

CHAPTER 10

THE ARBITRATION PROFESSION

I. THE DEMOGRAPHIC AND PROFESSIONAL
CHARACTERISTICS OF ARBITRATORS IN NORTH AMERICA

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In 1985 the Research Committee of the National Academy of Arbitrators published a monograph in which 590 publications were cited and annotated.¹ Labor arbitrators and arbitration have been the subject of study for decades. However, none of the studies are based on information about the population of arbitrators in North America (that is, Canada and the United States). The demographic and behavioral research is limited to small sets of arbitrators, such as NAA members, labor panels of the Federal Mediation and Conciliation Service (FMCS) and American Arbitration Association (AAA), or practitioners in a specific geographic area.

Because of this shortfall of information, it was impossible to make general statements with any degree of certainty about labor arbitrators and their professional practices until the NAA Research Committee initiated this study. As to caseload, age-gender mix, and other specific questions, available information was even more speculative.

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The survey was implemented under the leadership of Toni Genalo and Roy Hickman, Survey Research Center, Iowa State University, and the University of Minnesota provided computing funds for the preparation of this report. Special thanks go to Diana Beck and Mary Connerly, graduate students in Industrial Relations at the University of Minnesota and Iowa State University, respectively. This article is an abridgement of the original presentation.

¹*An Annotated Bibliography of Labor Arbitration, Labor Arbitration Awards* (Chicago: Commerce Clearing House, 1986).

The NAA Research Committee identified a twofold need for this research: (1) to develop a data base on the demographics and the professional practices of all arbitrators, and (2) to establish baseline statistics against which future data could be compared to measure the nature and extent of secular change in labor arbitration.

This report is the first formal analysis of the data gathered through the survey. Its purpose is to lay the foundation for subsequent data analyses and to identify research questions that can be answered with these data. The report is organized as follows:

1. The methodology of the survey is reviewed, and the representativeness of the response sample is assessed.
2. Statistics on the demographic and practice characteristics of labor arbitrators are presented to make inferences about the labor arbitration population, and differences between Academy and non-Academy arbitrators are analyzed.
3. Findings and questions for future research are summarized.

Methodology

A questionnaire was distributed to a sample of arbitrators in North America. Information was elicited on a broad range of demographic (education, age, sex, race, marital status) and practice (work status, per diem fees, caseload, office location) variables. A list of labor arbitrators and the questionnaire were prepared, and the survey was completed by late 1986.

Initial Population and Subsequent Respondents

The list contained the names of 645 NAA members and 3,712 nonmembers, a total of 4,357 potential arbitrators in North America. On March 23, 1987, a questionnaire was mailed to Academy members (645) and to a 20 percent random sample (742) of nonmembers. A follow-up postcard encouraging replies was mailed to nonrespondents in April 1987.

The nonmembers were randomly sampled from geographic strata (zip code).² Table 1 indicates the sample size, number of

²This was accomplished by first listing in alphabetical order the names of 3,712 nonmembers within zip code. A random number between one and five was drawn. The number was three. Then, the third name was drawn and every fifth name thereafter throughout the remainder of the list.

responses, and usable returns received. Due to inadequate or insufficient addresses, 72 questionnaires were returned. These were retained in the population count on the assumption that they were bona fide arbitrators even though their mailing addresses were not current.

The first question asked of those surveyed was: Have you ever been a neutral arbitrator? Those responding "no" were asked to return the questionnaire without answering the remaining questions. Thus, 74 indicated that they had never practiced arbitration, were currently ineligible to arbitrate, or were incapacitated or deceased.³ Under ideal conditions these would not have been

Table 1. Population Sample and Responses

	NAA	Non-NAA	Total
(1) Number of labor arbitrators in North America	645	3,712	4,357
(2) Number in sample	645	742	1,387
(3) Number of responses	387	409	796
(4) Usable returns	369	278	647
(5) Bad addresses	3	69	72
(6) Noneligible	13	61	74
(7) Other unusable returns	2	1	3
(8) Adjusted number of labor arbitrators in North America ¹	623	3,046	3,669
(9) Usable returns of labor arbitrators who practiced in 1986	347	208	555
Expansion weights ²	1.6884	10.9568	—

¹The row (1) figures were adjusted downward, using information about noneligible names on the master list. The adjustment percentages, 3.385% for Academy members and 17.941% for nonmembers, were computed by dividing "noneligible" by "number of responses" less "bad addresses."

²Computed by dividing "Adjusted number of labor arbitrators in North America" by "Usable returns." These expansion weights are used whenever member and nonmember subsamples are combined to estimate statistics having to do with all arbitrators. In effect, each nonmember response is treated as if it were 10.9568 responses, and each Academy response is counted as 1.6884 responses, because Academy members are, by design, already overrepresented in the sample.

