APPENDIX A

PROGRAM

National Academy of Arbitrators
Thirteenth Annual Meeting

STATLER HOTEL
WASHINGTON, D. C.
JANUARY 27-29, 1960

WEDNESDAY, JANUARY 27

1:00 p.m. REGISTRATION..........................Statler Hotel

2:30 p.m. CLOSED SESSION..................Manger-Hamilton Hotel,
(Members Only)
14th and K Streets,
Chantilly Room

Introduction of New Members..........G. ALLAN DASH, JR.,
President

Relations with Appointing Agencies.....LEO C. BROWN,
Chairman

1. Report of Liaison Committee........RAFAL T. SEWARD
   Discussion
2. Philosophy and Objectives of Continuing
   Liaison with Appointing Agencies
   Membership Views

8:30 p.m. Reception for New Members..............Democratic Club,
(Ladies included) Sheraton-Carlton Hotel
(across from Statler)

THURSDAY, JANUARY 28

9:00 a.m. CLOSED SESSION (Members Only)........Federal Room

THE NATIONAL ACADEMY OF ARBITRATORS
AFTER TWELVE YEARS
Chairman: JOHN PERRY HORBACHER
1. What I Expect of the Academy..........ROLF VALTIN

156
2. Arbitration—A Profession?...........William N. Loucks
3. Panel Discussion
   JEAN T. McKELVEY
   ARTHUR M. ROSS
   ISRAEL BEN SCHEIBER

10:45 a.m. THE PROBLEM OF ARBITRAL REMEDIES
   Federal Room
   Chairman: WILLARD W. WIRTZ
   Speaker: EMANUEL STEIN
   Commentator: IRVING BERNSTEIN

12:15 p.m. LUNCHEON—To Honor WILL DAVIS
   South American Room
   Toastmaster: JAMES C. HILL
   Presentation: G. ALLAN DASH, JR., President

2:00 p.m. CONTRACTING OUT AS AN ARBITRATION ISSUE
   Federal Room
   Chairman: SYLVESTER GARRETT
   Speaker: DONALD A. CRAWFORD
   Commentator: MARK L. KAHN

3:50 p.m. ARBITRATION AND CONTRACT DISPUTES
   Federal Room
   Panel Discussion
   Chairman: ROBBEN W. FLEMING
   MORRISON HANDSAKER
   BERNARD CUSHMAN
   JOHN WADDLETON
   Labor Counsel, Allis-Chalmers Corp.

FRIDAY, JANUARY 29
9:30 a.m. BUSINESS MEETING (Members Only)....Federal Room
   Election of Officers

12:15 p.m. LUNCHEON.........................South American Room
   Presidential Address

2:30 p.m. A colloquium—MAKING ARBITRATION WORK
   Federal Room
Chairman: GEORGE W. TAYLOR
LELAND HAZARD
Pittsburgh Plate Glass Company
IRVING BLUESTONE
United Automobile, Aircraft & Agricultural Implement Workers of America

6:00 p.m. COCKTAILS ...........................................Federal Room
7:00 p.m. ANNUAL DINNER ..................................Federal Room
   Induction of New President

Speaker: THE HONORABLE JAMES P. MITCHELL
          Secretary of Labor
Appendix B

United States Labor Arbitration Act*

AN ACT to provide for the judicial enforcement of agreements to arbitrate labor disputes arising in industries affecting commerce and to define the jurisdiction of the courts with reference to the arbitration of such disputes.

SECTION 1. Be it enacted, etc., that

(a) This Act may be cited as the "United States Labor Arbitration Act."

(b) The Congress hereby finds that the refusal by employers or labor organizations in industries affecting commerce to abide by the terms of agreements to arbitrate labor disputes or to honor awards made pursuant thereto burdens commerce and the free flow of goods in commerce and leads to labor disputes burdening and obstructing commerce and the free flow of goods in commerce.

The Congress hereby finds further that the voluntary arbitration of disputes between employers and labor organizations, particularly disputes arising under collective bargaining agreements, is an accepted and approved method of settling such disputes. Such method, being voluntary and, itself, the result of collective bargaining, should be encouraged and supported. In view of the wide variety of collectively negotiated kinds of arbitration procedures in use, the parties to collective bargaining agreements should continue to have the greatest degree of freedom to shape their arbitration procedures to suit their needs and desires, subject only to limitations which are essential to preserve the integrity of the process, to provide safeguards against improper usurpation of authority by the arbitrator, and to insure the opportunity for full and fair consideration of the issues involved. Judicial intervention in the process should be minimized, but should be available, where necessary, to enforce compliance with agreements to arbitrate, to prevent the assumption of arbitral jurisdiction where a valid agreement to arbitrate does not exist, to enforce awards, and to provide for limited judicial review of awards.

(c) It is the purpose and policy of this Act, in order to promote the free flow of commerce and to remove burdens and obstructions thereto, to provide for the judicial enforcement of agreements to arbitrate labor disputes in industries affecting commerce and to define the jurisdiction of the courts with reference to the arbitration of such disputes.

SECTION 2. As Used, in this Act,

(a) The term "employer" includes any person acting as an agent of an employer, directly or indirectly, but shall not include the United States or any wholly owned Government corporation, or any Federal Reserve Bank, or any state or political subdivision thereof, or any corporation or association operating a hospital, if no part of the net earnings inures to the benefit of any private shareholder or

* Draft No. 3.
individual, or any person subject to the Railway Labor Act, as amended from time
to time, or any labor organization (other than when acting as an employer), or
anyone acting in the capacity of officer or agent of such labor organization.

(b) The term “employee” shall include individuals employed as supervisors,
but shall not include any individual employed by an employer subject to the
Railway Labor Act, as amended from time to time, or by any other person who
is not an employer as herein defined.

(c) The term “labor organization” means any organization of any kind, or any
agency or employee representation committee or plan, in which employees par-
ticipate and which exists for the purpose, in whole or in part, of dealing with
employers concerning grievances, labor disputes, wages, rates of pay, hours of
employment, or conditions of work.

(d) The term “commerce” means trade, traffic, commerce, transportation or
communication among the several States, or between the District of Columbia or
any Territory of the United States and any State or other Territory, or the District
of Columbia, or within the District of Columbia or any Territory, or between
points in the same State but through any other State or any Territory or the
District of Columbia or any foreign country.

(e) The term “affecting commerce” means in commerce, or burdening or
obstructing commerce, or having led or tending to lead to a labor dispute burdening
or obstructing commerce or the free flow of commerce.

(f) The term “agreement to arbitrate” means a written agreement between
a labor organization or organizations and an employer or employers or an associa-
tion or group of employers, in an industry affecting commerce, to submit to
arbitration an existing dispute, or a collective bargaining agreement providing for
the arbitration of any or all future disputes.

(g) The term “collective bargaining agreement” means a written agreement
between a labor organization or organizations and an employer or employers or an
association or group of employers, in an industry affecting commerce, concerning
rates of pay, wages, hours or other terms and conditions of employment.

NOTE
The above provision incorporates the following changes from §2 of the
second draft:

(1) The terms “employer” and “labor organization” are expressly defined
in the same manner as in the NLRA, rather than by reference as in the second
draft. The purpose of this change is to insure that, even if the NLRA were
amended so as to exclude some categories of employers and labor organizations
from the coverage of the act, the arbitration act would still have as broad an
application as possible.

(2) A definition of the term “employee” is added [as sub-section (b)] in
order to insure that the act would apply to arbitration agreements between
employers and organizations representing supervisory employees.

(3) In subsection (f) a slight change is made so as to make it clear that
“an agreement to arbitrate” is either a specific arbitration submission agree-
ment, or a collective bargaining agreement containing an arbitration clause.

SECTION 3. Validity and enforceability of agreement to arbitrate.

An agreement to arbitrate shall be valid, irrevocable and enforceable, save
upon such grounds as exist at law or in equity for the revocation of any contract.
Academy Committee opinion has been divided on the question whether a statute should be applicable unless the parties specifically agree otherwise, or, on the other hand, should be inapplicable (except for the provision making arbitration agreements enforceable) unless the parties agree to accept the statute. This is the so-called "contracting out" problem.

The recently decided *Lincoln Mills* case (353 U.S. 448) makes arbitration agreements enforceable in the federal courts in all cases where there is the necessary relationship to interstate commerce, and holds that the federal courts are to develop, from all available sources, a body of federal law to be applied in the resolution of substantive and procedural problems in the enforcement of such agreements. To incorporate a "contracting in or out" provision in a proposed federal statute would border on the ridiculous, for it would invite Congress on the one hand to pass a law resolving problems of arbitration procedure and substance, and, on the other hand, permit the parties, by force of their own disavowal of the statute, to require the federal courts to proceed to develop rules as if the statute did not exist.

