

APPENDIX D

ENTRY INTO LABOR ARBITRATION AND THE EFFECTIVENESS OF TRAINING PROGRAMS FOR SUCH ENTRY*

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One of the assignments given to the Committee on the Development of New Arbitrators by the late President David P. Miller for 1974-1975 was to prepare and present to the Board of Governors a statement of policy and purpose with respect to (1) the activities and functions of the Committee on the Development of New Arbitrators, and (2) the policies and purposes that should govern the committee and the Academy in carrying out those activities and functions.

The determination of the committee was that the best means for accomplishing this assignment would be in the form of a request to the Board of Governors to establish the committee as a standing committee with a set of charges as to its duties, functions, and guiding policies.

At the Board of Governors' meeting on January 18, 1975, the following resolution with its accompanying charges was presented to that body by the committee's chairman, along with a request that it be placed on the agenda for vote at the Board's next meeting on April 28, 1975. A formal request, accompanied by the revised resolution, was submitted to the secretary of the Academy on March 11, 1975.

Resolution and Charges

It is proposed that the following resolution, statement of charges and policies, be adopted by the Board of Governors of

* Report of the Committee on the Development of New Arbitrators for 1974-1975. Members of the committee are John T. Conlon, Harold W. Davey, Jean T. McKelvey, Paul Prasow, Lawrence E. Seibel, John C. Shearer, Benjamin H. Wolf, Arnold M. Zack, and Thomas J. McDermott, chairman.

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the National Academy of Arbitrators, and that the necessary change in the organization's constitution be made to accomplish this objective.

A. That a standing committee be established with the designation of the Committee on the Development of Arbitrators.

Through the years the Academy has been concerned with the problem of insuring a steady supply of qualified persons for the field of labor arbitration. The development of this concern was presented in detail in the 1970-1971 report of the Special Committee on the Development of New Arbitrators. The theme of that report was that if the Academy is to fulfill its function as a professional organization, it must play some positive role in providing for the development of new arbitrators.

B. The functions, activities, and policies governing such will be as follows:

1. To cooperate with appointing agencies and other recognized organizations or groups concerned with labor arbitration in formulating programs designed to train and develop qualified arbitrators.

To this extent, the Committee on the Development of Arbitrators will serve as the Academy's liaison with those conducting or sponsoring training program. It will cooperate in the determination of course content and structure of the program. It will seek to aid the sponsoring group in securing the cooperation and assistance of Academy members to serve as lecturers, advisers, and mentors for potential candidates.

Specific designation of the Academy as a cooperating agency will be given only with the approval of the Board of Governors. The established policy governing this relationship, which is the one set forth in May 1971 by the then President Lewis Gill, is hereby confirmed.

It is the established policy of the National Academy of Arbitrators not to endorse or recommend individual arbitrators, whether or not they are members of the Academy. Accordingly, Academy sponsorship and cooperation in programs of training new arbitrators must not be taken as endorsement or recommendation by the Academy of any individuals involved in the training.

2. To monitor any and all programs that have as an objective the entry of qualified people into the profession. To the extent of its capabilities the Committee will seek to evaluate the effectiveness and results of such programs.

An important function of the Committee should be the continuous study of the various roads of entry into the profession. As such, an important part of the Committee's mission is to maintain contact with the various programs that are initiated to that end in order to keep the membership of the Academy informed as to the nature of the programs and their effectiveness in providing entry into the profession.

3. To conduct research into all areas relating to the Development of Arbitrators.

The need for a continuing study of entry into the arbitration profession should be a major continuing function of the Committee. In the past, too few efforts have been made by the Academy to investigate the question of how one becomes a qualified, accepted arbitrator. It therefore shall be a function of this Committee to conduct and sponsor studies into the demand for, supply of, and utilization of arbitrators, and to survey members with respect to determining the various roadways by which entry has been gained into the profession. Applications to be filed by persons seeking membership in the Academy should include questions that will elicit information as to how such individuals were introduced into the profession and gained acceptability. Obviously, studies requiring financial support or cooperation from substantial segments of the membership should not be conducted without prior approval from the Board of Governors and/or the Executive Committee.

4. To become and remain conversant with any and all research that is done by other individuals and organizations that is directed at the subject of entry and acceptability of new arbitrators. Information on such research should be a part of the Committee's annual report to the membership.

The Committee shall be the continuing storehouse and source of all knowledge developed with respect to entry and acceptability of arbitrators. By continually gathering and evaluating such research, and by becoming the principal repository

for such information, the Academy will fulfill one of its functions as a professional organization.