³Noneligible Academy members in this category (13) were either incapacitated or deceased. However, among nonmembers, some who practiced exclusively as mediators or

listed as arbitrators; consequently, these responses were used to adjust downward the presumed population size (see Table 1, rows (1) and (8)). The resulting best estimate of labor arbitrators in North America who were willing and able to practice in 1986 was 3,669.

This is the first known census of labor arbitrators, and it serves as a baseline against which census updates can be compared. However, it is important to note that this estimate is a bit low, since seven listing agencies did not share their rosters and since some arbitrators may not be named on any list, be carried in the 1985 Directory of U.S. Labor Arbitrators, or be a 1986 NAA member. The number of arbitrators excluded for these reasons, though not estimable, is certainly small.

Comparison With Prior Studies

Table 2 presents the sample means and percentages from this and previous studies on age, education, professional affiliation, and employment status. The present study's NAA and total sample findings on these variables are both reported to improve the quality of the matched comparisons. Despite the diversity of each study's underlying population, the high degree of conformity is encouraging. It suggests that our sample is a reliable representation of the population of arbitrators.

The average age of our respondents is 59.3, which is almost the same as the mean age in the Briggs and Anderson, Petersen and Rezler, and King studies. However, the average age among NAA respondents in our study is 62.3, considerably higher than that reported by McKelvey and Rogers. In 1969 the mean age of NAA respondents to their study was 57. This difference is probably because the mean age of Academy members has increased during the intervening years. McKelvey and Rogers also reported that a 1962 NAA survey had put the average age of

fact finders were included on the master list. The list of arbitrators was developed by first merging and then sorting out duplicates from the list of arbitrator names provided by FMCS and AAA. Any additional names (from the NAA membership directory and the BNA 1985 Directory of U.S. Labor Arbitrators) not on the merged/sorted list were added. Finally, a directory of every known state and provincial agency maintaining rosters of labor arbitrators was compiled. Sixty-five of the 72 agencies contacted responded to the request for copies of their rosters. Nonduplicate names were added to the master list. Some on agency lists were not arbitrators but worked only as mediators, fact finders, or administrators.

Table 2. Comparison of Prior Studies to 1988 NAA Study

	NAA Study (1988)		McKelvey & Rogers ¹	Briggs & Anderson ²	Petersen & Rezler ³	King ⁴
	NAA	Total	(1971)	(1980)	(1977)	(1971)
Sample	NAA Arbitrators in North America	Non-NAA & NAA Arbitrators in North America	NAA Arbitrators	AAA Arbitrators in Los Angeles & San Francisco	NAA & Non-NAA Arbitrators in Midwest Region of AAA	BNA Published Arbitrators
Sample Size	369	647	222 ⁵	133	97	134
Average Age	62.3	59.3	57	57.6	57.9	57.9
	percentages					
Have Law Degree	58.5	55.9	58.6 ⁵	45	59	68.9
Have Ph.D. Affiliations	29.8	22.7	29.3	23	n.a.	n.a.
AAA	79.7	57.1	n.a.	n.a.	n.a.	64.9
IRRA	72.6	50.3	n.a.	n.a.	n.a.	35.8
Full-Time Arbitrator	43.5	32.97	25.2	n.a.	32	n.a.
Part-Time Arbitrator	56.5	67.03	74.8	n.a.	68	n.a.

¹McKelvey and Rogers, *Survey of the Arbitration Profession in 1968*, in *Arbitration and the Public Interest*, Proceedings of the 24th Annual Meeting of the National Academy of Arbitrators, eds. Barbara D. Dennis and Gerald G. Somers (Washington: BNA Books, 1971), 275.

²Briggs and Anderson, *An Empirical Investigation of Arbitrator Acceptability*, 19 *Indus. Rel.* 163 (1980).

³Petersen and Rezler, *Fee Setting and Other Administrative Practices of Labor Arbitrators*, 68 *LA* 1383 (1977).

⁴King, *Some Aspects of the Active Labor Arbitrator*, *Personnel J.* 115 (1971).

⁵Computed by combining the holders of LL.B. (81) and J.D. (49) degrees and dividing by 222. McKelvey and Rogers, *supra* note 1 at 282.

NAA members at 52.7. The oldest respondent in our sample was 93 years of age.

The percentage of arbitrators with law degrees (55.9%) compares well with the finding by Petersen and Rezler (59%), who studied a random sample of NAA and non-NAA members on the AAA midwest region labor panel. A different figure is reported by Briggs and Anderson. Of all responding arbitrators on the AAA labor panels in the Los Angeles and San Francisco regions, they reported that 45 percent had law degrees. The limited geographic scope of that study restricts its comparative value. However, Briggs and Anderson observe that their 45 percent figure is biased downward because prior information on the educational backgrounds of arbitrators in their population showed that 54 percent actually held law degrees. This statistic and ours differ by less than two percentage points. The NAA match on this variable is nearly perfect (58.5% for our study and

58.6% for McKelvey and Rogers). The statistics in previous research on the percentage of Ph.D. arbitrators are also almost identical.