For this reason the act, as proposed, omits any "contracting in or out" provision. A majority of the Committee members who have made comments approve this omission.

**NOTE**

The foregoing preserves the substance of §4 of the second draft. The only change of substance is the recognition of "General Electric" type contract provisions expressly providing for judicial determination of the arbitrability of a claim, prior to the arbitration hearing if a party claims lack of arbitrability. Otherwise, the basic intent is to establish that the arbitrator has jurisdiction to determine, in the first instance, any question of "arbitrability" which may be raised, subject, of course, to judicial review as provided later in the act.

**SECTION 4. Jurisdiction of the arbitrator.**

The arbitrator's authority to determine any controversy shall, unless the parties by their agreement have expressly provided for prior judicial determination, include the authority initially to determine any issue raised regarding his jurisdiction, subject to judicial stay, review or intervention only on the grounds provided in Sections 5, 13 and 14 of this Act; provided, however, that if the agreement to arbitrate specifically provides that the question of the arbitrator's jurisdiction shall be subject to prior judicial determination, such provision shall be controlling. The participation by a party in an arbitration proceeding subject to this Act shall not be deemed a waiver of any claim or lack of jurisdiction or authority of the arbitrator if such claim is made during the proceeding and is not thereafter expressly waived.

**SECTION 5. Proceedings to compel or stay arbitration.**

(a) If a party fails or refuses to proceed to arbitration under an agreement to arbitrate, the other party may apply to the appropriate district court for an order directing the parties to proceed with arbitration. The court, except as provided in subsection (e) of this section, shall order arbitration unless the opposing party denies the existence or validity of an agreement to arbitrate, or denies his failure to comply therewith. If either such issue is raised, the court shall take proof and determine the issue in summary proceedings. Upon finding that there is no valid agreement to arbitrate, or that there is no default thereunder, the proceedings shall be dismissed. Upon finding that a valid agreement to arbitrate exists, and
that a party has failed to refuse to proceed thereunder, the court shall direct the
parties to proceed with arbitration in accordance with the agreement to arbitrate.

(b) A party against whom an arbitration proceeding has been commenced or
threatened, and who denies the existence or validity of an agreement to arbitrate,
may apply to the appropriate district court for an order staying an arbitration
commenced or threatened. If the opposing party asserts the existence or validity
of an agreement to arbitrate, the court shall take proof and determine the issue
in summary proceedings. Upon finding that a valid agreement to arbitrate does
not exist, the court shall enter an order staying the arbitration. Upon finding that
a valid agreement to arbitrate does exist, the court shall, except as provided in
subsection (e) of this section, direct the parties to proceed with arbitration in
accordance with the agreement to arbitrate.

(c) An action or proceeding in any court involving an issue subject to arbi-
tration under an agreement to arbitrate shall be stayed, except as provided in
subsection (e) of this section, if an order for arbitration or an application there-
for has been made under subsection (a) of this section, or if an application for a
stay of arbitration has been made under subsection (b) of this section. If the
issue is severable, the stay of such action or proceeding may be with respect to
the severable issue only. Such stay shall remain in effect until the application for
arbitration, or for the stay of arbitration, is disposed of, and shall become per-
manent if the application to proceed to arbitration is granted or the application
to stay arbitration is denied.

(d) The court shall not have power to stay arbitration, or to refuse to order
arbitration, if a valid agreement to arbitrate exists. If such agreement exists, but
a party raises a question concerning the jurisdiction of the arbitrator under the
agreement to arbitrate, the court shall not decide the issue, but shall, except as
provided in subsection (e) of this section, refer the question to be decided by
the arbitrator in the first instance subject to review as provided in Sections 13 and 14
of this Act.

(e) If the agreement to arbitrate provides expressly for a judicial determina-
tion, prior to the arbitration hearing, of a question raised concerning the arbitra-
bility of the claim or claims made by the party demanding arbitration, the court
shall, upon application of a party raising such question, take proof and determine
the issue in summary proceedings. Upon finding that any such claim is arbitrable,
the court shall direct the parties to proceed with the arbitration of such claim in
accordance with the agreement to arbitrate. Upon finding that any such claim is
not arbitrable, the court shall enter an order staying the arbitration of such claim.

NOTE

Section 5 incorporates these principles: (1) That, except where the arbi-
tration agreement provides expressly for judicial determination of an issue
of arbitrability prior to the arbitration hearing, the role of the court in pre-
arbitration proceedings should be confined to the determination of the existence
and validity of the underlying arbitration agreement, or the question of default
thereunder; (2) that summary proceedings should be available both to compel
and stay arbitration and to determine any question of arbitrability where the
contract provides for judicial determination thereof prior to the arbitration
hearing; and (3) that if a valid agreement to arbitrate exists, and a party
is in default thereunder, the court should remand any question of arbitrability
to the arbitrator for decision in the first instance (unless the contract expressly
provides otherwise) subject to the standards of judicial review set forth later
in the statute.
The section thus rejects the premise of the Uniform Act that courts should have pre-arbitral jurisdiction not only to determine the existence of an agreement to arbitrate, and the question of default thereunder, but also, subject to the criterion of *bona fides*, to determine a claim of non-arbitrability. A majority of the Committee believes that it is preferable, for the purpose of giving proper scope to the arbitration process, to permit the arbitrator himself to make the initial determination of issues of arbitrability (except where the contract expressly provides otherwise) so that, if judicial review follows at a later stage, the reviewing court will have the benefit of the arbitrator’s reasoning on any such issue.

Section 5 (e) in the second draft provided jurisdiction in the district courts to stay state court proceedings under certain circumstances. It was decided to transfer this provision to a later point in the statute and to deal with the subject of state court jurisdiction somewhat more broadly. The new subsection (e) deals with the case where the agreement to arbitrate provides expressly for judicial determination, prior to the arbitration hearing, of questions of arbitrability.

**SECTION 6. Appointment of arbitrators.**

If the agreement to arbitrate provides a method of appointment of arbitrators, this method shall be followed. In the absence of such provision, or if the agreed method fails or for any reason cannot be followed, or when an arbitrator appointed fails or is unable to act and his successor has not been duly and promptly appointed, the appropriate district court on application of a party shall appoint a sole arbitrator to hear and determine the controversy. In making such appointment the court shall obtain from the Federal Mediation and Conciliation Service a list of nine (9) persons from the panel of arbitrators of the Service and shall make the appointment of the arbitrator from such list. An arbitrator so appointed shall proceed to hear and determine the controversy with all the powers he would have had if designated by the parties.

**NOTE**

This section departs from the substance of the Uniform Act only in requiring the court to make use of the FMCS in the appointment of a substitute arbitrator. Deleted from the second draft was the provision requiring the court to mail to the parties the FMCS list and the provision permitting each party to strike three names. In addition, the number of persons to be included on the list was raised from seven to nine.

**SECTION 7. Majority action by arbitrators.**

The powers of the arbitrators, if there be more than one, may be exercised by a majority unless otherwise provided by the agreement to arbitrate or by this Act.

**NOTE**

This section omits the provision in the first draft concerning the contingency that an arbitrator may cease to act. The first draft provided that the remaining arbitrator or arbitrators, if appointed as neutrals, could continue with the case. Such provision seems unnecessary in view of the appointment provisions of Section 6.

**SECTION 8. Arbitration procedure.**

The arbitration shall be conducted in accordance with rules and procedures agreed upon by the parties or, in the absence of such agreement, by rules and procedures determined by the arbitrator. Such rules and procedures shall provide for a fair hearing.
NOTE

This section constitutes a radical departure from the corresponding section of the second draft. The change consists of the deletion of the specification of the details concerning hearing procedure, and the substitution of a simple provision leaving it to the parties or the arbitrator to prescribe rules of procedure subject only to the statutory requirement that the hearing be "fair."

This change was decided upon by the sub-committee for several reasons. For one thing, §8 of the second draft made the procedural standards set forth in subsection (b) subject to an agreement of the parties on procedure. Thus, they were not mandatory in any case, and it seemed, upon reflection, pointless to specify them. (The obvious reason for not making them mandatory in all cases is that the arbitration process should remain flexible in the matter of procedures, as it now is.) Moreover, it was felt that the specification of some of these procedural requirements would tend to invite litigation directed solely to the alleged failure to meet the statutory requirements. Finally, it was recognized that procedural standards are being evolved by the FMCS, AAA, and the NAA, and that these will probably provide sufficient guidance so that precatory provisions in the statute are unnecessary.

