

APPENDIX C

1978 REPORT OF THE COMMITTEE ON
DEVELOPMENT OF ARBITRATORS*

EDWIN R. TEPLÉ**

The members of the Committee on Development of Arbitrators believe the time has arrived for the establishment of a training program that is national in scope, and that such a program should be conducted on a continuing basis in any area of the country where a need for more new labor arbitrators becomes evident. A number of training programs have been undertaken over the past few years, but success, if measured by the acceptance of those completing the program, has been variable. The American Arbitration Association, the Federal Mediation and Conciliation Service, and the Labor Relations Law Section of the American Bar Association continue to have an active interest in the development of new labor arbitrators. An outstanding example of this interest was the Wingspread Conference on Training sponsored by the AAA in June 1977 at Racine, Wisconsin.

Previous committee reports have noted that a number of highly acceptable arbitrators who are presently members of the Academy received their basic training as interns in the offices of umpires for some of our major industries. It has been more difficult for ad hoc arbitrators and umpires in smaller industries to use and train interns in the same manner, or to give them the exposure they need. The committee believes that a modified intern approach can be utilized in many sections of the country to expand the development of new arbitrators as a complement to the more traditional training programs undertaken periodi-

*Members of the Committee on Development of Arbitrators are Howard S. Bellman, Theodore Dyke, Milton T. Edelman, James A. Gross, J. Kaney Hayes, Charles F. Ipavec, Matthew A. Kelly, Marlyn E. Lugar, James A. Morris, Jean T. McKelvey, Charles A. Myers, Kenneth Edward Norman, Paul Prasow, Francis X. Quinn, S.J., J. Thomas Rimer, Paul H. Sanders, Joseph A. Sickles, Duane L. Traynor, Burton B. Turkus, Marlin M. Volz, James P. Whyte, Louis Yagoda, and Edwin R. Teplé, chairman.

**Lecturer in Law, Case-Western Reserve Law School, Cleveland, Ohio.

cally as a need is perceived by particular sponsoring groups or agencies.

Proposed National Training Program

Based on responses to questions submitted to the members of the committee and other discussions we have had, the chairman has completed the following outline of a proposed national training program for labor arbitrators:

A. Qualified candidates would first be identified and approved.

1. AAA regional offices and FMCS headquarters are potential sources of names and might be used to check nominees with labor and management officials. People already on a labor panel but with limited or no established acceptability, for instance, might be included for advanced training and further exposure.

2. An application form has been developed which can be used for the purpose of clearing candidates in advance with AAA and FMCS, so that once the candidates have completed the program in a manner acceptable to both organizations, they might be placed on lists submitted to the parties.

B. Subsequent training would follow the intern approach, with candidates attending a minimum number of hearings conducted by members of the Academy. Three to 10 hearings would be arranged, depending on the individual candidate's background and prior cases or exposure to arbitration; hearings with as many different arbitrators as possible would be desirable.

1. Training would include note-taking and the rendering of practice opinions which would be submitted to the arbitrator for comment and comparison with the award actually issued in the case.

2. Candidates would be required to become familiar with AAA and FMCS rules as well as with the Code of Professional Responsibility.

3. Depending on local need or the interest of the candidate, special emphasis could be placed on some particular kind of arbitration, such as incentive or job-evaluation cases, public-employee grievances, or interest disputes.

C. The basic intern approach would be supplemented by additional education tailored to the candidate's specific needs, as the committee, AAA, or FMCS may indicate.

1. Local college or graduate courses might be utilized for this purpose. For example, a lawyer might be required to take or audit a course in labor relations or arbitration, or a professor of business administration might be required to audit a course in evidence.

2. Attendance at locally available seminars, short courses, FMCS and AAA programs, regional Academy meetings, and other similar activities would be encouraged or required, depending upon the individual's progress or need.

D. Entry into the program might occur at any time and in any part of the country where the candidate resides and necessary resources are available. The program would be locally oriented and continuing. Candidates would be processed individually or in very small groups.

1. A candidate with a fairly complete background in labor relations or limited arbitration experience might finish in one year, while others might take two or three years.

2. Course and seminar fees would be paid by the candidate, but hearings would be arranged locally or nearby to keep other expense at a minimum.

3. Where possible, periodic meetings with two or more candidates and a member of the Academy might be arranged in which experiences could be shared and questions asked.