The percentages of arbitrators affiliated with the AAA and the IRRRA in this study and in the King study diverge. These differences are explained by the highly selective criteria King used in drawing his sample of 134 male arbitrators.

The full-time and part-time matches between our study and Petersen and Rezler are remarkably similar. However, with the NAA subsample, McKelvey and Rogers report an employment status distribution that is sharply different from ours. This difference is probably a manifestation of survey question construction. The current study first differentiated between active and nonactive arbitrators, and then asked active arbitrators whether they had worked full time or part time as arbitrators. McKelvey and Rogers offered the forced choice: Do you do labor arbitration on a (a) full-time basis or (b) part-time basis? Nonactive arbitrators most likely marked part-time, when they were not doing any arbitration. The fact remains, however, that our survey's subsample of NAA members may be biased towards full-time practitioners.

A-Priori Characteristics of All Arbitrators. Prior information is available on membership status, gender, and geographic location. Tables 3 and 4 present response breakdowns on the membership and gender variables, respectively. When column (2) is compared with column (4) in Table 3, the membership distribution for the entire population of arbitrators is only slightly different from that in the sample of responses. The chi-square statistics suggest that the probability this difference will occur by chance is less than one half of one percent. Thus, the total sample is by design somewhat overrepresented by NAA members. Our use of expansion weights (see Table 1) implicitly adjusts for this bias when we compute statistics for the total sample.

Table 4 presents data on gender for the non-NAA and NAA classifications and for the total sample. The chi-square test shows that the differences between columns (2) and (4) in Table 4 are the result of chance and not the consequence of skewed responses. Representativeness on the basis of gender is present in the sample. The same conclusion is reached with respect to geographic location.⁴ In general, our survey's resulting sample

⁴Analytical work is not shown because of the length of the tables. However, the geographic location tables are available from the authors upon request.

Table 3. Academy Membership—Adjusted Population and Sample

	(1) Adjusted population	(2) Distribution of adjusted population (percentages)	(3) Adjusted survey response ¹	(4) Distribution of responses ² (percentages)
NAA Members	623	16.98	369	20.97
Nonmembers	3,046	83.02	1,391	79.03
Total	3,669	100.00	1,760	100.00

¹This count was estimated by assuming that the response rate for the 20% random sample of nonmembers (45.65%) would have been maintained if 100% of the nonmembers had been surveyed. Using adjusted figures from Table 1, there were 3,046 non-Academy arbitrators in North America in 1986. Twenty percent or 609 bona fide arbitrators were sampled. There were 278 usable returns for a 45.65% response rate.

²Chi-square = 20.15; 1 d.f., $p < .005$.

Table 4. Gender Distribution—Population and Subsamples

	(1) Population ¹	(2) Distribution of population (percentages)	(3) Survey Responses ²	(4) Distribution of responses (percentages)
Non-NAA ³				
Males	3,444	92.78	250	90.58
Females	268	7.22	26	9.42
NAA ⁴				
Males	617	95.66	351	95.9
Females	28	4.34	15	4.1
Total ⁵				
Males	4,061	93.21	601	93.6
Females	296	6.79	41	6.4

¹Where gender could not be determined (individuals were classified on the basis of their first names) the "unclear" individuals were proportionately classified as males and females.

²There were five missing values.

³Chi-square = 1.94; 1 d.f., $p > .10$.

⁴Chi-square = .05326; 1 d.f., $p > .80$.

⁵Chi-square = .1651; 1 d.f., $p > .50$.

appears to be representative of the population of NAA and non-NAA arbitrators in North America.

Analysis

The analytical focus of this study is whether NAA arbitrators are similar to nonmember arbitrators. To the extent that differences are identified, they serve as a basis for generating ideas about needed further research.

Demographic Characteristics of the Arbitrator

Table 5 displays a summary of the descriptive characteristics of labor arbitrators with respect to age, gender, marital status, race, educational background, and organizational membership. Mean ages are provided for males and females as well as for NAA, non-NAA, and all arbitrators. The remaining variables in Table 5 are set forth as percentages of NAA, non-NAA, and all arbitrators in each category. Table 5 also shows the percentage of Canadian arbitrators.

Age. The average age of all respondents was 59⁵ with a range between 32 and 93. However, Academy members were older than nonmembers with mean ages of 62 and 59, respectively. Academy members, more than nonmembers, are clustered at the older end of the age distribution (58.2% of NAA arbitrators are over 60, whereas only 47.55% of non-NAA arbitrators are over 60). These data are consistent with prior expectations inasmuch as membership in NAA requires a "track record," which often takes many years to develop. In contrast, nonmembers generally meet somewhat lower standards to gain entry to agency panels.