SECTION 9. Witnesses, subpoenas.

A majority of the Committee members who have submitted comments favor omitting altogether this section of the first draft. This constitutes a departure from the Uniform Act, which would grant subpoena power to the arbitrator and provide for witness fees. The power of subpoena is really unnecessary, as experience shows, and to introduce it would be to invite irritating difficulties in the form of an attempt by parties to involve unwilling or adverse persons as witnesses, or to harass an opponent by "fishing" for documents. Any provision for witness fees is likewise inappropriate for labor dispute arbitrations.

SECTION 9. Award.

(a) The award shall be in writing and signed by the arbitrator. The arbitrator shall cause a signed copy to be delivered to each party personally or by registered mail or as provided by agreement of the parties.

(b) An award shall be made within the time fixed therefore in the agreement to arbitrate or at the hearing, or, if not so fixed, within a reasonable time. A party waives the objection that an award was not timely made unless he notifies the arbitrator and the other party of his objection prior to the delivery of the award.

NOTE

Subsection (b) deletes from the comparable provision in the second draft the specification that the award shall be filed within thirty days following the closing of the hearing where the parties have not fixed some other time. The provision that the parties may extend the time is likewise deleted. The thirty-day provision, upon further reflection, was thought to be too rigid, and it seems unnecessary to provide in the statute that the parties may stipulate for an extension of time.

SECTION 10. Change of award by arbitrator.

On application of a party or, if an application to the district court is pending under Sections 12, 13 or 14, on submission to the arbitrator by the court under such conditions as the court may order, the arbitrator may modify or correct the award where:
(1) There was an evident miscalculation of figures or an evident mistake in the description of any person, thing or property referred to in the award;

(2) The award is imperfect in a matter of form, not affecting the merits of the controversy; or

(3) For the purpose of clarifying the award.

The application shall be made within twenty (20) days after delivery of the award to the applicant. Written notice thereof shall be given forthwith to the opposing party, stating he must serve his objections thereto, if any, within ten (10) days from the notice. The award so modified or corrected is subject to the provisions of Sections 12, 13 and 14 of this Act.

NOTE

This section conforms in substance with the corresponding section of the Uniform Act.

SECTION 11. Fees and expenses of arbitration.

Unless otherwise provided by agreement of the parties, the arbitrator’s expenses and fee shall be divided equally between the parties.

NOTE

This section differs from the corresponding section in the second draft in two respects, viz: (1) The words “or by this Act” appearing in the second draft, page 16, line 18, are omitted in view of the fact that the present draft omits any provision with respect to transcripts and the apportionment of the cost thereof; (2) the words “together with other expenses, not including counsel fees,” appearing at page 17, lines 1 and 2, of the second draft, are omitted on the ground that they simply introduced a needless ambiguity.

SECTION 12. Confirmation of the award.

Upon application of a party, the district court of the district in which the arbitration was held shall confirm an award unless within the time limits herein- after imposed grounds are urged for vacating or modifying or correcting the award, in which case the court shall proceed as provided in Sections 13 and 14.

NOTE

This section conforms with the corresponding section of the Uniform Act.

SECTION 13. Vacating an award.

(a) Upon application of a party, the district court of the district in which the arbitration was held shall vacate the award:

(1) Where the award was procured by corruption, fraud, or other undue means;

(2) Where there was no agreement to arbitrate and the party claiming the absence of such agreement made such claim in the arbitration proceeding and did not expressly waive it thereafter;

(3) To the extent that the award is affected by the arbitrator’s determination of an issue which he had no jurisdiction to determine, and the parties have not expressly agreed to be bound by the arbitrator’s determination of his jurisdiction. The award shall not be vacated if there was a reasonable basis for the arbitrator’s determination, express or implicit, of his jurisdiction. The fact that the award orders relief of a kind which might not be granted by a court of law or equity is not ground for vacating the award;
(4) To the extent that the award directs a party to commit an act or engage in conduct prohibited by state or federal law;

(5) Where the arbitrator so conducted the hearing, contrary to provisions of Section 8, as to prejudice substantially the rights of a party.

(b) An application under this section shall be made within thirty (30) days after delivery of a copy of the award to the applicant, except that, if predicated upon corruption, fraud or other undue means, it shall be made within thirty (30) days after such grounds are known or should have been known.

(c) In vacating the award on grounds other than stated in clause (2) of subsection (a) the court may order a rehearing before another arbitrator chosen as provided in the agreement to arbitrate, or in the absence of such provision, by the court in accordance with Section 6 of this Act, or, if the award is vacated on grounds set forth in clauses (3) and (5) of subsection (a), the court may order a rehearing before the arbitrator who made the award or his successor appointed in accordance with Section 6. The time within which the agreement to arbitrate requires the award to be made is applicable to the rehearing and commences from the date of the rehearing or from such date as is determined by the court.

(d) If the application to vacate is denied and no motion to modify or correct the award is pending, the court shall confirm the award.

NOTE

This section incorporates two changes of substance from the comparable section of the second draft.

In subsection (a) (2) the language appearing in the second draft at page 17, lines 18 and 19, was omitted as being unnecessary. It is believed that, if a court has determined, in a proceeding under Section 5, that there was an agreement to arbitrate, such determination would be res judicata.

Subsection (a) (3) has been completely recast. It was thought that this subsection of the second draft, although intended to deal primarily with the review of issues of arbitrability, actually would permit a review, subject to the stated limitations, of error in the interpretation of the collective agreement. It was thought that this problem might be met by restating the basis for review in such a way as to omit any reference to “excess of powers,” and substitute what is in clause (3) of the present draft. Thus recast, the only basis for review under this clause is that the arbitrator determined an issue which he had no jurisdiction to determine.

SECTION 14. Modification or correction of award.

(a) Upon application made within thirty (30) days after delivery of a copy of the award to the applicant, the district court of the district in which the hearing was held shall modify or correct the award where:

(1) There was an evident miscalculation of figures or an evident mistake in the description of any person, thing or property referred to in the award;

(2) The award is imperfect in a matter of form, not affecting the merits of the controversy.

(b) If the application is granted, the district court shall modify and correct the award so as to effect its intent and shall confirm the award as so modified and corrected. Otherwise, the district court shall confirm the award as made.

(c) An application to modify or correct an award may be joined in the alternative with an application to vacate the award.
NOTE

This section differs from the corresponding section of the second draft only in the deletion of subsection (a) (2) of that draft. This deletion was thought desirable since Section 13 deals adequately with the subject matter.

SECTION 15. Judgment or decree on award.

Upon the granting of an order confirming, modifying or correcting an award, judgment or decree shall be entered in conformity therewith and be enforced and docketed as any other judgment or decree. Costs of the application and of the proceedings subsequent thereto, and disbursements may be awarded by the court.

SECTION 16. Applications to court.

Except as otherwise provided, an application to the appropriate district court under this Act shall be by motion and shall be heard in the manner and upon the notice provided by law or rule of court for the making and hearing of motions. Unless the parties have agreed otherwise, notice of an initial application for an order shall be served in the manner provided by law for the service of a summons in an action, provided, that the process of the district court shall extend to and be valid when served in any judicial district.

SECTION 17. Venue.

Except as otherwise provided herein, an initial application shall be made to the district court of the district in which, under the agreement to arbitrate, the arbitration hearing shall be held. If the agreement to arbitrate makes no provision for the place of hearing, such application shall be made to the district court of the district in which the dispute arose, or in the event that the dispute arose in more than one district the application shall be made to the district court for the district in which is located the employer’s principal place of business. All subsequent applications shall be made to the court hearing the initial application unless the court otherwise directs.

SECTION 18. State court jurisdiction.

(a) Nothing in this Act shall be deemed to preclude the assumption by a state court of jurisdiction with respect to an agreement to arbitrate provided its action is consistent with the provisions of this Act;

(b) The appropriate district court may, upon application of a party to an agreement to arbitrate, stay the prosecution of a state court proceeding to stay arbitration or to set aside an arbitration award in any case in which state court action is sought upon a ground which would not be a proper ground for the requested relief under this Act;

(c) A proceeding in a state court to compel or stay arbitration, or to set aside or enforce an arbitration award, in which an alleged agreement to arbitrate is the basis for or involved in the proceeding, may be removed to an appropriate district court, without regard to the citizenship or residence of the parties, in the manner provided by law.