E. All possible means would be used to introduce candidates to the parties—regional AAA council meetings or training programs, IRRA meetings, and so on. Candidates would also become acquainted with AAA and FMCS regional personnel as early as possible in the program.

1. Candidates also could be introduced to state-agency personnel in areas that have public-dispute-settlement systems at the state level.

2. It is expected that AAA regional offices will be able to take part in the administration of the program.

3. Advance information concerning all seminars, meetings, courses, and workshops in each area of the country would be collected by a cooperative network and made available to candidates in training as early as possible.

4. Regional councils of the AAA might be used to obtain cooperation from union and management officials in some localities, and other ways to increase the exposure of approved candidates might be found elsewhere.

Copies of this proposal have been submitted to the American Arbitration Association and the Federal Mediation and Concilia-

tion Service. The chairman has been advised that both agencies are prepared to cooperate in a program of this kind, although the extent of their cooperation has not yet been determined.

Academy members in the Ohio Region have taken steps to initiate this program, under the guidance of Charles Ipavec and Kaney Hayes. Applications were sent to 17 prospective candidates; some applications have been completed and returned and are now being processed. A copy of each completed application has been forwarded to the AAA and FMCS for their consideration in connection with possible preliminary approval. Further steps will be taken with regard to the most qualified candidates, based on advice received from the AAA and FMCS. Candidates who fail to receive initial approval may be added to the program in the future if their qualifications increase.

Discussions concerning possible adoption of the program are under way in New England, where Charles Myers is working on details with those interested in that area. Paul Prasow reports that copies of the program outline were handed out during a discussion of arbitrator training at a regional meeting in California on February 28, 1978.

Marlin Volz reports that several of the law faculty at the University of Louisville, all members of the Academy, in cooperation with the executive director of the Louisville Labor-Management Committee, periodically conduct a one-day program for new labor arbitrators. These aspiring neutrals serve a type of internship, attending hearings with members of the Louisville group and writing practice opinions for review by the arbitrator of record.

Training Programs in Progress

While the expedited arbitration program in the steel industry is not quite the same as the intern approach, there are continuing reports that the program is producing new arbitrators acceptable to the parties involved. People on panels for expedited cases in steel are, in effect, graduating as their experience and acceptability increase, and they are then assigned to more difficult, standard cases.

The committee has received information concerning several training programs of the traditional type that were conducted or started during the past year.

Under the direction of Jean McKelvey, the ILR School of Cornell University, in cooperation with the AAA and FMCS, is

preparing a training program for women interested in becoming labor arbitrators. The academic part of this program consists of three two-day workshops in New York City, on May 19–20, 1978, October 20–21, 1978, and a Friday and Saturday in April 1979. In the interim between the workshops, candidates are assigned to observe at least six arbitration hearings and to write mock opinions and awards. The program is limited to 15 participants chosen by a selection committee representing the three sponsors.

A Michigan training program was undertaken jointly by the AAA regional office in Detroit and the College of Education at Wayne State University. The cosponsors were assisted by Ronald Haughton and other Michigan members of the Academy. Forty applications were screened by a joint committee, and 25 candidates were accepted initially. Nine or 10 members of this group attended three arbitration hearings and wrote draft awards. At latest report, five or six of the most active participants had received case assignments.

The Arbitration Committee of the Labor Relations Law Section, American Bar Association, is planning a very ambitious training program for labor arbitrators which will be centered in New York City but will draw candidates from all parts of the country. The candidates have been screened by a joint committee, including representatives of the AAA and FMCS, and the final list will be reduced to 15. The academic part of the program will be handled by the dean and members of the law faculty of Columbia University. Attendance at arbitration hearings with members of the Academy will be arranged. Financing of the major costs involved, including travel expenses of accepted candidates and publication of academic material developed for this program, is being arranged by the Labor Law Section. It is expected that graduation from this program will assure placement on the labor panels of both the AAA and FMCS so long as the candidate does not become involved in advocacy in the field of industrial relations.

The Institute of Industrial Relations at UCLA has been asked to undertake a new training program in California, in cooperation with the FMCS and the Los Angeles Bar Association. Arrangements are still in the discussion stage.

James L. Stern indicates that the Wisconsin people are studying the need and practicability of special training in that state for neutrals to be used for interest disputes in the public sector.