

APPENDIX B

STATEMENT OF THE CHAIRMAN OF THE COMMITTEE ON LAW AND LEGISLATION

NOTE. *This statement has been prepared by the Chairman, since (1) there was insufficient time, prior to the Annual Meeting, for clearing it with the members of the Committee, and (2) the Committee has taken no action during the past year.*

A "Committee on Legislation" was first created pursuant to action taken at the Third Annual Meeting of the Academy, in 1950, and was given no specific assignment, except as might be inferred from its title. It filed its first report at the Fourth Annual Meeting, in 1951. In this report were reviewed some of the problems which have arisen under and in the absence of statutes regulating the arbitration process, and it presented the following recommendations, *which were adopted*:

1. The subject of legislative regulation of labor dispute arbitration is one in which the Academy has an obvious interest. It might seem, then, that the Academy should not hesitate to take a position, not only on the desirability of such legislation, but also on its specific content. In view of the fact, however, that the members of the Academy may be thought to have a personal interest, as arbitrators, in freedom from restriction, except at the instance of the parties who employ them, your Committee believes that any move in the direction of committing the Academy on questions related to such legislation should be approached with great care. The Academy should avoid both precipitous and self-serving opposition and hasty approbation of statutory controls. Your Committee is not yet ready to recommend or suggest an Academy position on the subject, but recommends that it be authorized and directed to continue its examination, and, at the next annual meeting of the Academy, make a recommendation on the question whether the Academy should take a position on the principle of statutory regulation of labor arbitration, and, if so, what that position should be.

2. The detailed provisions of a regulatory statute are important and deserving of critical attention whether or not the Academy shall decide to oppose, approve, or remain silent with respect to such legislation on principle. Your Committee, therefore, recommends that it be authorized and directed to continue its examination of this phase of the subject and, at the next annual meeting of the Academy, make recommendations as to the substance of such legislation, irrespective of the position, if any, which the Academy may take on the principle of statutory regulation. It is suggested that particular attention be given, in the light of the New York experience, to the problem of defining the areas of finality of decision as between arbitrators and courts.

Taking the adoption of these recommendations as a mandate to proceed, the Committee undertook to consider the subject of legislative regulation of labor dispute arbitration, and the relationship of the Academy to this subject. It was unable to complete its work prior to the 1952 Annual Meeting, and so reported, but with the recommendation "that the matters assigned to it for consideration at the March, 1951, meeting of the Academy be continued as the assignment of the Committee, in the expectation that the Committee will have a definitive report to present at the next Annual Meeting of the Academy." This recommendation was adopted, which meant that the Committee was directed to continue its work and come up with a report at the 1953 Annual Meeting.

Acting under this authority and direction the Committee during 1952-1953 examined the subject with some care. A questionnaire was prepared by the Chairman and circulated to the members of the Committee (copy attached hereto). On the basis of the returns received, a report was prepared which reflected as nearly as possible the combined judgment of the members of the Committee (copy attached hereto). This report, which included recommendations on the matters *which had been assigned to the Committee* was presented at the 1953 Annual Meeting. After discussion, the matter was tabled.

The Committee did no further work on the subject during 1953-1954, but its report was again considered at the 1954 Annual Meeting.

A rather vigorous and extended discussion ensued, with results which were inconclusive. The following resolution was passed:

RESOLVED, that the Academy make known to State Legislatures, the Congress, and other bodies concerned with legislation relating to arbitration, that its Committee on Legislation is available on request for analysis and consultation on such matters,

PROVIDED, that it is fully disclosed that the Academy, as an organization, takes no position as to the advisability of adopting any specific proposals, rules, or criteria.

The Newsletter issued by the Secretary February 15, 1954, stated:

Considerable discussion took place over the recommendations of the Legislative Committee with reference to arbitration statutes. The final result was that the matter was referred back to the Board of Governors. The Board of Governors in turn, adopted a resolution directing that the Regional Chairmen arrange for local meetings to be held for the purpose of more thorough consideration of the question of whether the Academy should take a stand on matters pertaining to legislation, and if so, what that stand ought to be. Within the near future the Regional Chairmen will receive memoranda specifying in detail the questions posed and the information sought by the Board of Governors. This matter is scheduled for further debate at the next annual meeting.

The Newsletter issued for November, 1954, states:

The Secretary, reporting for the Legislative Committee (at the Board of Governors Meeting held October 16, 1954) said that recent reports from the Regional Chairmen revealed a wide variety of opinion. He requested permission to direct a simplified question to members of the Academy which would indicate more directly the attitude of the Members on the basic question.

Such permission was granted, and a copy of that question is attached for reply. PLEASE ANSWER AND RETURN.

This questionnaire was returned by a total of 68 members, and an analysis of the returns has been prepared by the Secretary.

Meanwhile, it had become generally known that the Commissioners on Uniform State Laws are considering the adoption of a Uniform Arbitration Act, and that the University of Chicago Law School has under way some kind of study of arbitration statutes. By letter dated November 5, 1954, the Chairman of the Committee was informed by the Secretary that the Board of Governors, at its October meeting, had adopted the following resolution:

RESOLVED that the Chairman of the Committee on Law and Legislation communicate with that Law School [University of Chicago], offering our assistance and maintaining contact with the progress of such survey.