NOTE

In the second draft, Section 5(e) gave the federal courts jurisdiction to stay proceedings in state courts, “involving issues the decision of which may subvert the purposes and policies of this Act.” It was considered desirable to deal with the subject of state court jurisdiction somewhat more comprehensively, and in a separate section. The intended effect of Section 18 is to insure, if a party so desires, that state court jurisdiction shall not be assumed to accomplish an objective which could not be accomplished under the federal act.
Section 19. Appeals.

(a) An appeal may be taken from:

(1) An order denying an application to compel arbitration made under Section 5;

(2) An order granting an application to stay arbitration made under Section 5;

(3) An order confirming or denying confirmation of an award;

(4) An order modifying or correcting an award;

(5) An order vacating an award without directing a rehearing;

(6) A judgment or decree entered pursuant to the provisions of this Act; or

(7) An order made under Section 18 staying the prosecution of a state court proceeding.

(b) The appeal shall be taken in the manner and to the same extent as from orders or judgments in a civil action.

NOTE

This section includes what was in Section 18 of the second draft, and adds only clause (7) to subsection (a).

Section 20. Constitutionality.

If any provision of this Act or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

Section 21. Repeal.

All acts or parts of acts which are inconsistent with the provisions of this Act are hereby repealed.

Section 22. Time of taking effect.

This Act shall take effect . . .
AN EVALUATION OF ARBITRATION APPRENTICESHIPS*

ARNOLD M. ZACK**

Since the end of World War Two arbitration has grown to be accepted as the normal means of resolving disputes arising between management and labor during the life of the collective bargaining agreement. The universality of this acceptance is demonstrated by the inclusion of arbitration provisions in over 90% of the current agreements, and by the tremendous growth in the number of arbitration cases heard annually from a few thousand at the end of the Second World War to 25,000 at the present time, with prospects of further increases at approximately 10 percent per year.¹

This dynamic growth has brought with it certain personnel problems arising from the fact that the increase in the number of acceptable arbitrators has not been commensurate with the increase in the number of cases to be heard. In addition it is also evident that the bulk of the cases heard today are presented to the same core of arbitrators that entered the field in the mid-1940's. This group, composed primarily of members of the National Academy of Arbitrators, is advancing in years to the point where their average age is now in the mid-fifties. As far as is known, no specific program has been set forth for expanding the corps of currently available arbitrators, or for the selection and training of successors.

The arbitration profession as we know it today had its inauguration under the banner of the War Labor Board. The policy of the War Labor Board was to direct the insertion of arbitration provisions in collective agreements so that disputes arising out of such agreements would be settled by the use of private machinery. The insertion of such provisions into collective bargaining agreements was at first rejected by managements as an infringement upon their exclusive rights of management of the business, but under the pressure of the war effort, there was sufficient opportunity for settlements, some of which managements found quite acceptable. Accordingly, upon termination of the war effort, many companies were willing to abide by, and often rely upon, the arbitration provisions, during the early post-war period. So it was, that the youthful economists, attorneys and engineers, returning to their peacetime pursuits after their experience in settling wartime labor conflicts found an increasing demand from the parties for their services as arbitrators.

THE NEED FOR COMPETENT ARBITRATORS

It soon became evident, however, from the increasing number of arbitration cases being heard throughout the nation, that there was a need for augmenting...
the ranks of competent arbitrators. This need was voiced by Professor E. E. Witte as early as 1948, when he told the First Annual meeting of the National Academy of Arbitrators that the further progress of industrial arbitration depended in large measure upon the development of "a larger group of qualified and experienced arbitrators." These dual criteria of qualification and experience were, and continue to be, the keynote of the problem faced in expanding the ranks of arbitrators.

Many would-be arbitrators with creditable experience in their own occupations and with apparent qualifications for service as arbitrators have offered themselves to the parties. Comparatively few, however, have succeeded in acquiring the practical experience in arbitration which is essential for their acceptability to companies and unions.

The American Arbitration Association and the Federal Mediation & Conciliation Service have developed sound procedures for offering to the parties the names of individuals who they believe to be acceptable as arbitrators. Neither organization, however, has the power, in view of the voluntary nature of contemporary industrial arbitration, to place a newly listed panel member as the arbitrator in any specific case. Both have urged the parties to select new arbitrators, in many instances by including the names of several in lists of recommended arbitrators, but the parties are naturally loathe to take the risk of foregoing the services of a seasoned arbitrator in order to initiate an unknown neophyte. This problem of acceptability underlies the current stagnation in the number of active arbitrators in whom both parties have confidence.

The National Academy of Arbitrators approached this problem in 1950 when its Committee on Research and Education acknowledged that there were enough people able and willing to undertake arbitration work, although admitting a shortage of acceptable arbitrators in several areas of the nation. It attributed this disparity to the concentration of the majority of cases among the select veterans at the expense of "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," pointing out that "many of those who are now on the periphery of acceptability might well benefit from some training in the finer points of labor arbitration."

The Committee proposed a two-fold training program, based, on the one hand, on the need to train a new generation of arbitrators in the academic aspects of industrial arbitration, and, on the other hand, on the need for perfecting the techniques of those who already had appropriate background and temperament for arbitration. Among the suggestions made by the Committee as means for achieving a solution to the problem were: the study of reported cases and literature; the attendance at arbitration hearings and mediation conferences as observers; the handling of less involved cases at lower rates by special referrals from designating organizations, and service as full time apprentice or interns under the leadership of established arbitrators. Further study of the proposal that apprenticeships be established was undertaken by the Academy's Subcommittee on Education and Training which, in 1955, suggested apprenticeships with designating agencies or with individual arbitrators as possible means of training selected individuals in the finer techniques of arbitration.

---


* Ibid., p. 171.

Without delving into the relative merits of internships with designating agencies or of any of the many diverse roads which have brought people into arbitration, let us turn at this point to an examination of the apprenticeships with arbitrators which are currently in effect, and which have in the past few years served as successful springboards to arbitration practice.

**CURRENT APPRENTICESHIPS**

At the present time there are probably less than a dozen full-time arbitration apprenticeships in operation. An informal questionnaire was sent to eight individuals known to be serving with members of the Academy. Seven returned the completed forms while the eighth declined to take part in the survey. It is naturally difficult to arrive at precise, or even determinative findings with such a small statistical universe, but nevertheless an analysis of the background of the apprentices, the activities in which they engage in their employment and the progress they are making toward independent arbitration careers should aid in ascertaining the effectiveness of apprenticeship as a device for training new arbitrators.

*The Apprentice:* Most of the apprentices questioned did their undergraduate work in economics or political science; and their graduate work in law. One of the apprentices was a chemistry major in college, while two others did their graduate work in economics. Seven of the eight apprentices of whom anything is known, reported having two (2) academic degrees. Six of the seven who responded to the questionnaire worked in the field of labor relations prior to entering their initial arbitration employment, either in summertime employment or immediately following the completion of their formal studies. Two apprentices worked for the American Arbitration Association, two for the National Labor Relations Board, two for management consultants, one for the Federal Mediation and Conciliation Service, and one for a trade union. The average age of the apprentices at the commencement of their apprenticeships was 27 years.

*The Employer:* All of the apprentices work for arbitrators serving as Umpires under nation-wide agreements, although the newer apprentices are not necessarily active participants in the umpire relationships. Some, in fact, devote all of their energies to their employer's ad hoc cases until they achieve those qualities deemed necessary for their active involvement in the umpire relationship. Of the eight apprentices four have served in excess of four years.

*Relations with the Parties:* The newer apprentices appear to have little direct contact with the parties except for occasional attendance at hearings with the arbitrator, although the parties are usually aware of the apprenticeship. The senior apprentices graduate to a more active role as hearing officers in the umpire- ships, holding approximately three or four hearings per month on their own.

*Decision Writing:* All apprentices engage in decision writing at least to the extent of setting forth the background and facts of a particular dispute and perhaps the contentions of the parties, as well as such information garnered from the transcript (if one is taken), from the notes of the arbitrator, or from the notes of the apprentice if he is in attendance at the hearing. Most of the apprentices write draft opinions, which are either reviewed or rewritten by their employers. Those apprentices who serve as hearing officers write and sign their own decisions subject to the review and countersignature of their employer.

*Compensation:* Invariably, full time apprentices are paid a salary by the arbitrator himself, although one instance was reported where an apprentice, serving
as hearing officer in an umpire relationship, was compensated directly by the parties.

