

APPENDIX C

NATIONAL ACADEMY OF ARBITRATORS PROGRESS REPORT OF SPECIAL COMMITTEE ON STATUTORY REGULATION OF LABOR DISPUTE ARBITRATION

Two previous efforts to get a meeting of this Committee failed and the Committee met for the first time in the English Room of the Chase Hotel at 7:30 P.M., on January 29, 1958, with the following members present: Abrahams, Alexander, Crane, Smith and Howard.

Starting with the understanding that the present special committee is committed, by action of the Board of Governors, to undertake to implement the recommendations of the preceding Special Committee to the effect that "The Academy discharge its responsibility by developing, promulgating and proposing a Labor Dispute Arbitration Act, which could be enacted at either federal or state level, and at the federal level by amendment of the Taft-Hartley Act or otherwise," consideration was given to the general type of act to be proposed.

In the first place, it was more or less assumed by the members present that a separate act at the federal level, rather than amendments to the Taft-Hartley Act would be more desirable.

One suggestion considered was that a very simple act be drafted which would provide for the enforcement of agreements to arbitrate, both as to existing and future disputes, with a minimum of due process provisions providing for a fair hearing, not controlled by the common law or statutory rules of evidence, with perhaps some provisions for preventing one party from blocking arbitration by refusal to cooperate, and probably not very much more.

A second suggestion was to take the Appendix to the Report of the previous Special Committee under date of September

22, 1957, setting forth the criticisms of the Uniform Arbitration Act, as a point of departure, and with some consideration of other available acts, draft a proposed act that would meet the criticisms there set forth, keeping the act as simple as feasible. Among other things, such an act would preclude or restrict to a minimum pre-arbitral authority of the court and undertake to insure that the questions of arbitrability and the jurisdiction of the arbitrator be first passed on by the arbitrator or arbitration tribunal, and that possible application of the *Cutler-Hammer* doctrine be precluded as far as possible.

Some serious question was raised as to whether such an act should include any provisions for procedure, and just what would be the consequences of their complete omission.

Without ruling out the first suggestions for a very brief and simple act, the second suggestion of undertaking to provide an act to meet the criticisms of the Uniform Act set forth by the previous Special Committee was acted on by setting up a sub-committee of three members living in such close proximity to one another as to make frequent meetings feasible, and authorizing it to undertake to prepare a preliminary draft of such an act for presentation to and consideration by the full committee. It is still within the discretion of the sub-committee to act on the first suggestion instead of the second, or possibly to present two separate proposed acts, one based on each suggestion.

Russell Smith (Chairman), Gabriel Alexander and Louis Crane agreed to function as the sub-committee to undertake this task.

It was recognized that probably no member or members of the committee could devote sufficient time to this task to accomplish the purpose without some research and drafting assistance. It was therefore agreed that the sub-committee should act on the basis of the prior authorization of the Board of Governors to employ the needed assistance. Certain named individuals in Detroit, deemed by the members of the sub-committee to be well qualified for the task, were mentioned, and an effort will be made to secure the services of one, final arrangements being made only with the approval of the President of the National Academy.

Certain other matters were brought to the attention of the Committee by the Chairman as probably requiring some consideration in connection with any measure to be enacted at the federal level, but were not dealt with in detail at this meeting. They involve questions prompted by the recent decisions of the United States Supreme Court, particularly the *Lincoln Mills* decision, and include the following:

(1) Should the Norris-LaGuardia Act be amended, or should limitations on its application be spelled out?

This problem especially arises with respect to violations of a no-strike provision in the collective bargaining agreement.

(2) Should such a statute undertake to provide for exclusive application of federal law, and/or exclusive jurisdiction of the federal courts, as means of avoiding confusion, conflicting decisions and probable forum shopping?

(3) Should such a statute amend, by implication or otherwise, the United States Arbitration Act to make it clear that it shall not apply to collective bargaining agreements?

(4) Should such a statute undertake to make clear the right of the union to sue on behalf of employees, even for wages, contrary to the decision in the *Westinghouse* case?

These suggestions were made on the basis of a rather careful study by the Chairman, assisted by a student working under authorization of the Board of Governors referred to above.

Membership of Special Committee

Harry Abrahams
Gabriel N. Alexander
Archibald Cox
Louis A. Crane
Frank Elkouri
I. Robert Feinberg
Meyer S. Ryder
Russell A. Smith
David A. Wolff
Robert L. Howard, *Chairman*

February 1, 1958