

APPENDIX D

REPLENISHMENT OF PROFESSIONAL ARBITRATORS

REPORT TO THE MEMBERSHIP, 1964

Committee On The Training Of New Arbitrators

The National Academy of Arbitrators has long maintained a crucial interest in replenishment of the ranks of professional arbitrators. Like other professional associations, however, the first concern of the Academy has been for the quality of succession. This fact has been precisely reflected in the constitutional statement of the Academy's major purposes. The first purpose there described is "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."

The National Academy has, in the past, devoted a smaller measure of interest and energy to the quantity of arbitrators available for service in industrial disputes. In general, the Academy has considered it advisable to permit this aspect of replenishment to rest primarily in the hands of company and union representatives and in the offices of the appointing agencies, federal, state, and private. The American Arbitration Association and the Federal Mediation and Conciliation Service have been relied upon, particularly. Such policy has been followed in recognition of the over-riding fact that the quantity of professional arbitrators turns, primarily, upon the critical factor of acceptability. And acceptability is and must be determined solely by the parties, with such guidance and assistance of the appointing agencies as is deemed desirable. As all who are experienced in labor arbitration know, there are at all times literally thousands of individuals who have declared themselves available for service as arbitrators. However,

among this large group, only those who find acceptability with the parties actually serve. This selective process will certainly continue to be as true in the future as in the past. This is as it should be.

Although quality of new arbitrators has been its primary interest, over its history the Academy has engaged in a number of activities, either as a professional organization or through its individual members, that have related, directly or indirectly, to supply and replenishment of professional arbitrators.

In 1950, after a year's study, the Academy's Committee on Research and Education issued a "Report On The Education And Training Of New Arbitrators."¹ Some of the pertinent comments in that report are the following:

It appears, therefore, that the training problem is two-fold. On the one hand there is the problem of providing some means by which people who have an appropriate background and temperament for arbitration, and perhaps some experience, can achieve a greater mastery of the techniques—in other words, helping the amateurs to become less amateurish—and on the other hand there is the problem of making some provision for the training of a new generation of arbitrators. . . .

Since the number of new arbitrators who can be trained by the foregoing methods is necessarily very limited, the chief source of new blood in the profession will probably continue to be established lawyers, professors, and others who do not look upon arbitration as their primary source of income. Today there are undoubtedly hundreds of people who had some experience as panel chairmen for the War Labor Board and who may have handled one or two arbitration cases. Many of these people might make quite acceptable arbitrators with further experience or training. However, they cannot get the needed experience unless they are acceptable and, generally speaking, they are not acceptable unless they have had experience. Thus far the discussion has not turned up any method of training that seems to give much promise of being very helpful for such people. . . .

Since experience is unquestionably the best teacher in this field, as in so many others, and since there are many potentially able arbitrators whose services are not being used, the problem of maintaining an adequate supply of arbitrators now and in the future is to a large extent a problem of promoting the acceptability of newcomers. . . .

¹ Published in *The Profession Of Labor Arbitration* (Washington, BNA, Incorporated, 1957), p. 170.

The training of arbitrators and arbitration representatives is a field in which practically nothing has been done and in which a great deal should be done. Aside from our recommendation that universities be encouraged to offer special training to arbitration representatives, this committee is not ready to propose a program of action. Such a program should be developed primarily as the result of regional discussions, and we hope there will be a number of these during the coming year. Any profession worthy of the name devotes a great deal of attention to the training of practitioners in the field. If arbitration is to be recognized as a profession, we must give adequate attention to training for this new profession. In the opinion of this committee, it is most fitting that this Academy, the professional society of arbitrators, should make training for arbitration one of its major concerns.

In 1955 a Subcommittee of the Research and Education Committee issued an interim report which dealt with education and training for the arbitration profession.² Suggested programs included internships with the appointing agencies, expansion of courses in arbitration and arbitration conferences, an arbitration student advisory service and internships with individual arbitrators.

The Research and Education Committee, during the course of its activities, has further surveyed, considered, and advised upon such matters as appropriate educational preparation for the profession of arbitration, the nature, quantity, and location of available college curricula directed toward this goal and specific courses in the field. This Committee, as part of the general range of its duties, has also produced educational and research materials useful to the training of new arbitrators.

A paper surveying 1960 arbitration apprenticeships, by Academy member Arnold M. Zack, was published in the Proceedings of the Thirteenth Annual Meeting.³

A number of Academy members have directly influenced the supply of arbitrators by engaging in formal or informal training activities. Such members have often been those acting in continuous impartial umpireships but others, without such appointments, have also served as master journeymen.