5. From its studies, cooperation with appointing agencies, research, and knowledge of other research, the Committee should seek to structure "model" training programs that would be made available for use by appropriate outside agencies or organizations.

On the basis of knowledge and experience gained from its work, the Committee should seek to develop some model training programs, recommending the content, the academic training, and the nature and extent of field work with active arbitrators that should be provided if qualified new persons are to obtain entry into the profession.

6. To continue to seek to develop some type of continuing program for entry of persons into the arbitration profession. Such program should be both practical and within the capabilities of the Academy to carry out.

The Committee should continue to direct its attention toward the establishment of some permanent program, sponsored by the Academy, that will contribute in some fashion to entry into the profession. To date no program fitting the standards of practicality and within the Academy's capabilities has been devised. However, as the Academy continues to grow, its structure is bound to change. With those changes, new capabilities may open up for the expansion of its functions. One of those may be entry into the profession. The Committee on the Development of Arbitrators should be prepared for that time so that it can make sound proposals should it be called upon to do so.

At the Board of Governors' meeting on April 28, 1975, the first part of the above resolution was voted down. However, the Board did accept Part B of the resolution as being an expression of the will of the Board of Governors with respect to the charges, functions, and statements of policy for the guidance of members of any future Committees on the Development of Arbitrators that are appointed by presidents of the Academy.

Continuing Interest Toward Entry into Arbitration

For the year 1974-1975 the Committee has also continued its work of monitoring research and writings concerned with the de-

velopment of arbitrators and entry into the profession. In addition, it has concerned itself with following up on past training programs with the objective of attempting to evaluate the degrees of success attained by those programs.

The problem of entry into the profession continues to occupy the attention of researchers. In one article examining the use of expedited arbitration, the author concluded that the procedure has not eliminated the problem of producing arbitrators acceptable to the parties, nor would it quickly develop a crop of experienced qualified arbitrators.¹ He did conclude that the procedure could give new arbitrators a viable forum for seeking experience and gaining acceptance.²

A new arbitrator, writing about the steel industry's expedited program, sees it as a very important step forward toward a solution of some of the major problems facing arbitration.³ Among the problems treated were the difficulties of gaining acceptability and the costs and delays resulting from a small group of experienced arbitrators carrying most of the workload. His word of caution to the profession on the dangers of shrugging off these problems is worthy of quotation:

"The profession of arbitration could easily shrug off these problems by referring to the private and voluntary nature of arbitration. In effect, 'what the parties want they get.' Although such a response would be appropriate for the proverbial ostrich, it would be extremely unwise for the profession. Even though arbitration is private and voluntary, the values of the process have been determined by the profession. From boilerplate grievance arbitration clauses in collective bargaining agreements, the parties have delegated to the profession the function of developing its practice, procedure and substantive concepts—the very 'warp and woof' of the process. As the dynamics of the process have become institutionalized, the

¹ Steven E. Kane, "Current Developments in Expedited Arbitration," *Labor L.J.* (May 1973), p. 287. A similar conclusion was reached by this committee in its study of the AAA expedited arbitration program. See Thomas J. McDermott, "Evaluation of Programs Seeking to Develop Arbitrator Acceptability," Appendix D in *Arbitration—1974*, Proceedings of the 27th Annual Meeting, National Academy of Arbitrators, eds. Barbara D. Dennis and Gerald C. Somers (Washington: BNA Books, 1975).

² Kane, *id.*

³ Hyman Cohen, "The Search for Innovative Procedures in Labor Arbitration," 29 *Arb. J.* 114 (June 1974).

parties and the profession have developed a 'mutuality of dependence.'"⁴

The Arbitration Journal for March 1975 contains two articles relating to entry into the labor arbitration profession. One tells of the experiences of an individual in his attempts to gain acceptance on the panels of appointing agencies.⁵ Despite the frustrations and delays encountered, this writer does recognize that for anyone to aspire to become an accepted arbitrator, he must have a genuine commitment to impartial labor arbitration and not just a wish to pick up a few extra dollars as a moonlighter.⁶

In the second article, a young arbitrator recounts his experience with his first case.⁷ Needless to say, he found the arbitration procedure to be considerably different from what he had been led to expect as a result of his academic studies. The lesson he learned from that case was that in order to understand the practical problems of arbitration, a person needs exposure to real situations in different settings and involving different types of issues.⁸ Attainment of this exposure can come only through attendance at arbitration hearings with established arbitrators.