**Outside Employment:** Naturally, all apprentices devote as much time as is necessary to hear their own cases and otherwise help to develop their own practice through such devices as writing articles. In addition two apprentices engage in teaching activities which accounts for approximately 5-10% of their time—one in labor law, and the other in economics.

**Own Practice:** Three of the seven apprentices reporting have arbitrated cases of their own. In two instances, where the apprenticeships began at the ages of 28 and 31 respectively after previous employment in the field of labor relations and experience as hearing officer the initial cases came directly from the parties within the first year. In the third instance where the individual had had seven summers of employment in labor relations before entering the apprenticeship immediately after law school and where his role was largely in ad hoc work the initial case came from the AAA after two years. After the initial case, the more rapid rise in case load occurred in the cases of the former two arbitrators. They heard an average of 12 cases their first year, 19 cases their second year, and 28 cases their third year. The number of cases heard by the younger apprentice working on ad hoc cases increased at a much slower rate.

All three apprentices attained listing on the panels of the AAA and the FMCS within two years after commencing their apprenticeships. The two apprentices who began with cases from the parties continued to get a majority of their work directly, while the one who began through the AAA continued to get most of his cases by that means. All three have at least one permanent umpire-ship of their own.

**Self-Appraisal:** Most apprentices indicated satisfaction with their progress, although in some cases the response indicated concern over the time elapsed and the lack of assurance that they would be able to achieve an independent arbitral status. All agreed to a willingness to “do it over again,” and expressed satisfaction with their employers as teachers and with their employer-employee relationship as congenial and productive for their own development.

### AN APPRENTICESHIP PROGRAM

Because of the wide variations in the background of the individuals and in the character of their respective apprenticeships, it is difficult to generalize, or suggest an ideal road to becoming a successful arbitrator. Nevertheless, despite the small sample employed in this survey it is possible to note significant steps taken by some, or many of the apprentices, and from these steps to suggest some of the paths which might be of value in becoming an apprentice, and which from there, might carry the individual to the status of arbitrator.

Several things are essential to an apprenticeship program. First is an awareness that not all apprentices succeed. Assuming an individual has the academic and intellectual capacity necessary to become an arbitrator, there is still no assurance that he will “click” when on his own, even if he does succeed in obtaining some cases while still under the wing of the arbitrator-mentor. For this reason it is essential that the apprentice carefully examine his own potential, his long range objectives, and his ability to withstand the frustrations attendant upon the long period of unrecognized activity as a shadow to a successful arbitrator.

Second is a willingness to devote several years to the apprenticeship. It has been suggested that apprenticeships be modeled on the one or two year clerkships
in the state and federal court system. While this would permit more potential arbitrators to examine the workings of, and their propensity toward, arbitration, there is little likelihood that they would be productive for either the arbitrator-employer, or the apprentice, particularly in view of the different functions served by clerkships and apprenticeships. The former is an admirable device for familiarizing oneself with all phases of the law and secondarily with developing good writing technique. The latter appears to place the emphasis on independent thinking and writing with less concentration on precedents. For the employer such short term apprenticeships would require the devotion of a considerable amount of time in training in writing and thinking technique, with little opportunity for return on the time and effort invested, while for the apprentice, it would merely whet the appetite for work in the field with insufficient time to master the concepts and techniques involved, with little opportunity for getting to be known by the parties, and with the exceedingly dim prospects of unemployment and separation from arbitration only a matter of months away. Training for the field of arbitration cannot be condensed into a one or even a two year course of clerkship. Indeed, much more time is needed for maturation, as well as for the development of arbitration technique. The parties are naturally loathe to entrust their fate to the hands of a youngster less than half their age, when they can obtain the services of a proven arbitrator merely by waiting a few additional weeks. Thus it is wise to find a profitable way to mark time while the maturation process takes place.

This leads us to a third essential for a successful apprenticeship program, that is a background in the field of labor relations. Formal academic training is not sufficient to train a person in the field of labor relations. Most scholastic treatment of labor relations problems is handled theoretically, frequently at the hand of a teacher who has had little actual experience in the field. Of much greater value would be some post-academic experience with employers and/or unions if this did not tend to block one’s future entry into arbitration. Aside from this practical experience and the unquestionable insight it develops, the next best opportunities currently are provided by the state and federal mediation services, the AAA, some unbiased and non-controversial governmental agencies, the practice of law, and finally teaching. Each of these employments has unique advantages.

Experience with the mediation services is unquestionably of great value for an apprentice particularly if there is an opportunity to serve as a mediator. It gives him specific knowledge of the orientation of the parties, a familiarity with his potential clients and an opportunity to gain a unique understanding of the peaceful settlement of industrial conflicts.

Service with the AAA provides the potential apprentice with knowledge of the procedural elements of arbitration, with an opportunity for meeting many labor and management people, and with an opportunity for observing and discussing actual arbitration cases with a diversity of arbitrators, one of whom might come forth with the desired apprenticeship.

At present governmental participation in the field of labor relations (other than the FMCS) is likely to be of limited value. Although there is a great advantage to be gained from actually dealing with particular problem areas in labor management relations, the advocacy which one is required to advance in a particular case, or for a particular agency, is likely to result in the imposition of a pro-management or pro-labor label which might ultimately prove to be damaging in an arbitration practice. If the governmental employment is of a type which
Challenges to Arbitration

avoids this tendency to become labelled, then it can certainly prove to be profitable. Law practice itself is likely to contain this same hidden danger if it be directly in the field of labor relations. Although there are a few practices which service clients on both sides of the fence, the general tendency is for a labor relations practice to be heavily weighted either on the side of management or labor. Taking part in a general practice, of course, removes this danger, but it also removes the practitioner from the field of labor relations and from the likelihood of meeting potential clients. Certainly a general practice provides worthwhile training in investigation, marshalling of facts, reasoning and writing. It also provides the potential apprentice with roots in another profession should his drive toward arbitration be thwarted, or should it prove to be only partially successful.

Finally, teaching offers unquestioned advantages. Not only does it often provide direct entry into arbitration without recourse to any apprenticeship, as it has in the case of several newly established arbitrators, but it also provides the opportunity for fruitful research in the field, the aloofness from day to day involvement on the side of either labor or management, the financial cushion provided by the practice of law, and the widespread respect of the parties and the public. All of these routes to maturity provide not merely the post-academic, pre-apprenticeship experience which can do much to train for the arbitral status, but also provide alternatives to the graduating student professing interest in arbitration, which might in fact prove to be more alluring, and thus help to weed out those who might be attracted solely by the alleged glamor of arbitration.

Once the potential arbitrator, equipped with the necessary ability and academic education has acquired the practical experience and necessary maturity, he is ready to undertake the fourth essential step in the apprentice training program—service as an apprentice under a suitable arbitrator.

At present the selection of an arbitrator for whom to work is a haphazard proposition. Through one's prior experience in labor relations it is possible to meet many employers. However, very few practicing arbitrators are in a position where they can undertake the financial obligations accompanying the employment of an apprentice. Where a choice of arbitrators is available it would seem more desirable to work for an arbitrator located in an industrial area and serving under one or more umpireships. Although work under such umpireships may limit one's contacts with potential clients and may lead to specialization in the problems and contracts of one company or one industry in contrast to the wider perspective obtained under an ad hoc system, it is also likely to bear more immediate rewards in the form of a hearing officership and the resultant opportunity to display one's personal wares directly before the parties. In addition, such an apprenticeship might prove to be more economically secure since the parties themselves might make arrangements to finance the hiring of an assistant to the arbitrator.

It is important for the applicant to seek out a personable and skillful arbitrator who is willing to take the time to train future arbitrators and who does no intend to use the assistant merely as a permanent sounding board or as a ghost writer. Such an unfortunate practice is quite unlikely to occur since those arbitrators who would be willing to take on the economic and intellectual responsibility inherent in training an arbitrator are the leaders in the profession who have, by undertaking the apprenticeships, assumed the moral obligation of helping to train their potential successors.
Once the applicant has commenced his apprenticeship he will undoubtedly discover, as have all contemporary apprentices, that the work is stimulating, non-repetitive, and often actually exciting. It is then that he begins the final waiting period of several years duration, while he commences to build up his own arbitration practice. If successful, he in turn, might ultimately find himself training a third generation of industrial arbitrators.