The letter asked the Chairman to contact the University of Chicago "and include the results thereof in your annual report", and also to contact Dean Pirsig, of the University of Minnesota Law School, who is Chairman of the Subcommittee of the Commissioners on Uniform State Laws having charge of the work on an arbitration statute, "and establish and maintain closer liaison with him in the name of the Academy." On December 4, 1954, the Chairman wrote letters as follows:

Professor Soia Mentschikoff
University of Chicago Law School
Chicago, Illinois

Dear Professor Mentschikoff:

For several years I have served as Chairman of the Committee on Legislation of the National Academy of Arbitrators. Among other things, this Committee has had an interest in the subject of statutory regulation of voluntary labor-management arbitration. We have noted that a research project on arbitration is

being conducted at the University of Chicago under your supervision. I shall appreciate it very much if you will give me some indication of the nature and scope of this project.

Sincerely yours,

Russell A. Smith
Professor of Law

Dean Maynard E. Persig
University of Minnesota Law School
Minneapolis, Minnesota

Dear Maynard:

For a number of years I have served as Chairman of the Committee on Legislation of the National Academy of Arbitrators. Our Committee has had under consideration the subject of statutory regulation of voluntary labor-management arbitration. We know that the Commissioners on Uniform State Laws are likewise concerned with this subject. We have been instructed by the Board of Governors of the Academy to establish "liaison" with you so that we may be informed of progress of your work and may make ourselves available for possible consultation.

With kind regards,

Yours sincerely,
Russell A. Smith
Professor of Law

Professor Mentschikoff has not, to date, responded to this letter. Dean Persig, however, wrote the Chairman as follows on December 9, 1954:

I am glad to have your offer of assistance in connection with the drafting of a uniform arbitration act.

I enclose the latest draft which was under consideration at the last Conference of the Commissioners on Uniform Laws

[referring to the August, 1954, Conference]. It is being further revised in the light of a discussion.

A problem of particular concern to us concerns the Arbitration Board to which labor and management representatives have been selected. These representatives in fact are expected to represent the interests which designated them. It has troubled us in trying to recognize this by statutory provision. I shall be glad to have your suggestions.

This brings the story up to date, except for the point, which should be made, that the American Arbitration Association, through its Arbitration Law Committee, has been active on the subject of statutes concerning arbitration, and has made numerous suggestions to Dean Pirsig's Subcommittee. It is the understanding of the Chairman that the draft act will come before the Commissioners at its 1955 meeting for final adoption. It is also worthy of mention that there has been activity in certain states for adoption or amendment of laws relating to labor dispute arbitration (as witness the Recommendations made fairly recently to the Governor of Pennsylvania by a tripartite "Governors Commission on Labor Legislation," headed by Herb Syme).

It seems to the Chairman that the Academy must, at its 1955 Annual Meeting, (1) determine with more definiteness whether it desires to take any position at all, either in principle or with respect to details, on the subject of statutes relating to labor dispute arbitration, and especially concerning the draft Uniform Act, and (2) what further function or functions, if any, it wishes to lodge in its Committee on Law and Legislation.

The Chairman suggests that, as respects the subject of legislation regulating labor dispute arbitration, the following specific questions should be answered.

(1) Should the Academy take an official position against the enactment of (and therefore in favor of the repeal of existing) legislation regulating voluntary labor dispute arbitration?

(2) Should the Academy take an official position in favor of the enactment of legislation regulating voluntary labor dispute arbitra-

tion (which would incorporate those substantive principles which the Academy conceives to be sound)?

(3) Should the Academy refrain from taking any official position on the question whether there should or should not be statutory regulation, either at the federal or state level, with respect to voluntary labor dispute arbitration?

(4) Can the Academy consistently refrain from taking an official position on the principle of statutory regulation, or take a position in opposition to statutory regulation, while at the same time indicating its composite professional judgment as to the desirable content of a regulatory statute (i.e., can the Academy, with propriety, maintain that it is officially neutral as regards, or officially opposed to, the enactment or extension of the idea of statutory control, while, at the same time, undertaking to indicate its views concerning the most desirable statutory method of dealing with such matters as selection of arbitrators, procedure and judicial review)?

(5) Should the Academy permit its Board of Governors, or its Committee on Legislation, or some other designated subordinate body, to take a position on the principle or the contents of statutory regulation without purporting to bind the entire membership of the Academy?

Note: It would seem that a consensus of the membership should be obtained with respect to the above questions before attempting to deal with the specific substantive content of legislation. If the members should feel that the Academy should officially *oppose* any statutory regulation whatsoever, or that the Academy cannot consistently remain neutral on the general question while indicating its views of substantive content, there is no need to go further. If, on the other hand, the members should feel that the Academy should either officially espouse the adoption of suitable legislation, or can and should remain officially neutral while indicating its professional judgment

on substantive content, the next step would be to consider substantive matters.

January 14, 1955

Respectfully submitted,

RUSSELL A. SMITH

Chairman, Committee on Law and Legislation