An extensive study of entry into the profession and of training programs for neutrals was made by Ralph S. Berger.⁹ It is perhaps the most intensive study of Academy activity in these areas ever made by a non-Academy member. Berger assesses the role that he believes the Academy should play with respect to future programs as follows:

"Future training programs must strive for the development of a device to insure the cooperation of labor and management in utilizing the services of new arbitrators. Here again, the National Academy of Arbitrators has a vital role to play in offering its cooperation and prestigious backing to newcomers in the field. Because of organizational constraints, the NAA itself might not be the place from which training programs should

⁴ *Id.*, at 118.

⁵ Willis J. Nordlund, "The Arbitrator Development Process: An Outsider View," 30 *Arb. J.* 34 (March 1975).

⁶ *Id.*, at 41.

⁷ Myron Roomkin, "The First Case: Or, the One-Eyed Man in the Land of the Blind," 30 *Arb. J.* 42 (March 1975).

⁸ *Id.*, at 48.

⁹ Ralph S. Berger, "Training Programs for Neutrals" (Ithaca, N.Y.: New York State School of Industrial and Labor Relations, Cornell University, 1974), manuscript.

be conducted. Yet it is the place from which ideas for training programs and for achieving acceptability should emanate and the Academy must do so in an unselfish professional manner. The Western New York program would not have achieved the results that it already has had the NAA not cooperated in the program.”¹⁰

Also of interest to this committee are his proposals with respect to how such programs might be evaluated:

“As far as training programs are concerned, there is the need for an effective evaluation device to assess the strengths and weaknesses of contemporary programs. Such an appraisal should not be conducted by the agency that administered the program. Rather, qualified outsiders should be commissioned to make as objective an evaluation as possible. It is somewhat unfortunate that most of the literature now in the field concerning a program’s accomplishments is based on the instructing agency’s own perceptions of achievement. It would be a very worthwhile, and not terribly difficult, project to design a uniform survey instrument which might be sent to the graduates of all of the training programs which have proliferated over the last few years and to compare the results received as a first step towards outside evaluation. The NAA or SPIDR might be responsible for administering the survey and evaluating the findings.”¹¹

Finally, his conclusion concerning the difficulty of gaining acceptability is worthy of note:

“Even if all of the above measures are taken, there is no steadfast guarantee that acceptable neutrals will emerge, for it is not only the dispute settler who displays subjectivity, it is the parties to the dispute who display it as well. All other things equal, there are many labor and management practitioners who, if given the choice, would prefer to have a well known, established arbitrator hearing his case rather than a younger person with less experience, especially if the latter is a female or minority group member.

“Just as there is no method by which one can legislate morality, there is no manner by which one can decree that per-

¹⁰ *Id.*, at 53.

¹¹ *Id.*, at 69.

sonal prejudices be abolished. Yet experience has shown that many newcomers to the field can produce work of the highest quality and achieve acceptability if they are given the opportunity to perform. Supply and demand curves testify to the fact that the need for newcomers is increasing. It is not enough to adopt a laissez-faire policy and hope that the factors will work themselves out. To quote *Poor Richard's Almanac*, 'He that lives upon hope will die fasting.' For the good of the dispute settlement profession, and for the good of the parties that utilize the services of neutrals, the time to open up the gateways of entry into the field is now."¹²

William F. Edmonson and Alex J. Simon were more optimistic regarding entry into arbitration in an article concerning its use in higher education.¹³ These authors reached the following conclusions:

"Strikes by faculties in higher educational institutions will decline to an average much less than that experienced in the private sector. Negotiated agreements containing no-strike clauses will become the most common form and arbitration will increasingly become the most efficient mechanism for dispute settlement in higher education.

"As faculties, boards, and administrations in higher education become more proficient in the handling of grievances, fewer grievances will arise requiring submission to arbitration.

"A new breed of arbitrator will develop over the next ten to twenty years to settle disputes in the public sector. If past practice provides any indication as to what the future may hold, arbitrators of higher education disputes will come from the ranks of university professors who are certified by the American Arbitration Association or the Federal Mediation and Conciliation Service.

"A code for the arbitration of disputes originating in higher education institutions will be drafted and adopted for use by this new special breed of arbitrators.

"And finally, training academies will, of necessity, have to be established on a regional basis for purposes of training new

¹² *Id.*, at 69-70.