² Published in *Management Rights And The Arbitration Process* (Washington: BNA Incorporated, 1956), p. 230.

³ Published in *Challenges To Arbitration* (Washington: BNA Incorporated, 1960), p. 169.

The Academy's 1963 Member Survey, just completed, reports pertinent statistics of apprentice activities of National Academy members. Of 165 member questionnaire respondents, 14.5 percent indicated they had served as arbitrator trainers. The average number of apprentices trained was indicated as three. The questionnaire responses covered both formal and informal training arrangements and, presumably, spanned the entire arbitration careers of each of the respondents.

It is obvious, from the foregoing statistics, that only a few Academy members have found it possible to assist in augmentation of the supply of new arbitrators. This result is not wholly unexpected in light of the nature of professional arbitration service. In this service, the relationship between the arbitrator and his clients is highly personal and many arbitrators doubtless have hesitated to intrude a fourth party into this relationship. Another compelling reason playing upon the vast majority of arbitrators has certainly been the cost in time that apprentice acceptance necessarily entails. This consideration is an especially forceful barrier for the part-time arbitrators, who constitute the largest segment of professional arbitrators. Viewed from the opposite side, there is the problem of time investment by the potential apprentice in arbitration. Not many among the total potential of trainers have been in a position to compensate their apprentices. The apprentices must, in most cases therefore, take care of their economic necessities in other endeavors while they serve their apprenticeships. This fact certainly has acted as a deterrent for potential apprentices. Another deterrent for the trainer, especially if he is a part-time arbitrator, is the fact that apprentices usually cannot contribute significantly or effectively to the work of the trainer. For the greatest part of their terms, they are not sufficiently experienced to do so and, in any event, the delicate personal relationship between the trainer and the parties usually makes a significant contribution by the apprentice, even if it were possible, undesirable and undesired, at least in the view of many potential arbitrator trainers.

The probability that most member apprentice training of arbitrators has, in the past, been performed by continuous impartial umpires, or by other arbitrators in an analogous position, is suggested by the fact that the 1963 Member Survey reports that

of the 18 Academy members who began their work by apprenticeship, 13 received significant remuneration during apprenticeship. Only the continuous umpire situation normally permits such level of compensation of apprentices.

Other significant statistics from the Member Survey relate to training of present members of the Academy. Ninety percent of 175 survey respondents reported that they did not serve as apprentices. Plainly, apprenticeship service was not a prime requisite for successful entrance to arbitration for present Academy members. The statistics of source of first case of Academy members probably confirms this conclusion. Thirty percent of members received their first arbitration case directly from the parties, 63 percent from an appointing agency. Only four percent obtained their first case through "another arbitrator," who might have been, but not certainly was, a trainer.

Member statistics show, finally, that there has been little increase in recent years in the number of Academy members introduced to arbitration by use of the apprentice system. In the decade of the 1940's, seven were so trained; in the decade of the 1950's, the total was nine. If the member figures are representative, as they probably are, it thus appears that there has been no significant increase in recent years in the use of the apprentice system as a method for expanding the quantity of new arbitrators.

At the Fifteenth Annual Meeting of the Academy an extensive workshop session was devoted to problems related to providing suitable training and gaining acceptability for new arbitrators. One examination of these problems, that furnished a backdrop for the workshop discussions, was a Report of the Committee on Labor Arbitration of the Labor Relations Law Section of the American Bar Association.⁴

During the last two years, the Academy has undertaken a more active role in efforts to augment the quantity of acceptable arbitrators. This policy was instituted under the presidency of Benjamin Aaron and continued under Sylvester Garrett's succeeding term. The new policy was established as the major activity of the

⁴ The account of the 1962 workshop on The Development of Qualified New Arbitrators as well as the Report of the Committee on Labor Arbitration are published in *Collective Bargaining and The Arbitrator's Role* (Washington: BNA Incorporated, 1962).

Academy for both 1962 and 1963. In the spring of 1962, the American Arbitration Association and the Federal Mediation and Conciliation Service concluded that shortages of acceptable arbitrators in certain regions of the country required programs in those localities. The Academy was requested to cooperate and agreed to do so. Conferences between Academy officials and representatives of the appointing agencies led to the institution of the Chicago arbitrator training program, probably the first venture of its type ever undertaken.

