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

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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 participate 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 association 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 agreement, 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.

NOTE

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.

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.

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 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 refused 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 arbitration 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 therefor 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 permanent 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 determination, prior to the arbitration hearing, of a question raised concerning the arbitrability 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 arbitration 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.)*

NOTE

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 harrass 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 hereinafter 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 . . .