¹³ William F. Edmonson and Alex J. Simon, "Arbitration in Higher Education," 29 *Arb. J.* 217 (Dec. 1974).

people to become certified impartial arbitrators. Trainees will have the option of electing specialized training programs (i.e., programs emphasizing private sector arbitration or public sector arbitration; special seminars will be made available for individuals seeking training in the settlement of education disputes). The faculties of these academies will come from the ranks of certified, experienced arbitrators, union and association officials, government representatives, management and administrative executives, and educators.”¹⁴

Expedited Arbitration as an Avenue to Entry

For the committee’s 1973–1974 report several expedited arbitration procedures were investigated in an effort to determine if such procedures represented an avenue for giving inexperienced and partially experienced persons an opportunity to gain acceptability as arbitrators. The conclusion reached in that analysis was that, other than the steel program, expedited arbitration procedures are unlikely to serve as means of entry into the profession for new arbitrators,¹⁵ one reason being that the ad hoc expedited procedure itself gained little acceptance. Where there was acceptance of the procedure, the parties were given the opportunity to select from a multiple-names list drawn from the regular panels. As a result, those with minimal experience or those who were inexperienced were unlikely to gain any more exposure and acceptability than they would have received on the regular panels.¹⁶

However, interest in the use of negotiated expedited systems remains. In the 1974 negotiations in the glass containers industry, the Glass Bottle Blowers Association of United States and Canada, AFL-CIO, entered into agreements with at least six companies to use an expedited arbitration system. In some cases all disputes are resolved under the expedited procedure, while in others one party can elect to submit the case to regular arbitration. Contract panels of arbitrators have been selected under most agreements, and all of those so selected have been experienced arbitrators with national reputations. Where contract panels are not used, AAA and FMCS panels are used.

¹⁴ *Id.*, at 224.

¹⁵ McDermott, *supra* note 1, at 329.

¹⁶ *Id.*, at 336–341.

Also in 1974, the United States Postal Service and four Postal Unions—the Postal Workers, Letter Carriers, Mail Handlers, and Rural Letter Carriers—established an expedited arbitration procedure that is being administered by the Office of Arbitration Services of the FMCS. The procedure is to be used for “disciplinary cases which do not involve interpretation of the Agreement and which are not of a technical or policy-making nature.”¹⁷ The procedure calls for the issuance of awards within 48 hours after conclusion of the hearing, and a brief written explanation may be included. In selecting arbitrators for this program, it was the determination of the parties that the procedure would be best served if “established, nationally recognized arbitrators were called upon to participate.”¹⁸

It would appear, therefore, that other than in the steel program the expedited programs will not offer newcomers to the profession any introduction to labor arbitration. Neither are such programs likely to result in increased acceptability for those with minimal experience.

As for the steel program, there has now been sufficient use of that procedure to warrant a meaningful study of the extent to which members from the steel panels are gaining acceptability as arbitrators under regular procedures. Such a study should be the concern of the Committee on the Development of Arbitrators.

Continuing Evaluation of Prior Training Programs

Past committee reports have detailed various training programs instituted in recent years with the objective of training acceptable qualified arbitrators. The 1973–1974 report presented a preliminary analysis of the results achieved by some of these programs. The following summaries are more complete evaluations based on further information received.

*The Western New York Program*¹⁹

¹⁷ Article XV, Section 4, Labor Agreement between U.S. Postal Service and the Four Postal Unions, dated July 21, 1973.

¹⁸ Letter dated July 22, 1974, from L. Lawrence Schultz, Director of Arbitration Services, FMCS.

¹⁹ For details of this program, see Thomas J. McDermott, “Activities Directed at Advancing the Acceptability of New Arbitrators,” Appendix C in *Labor Arbitration at the Quarter-Century Mark*, Proceedings of the 25th Annual Meeting, National Academy of Arbitrators, eds. Barbara D. Dennis and Gerald G. Somers (Washington: BNA Books, 1973), p. 340, and for an evaluation of the results of that program, see McDermott, *supra* note 1, at 330–334.

One of the programs that was a subject of the committee's study was sponsored by the Federal Mediation and Conciliation Service, the American Arbitration Association, and the Western New York Industrial Relations Research Association. The National Academy of Arbitrators and this committee cooperated with those organizations in developing and conducting it.

The program began with 20 candidates and concluded with 13 graduates. In the 1973-1974 committee evaluation of this program, the tentative conclusion reached was that 9 of the 13 graduates had started down the road to acceptability. One had almost achieved the level of full acceptability, and two others were well along the road.²⁰ The cumulative data on selections and appointments from May 1973 through December 1974 strengthens the tentative evaluations made last year.²¹

Of the 13 graduates, eight are currently employed as academicians; two of them also serve as part-time public sector mediators and fact-finders in New York State. Three of the remaining five graduates are attorneys with private law firms. In addition, one is a member of the New York State Public Employment Relations Board, and he is also doing some mediation work in the public sector. Only one of the graduates is employed as an advocate, and another is currently employed as a mediator and fact-finder in the public sector.

Table 1 presents data from the AAA Syracuse office on the exposure given the graduates and the results achieved from the time of graduation through December 31, 1974. Also shown is a summary of the other appointments received from FMCS and other appointing agencies.

