

APPENDIX D

RESEARCH AND EDUCATION COMMITTEE REPORT AND RECOMMENDATIONS

January 1, 1959

In embarking upon its work, the Research and Education Committee discovered that the duties and responsibilities of the Committee have been self-imposed. Therefore, reference was made to assignments carried out by previous committees and items gleaned from random records of the Committee to provide a list of activities to serve as an initial guide to our program.

Comments elicited from the members of the Committee, plus counsel given by the Board of Governors at its meeting in Detroit in April, led to the prosecution of two activities. First, a questionnaire survey of the work of arbitration performed by members of the Academy in the year 1957 and, second, a supplement to the *Bibliography of Dispute Settlement by Third Parties*. Three other matters were given consideration and it was expected that something would be done with respect to two of these, the first two in the following list:

- (1) A periodic paper-back publication (not more often than once a year and perhaps biennially) of the most interesting and important arbitration cases of the members of the Academy.
- (2) A survey of arbitration course offerings at American Universities.
- (3) A search for ways to implement the training of new arbitrators.

The Board of Governors had instructed the Research and Education Committee in 1957 to make a new survey of the arbitration work of members of the Academy, such as the one conducted by the Committee and reported in 1953.* When the question was raised with the Committee in 1958, the consensus was that a new survey should be among the Committee's first activities. The Board of Governors concurred and it was suggested that certain items of information be included in the questionnaire that was to be modeled on the earlier survey. Also, it was suggested that the survey be extended by soliciting the cooperation of various agencies who designate

* *Editor's Note:* This earlier survey has been published in *THE PROFESSION OF LABOR ARBITRATION* (Washington: BNA Incorporated, 1957), Appendix E, pp. 176-182.

arbitrators to serve on arbitration cases—the American Arbitration Association and the various federal and state governmental agencies.

It was our desire to send copies of the questionnaire to all persons on the lists of these agencies in 1957, who were not members of the Academy. It was hoped that this would give us a rather complete coverage of all arbitration being done in the United States. The responses of the various agencies were mixed. Some agencies were quite willing to give us the names of arbitrators on their lists in 1957 who were not members of the Academy, or at least to send our questionnaire to the individuals who in turn, would respond anonymously. One agency was reluctant to cooperate and another gave a near refusal. But it was hoped that after the members of the Academy had responded to the questionnaire we could turn again to these agencies and succeed in our request for cooperation. However, as will be seen below, the response from Academy members was disappointing and, under the circumstances, it did not seem proper to try to extend the coverage. The survey, therefore, covered only the members of the Academy.

GENERAL REPORT ON THE RESULTS OF THE QUESTIONNAIRE

A total of 247 questionnaires was mailed. Inasmuch as only 89 were completed, the returns were disappointing. Responses were received from eight others who explained that they were retired, ill, not active or away on vacation. Hence, there were 97 responses, for a percentage of 39, but only the returns on the 89 questionnaires were tabulated. If the questionnaires that were returned are representative the number would be sufficient to make a reliable sample, but we have no way of knowing the degree of representativeness of the returns submitted. The results, therefore, must be received with this in mind. It should be noted that not all individuals responded to each item in the questionnaire or to all parts of some items. This must be kept in mind also as the tables are read.¹

A few human interest items seem to be clear enough to justify acceptance. First is the horrible fact, probably surprising to no one, that the members of the Academy are middle aged! In ten years more of the arbitrators will be grey and thin-haired than today. Second, if college degrees are a reliable measure, arbitrators are fairly well educated. At least we can say they are highly schooled. Third, most Academy members have been performing arbitration services from five to 20 years, almost half from 10 to 15 years; the crest of the wave thrown up by the National War Labor Board. Fourth, most of the members have been available continuously, although a large number have been unavailable at certain intervals of six months or more. Fifth, government employment and teaching have been the occupations which were the most common spring board to arbitration work and the "War Labor Board Fraternity" still remains as a conspicuous factor.

Still other facts may be noted. By far the largest proportion of our arbitration work is in grievance cases and most of these involve single issues

¹ The statistical compilations will be found in the tables in Appendix E.

and one person designated as arbitrator, although a fair number of tripartite boards function. *Ad hoc* designations run ahead of the others, but when cases under umpireships and contract designations are lumped together they approach closely the total of the *ad hoc* cases. Most of these cases require only one day of hearing. A large part of our membership, one-fourth, does little or no arbitration work. Of course, some members are available only for a limited amount of work. (Perhaps this statistic should be kept in mind by any future Committee which might desire to investigate the problem of training of new arbitrators. Perhaps some attention should be given to the need to increase the activity of present members as well as to train new arbitrators.) Some members appear to have very heavy loads.

Contract arbitration cases are few and other types of arbitration, or third party decisions such as union representation, intra- and inter-union issues, and fact-finding, are even less numerous.

Seventy-three active umpireships or chairmanships were reported, involving 32 of our members, and 60 designations in contracts were reported, involving approximately 25 of our members. Some of the same persons were reported in each type of activity.

The parties appear to do most of the selecting of arbitrators, for designating agencies appear to be utilized in only one-third of the cases.

The distribution of arbitration among reporting Academy members is nationwide and conforms to the general patterns of industrialization in the country, but most Academy members would appear to be "stay-at-homes" inasmuch as their work is more or less limited to one geographical area. Some members, on the other hand, appear to have a suitcase packed most of the time; perhaps they are those whose arbitration motto is "Have packed suitcase, will travel."