The Chicago Program

The Chicago training program was initiated and planned by the American Arbitration Association and the Federal Mediation and Conciliation Service. It was administered in the Chicago American Arbitration Association offices by the Chicago Regional Manager. The role of the Academy was consultative and cooperative. However, all of the training at hearings and generally with respect to the particular arbitration cases heard was done by Chicago regional members. All members were invited to serve as instructors by letter from the Regional Chairman. A significant number of Chicago members accepted the invitation. During the course of the September, 1962-August, 1963 period, all of the 14 trainees accompanied members to hearings at least once; some attended several times. The time and energy expended in this endeavor by cooperating members was substantial. Attendance of trainees at hearings was arranged by either the Regional Manager, where American Arbitration Association cases were involved, or by the individual arbitrators, in other cases. Attendance of trainees at hearings occurred, of course, only after permission of the parties had been secured.

The apprentice arbitrators were requested to prepare their own opinions and awards on the basis of the evidence produced at the hearings. Subsequently, and only after the actual opinions and awards had been released, the arbitrators analyzed and discussed the trainees' practice awards with them. Unfortunately, it would seem, only a few of the trainees chose to write practice opinions and awards. The reluctance of a substantial portion of the trainees to devote the time required to this phase of the apprentice pro-

gram was an unexpected development which reduced greatly the value of the trainees' attendance at hearings.

The 14 trainees were selected by the appointing agencies after a preliminary meeting between representatives of these organizations and national representatives of the Academy.

The American Arbitration Association and the Federal Mediation and Conciliation Service appointed a local Labor-Management Advisory Committee to assist and support the program.

The Chicago program was initiated by a one day "training institute" held at the Palmer House in September, 1962. Morning sessions were devoted to arbitration procedures and practices and were conducted by major representatives of the appointing agencies. Afternoon sessions included a talk by a regional member on problems and pitfalls confronting new arbitrators and a panel discussion by arbitrator, union, and management representatives on the subject "What Labor and Management Expect of *Ad Hoc* Arbitration."

The table on page 324 summarizes the statistical aspects of the Chicago program. The statistical record has been updated to December 15, 1963.

Comments on the foregoing record are the following: Three trainees did not complete the full-year program. One transferred to another locality in June, 1963. Two others withdrew on their own initiative, in April and June, 1963. One of these two had received no appointments either before or during the program. Arbitrator H, obviously the most successful member of the group, withdrew because he felt identification with the program was hurting more than it was helping him. It is highly doubtful that the program can, with accuracy, cite arbitrator H as one of its successes. Prior to commencement of the program, he had been closely associated with a prominent Chicago arbitrator and, certainly as a consequence, he had in the prior period already received more appointments than he received from the American Arbitration Association office during the time he participated in the program (a total of three). His total score of 10, stated in the table, demonstrates that his acceptability has continued up to December, 1963.

RECORD OF CHICAGO ARBITRATOR-TRAINING PROGRAM

Sept. 17th, 1962 through Dec. 15, 1963

<i>Arbitrator</i>	<i>Name submitted</i>	<i>Company acceptance</i>	<i>Union acceptance</i>	<i>Selected as arbitrator</i>
A ¹	3	0	2	0
B	16	8	6	2
C	23	3	2	0
D	9	0	1	0
E	19	1	3	0
F	16	0	2	0
G	22	3	5	0
H ²	63	22	25	10
I	20	2	11	1
J	12	0	4	0
K	23	3	3	0
L	4	0	0	0
M ³	14	1	4	0
N ⁴	9	0	4	0
<i>Totals</i>	253	43	72	13

¹ Not participating in program after April, 1963.

² Not participating in program after June, 1963.

³ Not participating in program after June, 1963.

⁴ Deceased, December, 1963.

If Arbitrator H is excluded from the results of the program, the record shows that only two of the other 13 trainees received a total of three appointments over a period of approximately one year, in spite of the very creditable general exposure which the table reveals. Eleven of the 13 received no appointments.

It is worthy of emphasis that the table shows that company representatives were almost twice as reluctant to accept an untried arbitrator as were unions. Unions accepted 72 times and companies 43 times. This reaction is believed to be representative of a reaction that may well exist in other areas of the country.

As a summary judgment, it can be said that the Chicago program was highly successful in terms of Academy cooperation, American Arbitration Association regional office administration, and in terms of time and effort expended by member-trainers. It is possible that one or two established arbitrators may yet emerge from

the program. It is still too early to draw a final conclusion. One of the aspects of the 1963 Member Survey suggests that eventual success or failure may be fully revealed only over a considerable period of time. The Survey reveals that Academy members who began their careers by apprenticeship average 21 months before they received their first appointment.