As was demonstrated in last year's report, Arbitrator D clearly has established himself in both the private and public sectors as a fully acceptable arbitrator. Considering the fact that he is a member of New York State's PERB, a mediator for that agency, and an attorney, his arbitration caseload of 40 cases in 20 months would have to be considered substantial and in line with the ex-

²⁰ See McDermott, *supra* note 1, at 333.

²¹ The committee is indebted to Deborah A. Brown, Regional Manager, AAA, Syracuse, N.Y., for her work in running a continuing compilation of the AAA data, and to C. Richard Miserendino, Assistant to Jean McKelvey at Cornell University, for his report on those data and on the survey he conducted among the 13 graduates. The information presented here is drawn from that report.

Table 1

LISTINGS AND APPOINTMENTS,
GRADUATES WESTERN NEW YORK PROGRAM

May 1973 Through December 31, 1974

| Arbi- trator | AAA Experience | | | | Appointments Other than AAA Other | | | | |
|-----------------|----------------|---------|----------------|---------------|---|----------------|------|---------|--------|
| | Times Listed | | Times Selected | | Times | | | Other | |
| | Public | Private | Unions | Em- ployer | Jointly | Ap- pointed | FMCS | Private | Public |
| A | 3 | 3 | 0 | 1 | 1 | 0 | 0 | 2 | 4 |
| B ^a | 13 | 6 | 0 | 2 | 1 | 0 | — | — | — |
| C | 23 | 1 | 4 | 1 | 1 | 1 | 0 | 2 | 0 |
| D | 29 | 39 | 29 | 22 | 14 | 7 | 4 | 12 | 17 |
| E | 30 | 5 | 14 | 9 | 1 | 1 | 4 | 3 | 3 |
| F | 17 | 2 | 2 | 7 | 1 | 1 | 3 | 1 | |
| G | 21 | 1 | 3 | 0 | 0 | 0 | 2 | 6 | |
| H | 11 | 4 | 3 | 5 | 0 | 0 | 0 | 4 | |
| I | 15 | 0 | 2 | 7 | 1 | 0 | 1 | 1 | |
| J | 20 | 5 | 9 | 6 | 2 | 2 | 3 | | 1 |
| K | 34 | 25 | 25 | 22 | 10 | 7 | 2 | 1 | 5 |
| L ^a | 10 | 3 | 1 | 3 | 1 | 0 | — | — | — |
| M | 22 | 1 | 6 | 8 | 3 | 2 | 3 | | 6 |

^a Information pertaining to other than AAA cases not received.

perience of many fully accepted arbitrators performing on a part-time basis.

Another graduate who is well on the road to gaining acceptability is Arbitrator K. His being chosen by at least one of the parties in 47 out of 59 times listed on the AAA panels (by unions in 25 instances, by employers in 22 instances, and 10 times jointly) indicates a high degree of acceptability. Above all, a total of 15 cases over a 20-month period constitutes a strong beginning for a new arbitrator. In as much as he is not on the Steel Expedited panel, his caseload was composed entirely of regular arbitration cases.

It also appears that Arbitrator M has made a good start in the profession, although his acceptability on the AAA panels was only fair. Up to December 1974, all but one of his cases had been in the public sector—two from AAA, two from FMCS, and six from other sources.

Another graduate who has done well is Arbitrator E. Although his record of acceptability on AAA panels has not been particularly good (one joint acceptance and one appointment), he has had four cases from FMCS, all in the private sector, and three from PERB in the public sector. This arbitrator is on the Steel Expedited panel and the three cases under "Other Private" were a result of appointments on that panel.

Arbitrator C, the only female graduate, received her first AAA appointment in a public case; her two private cases were from the Steel Expedited program. However, she is working full time and is also a Ph.D. candidate, so that her availability is quite limited. Arbitrator F has had one AAA appointment as well as three private sector selections from FMCS and one on the Steel Expedited program. Arbitrator J received two appointments from AAA, three private sector cases from FMCS, and one public sector case. Arbitrator G's selection record on the AAA panels has been poor, but he received two private sector cases from FMCS and six on the Steel Expedited program.

Arbitrator A originally sought cases only in the Buffalo area and has since relocated in Minneapolis, Minn. Prior to his departure, he received four public sector cases through PERB and two Steel Expedited cases.

Of the remaining graduates, Arbitrators B and L have never been appointed on an AAA case. Arbitrator H's four private sector cases have been under the Steel Expedited program. Arbitrator I has received one case through FMCS and one Steel Expedited case.