THE SUPPLEMENT TO THE BIBLIOGRAPHY OF DISPUTE SETTLEMENT BY THIRD PARTIES

Your Committee chairman had sponsored the work which led to the publication of the *Bibliography of Dispute Settlement by Third Parties* to which the Academy had given some financial support and thereby received copies for each of the members. At the time of publication it had been conceived that periodic supplements would be issued. In 1958 it seemed timely to produce a supplement and the committee gave encouragement to it and supported the chairman's request that the Academy support it with a grant of \$600 in order to make it possible to hire a graduate assistant during the summer months. The Board of Governors made a grant in this amount to the New York State School of Industrial and Labor Relations which was used to support what was called the National Academy of Arbitrators Assistantship. Consequently an assistant was employed during the summer who worked under the direction of your chairman and Curtis W. Stucki, Assistant Librarian. Stucki has continued to work on the project during the ensuing months to the extent that time has permitted. As of

this date the entries in the bibliography are going through a final editing and a mimeographed supplement in the style of the original publication should be ready for distribution early in 1959.

A PROPOSED PUBLICATION OF IMPORTANT ARBITRATION CASES

The report of the "Special Committee to Consider the Aims and Policies of the Academy," which accompanied the March, 1958 "Newsletter" and the President's letter to the Academy members, contained an item under Roman III which is of interest to the members of the Research and Education Committee. The suggestion that each Academy member write "a report a year on the most interesting arbitration case which he has handled during the year" and that "a compilation of such reports be prepared and distributed each year," led to a survey of opinion within the Research and Education Committee concerning a variation of the idea, namely, the desirability of a periodic publication of selected cases covering important and novel issues in arbitration for use as an educational tool which might be a service of the Academy to the teaching profession.

Members of the Committee on Research and Education gave strong support to the idea, although some reservations were made. It was the chairman's intention to give to a sub-committee an assignment to consider the matter in more detail but this was not done. However, to give the members of the Academy a sense of the reactions to such a proposal the following quotations are supplied:

"I am enthusiastic about the idea of an occasional publication of arbitration cases decided by members of the Academy. It would be a very useful publication. The *Reports* now available are in Law Libraries, or other specialized libraries and are really not convenient for students or teachers, to say nothing of others who are not specialists. I urge the fullest exploration of this idea and endorse it strongly."

—William Haber

"I am intrigued with the idea of publishing a book of cases. My feeling is that this should be attempted on a five year basis. As I see it we might ask each member to send us not more than five precedent-making cases from their experience during the past five years. In order to be of value in teaching I would think the cases would have to be supplemented with considerable information and analysis. This means that in addition to asking the members to supply additional information the committee must be prepared in money and time to do a sizeable editorial job. I think the idea has merit but I would like to see it thoroughly discussed before it is undertaken."—Thomas Kennedy

"I also like your idea with respect to publication of selected cases covering important or novel issues. I have just begun to think about this subject area a little bit because of some things I hope to do next year and my offhand impression is one of a surprising lack of materials covering important issues in arbitration. The law school journals, for instance, are full of helpful notes about new and controversial decisions

coming down from the courts. It seems to me there is now a sufficient volume of arbitration so that similar notes are justified on important issues in arbitration. If we do anything on this score, I would strongly favor working out a cooperative relationship with one of the services such as BNA."—R. W. Fleming

"The idea of reporting some important and novel cases for educational purposes is a good one. Would this be by permission of the Company and Union involved or so written up as to not reveal the names of the parties?"—W. N. Loucks

". . . it occurs to me that the thought expressed regarding the possible publication in paper-back form of selected cases seems a most worthwhile and useful project. I know from my own experience when I set up the Labor-Arbitration Course at Hofstra, that the problem of effective training or study material was a serious one, and the proposed type of publication could have been particularly helpful, particularly if appropriate editing would provide some sort of "shepardizing" aid to tie in a particular case with related precedents."—Harry H. Rains

"You are a better judge than I am of the value of your proposal for the selection of cases for teaching purposes. It sounds reasonable enough. I should, however, be a little dubious about the possibility of having BNA publish such a work at low cost. Another thing you might consider is that many interesting cases never get published. In fact, three or four really choice ones I have had in the last few years were not published either because one of the parties objected or because the issues were too hot. They might be available after a decent interval and almost certainly would be available if the parties' names were hidden."—Irving Bernstein

"I have some reservations about the latter since I assume that this is the kind of project which The Bureau of National Affairs Inc. could do just as well, if not better, although perhaps you have something close to this in mind when you mention cooperating with their organization."

—Frank C. Pierson

"I have some question about the desirability of publishing selected cases covering important and novel issues in arbitration, which is one of the suggestions made. In addition to the established arbitration reporting services, several case books covering arbitration issues have been published. Harry Shulman was a co-author of one of these. It is quite probable that other books of this character will be issued in the future."—Lloyd H. Bailer

"My personal reaction to the proposed project involving some sort of 'Case Book' is that this effort should be directed toward informing the Arbitrators of significant cases rather than toward assisting the academics in securing class materials. It seems to me that it is so difficult to satisfy the individual needs for this latter type of material that it would be next to impossible to do a book which would be helpful in this

direction. In addition I have the impression that there is considerable case material available already."—Robert Stutz

A PROPOSED SURVEY OF ARBITRATION COURSES OFFERED AT UNIVERSITIES

It may be stated that there was little enthusiasm within the Research and Educational Committee for a survey of courses in arbitration being taught at universities. However, one member of the Committee made a qualified offer to make such a survey and it was considered a tentative assignment but was not made final. Hence, no survey was made.

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