasons: the fact that a very large minority failed to reply; the fact that there is no way of knowing how many arbitrators are not Academy members; the fact that some respondents interpreted a few questions differently; and the fact that some members estimated their caseload. The survey gives us, then, a general picture of the Academy membership and, if it is representative, of arbitrators and arbitration as a whole. On the question of representativeness it is probable that the survey includes a larger proportion of the very active arbitrators (those with large umpireships and important railroad assignments) and a smaller proportion of those who do very little work.

The results in narrative form follow:

1. The arbitrator is mature in years, 49.7 being the average age. No one is younger than 34 and only 13 are under 40.

2. The typical arbitrator is exceedingly well-educated. All have had some college work and only 5 have failed to complete at least the B.A. degree. About 54% hold legal degrees and 36% are Ph.Ds.

3. Almost all arbitrators engage in some other profession. The majority are in academic life (almost all of them in the labor field, primarily economics-industrial relations and secondarily law.) About a quarter of them practice law.

4. The typical arbitrator has practiced about 11 years. Only a handful have entered in the past 5 years. The majority began between 1942 and 1947.

5. Most arbitrators got into the work through government service, primarily with the War Labor Board. A fair number entered because the parties asked them to serve in a particular case.

6. Those reporting handled almost 4,000 cases in 1952, an average of 35.7 per arbitrator. If we assume a somewhat lower figure for those members who failed to report, say 25, the total number of 1952 cases handled by Academy members was in the neighborhood of 6,000. This suggests—and here we must guess—that the total volume of available work in 1952 may have been in the range of 8-10,000 cases. If there is substance to the estimate of 100,000 collective agreements, this suggests an average of 1/10 of one arbitration per agreement in 1952. The volume of work handled by Academy members is highly concentrated. Only 24 arbitrators did almost two-thirds of the work, while 29 did little or no work.

7. Slightly more than half of those reporting served in one or more umpireships, in which each averaged almost 28 cases.

8. Virtually everyone served in *ad hoc* work, averaging just over 20 cases per arbitrator. The total volume of *ad hoc* cases exceeded permanent in a proportion of 3 to 2.

9. The volume of contract cases is very small, only 145 being reported. About half of those reporting had one or more such arbitrations in 1952.

10. The number of grievance cases was much greater—2,764—and almost everyone did some.

11. Only 21% of the cases were presented to tripartite boards.

12. By contrast, 79% were handled by single arbitrators.

13. The total number of reported contracts with umpireships was 202. Another evidence of concentration appears in the fact that 11 members were named in half of them.

14. The overwhelming majority of arbitrators—almost two-thirds—were selected by the parties. The AAA, the railroad agencies, the FMCS, and the state boards followed in that order.

15. Only a small fraction of the arbitrators derived more than 50% of their income from arbitration work. Better than 4 out of 5 got most of their income from some other source.

16. A majority of the arbitrators earned less than \$5,000 in arbitration work in 1952. Only a handful earned over \$20,000.

17. A fee of \$100 a day in grievance cases appears to have been the "standard rate" in 1952.

18. The same fee prevailed in contract cases, although there were more arbitrators who charged a higher amount.

The results of the survey of arbitration are submitted by the Committee to the Board of Governors for such disposition as the Board sees fit. The following questions appear to the Chairman as matters upon which the Board should act:

1. Should the results of the survey be distributed to the membership of the Academy?

2. Should these results in whole or in part be released publicly?

3. Is there merit in making this kind of a survey an annual affair?

4. If the answer to the last question is in the affirmative, does the Board have specific suggestions for improving the content and administration of the survey?