Thus, of the 13 graduates of the Western New York program, one has gained full acceptability in a 20-month period, three are well along the road to full acceptability, and three have made good starts and stand a good chance of reaching the professional ranks. Arbitrators C, I, and A have had a few cases and may still gain acceptability. Whether Arbitrator A can continue his arbitration work in his new location is, of course, a question. Only two graduates have shown no movement toward gaining acceptability. The fact that Arbitrator L is the only advocate among the graduates may explain why he has not been selected. Analysis of these data indicates that the Western New York program has had outstanding success in producing persons who are proving to be qualified and acceptable arbitrators.

Evaluation of the Program by the Graduates. Committee member Jean McKelvey and Academy member Alice Grant conducted a survey among the 13 graduates to solicit their opinions on the quality of the training program. Questions related to time devoted to subject matter, size of the group, the format and content of the group meetings, and the value of the candidate's field experience.²²

Their general opinion of the training was very favorable, and they unanimously endorsed continuation of the program. They considered the mock awards and attendance at hearings an extremely valuable part of the program, and they believed that the size of the group, originally 20, was appropriate. Furthermore, ten stated that the program fulfilled their expectations in terms of what they wished to learn. All but one said that he received enough individual attention.

The graduates were somewhat more critical of the course content. Nine of them stated that the program could not have been condensed and covered in any shorter period of time, but nine also believed that some of the topics were treated superficially. Some legal aspects of arbitration were mentioned most often as deserving more time and emphasis, among them being the basis of an arbitrator's authority, procedures for hearings, contract law, and the relationship of arbitration to other laws, as Title VII.

The group endorsed the type of group instruction employed in the course, the use of AAA films of mock arbitration cases, and the use of guest lecturers, several of whom were Academy members and officers. Their contribution was considered to be of much value and the scope of their topics neither too broad nor too narrow. In addition, the consensus of the group was that the discussion periods were both informative and interesting. In view of the success of its graduates the conclusion would have to be that the program's objectives were achieved.

The Southern California Program at UCLA

Another program for which this committee served as a cooperating agency was sponsored by the U.S. Department of Labor at

²² This information is drawn from Miserendino's analysis of the questionnaires, Spring 1974.

UCLA's Institute of Industrial Relations.²³ Program directors were Philip Tamoush and Academy members Howard Block and Paul Prasow. The training aspects of the program covered a period of approximately one year; all 22 participants who were initially selected were graduated.

Following completion of the formal aspects of the program, the directors began a series of activities directed at enhancing the acceptability of the graduates as arbitrators and neutrals; some of these were described in last year's report.²⁴ This year further measures were instituted, including securing the agreement of all of the graduates to the following conditions:²⁵ (1) they would be available during 1973–1974 at a fee of \$150 per day; (2) they would set hearing dates within 15 days after being selected by the parties; (3) they would issue their opinions and awards within 15 days after the record was completed; (4) copies of their class and actual arbitration opinions would be made available to persons contacting the Institute for information about the graduates.

These policies were designed to meet and counter some of the most frequently voiced objections to arbitration, thereby enhancing the acceptability of the graduates.

Following the graduation, the program directors established contacts with various organizations, committees, and representatives of parties, such as the League of California Cities, the County Supervisors Association of California, and the Los Angeles County Federation of Labor Executive Committee. One result of these meetings was that the City of Anaheim, Calif., and its Employees Association agreed "that to the maximum extent possible they would have the American Arbitration Association list the names of only the program graduates on the arbitration panels submitted to that City and the Union."²⁶

²³ See Thomas J. McDermott, "Progress Report: Programs Directed at the Development of New Arbitrators," Appendix E in *Arbitration of Interest Disputes*, Proceedings of the 26th Annual Meeting, National Academy of Arbitrators, eds. Barbara D. Dennis and Gerald G. Somers (Washington: BNA Books, 1974), pp. 253–255, for a description of the make-up of that program. For an initial evaluation, see McDermott, *supra* note 1, at 334–335.

²⁴ See McDermott, *supra* note 1, at 334–335, for a description of the activities carried out.

²⁵ Paul Prasow, Howard Block, and Philip Tamoush, *Training and Development of Third Party Neutrals for the Public Sector—Follow Up Phase*, Annual Report submitted to the U.S. Department of Labor, July 1, 1973–June 30, 1974, p. 4.

²⁶ *Id.*, at 12.

During 1973–1974 the graduates heard approximately 60 cases, including labor arbitration, housing authority disputes, and fact-finding. Public sector agencies that have used the graduates are the County of Los Angeles, the County of San Diego, the Southern California Rapid Transit District, the City of Anaheim, the City of Garden Grove, the County of Santa Barbara, and Clark County, Nev. Five of the graduates are regularly receiving fact-finding or arbitration appointments; three have been receiving such appointments on an occasional basis.²⁷ All appointments have been in the public sector.