Assuming the NAA has consistently applied its admission rules, both male and female NAA members should be older than nonmembers. In fact, when the ages of male and female arbitrators are averaged separately, the mean ages for males and females are older for the NAA subsample. On average, males (60.1) are older than females (50.3) with respect to both the NAA and the non-NAA groups. However, the average age for females is based on a small sample. This difference supports the view

⁵The 95% confidence interval around this mean is 58.29 to 60.25. This implies that 95 of 100 samples will yield a mean age falling within that interval.

Table 5. Characteristics of Arbitrators

	Non-NAA	NAA	All
Average Age—All*	58.64 (n = 276)	62.33 (n = 366)	59.27 (n = 642)
Average Age—Males*	59.56 (n = 250)	62.62 (n = 351)	60.10 (n = 601)
Average Age—Females	49.85 (n = 26)	55.40 (n = 15)	50.30 (n = 41)
	percentages		
Sex			
Male*	90.6	95.9	91.5
Female*	9.4	4.1	8.5
Marital Status			
Married*	84.9	91.3	86.0
Divorced/separated**	9.4	5.7	8.7
Widowed*	2.9	1.9	2.7
Never married*	2.5	.5	2.2
No response	.4	.5	.4
Race			
White, non-Hispanic*	96.0	98.6	96.5
White, Hispanic*	.7	0	.6
Black, non-Hispanic*	1.8	.3	1.5
Black, Hispanic	0	0	0
Asian	.7	.3	.6
American Indian	.4	.3	.3
No Response	.4	.5	.4
Educational Background			
With a Law degree			
Yes	55.4	58.5	55.9
No	44.2	40.4	43.6
No response	.4	1.1	.5
Without a Law degree			
High School	3.6	0	1.6
Vocational/Technical	0	0	0
Two year Assoc. degree	1.8	1.4	1.6
B.S./B.A.*	11.8	5.5	8.2
Graduate work*	8.2	1.4	4.3
Master's	31.8	26.0	28.5
Ph.D.*	42.7	65.8	55.9
Organizational Membership			
American Arbitration Assn.*	52.5	79.7	57.1
IRRA*	45.7	72.6	50.3
SPIDR*	30.6	48.5	33.6
Society of Fed. L-R Prof's*	2.9	10.6	4.2
Labor Law Sect./Reg. Bar	33.5	35.2	33.8
ABA or CBA Labor Law*	19.4	28.2	20.9
Canadian Arbitrators	.05	.03	.04

*Difference between means or proportions for non-NAA and NAA groups is statistically significant at $\alpha = .05$ for these characteristics.

**Significant at $\alpha = .10$.

that it has been only within the past decade or so that women have entered the arbitration profession in meaningful numbers.

Gender. Note that 9.4 percent and 4.1 percent are the proportions of female non-NAA and NAA members, respectively. We examined whether the age differences between male and female arbitrators could account for the Academy versus non-Academy gender distributions. The Academy screens applicants on experience. Assuming that age and experience are positively correlated, it was hypothesized that the proportion of member and nonmember female arbitrators would be equal within the age categories of 50 and under, and over 50. This hypothesis was rejected.⁶

Explaining the gender-based differences in membership is not a trivial exercise. A complete study would require access to data on applicants to NAA membership, including information on the screening decisions reached. This issue is further complicated by the small sample size. Within the 1986 population, if only 30 to 35 female nonmembers had become NAA members, the proportion of female NAA and non-NAA arbitrators would have been approximately equal. Conclusions regarding gender-based discrimination cannot be reached without further research.

Marital Status. The majority of respondents are married (86.0%). Approximately 91 percent of Academy members and nearly 85 percent of nonmembers are married. This difference is statistically significant and may be explained by the fact that Academy members are older, providing more time in which to marry or remarry.

Race. For the most part, arbitrators are white non-Hispanics (96.5%). Only 1.5 percent of all arbitrators and a mere 0.3 percent of NAA members are black. Less than 1 percent indicated that they are members of the other racial groups (see Table 5). The race differences between Academy members and nonmembers are not statistically significant.

Educational Background. On the whole, arbitrators are well-educated. Nearly 56 percent have law degrees. There is no significant difference between the proportions of non-NAA and NAA arbitrators with law degrees. A somewhat higher proportion of lawyer-arbitrators was anticipated, given the quasi-legal

⁶In the 50 or under age category the chi-square = 8.032; 1 d.f., $p = .005$ (using expansion weights); and for the over-50 category the chi-square = 6.629; 1 d.f., $p = .010$.

nature of the arbitration process. Instead, for every nonlawyer arbitrator, there are only about 1.25 arbitrators with law degrees.

For arbitrators without a law degree, Table 5 summarizes the proportions having reached various levels of educational achievement. Very few (1.6%) have only a high school diploma. An a priori hypothesis that the NAA group would have more advanced degree holders is supported. While 65.8 percent of NAA nonlawyer arbitrators have Ph.D.s, only 42.7 percent of nonmember nonlawyers have a doctorate. More than 95 percent of all nonlawyer arbitrators in North America have at least a B.A. or B.S. degree. Although post-secondary work is not required to enter the field of arbitration, for all practical purposes access to the profession is facilitated by higher education.