Respectfully submitted,
Irving Bernstein, Chairman

APPENDIX

Survey of the Arbitration Profession in 1952

(figures in parentheses represent usable replies)

1. <i>Age:</i>			
(112)	Average of reporting members is 49.7 years, 13 are under 40 and 18 are 60 or more.		
2. <i>Education:</i>			
(115)		<i>Number</i>	<i>Percent</i>
	Some college	5	4.3
	B.A. or B.S.	2	1.7
	M.A. or M.S.	4	3.5
	LL.B or J.D.	49	42.6
	Ph.D.	41	35.7
	Other	14	12.2
		<hr/>	<hr/>
		115	100.0
	S.J.D.	6	
	LL.M.	3	
	D.D.	2	
	M.E.	1	
	B.A. grad.	2	
3. <i>Other Profession:</i>			
(115) ¹		<i>Number</i>	<i>Percent</i>
	Law	27	22.3
	Academic	71	58.7
	Law	18	
	Ind. rels., Ec., Bus. Ad.	44	
	Other	9	
	Consultant	8	6.6
	Other	7	5.8
	None	8	6.6
		<hr/>	<hr/>
		121 ¹	100.0

¹ Totals fail to tally due to duplication.

4. *Number of Years Practiced Arbitration:*

(112) Average arbitrator has practiced 11.2 years. Only 9 have been at it 5 or fewer years and only 12 for 20 or more years. Most respondents entered between 1942 and 1947.

5. *Method of Entering Arbitration Work:*

	<i>Number</i>	<i>Percent</i>
(105) Government Service	66	62.9
WLB	42	
State med. board	6	
Other	18	
Request by government	7	6.7
AAA	9	8.6
Request by parties	18	17.1
Consultant, teaching, research	5	4.8
	105	100.1

6. *Number of Cases in 1952:*

(110) Total 3,929
 Average per arbitrator 35.7
 29 arbitrators had 5 or fewer cases; 7 had none. (WSB employment explains this in part); these 29 accounted for only 66 cases, or 6.0%.
 24 arbitrators had 50 or more cases, constituting a total of 2,538, or 64.6% of the total.

7. *Number of 1952 Cases Coming Before Permanent Umpires:*

(101) 54 of 101 reporting had one or more cases as an umpire. These 54 arbitrators had a total of 1,490 cases, an average of 27.6 per umpire.

8. *Number of 1952 Cases Coming Before Ad Hoc Arbitrators:*

(102) Of the 102 persons reporting, all but 7 did some *ad hoc* work. Their total of cases was 2,123, an average of 20.8 per arbitrator. Only 7 were exclusively umpires; 47 did only *ad hoc* work; and 50 did both.

9. *Number of 1952 Contract Cases:*

(90) Of the 90 whose replies could be used, 46 (51.1%) did some contract work and 44 (48.9%) did none. The total number of contract cases was 145, an average of 1.6 cases per arbitrator.

10. *Number of 1952 Grievance Cases:*

(93) All but 1 of the 93 arbitrators did some grievance work. Their total number of cases was 2,764, an average of 29.7 per arbitrator. 23 arbitrators had 5 or fewer cases, while

23 had 40 or more. The highest number reported was 190. The number of grievance cases (2,764) much exceeded the number of contract cases (145), the former constituting 95% of the total.

11. *Number of 1952 Cases Presented to Tripartite Boards:*

(98) The total number of cases presented to boards was 661, an average of 6.7 per arbitrator.

12. *Number of 1952 Cases Presented to Single Arbitrators:*

(97) The total number of cases presented to single arbitrators was 2,538, an average of 26.2 per arbitrator. Such cases exceed the number handled on a tripartite basis by a wide margin, constituting 79.3% of the combined total.

13. *Number of 1952 Agreements Designating Umpires:*

(107) Of the 107 arbitrators, 59 were named as umpire in one or more contracts and 48 were not. The total number of agreements establishing umpireships was 202. A group of 11 arbitrators were named in 101, exactly half of the contracts.

14. *Selecting Agencies in 1952 Cases:*

	<i>Number</i>	<i>Percent</i>
(100) Parties	2,129	64.7
AAA	428	13.0
NMB and NRAB	362	11.0
FMCS	221	6.7
State agencies	133	4.0
Courts	8	0.3
Others	10	0.3
	3,291	100.0

15. *Percent of 1952 Income From Arbitration:*

	<i>Number</i>	<i>Percent</i>
(113) Over 50%	20	17.7
Under 50%	86	76.1
No income	7	6.2
	113	100.0