University of California at Berkeley Program

The Department of Labor sponsored a program in California in 1972 for the training of neutrals in the field of dispute settlement in the public sector. This one, which also lasted one year, was under the direction of Academy member Adolph Koven. Of the 562 persons who applied for admission to the program,²⁸ 325 were eliminated on the basis of their written applications. The remaining 237 were interviewed at least once and 81 were interviewed twice.

The interviews were conducted by a panel of staff and advisory board members, the latter including representatives from labor and management in the San Francisco Bay area. Of the 18 finally selected, nine were males and nine females. Their ages ranged from 29 to 54 years, most of them being in their thirties. In the group were four white women, one native American, seven blacks, two Chicanos, and four Asians. All but one held an undergraduate degree, and 12 were either working toward or holding a graduate or law degree. Five of the group were practicing attorneys.²⁹

One criterion for selection was prior experience in labor-management or community relations. Other criteria were exposure or involvement in such adversary situations as activities related to the elimination of racial, ethnic, and sex discrimination, and interest in advancement to professional status in the dispute settlement field.³⁰

²⁷ *Id.*, at 14.

²⁸ *Supra* note 9, at 38.

²⁹ *Id.*, at 39.

³⁰ *Id.*

The program was divided into three phases, the first consisting of 102 hours of formal classroom training in such areas as collective bargaining in the public sector in California, urban and community issues and problems, and dispute settlement procedures. The second phase lasted five months for a total of 160 hours. Here the trainees spent about equal amounts of time in each of the following activities:³¹ (1) exposure to actual collective bargaining situations involving the state and federal conciliation services and private arbitrations (included here were six mock arbitrations conducted by the students); (2) exposure to community disputes, including the area's college consortium dispute settlement panel, landlord-tenant disputes, and AAA commercial arbitration; (3) involvement in formulating and presenting either party's position in labor relations and community relations disputes. All but one of the trainees completed the course.

To help them gain acceptability, a biographical brochure was prepared and circulated in the area. As of March 1974, one student had been selected for five arbitrations and one for three arbitrations. One of the women graduates had been selected as a permanent member of a three-person panel in the Affirmative Action Grievance Procedure for the California canning industry.³²

The Cleveland Program

A training program initiated in 1971 by Academy member Edwin R. Teple, described in prior reports of this Committee, consisted of an approved course conducted at the Case Western Reserve University Law School for which academic credit was given.³³ The results of this program are now quite conclusive, and they would have to be rated as excellent. All 18 persons enrolled completed the formal aspects of the program, and 12 participated in field work—accompanying arbitrators to hearings. Five of the group have gained what could be called full acceptability and all are now members of the Academy. In addition, one other graduate heard several cases, but work with the Cleveland Bar Association has become his all-consuming interest.³⁴

³¹ *Id.*

³² As reported by A. Koven to Berger, *id.*, at 42.

³³ Details of this program were reported in the 1971-1972 report, McDermott, *supra* note 19, at 337, and some evaluation was presented in the 1973-1974 report, McDermott, *supra* note 1, at 342.

³⁴ Letter dated Sept. 3, 1974, from Edwin R. Teple.

American Arbitration Association Activities

The new American Arbitration Association program, designed to encourage the use of underutilized arbitrators, is the Data Bank of Awards. Under this program, all awards published by AAA will automatically become part of the Data Bank without regard to whether they have been reported elsewhere. In addition, arbitrators who wish to have any of their unpublished decisions in the Bank may send them to AAA, provided there is an accompanying statement that the parties have no objection to publication.

These decisions will be microfilmed and will be available for a small fee to any person requesting them. Thus, the parties will have an opportunity to see samples of an unfamiliar arbitrator's work.³⁵

A second activity directed at enabling parties to become familiar with new and lesser known arbitrators is the "showcase program" being conducted by Harry R. Payne, Regional Manager of AAA's Detroit office. Under it, three or four arbitrators, selected on the basis of potential, availability, interest, and no objective conflicts of interest,³⁶ make 10- to 15-minute presentations on one or two topics and answer questions before various labor-management groups. The topics are the standard ones, such as discipline, evidence, power of the arbitrator.

Since the inception of the program, 14 arbitrators have been "showcased" before several audiences, including the Industrial Relations Association of Detroit; the Industrial Relations Research Association at Kalamazoo, Toledo, and Wayne State; the Personnel Association in East Lansing; and the Lenawee County Management Club.