RECOMMENDATIONS

If the apprenticeship concept is to be furthered to fulfill the ultimate objective of training competent arbitrators in the same manner that companies, unions and professions now train their replacements, there are certain innovations which might be considered to strengthen the present framework of training. The National Academy of Arbitrators could do much to further an apprenticeship program without destroying the voluntary or individualistic aspects of contemporary arbitration, by lending its weight to the furtherance of some of the following programs.

These innovations constitute an attempt to overcome some of the obstacles faced by initiates in their efforts to become first apprentices, and later, arbitrators.

1. A public relations program aimed at the graduate and law school level to inform students of the nature of the arbitration practice and to dispel some of the myths which have become associated with the profession of arbitration; to discover those individuals who would appear to have the necessary potential to justify training them for arbitration; and to detail some of the paths which they might follow to gain the necessary academic and practical experience necessary for entry into apprenticeships. Such a program could include a national essay competition, an arrangement for attendance at arbitration hearings, and the participation of arbitrators in school classes and discussions dealing with arbitration. An effort could also be made to encourage more schools to offer courses in addition to the theoretical or procedural courses currently being taught in those areas.

2. The formulation of a policy endorsing the concept of apprenticeships as the most effective means of training competent arbitrators, explaining to the parties and the public the need for new arbitrators and setting forth to all the importance of proper training of candidates. Such a policy could detail several methods of securing these objectives, such as encouraging the selection of newly launched arbitrators, encouraging the parties to umpireships specifically to provide for assistants, urging student attendance at certain hearings, etc.

3. The development of a clearing house where individuals interested in entering arbitration could obtain information as to the nature of, and the qualifications for, apprenticeships, and the availability of employment opportunities. Such a clearing house could also serve to meet the personnel requirements of arbitrators looking for part-time or full-time assistants. It might also provide employment for a potential apprentice who wants to gain some experience in the field of arbitration. Although such work would be primarily administrative, it might give some insight into the problem areas of arbitration, and would certainly provide a good means for a candidate to meet potential arbitrator-employers.

4. The establishment of a program of summertime or graduate clerkships with the designating agencies. This arrangement might be expanded to permit the apprentices to serve as tribunal clerks, as an adjunct to their apprenticeship program, thus familiarizing them with the subject matter as well as with the techniques of arbitration, helping to fill the need for arbitration tribunal clerks and serving to bring the apprentices into increased contact with potential clients.
5. The development of a pre-apprenticeship program with labor and industry which would permit certain selected individuals to engage in direct work in a labor relations context for both companies and unions. Such a program would permit the development of insight into the positions of both parties, without raising the objections heard when a neophyte arbitrator is known to have worked for only one of the parties.

By such devices as these, the current system for training new arbitrators could be formalized into an acceptable and accepted program, attracting to it the best possible candidates.

An outstanding arbitrator pointed out recently that "Arbitrators are Accidents." This may well have been true in the past, but with proper planning and selectivity there is no reason why capable young men could not be given the final training which will increase their experience and, hopefully, make them more acceptable to the parties. There is no assurance that such training would guarantee the individuals acceptability to the parties, but current evidence is convincing that it has proved to be of value, and with more thought given to the matter, such a program might be made to work even more effectively.
APPENDIX D

NATIONAL ACADEMY OF ARBITRATORS

CONSTITUTION AND BY-LAWS

(As Amended January 29, 1960)

CONSTITUTION

ARTICLE I

SECTION 1. The name of this association shall be National Academy of Arbitrators.

SECTION 2. The principal office and headquarters of the Academy shall be located in such place as shall be designated by the Board of Governors.

ARTICLE II

SECTION 1. The purposes for which the Academy is formed are: To establish and foster the highest standards of integrity, competence, honor, and character among those engaged in the arbitration of industrial disputes on a professional basis; to adopt and encourage the acceptance of and adherence to the canons of ethics to govern the conduct of arbitrators; to promote the study and understanding of the arbitration of industrial disputes; to encourage friendly association among the members of the profession; to cooperate with other organizations, institutions, and learned societies interested in industrial relations, and to do any and all things which shall be appropriate in the furtherance of these purposes.

SECTION 2. The Academy shall not recommend, designate, or appoint arbitrators.

ARTICLE III

SECTION 1. The Academy is a non-profit, professional and honorary association of arbitrators, open to membership without regard to politics, race, creed, color, or sex; its membership shall be composed of those who have hereby associated themselves together in furtherance of the objects and purposes here set forth and such other persons as may from time to time be elected to membership as hereinafter provided.

ARTICLE IV

SECTION 1. The government and management of the Academy shall be vested in a Board of Governors consisting of twelve (12) members in addition to the ex-officio members hereinafter provided for. At the annual meeting in January, 1957, four (4) shall be elected for a three year term, and one (1) for a two year term, and one (1) for a one year term. At each annual meeting thereafter four (4) members shall be elected for a three year term. After the election to be held January 20, 1950, no member of the Board shall be eligible for two (2) successive three year terms.” (As amended February 2, 1957.)

ARTICLE V

SECTION 1. Members shall be participating, contributing and sustaining members.
SECTION 2. Members shall be elected by the Board of Governors in the manner provided in the By-Laws. (As amended.)

ARTICLE VI

SECTION 1. The officers of the Academy shall consist of a President, four Vice Presidents, an Executive Secretary, and a Treasurer, who shall be elected at the annual meeting for one year terms and who shall serve as ex officio members of the Board of Governors with the right to vote.

SECTION 2. The President and Vice Presidents shall be eligible for no more than two successive terms in the same office. Upon the expiration of his term of office the retiring President shall serve as ex officio member of the Board of Governors for one year with the right to vote.

ARTICLE VII

"Amendment to the Constitution or By-laws shall be made by affirmative vote of two thirds (2/3) of those voting at any membership meeting: Provided, however, that after February 2, 1957 no proposed amendment shall be adopted unless it has been (a) approved by a majority vote of the Board of Governors, or (b) signed by ten (10) members of the Academy; and thereafter filed in writing with the Secretary at least ninety (90) days prior to the membership meeting; and distributed by mail to the entire membership at least forty five (45) days prior to the meeting. (This proviso shall not be construed to prevent the making of germane amendments to such provision at the time of the membership meeting)." (As amended February 2, 1957.)

BY-LAWS

ARTICLE I

Duties of Officers

SECTION 1. President

The president, or in his absence, one of the Vice Presidents, shall preside at all meetings of the Academy. At the Annual Meeting the President shall present a report of the general affairs of the Academy.

SECTION 2. Secretary

The Secretary, under the direction of the President and the Board of Governors, shall perform the customary duties of such office. He shall conduct the correspondence of the Academy; record the proceedings of all meetings of the Academy and the proceedings of the meetings of the Board of Governors. He shall issue all notices and other documents requiring verification: make at each Annual meeting a report of the membership of the Academy and all other matters pertaining to the conduct of his office; and perform such other duties as may be assigned to him by the President and by the Board of Governors.

SECTION 3. Treasurer

The Treasurer, under the direction of the President and the Board of Governors, shall collect and deposit all moneys due the Academy; verify all bills and pay them when approved by the President or the Board of Governors; and make at each annual meeting, or more often if required by the Board of Governors, a report of the accounts of the Academy.

ARTICLE II

Annual Meeting

SECTION 1. The annual meeting of the Academy shall be held on the last
Friday in January of each year, or at such other time as may be designated by the Board of Governors, at such place as shall be designated by the Board of Governors. (As amended 1/29/60.)

**ARTICLE III**

**Board of Governors**

Section 1. The Board of Governors shall be the governing body of this Assembly.

Section 2. The Board of Governors shall be elected by the members, as provided in the Constitution, and shall hold office for the term elected or until successors are elected and qualified.

Section 3. Vacancies on the Board of Governors occasioned by death, resignation, or other reason, shall be filled by appointment by the President, and Governors as appointed shall serve until the next Annual Meeting of membership.

Section 4. The Annual Meeting of the Board of Governors shall be held immediately following the Annual Meeting of the membership for the purpose of considering such matters as may be brought properly to its attention.

Section 5. Regular meetings of the Board of Governors shall be held semi-annually at such time and place as the President shall designate.

Section 6. Special meetings of the Board of Governors of this Academy may be called by the President or upon formal request in writing by a majority of its members. Such notice shall specify the objects and purposes of such special meeting and no other business shall be transacted except by unanimous consent of those present.

Section 7. Notice of all meetings of the Board of Governors stating time and place of the meetings shall be forwarded by the Secretary to each member of the Board at least ten days prior to any such meetings.

Section 8. Five or more members of the Board of Governors shall constitute a quorum.