Organizational Membership. Over half the respondents are members of the AAA and the IRRA (57.1% and 50.3%, respectively). Nearly 34 percent are members of both the Society of Professionals in Dispute Resolution (SPIDR) and the Labor Law Section/Labor or Regional Bar. Almost 21 percent are associated with the American Bar Association (ABA) or the Canadian Bar Association (CBA) Labor Law Section.⁷ Consistent with expectations, NAA arbitrators are more likely than their nonmember colleagues to be members of the professional organizations listed in Table 5.

Summary. Throughout this section generalizations about the population of labor arbitrators in North America have been presented. However, as shown in Table 5, all but 27 respondents maintained their primary office in the United States in 1986. Twenty-six arbitrators (0.04%) were Canadian, and only one questionnaire was received from the Virgin Islands.

In general, approximately 50 percent of all labor arbitrators in North America are age 60 or above, male, white, and married. If we assume that the "typical" arbitrator is age 50 or over, male, married, and white, the proportion jumps to 65 percent. Just over 70 percent of Academy members conform to this profile, as do 57 percent of nonmembers. The population of labor arbitrators is a fairly homogeneous group, but there are some statistically significant differences between Academy members and nonmembers.

⁷The proportions belonging to each organization add up to more than 100% because many arbitrators belong to more than one organization.

The Practice of Arbitration

Conventional beliefs about the labor arbitration profession (which we tend to confirm) include the following:

1. It is relatively difficult to gain access to the field of labor arbitration.
2. Only a small fraction of labor arbitrators earn a full-time livelihood through arbitration practice.
3. NAA members relative to nonmembers have a deeper involvement in the practice (as measured by the percentage working full time, the number of cases heard per year, and the match between the actual and the desired number of cases heard).

This study examines the following characteristics of the profession:

1. general employment status of labor arbitrators in North America,
2. caseload (based on the responses of those arbitrators who were working on either a full-time or a part-time basis),
3. average fees and billings charged by labor arbitrators,
4. percentage of cases heard in the public and private sectors, and
5. the nonunion sector, neutral labor-management work other than arbitration (e.g., mediation, fact finding), and alternative dispute resolution (ADR).

Employment Status. Arbitration in North America is largely a part-time business (see Table 6). During 1986 (and perhaps during any given year), some labor arbitrators were not practicing because they were retired, working full time for management or labor, ill, not making their services available due to other demands on their time, or simply not selected or scheduled to hear cases that settled prior to hearing. Approximately 22 percent of available arbitrators did not work as arbitrators in 1986 for these reasons, and only 17 percent practiced full time, that is, only about one in six.

Table 6 shows that the labor force participation rate and the proportion of full-time arbitrators are higher for NAA than non-NAA members. Most NAA members who did not work in 1986 chose not to do so because of retirement or poor health and not because of selection difficulties (as was the case with many nonmembers).⁸

⁸The questionnaire asked respondents to indicate why they did not work in 1986. The

Table 6. Characteristics of Arbitrators' Practices—Employment Status

Characteristics	Non-NAA	NAA	Total
1986 Status			
Full time*	11.5%	40.9%	16.5%
Part time*	63.3	53.1	61.6
Not Working*	25.2	6.0	21.9
Part time Only			
Average % total gross income derived from work as a neutral in 1986*	19.08 (n = 172)	43.0 (n = 192)	22.59 (n = 364)
Mean full-time equivalent (FTE) days/months worked as a neutral in 1986*	3.58 (n = 166)	8.44 (n = 186)	4.3 (n = 352)
Percent wanting to work full time*	33.7	13.5	29.5

*Difference between proportions for the non-NAA and NAA groups is statistically significant at $\alpha = .05$ for these characteristics.

Earnings and Days Worked. Focusing on arbitrators with part-time practices and using their associated percentage of gross income and mean full-time equivalent (FTE) days worked per month as indices of the importance of the arbitration practice to their livelihood, we see that the profession is largely a supplemental pursuit. These statistics and the discussion about age support the widely held belief that labor arbitration is a difficult field to enter, particularly as a full-time career.

Table 6 shows that part-time status is considerably less than half-time (that is, 20 hours per week). Only 23 percent of gross income was derived from the arbitration of part-timers in 1986 and only 4.3 FTE days were worked per month.

primary reasons that nonmember arbitrators did not work in 1986 were listed as "not called," "no cases," "no assignments offered," and "cases settled prior to hearing." Most nonworking NAA arbitrators answered with "retired" or "illness or injury."