Mr. Payne reports that the result of the program is difficult to assess. Some of the "showcased" arbitrators have received an increasing number of cases; others have not.

All of the presentations have been enthusiastically received by the parties who apparently like to have the opportunity to meet these less familiar arbitrators, to listen to their views, and to ask

³⁵ *Study Time*, ed. M. Stone, AAA, Oct. 1974.

³⁶ Letter dated May 21, 1974, from Harry R. Payne, Regional Manager, Detroit AAA.

questions. Such a program appears to be a valuable device for enabling new arbitrators to make themselves known to the parties who make arbitrator selections.

Conclusions

Interest in the subject of entry into the profession of labor arbitration appears to continue unabated. Arbitrator caseloads continue to grow,³⁷ and recruits to the profession must learn the skills and gain acceptability.

The preceding evaluations of the Western New York and the Cleveland programs demonstrate that properly designed and administered training programs can contribute to the development of persons qualified to serve as labor arbitrators and to the achievement of acceptability for those persons. Evaluation of the UCLA program indicates a degree of success, particularly with respect to gaining some acceptability in the public sector for eight of its graduates. Unfortunately, the data received on the experience of the graduates of that program were not too specific, so that it is difficult to distinguish the acceptability of those eight graduates as between fact-finding and arbitration.

The Berkeley program results do not indicate any substantial degree of success thus far. The 562 applications for admission suggest that far too much advance publicity was given to the program. The burden of selection must have been overwhelming. Furthermore, it would appear from the composition of the group of trainees that the selection panel concentrated more on achieving a sex- and minority-balanced group than on selecting persons who might have the better qualifications for gaining acceptability as labor arbitrators.

It would also appear that the program sought to cover the landlord-tenant, student administration, and minority disputes, in addition to labor disputes. In view of the voluntary aspects of labor arbitration, where the arbitrator is subject to mutual selection by the disputing parties, it is questionable if graduates of

³⁷ AAA reports the following number of cases administered:

| | <u>1973</u> | <u>1974</u> | <u>Percent Increase</u> |
|----------------|-------------|-------------|-------------------------|
| Public sector | 2193 | 3098 | 41 |
| Private sector | 6430 | 6966 | 8 |
| Total | 8623 | 10,064 | 17 |

programs directed at developing neutrals for all types of disputes will receive any high degree of acceptability in labor arbitration.

One thing the evaluations to date have indicated is that not only must a training program be well designed in terms of academic content and on-the-job training, but there must also be positive and specific measures taken to insure the support of the labor-management practitioners in the matter of acceptability. The Western New York program had that support from the beginning through the sponsorship of the IRRRA and its membership, made up mainly of labor-management practitioners. In Cleveland it was achieved through the assistance of a number of Academy member-arbitrators in the area, who assisted the graduates in making personal contacts with labor and management representatives. In addition, the AAA regional office was of great assistance, and the graduation ceremonies were made a part of a Conference on Labor Arbitration that was widely attended.

The evidence is also conclusive that the movement toward expedited arbitration is not likely to serve as an entry for many new arbitrators into the profession. The thinking of the parties in industries other than steel, where expedited arbitration procedures have been established, seems to be that they want the insurance that, absent detailed opinions, their cases will be fairly decided by established and experienced arbitrators.

As suggested above, the extent to which the expedited panels in the steel industry are contributing to the entry and acceptability of new arbitrators should be the subject of a future study by this committee. In addition, a most valuable source of information on entry into the profession would be the experience of the approximately 100 arbitrators who have been admitted as members of the Academy in the last few years.³⁸ A study of those members should be made; and furthermore, it is one that is well within the capabilities of the Committee on the Development of Arbitrators. Still another area of study within the capabilities of the committee would be a survey of Academy members in order to determine the extent to which those arbitrators are making use of assistants, the ways in which they are being used, and the success assistants have had in gaining acceptability.

³⁸ This type of study was the suggestion of Committee Member Benjamin Wolf.

The use of assistants is distinguished from the apprenticeship method of training arbitrators, which has been an important route of entry into the profession. Under the apprenticeship method, the arbitrator obtains the permission of the parties to accept the apprentice for hearing cases. Assistants, on the other hand, are used in a variety of ways, from doing research and writing rough drafts of background facts and drafts of decisions, under the guidance of the arbitrator, to serving as hearing officers.

The above are but a few areas for investigation by future Committees on the Development of New Arbitrators. Concern with entry into the profession and with the supply of experienced and qualified arbitrators is not abating. It is incumbent upon the Academy, as the professional organization for arbitrators, to maintain contact with and an active role in the development of qualified arbitrators.