**ARTICLE IV**

**Committees**

Section 1. The President shall appoint the following standing Committees:

a—Membership Committee
b—Committee on Ethics
c—Committee on Research and Education
d—Committee on Legislation
e—Auditing Committee

Section 2. The President shall appoint such Special Committees as he may from time to time deem necessary and advisable in the furtherance of the objects and purposes of this Academy or as voted by the membership at any Annual Meeting. Nothing herein contained shall be so construed as to limit the power of the Board of Governors to appoint such sub-committees as it may deem necessary in the furtherance of the powers conferred upon it under the Constitution.

**ARTICLE V**

**Dues**

Section 1. The annual dues for participation membership shall be $10 per year.

Section 2. The annual dues for contributing members shall be $25 per year.

Section 3. The annual dues for sustaining members shall be $100 per year.
180  CHALLENGES TO ARBITRATION

SECTION 4. Each year each member shall choose the class of membership which he desires to hold during the year giving consideration to the importance of arbitration and to its importance to him as a source of income. The class of membership so adopted by each member shall not be shown in the public roster of Academy Membership.

SECTION 5. The dues of members elected to membership after July 1 of any year shall be one half the amount of annual dues for that year.

SECTION 6. Dues statements shall be distributed to the members as of the first of the month following the annual meeting and shall be paid by the tenth of the following month. Members who have not paid as of such date shall be notified that they are in arrears and unless payment is made within sixty days thereafter, they shall be subject to suspension by the Board of Governors. Any member suspended by the Board of Governors for the nonpayment of dues shall be automatically reinstated upon payment of all arrears within thirty days of notice of such suspension. After the lapse of such thirty days, reinstatement may be made only by vote of the Board of Governors. (As amended January, 1955.)

SECTION 7. The Board of Governors may at its discretion authorize the waiver of dues from members who have become inactive as arbitrators. (As amended January 29, 1960.)

ARTICLE VI

Membership

SECTION 1. Application for membership shall be filed on an approved form with the Chairman of the Membership Committee.

SECTION 2. At least thirty days prior to the approval or disapproval of an application by the Membership Committee, the Committee shall send to each member a statement of the qualifications of the applicant. (As amended January 29, 1960.)

SECTION 3. Upon completion of the review of an application and following a majority vote of those present at a meeting called for the consideration of such application, the Membership Committee shall submit its recommendations to the Board of Governors.

SECTION 4. The Board of Governors shall act on the recommendations of the Membership Committee at each semi-annual meeting, or at any special meeting called for that purpose, and applicants shall be admitted to membership by a two-thirds vote of those present.
INDEX

A
Ability to pay 105
American Arbitration Association
   case load, number and types
   of cases, 1954 and 1958 ... 82
Code of Ethics and
   Procedural Standards 4
Arbitrability
   arbitrators, views in conflict
      with courts 74
   employer's contest of 17
   merits of case v. arbitrability
      75
   non-arbitrable issues,
      arbitrator's duty to avoid
      appraising merits 75
   subcontracting 54, 75
Arbitration
   and public opinion 1, 3
   as against self-help,
      historical 116
   compromise, willingness as
      basis 103
   courts of equity, comparison
      45
   economic conditions, effect
      on decisions 107
   education of public 3
   frequency and subject,
      FMCS report 145
   historical development 39
      et seq.
   interests disputes 78 et seq.
   legalism in 101, 114
   national goals and values,
      relation to 21
   non-economic aspects of
      interests disputes 94
   social conflict, mitigation
      through compromise 22 et
      seq.
   trends in, address by James P.
      Mitchell 144
   union representatives,
      training of 112
Arbitration apprenticeships
   Zack, Arnold M., survey by
      170
Arbitration of new contract terms
   (see Interests, disputes as to)
Arbitrators
   appointing agencies,
      relationship to 19
   authority, remedies 43 et seq.
   bias, problem of 26
   compensation (see Cost of...
      arbitration)
   discretion with regard to
      remedies 46
   licensing, possible substitutes
      for, 29
   mediation function,
      historical 41
   novel remedies 46
   professional dedication,
      formal statement proposed
      30
   "screw-ball" decisions,
      avoidance of 85, 93
   selection in interests
      arbitration 93
   self-appraisal 1
Authority of arbitrators
   (see also Remedies)
   consent of parties, as basis 43
   discretion 46
   "injunctive" relief 47
   innovations, novel remedies
      46
   "legislative" role in interests
      disputes 87
   limitation by parties 45, 85
limitation by submission agreement 45, 85
reinstatement and back pay 45
remedies available 43 et seq.
tripartite boards 85

Awards
(see also Remedies)
approximating negotiated settlement 86
contract construction, broad v. strict 50
economic conditions, effect of 107
noncompliance, trend toward 17
novel awards, innovations 46
relationship of parties as factor 43
small employer, special problems of 48

B
Bailer, Lloyd 33
Bernstein, Irving 86
panel discussion 49
Bethlehem Steel case 58, 63
Bluestone, Irving
colloquium 107
Bornstein, Tim L. 55
Bredhoff, Elliott 55

C
Celanese case 56, 60
Clean-hands doctrine 46
Code of Ethics and Procedural Standards
compensation of arbitrators 5
enforcement by NAA 18
Ethics Committee of NAA 18, 30
public opinion, relation to 4
revision suggested 4

Collective bargaining
(see also Compulsory arbitration)
and public opinion 1
arbitral award approximating negotiated settlement 86
government intervention, current threat of 11
post-arbitral bargaining 44
propaganda, parties' resort to 2
voluntary arbitration as adjunct 11
authority of arbitrators 45
commercial contracts, comparison with 39
enforcement, remedies available 43
legal standing, history 39
strict v. broad construction 50

Columbia Graduate School of Business Study
subcontracting practices, study 56
Community interests (see Public interest)
Compromise
social conflict, mitigation of 22 et seq.
willingness as basis of arbitration 103
Compulsory arbitration
contract or interests disputes 78
criticisms of 9
education of public, by NAA 18
government intervention, current threat of 11
Great Britain 83
interests, disputes as to 78 et seq.
labor-management conferences 148
Mitchell, James P., address 147
rejection by NAA 8 et seq.
Rockefeller, Nelson;
advocacy 79
steel strike of 1959, effect on
public opinion 8
Stevenson, Adlai; advocacy
79
transit industry experience
97
Continental Can Co. v.
Steelworkers 61
Contract clauses, sample clauses
subcontracting 52, 74
Contract disputes (see Interests,
disputes as to)
Contracting work out (see
Subcontracting)
Cost of arbitration
as bar to arbitration 108
et seq.
bias, problem of 26
Code of Ethics and
Procedural Standards,
revision suggested 4
compensation of arbitrators,
Code of Ethics 5
professional ethics 25
reduction 109
responsibility of parties 110
small union locals 109
“streamlined” procedures 19
United Auto Workers,
experience 109
written briefs, elimination
of 19
Crawford, Donald A.
address by 51
Cushman, Bernard
panel discussion 96
Custom and practice
basic steel agreements 54
costs of production 145
divergence between contract
and conduct 57
economic conditions, effect
on decisions 107
subcontracting 76
“wasteful” practices,
management drive to
eliminate 145
working rules, railroads and
local transit, arbitration of
98
Dash, G. Allan, Jr. 54, 67, 74, 139
address by 1
Davis, William H.
address by 140
testimonial 123
Discharge and discipline
lie detector tests 113
Dunlop, John T. 9
Education of arbitrators (see
Training of arbitrators)
Emergency disputes (see National
emergency disputes)
Enforcement of awards (see
Awards; Remedies)
Ethics (see Code of Ethics and
Procedural Standards)
Evidence
lie detector tests, union
objections 113
Fact-finding boards
Federal Mediation and
Conciliation Service,
proposed role in national
emergency strikes 147
Federal Mediation and
Conciliation Service
case load, growth and types
of cases 145
interests disputes, frequency
of arbitration 145
national emergency strikes,
proposed role of FMCS,
Mitchell address 147
Fischer, Ben 55, 66
CHALLENGES TO ARBITRATION

G
Garrett, Sylvester 62, 65
General Electric Corp., public statements 105
Goldberg, Arthur J. 55
Graham, Frank 135
Gray, Herman A. 62
Great Britain
Industrial Disputes Tribunal 83

H
Handsaker, Morrison
address by 78
Hazard, Leland
colloquium 116
Hearst Publications case 62
Hill, James C.
testimonial address in honor of William H. Davis 123