Further Planning

In the late spring of 1963, the appointing agencies decided to initiate arbitrator-training programs in two other reported shortage areas, northern Ohio and Pittsburgh. Plans for these additional programs were discussed at a New York City meeting of representatives of the appointing agencies and of the Academy. At this meeting, on May 17, 1963, the Chairman of the present Committee submitted a set of recommendations for the new programs, based upon the Chicago experience. These recommendations suggested the following:

1. The introductory or training "institutes" should be extended well beyond one day. At least several days (or a series of Saturday mornings) should be made available to and required of the trainees. Even a minimum educational program, worthy of the name, necessitated an indoctrination period beyond that utilized in Chicago. It was suggested, also, that the forthcoming "institutes" include a greater amount of instruction from senior Academy regional members and, perhaps, from local union and management representatives, too.
2. Members of Academy regional groups should be invited to participate more actively and at an earlier time in nomination and selection of trainee candidates. It would be understood, however, that final selection would remain with the appointing agencies.
3. Consideration should be given to assignment of each trainee to a single arbitrator, to achieve the advantages of greater concentration of instruction and simplification of the administrative problem of arranging attendance at hearings.
4. Trainees should be required to study evidence and argument and write practice opinions and awards.

5. Consideration should be given to acceptance of a smaller number of trainees than in the Chicago program.

Preliminary to establishment of the new programs, Donald Straus, President, American Arbitration Association, Joseph Murphy, Vice President, American Arbitration Association, Herbert Schmertz, General Counsel, Federal Mediation and Conciliation Service, President Sylvester Garrett and the present Chairman of Committee held luncheon meetings with invited union and management groups in Pittsburgh and Cleveland on June 19 and 20, 1963. These meetings were designed to learn the reaction of these groups and to enlist their support for the programs. On the same days, dinner meetings were held with Academy members in the two regions. In both areas the responses were favorable. Labor-Management Advisory Committees were subsequently constituted in Pittsburgh and in the northern Ohio regions. In both areas, regional Academy members cooperated with the appointing agencies and the union-management committees in nomination and selection of candidates.

The Pittsburgh Program

The initial session in the program for training new arbitrators was held at the Penn-Sheraton Hotel, Pittsburgh, Pennsylvania, on October 18, 1963. The morning sessions were conducted by representatives of the appointing agencies and considered practices and procedures in labor arbitration. In the afternoon sessions union and management representatives discussed "What Management and Labor Expect From The New And Beginning Arbitrators." The Academy's regional chairman spoke on "Problems Of The New Arbitrator."

Under the Pittsburgh program, only seven trainees were selected. It was felt that with a small number a more effective exposure could be achieved. Local Academy members were given the opportunity both to make nominations and to comment on the trainees chosen.

Attendance at actual hearings began in December, 1963, and sufficient hearings were arranged so that all but one trainee was able to attend at least one during that month. It was also determined that, where possible, two trainees would be permitted to

attend the same hearing. The reason for this was to increase exposure and also to encourage the trainees to discuss points and questions raised by the hearing among themselves.

A means of exposure instituted in this program permits trainees to attend hearings conducted by arbitrators who are Academy members, but not from the Pittsburgh district.

The goal for this program is to have each trainee attend five hearings by the end of April. Up to the present, one trainee has attended four hearings, two have attended two hearings, three have attended one hearing, and one has not attended any. Two problems have arisen with respect to the scheduling of trainees for attendance at hearings. One has been the fact that there have not been enough hearings for *ad hoc* cases in the immediate Pittsburgh area. Many hearings are outside of the city, which creates a transportation problem that has not been resolved. The other and more important problem is the difficulty of matching available dates of the trainees with dates for the hearings. This problem accounts for the failure of one trainee to participate in the hearing schedule.

While plans call for trainees to write practice decisions and to discuss those decisions with the arbitrator, this phase of the program has not yet been instituted. The belief is that it will be better for the trainees to have attended at least three hearings and to absorb the atmosphere of arbitration before entering the writing phase. Within the next month some of the trainees will be ready for this activity.

The Northern Ohio Program

The northern Ohio training program has not yet begun because of problems associated with selection of the new arbitrators. It is anticipated that a beginning will be made in the near future, however. When appropriate, a report on this training program will be made available.

Committee on the Training of New Arbitrators
Pearce Davis, Chairman
Thomas J. McDermott
Joseph G. Stashower