The NAA and non-NAA contrast is sharp. Part-time Academy members have percentages of total gross income and FTE days per month about twice the magnitude of nonmembers. To the extent that "part time" is interpreted to mean "half time," NAA members come closer to this interpretation. This area of part-time versus full-time work requires more research and analysis.

Utilization. By rough calculation approximately 40 percent of North America's stock of arbitrators are underutilized. Many part-time arbitrators want to practice full time. This finding refutes the belief that there is a shortage of labor arbitrators. If there were opportunities for more arbitration work, the 1986 stock of active labor arbitrators would have been willing and able to hear an additional 25,519 cases per year *ceteris paribus*.⁹ Subsequent in-depth research on arbitrator utilization is recommended.

NAA members are better positioned than nonmembers to allocate their time to meet their desired case load; 33.7 percent of part-time nonmembers want full-time work, whereas only 13.5 percent of part-time Academy members desire to go full time. An explanation for this difference may be that NAA members are primarily employed in full-time salaried occupations, and arbitration adds approximately 43 percent to their gross income, whereas the part-time practice of nonmembers adds only 20 percent to their gross income. Support for this explanation is provided by the responses to question 20, which asked part-timers to specify their principal occupation other than labor arbitrator (see Table 7). Another significant difference

⁹Among nonmember part-time arbitrators, 21.3% ($33.7\% \times 63.3\%$) desire a full-time practice and 7.2% ($13.5\% \times 53.1\%$) of part-time NAA members want to practice full time. These estimates generalize to point estimates of 410 ($1,925 \times 21.3\%$) and 24 ($331 \times 7.2\%$) part-time nonmember and member arbitrators, respectively, wanting to expand their practices. The sum of 434 is approximately one sixth of all active arbitrators in North America.

Using the part-timers' FTE days per month in Table 6 in combination with the assumption that full-time arbitrators work 21 FTE days per month, one can easily compute the point estimate of the incremental increase in the number of FTE days per month of arbitration services that would flow from realizations of the desire to work full time. For nonmembers the estimate is 7,142 (17.42×410) and for NAA members, 301 (12.56×24). These sum to 7,443 FTE days per month or 89,316 FTE days per year. Assuming that it takes 3.5 FTE days to hear and decide a case, these calculations suggest that there are part-time arbitrators in North America willing to hear about 25,519 more cases per year than are currently being heard.

The above calculations, rough as they are, are of the "lower bound" variety inasmuch as there no doubt are: (1) full-time and other part-time arbitrators who would be willing to expand their practices, and (2) arbitrators in the "not working" category who would like to be working and are able to do so. A third reason is that this sample of NAA arbitrators may be skewed towards full-time and away from part-time members. This area warrants continued research.

Table 7. *Part-time Arbitrators—Principal Occupation Other Than Labor Arbitration in 1986, Question No. 20*

Occupation	Non-NAA percentages	NAA
Retired; none	17.8	17.4
Administrator, regulatory body	2.3	1.5
Administrator, personnel, industrial relations	2.3	2.1
Consultant	5.2	1.5
Lawyer	32.8	18.5
Nonarbitrating neutral, mediator, fact finder	5.7	2.1
Teacher*	29.3	55.4
Union representative	.6	0
Researcher	.6	.5
Law student	0	.5
Judge (Municipal)	0	.5
Flight attendant	.6	0
Financial advisor	.6	0
Insurance general agent	.6	0
Sales	.6	0
Unemployed	.6	0
Owner/manager of campground	.6	0

*Difference statistically significant at $\alpha = .05$.

between NAA and non-NAA arbitrators related to teacher status—29.3 percent of nonmembers compared with 55.4 percent of NAA members are teachers.

A final point about the full-time/part-time distribution of arbitrators is that, when work status and age—those 60 and younger, and those over 60—are cross-tabulated,¹⁰ it appears

¹⁰ Arbitrator Work Status by Classification (percentages)			
NAA members 60 and below		Nonmembers 60 and below	
Full time	41.18	Full time	12.41
Part time	57.52	Part time	64.14
Not working	1.31	Not working	23.45
NAA members over 60		Nonmembers over 60	
Full time	40.85	Full time	10.69
Part time	50.23	Part time	61.83
Not working	8.92	Not working	27.48

that arbitrators elect to practice either full time or part time, rather than to start out as relatively young part-time arbitrators who convert to full-time arbitrators as experience mounts. In other words, the percentages of arbitrators (both NAA members and nonmembers) in the full-time, part-time, and not-working categories are substantially the same for both age classifications. This hypothesis is supported by the fact that part-time arbitrators who desire to go full time are distributed fairly evenly across all ages until approximately age 80 (only one part-time arbitrator over the age of 79 wanted to work full time). Further research on the desires of part-timers to become full-time arbitrators is recommended.