I
Injunctions, by arbitrators 47
Interests, disputes as to 78
ability to pay 105
arbitration as possible deterrent to bargaining 89
arbitration, frequency of 81
arbitration, attitude of labor and management 80
compulsory v. voluntary arbitration 78 et seq.
English experience and attitude 83
interests and rights, inseparability 88
Kaiser Steel Corp., tripartite policy conferences 91, 105
“legislative” role of arbitrator 87, 95
mediation, fact-finding 91
negotiation and mediation as conditions to arbitration 79
negotiated settlement, award approximating 86
non-economic aspects 94
offers to arbitrate, good faith 81
precedents, standards, and criteria 88, 94
public interest, devices to protect 91
Railway Labor Act, arbitration provisions 96
risks of contract arbitration 84
“screwball” decisions, prevention of 85, 93
transit industry experience 96, 99
tripartite boards 85
“wage leadership” or pattern-setting cases 89

J
Jackson, Mr. Justice 39

K
Kaiser Steel Corp., tripartite policy conferences 91
Kahn, Mark L.
panel discussion 73
Kennedy, Thomas 9
Kuhn, Alfred 86

L
Labor-management conferences, Mitchell proposals 148
Labor-Management Relations Act
national emergency strikes, Mitchell proposals 147 et seq.
national emergency strikes, voluntary arbitration step proposed 100
Legalism
as against “human values” 114
in arbitration 101
“no mediation” approach 101
Legislation
Law and Legislation
Committee, NAA, activities 5 et seq.
compulsory arbitration 8
Lennard, Melvin 64
Lie detector tests 113
Limited submission
contract or interests
arbitration 85
Lincoln Mills case 7
Loucks, William N.
address by 20

M
Major disputes (see Interests, disputes as to)
Management rights
(see also Subcontracting)
economic conditions, effect 107
General Electric Corp.,
public statements 105
implied limitations doctrine
54, 60
in absence of express contract
provisions 54
Kaiser Steel Corp., tripartite
policy conferences 91
public interest as limiting
factor 104
reserved (retained) rights v.
implied limitations 54
et seq.
subcontracting 51 et seq.
“wasteful” practices, drive to
eliminate 145
McKelvey, Jean T.
panel discussion 31
Mediation
(see also Federal Mediation
and Conciliation Service)
contract or interest disputes
79, 91
historical review 41
interests disputes, as step
prior to arbitration 79
Mitchell, James P.
address by 144
questions and answers 151

N
National Academy of Arbitrators
appointing agencies,
relation to 19
as molder of public opinion 2
Board of Governors, action
on U.S. Arbitration Act 7
Code of Ethics and
Procedural Standards 4
compulsory arbitration,
position 5, 8 et seq.
constitution and by-laws as
amended 178
education of public 3
evaluation by recent member,
Valtin address 13
Law and Legislation
Committee, reports and
activities 6
membership as equivalent
to licensure 29
policy questions, NAA’s role
16
publications and programs 3
National emergency strikes
labor-management
conferences, Mitchell
address 148
steel strike of 1959 . . . 8, 21,
104, 145, 147
voluntary arbitration steps,
LMRA amendment
proposed 100
New contract arbitration *(see Interests, disputes as to)*

New York State Board of Mediation

- case load, 1954 and 1958 . . . 82
- case load, proportion of interests disputes 19, 82

P

Past practice *(see Custom and practice)*

Phelps, James 55, 58

Powers of arbitrators *(see Authority of arbitrators)*

Precedents

- interests disputes 88
- legalism as against “human values” 114
- standards and criteria in interests disputes 94
- *stare decisis*, trend toward 114

Primary disputes *(see Interests, disputes as to)*

Professional status of arbitration

- criteria of professionalism 23
- bias, problem of 26
- education 24
- Ethics Committee, role of 30
- historical development 41
- licensure, NAA membership as substitute 29
- responsibility of individual arbitrators 25
- social conflict, mitigation of, role of arbitrators 22 et seq.
- Special Committee, recommendation of 30
- statement of professional dedication proposed 30

Public interest *(see also Public opinion)*

- devices to protect 105
- General Electric Corp., public statements of 105
- interests disputes 91
- Kaiser Steel Company, tripartite policy conferences 91
- management recognition of 104 et seq.
- national emergency strikes, Mitchell address 146 et seq.

Public opinion *(see also Public interest)*

- as limiting bargaining demands 3
- Board of Inquiry, steel strike of 1959 . . . 147
- Code of Ethics and Procedural Standards 4
- compulsory arbitration 8, 18
- compulsory arbitration, NAA position 5 et seq.
- education of the public, NAA role 8
- English experience and attitude 83
- management and labor opposition to arbitration of interests disputes 80
- management rights 104
- parties’ efforts to sway 2
- publications and programs of NAA 3
- steel strike of 1959, effect of 8, 104, 145, 147
- union tactics, effect on 104 et seq.

Public Service Coordinated Transport case 99

R

Railway Labor Act, arbitration provisions 96

Remedies 39 *(see also Awards)*

- as fixed by parties 44
available to arbitrators 43
  et seq.
back pay 45
clean-hands doctrine 46
construction, broad v. strict
  50
contract terms as limiting 45
discretion of arbitrator 46
good faith of parties, as basis
  43
historical development 39
  et seq.
in
  injunctive" relief 47
novel remedies, innovations
  46
post-arbitral bargaining 44
relationship of parties 43
reinstatement 45
small employer, problems of
  48
submission as limiting 45
S
Rives, Judge 75
Rockefeller, Nelson
  compulsory arbitration,
    advocacy 79
  
Schedler, Carl 77
Scheiber, Israel Ben
  panel discussion 35
Schmidt, Milton 61
Sembower, John F. 99
Seward, Ralph 55, 63
Small employers, special problems
  of 48
Smith, Bradford B. 54
Social conflict, mitigation through
  principle of arbitration 22 et
  seq.
"Statement of professional
dedication" proposed 30
Steel strike of 1959
  Board of Inquiry 147
  effect on public opinion 8
    in relation to national goals
      21
"wasteful" practices,
  management attitude 145
Steelworkers 61, 91, 105
Stein, Emanuel
  address by 39
Stevenson, Adlai
  compulsory arbitration,
    advocacy 79
Strong, George 81
Subcontracting 39
  absence of contract
    provisions 54
  arbitrability 54, 74
Bethlehem Steel Co. 58, 63
Celanese case 56, 60
  construction and rebuilding
    65
  contract and conduct,
    divergence 57
  contract clauses, four
    general types 52
Continental Can Co. v.
  Steelworkers 61
  custom and practice 76
  definition 51, 73
  estoppel of union 59
  express contract provisions 52
  extent and frequency,
    statistical study 56
General Metals Co. case 64
  good faith, reasonableness
    tests 59
Hearst Publications case 62
  implied-limitations doctrine
    60
  janitorial work 67
  management rights, extent
    of union inroads 53
  messenger service 62
  new construction rule 66
  non-routine work rule 66
  past practice 76
  pattern of arbitral decisions
    67
  plant cafeteria, operation of
    66
plant protection work 69
recognition clause, effect of 58, 62
regular or permanent work 69
reserved rights doctrine 58
right to subcontract, criteria applied by arbitrators 65
right to subcontract, "gray" areas 77
scrap reclamation 64
surplus or impermanent work 70
transfer of work out of bargaining unit 51, 73
trucking 70
types of issues 67
types of work subcontracted, statistical distribution 57
Warrior & Gulf Navigation Co. case 75
Submission 45, 85
Sugerman, Sidney 52

T
Taylor, George W. 9, 53, 87, 99, 133
address by 101
Training of arbitrators
arbitration clinics 34
apprenticeships, survey on 170
committee proceedings reviewed 32
criteria of professionalism 23
internships 33, 34, 107 et seq.
role of NAA; information, fellowship funds 35
Subcommittee on training, 1955 report 33
union representatives 112

Transit industry
interests disputes arbitration 99

U
Uniform Arbitration Act
Law and Legislation Committee, activities 6
Union representatives, training of 112
United Auto Workers 108
United States Labor Arbitration Act
committees, activities of 5
drafting and revisions 7
proposed text 160

V
Valtin, Rolf
address by 13
Voluntary arbitration (see Compulsory arbitration)

W
Waddleton, John
panel discussion 92
Warrior & Gulf Navigation Co. case 75
Witnesses
lie detector tests, union objections 113
Wolff, Sidney 60
Working rules (see Custom and practice)

Z
Zack, Arnold M.
arbitration apprenticeships, report on 170