Caseload. Tables 8 and 9 summarize the caseloads of arbitrators in 1986. Academy members hear more cases over the

Table 8. Characteristics of Arbitrators' Practices—Arbitrators Working in 1986

Characteristic	Non-NAA	NAA	Total
Mean number of cases in career*	134.36 (n = 270)	1,054.56 (n = 357)	290.12 (n = 627)
Mean number of cases per year*	10.25 (n = 259)	44.87 (n = 356)	16.30 (n = 615)
	percentages		
Participation on Panels			
AAA*	68.8	91.1	73.3
FMCS*	56.7	89.3	63.4
State**	58.2	64.6	59.5
Other Ad Hoc*	12.5	19.0	13.8
Employer/Union*	35.6	72.0	43.0
Postal Industry*	8.2	25.4	11.7
Steel Industry*	4.8	10.7	6.0
Other Permanent Panels*	15.4	22.8	16.9
Permanent Umpireship*	13.0	32.9	17.0

*Difference between means or proportions for the non-NAA and NAA groups is statistically significant at $\alpha = .05$ for these characteristics.

**Significant at $\alpha = .10$.

Table 9. Actual and Preferred Caseloads—Arbitrators Working in 1986

Caseload	non-NAA	NAA	Total
Mean grievance cases in 1986*	17.48 (n = 208)	55.96 (n = 347)	23.35 (n = 555)
Mean interest cases in 1986	1.33 (n = 186)	1.80 (n = 347)	1.42 (n = 533)
Mean total cases in 1986*	18.8 (n = 208)	57.75 (n = 347)	26.77 (n = 555)
Mean cases refused in 1986* (grievance and interest)	1.38 (n = 203)	4.64 (n = 332)	2.04 (n = 535)
Mean additional cases that could have been scheduled in 1986 (grievance and interest)	15.18 (n = 181)	11.34 (n = 300)	14.40 (n = 481)
Mean cases preferred to have had in 1986* (grievance and interest)	30.06 (n = 166)	54.24 (n = 208)	33.97 (n = 374)
Mean cases desired in 1987* (grievance and interest)	29.83 (n = 182)	54.08 (n = 246)	34.01 (n = 428)

*Difference between means for the non-NAA and NAA groups is statistically significant at $\alpha = .05$ for these characteristics.

course of their careers and average more cases per year than non-NAA arbitrators. The mean number of cases per year¹¹ for all respondents was 16.3, but the average was 44.87 for NAA members and only 10.25 for nonmembers. Explanations for these differences include: (1) age (the assumption that caseload increases at an increasing rate with respect to age), (2) status (the idea that visibility and availability increase caseload), and (3) panel participation (proportionately more NAA members

¹¹Figures are computed by dividing the number of years since respondents heard their first case by the sum of all grievance and interest arbitration cases heard over their careers.

are on permanent arbitration panels).¹² These areas need further research. It might also be that caseload is influenced by an arbitrator's "relative worth" or "acceptability" as measured by the gap between actual and preferred caseloads.¹³

Table 9 presents actual and preferred caseloads of arbitrators working in 1986. The mean number of grievance arbitration cases was 23.35, with Academy members averaging 56 cases (0–404); nonmembers, only 17.5 cases (0–204). Fewer interest arbitration cases were reported for both subgroups. The mean number of interest cases in 1986 was 1.42 (0–26). NAA members averaged 1.80 (0–25); nonmembers, 1.33 (0–26).

Since NAA and non-NAA arbitrators heard almost the same number of interest arbitration cases in 1986, interest arbitration could be a viable channel for entrance into the profession. Future research to test this hypothesis might look at the number of interest cases heard by NAA members and nonmembers who work part time. The number may be considerably larger for part-time nonmembers, especially in states such as Minnesota and Iowa, which in some instances have public sector laws prescribing arbitration when the parties reach impasse in contract negotiations.

Non-NAA arbitrators heard fewer cases than NAA members. Nonmembers desired to hear more cases than they actually heard. These data support the assertion that arbitration is a tough field to break into, and further challenge the belief that shortages abound.

Fees. Table 10 demonstrates that there are differences in the fees and billings charged by NAA and non-NAA arbitrators. In 1986 per diem fees for all grievance arbitration cases ranged from \$100.00 to \$1,800.00 with an average of \$419.75. The mean per diem was \$411.23 for nonmembers and \$452.68 for

¹²Overall, a larger percentage of NAA members, compared with nonmembers, were actively participating on arbitration panels. The most marked difference was in participation on employer-union panels—72% of Academy respondents were panel members in contrast to 35.6% of nonmembers. Similarly, 32.9% of NAA members held at least one permanent umpireship in 1986, while only 13% of the nonmembers did so.

¹³In the May 3, 1988 edition of *The Chronicle*, p. 3, the matter of caseload distribution was introduced. It was reported that only a few labor arbitrators handle a large percentage of cases. About 12% of all active arbitrators hear approximately 51% of all cases; slightly more than 20% hear about 66% of all cases; and about 30% of all arbitrators handle approximately 78% of cases heard. Conversely, in 1986 about 70% of all arbitrators in North America heard only 22% of all cases. Explaining this case distribution result is reserved for subsequent research.

Table 10. Fees and Billing—Arbitrators Working in 1986

Fees/Billing	Non-NAA	NAA	Total
Average fees for grievance cases			
Per diem*	\$411.23 (n = 203)	\$452.68 (n = 341)	\$419.75 (n = 544)
Docketing*	\$3.79 (n = 203)	\$7.76 (n = 342)	\$4.61 (n = 545)
Cancellation*	\$189.64 (n = 202)	\$353.52 (n = 333)	\$222.84 (n = 535)
Average fees for interest cases			
Per diem*	\$378.38 (n = 68)	\$475.11 (n = 141)	\$401.80 (n = 209)
Docketing	\$1.40 (n = 68)	\$28.72 (n = 141)	\$8.01 (n = 209)
Cancellation*	\$125.52 (n = 68)	\$313.41 (n = 139)	\$170.53 (n = 207)
Average billing in 1986* (excluding expenses)			
	\$1,111.85 (n = 196)	\$1,258.65 (n = 316)	\$1,141.07 (n = 512)
Average billing days in 1986			
Hearing days*	15.70 (n = 178)	46.40 (n = 237)	20.93 (n = 415)
Cancelled/postponed*	2.55 (n = 179)	12.53 (n = 242)	4.27 (n = 421)
Study days*	16.20 (n = 178)	67.42 (n = 237)	24.92 (n = 415)
Travel days*	1.42 (n = 178)	7.53 (n = 242)	2.48 (n = 420)
Executive sessions**	.57 (n = 178)	1.09 (n = 240)	.66 (n = 418)

*Difference between means for the non-NAA and NAA groups is statistically significant at $\alpha = .05$ for these characteristics.

**Significant at $\alpha = .10$.

NAA members. A greater difference was observed in the average fee for grievance arbitration cancellations, which for nonmembers was \$189.64 (46% of the average per diem) and for Academy members was \$353.52 (78% of the average per diem).

A similar pattern was observed with respect to the average fees for interest arbitration cases. However, the per diems spanned a larger range (0–\$2,250), and the average per diem was \$401.80 in 1986. Nonmembers charged \$378.38 per diem, \$1.40 for

docketing, and \$125.52 for cancellation; Academy members charged \$475.11 per diem, \$28.72 for docketing, and \$313.41 for cancellation.

Future research might test the following: Does Academy membership, holding qualification variables constant, affect income? Is there an economic motivation for arbitrators to join the Academy?

The average billing in 1986, excluding expenses, was \$1,141.07 with a range from \$150.00 to \$6,000.00. There is no significant difference between the average billing for NAA members and nonmembers (\$1,258.65 compared with \$1,111.85). However, Academy members averaged significantly more billing days in 1986. The average number of hearing days for Academy members was 46.4; for nonmembers, only 15.7. Nonmembers averaged 2.55 cancellations or postponements, 16.2 study days, 1.42 travel days, and .57 executive sessions; NAA members averaged 12.53 cancellations or postponements, 67.42 study days, 7.53 travel days, and 1.09 executive sessions.

Private and Public Sector Arbitration. Table 11 shows that nonmembers heard proportionally more of their cases in the public sector than Academy members (45.53% compared with 30.78%). The distribution of Academy members' cases favored the private sector (69.23% compared with 54.58%). Public sector grievance and interest arbitration may give nonmember arbitrators greatest entry into the profession. Interesting questions for future research are whether younger arbitrators do more work in the public sector and whether younger arbitrators are concentrated in states having active public sectors.

The Nonunion Sector. There is a perception that nonunion employers are voluntarily turning to grievance or arbitration machinery. Respondents were asked how many of their cases in 1986 did not involve representation by a union or employee association. As shown in Table 12, 118 arbitrators (18.24%) reported hearing at least one nonunion case; 85 were Academy members and 33, nonmembers. The average number of nonunion cases was approximately 4, slightly higher for non-NAA arbitrators. The average number of nonunion cases in which arbitrators were mutually selected was only 2.4.

Perhaps the most significant conclusion to be drawn from these data is that, in general, the nonunion sector remains dwarfed by the union sector with respect to independent, neutral systems of industrial jurisprudence.

Table 11. Public and Private Sector Arbitration in 1986 (Grievance and Interest)

Public/Private Cases	Non-NAA	NAA	Total
Average percent of public sector cases in 1986*	45.53 (n = 198)	30.78 (n = 342)	42.43 (n = 540)
Average percent of private sector cases in 1986*	54.58 (n = 198)	69.23 (n = 342)	57.58 (n = 540)

*Difference between proportions for the non-NAA and NAA groups is statistically significant at $\alpha = .05$ for these characteristics.

Table 12. The Nonunion Sector

Cases	Non-NAA	NAA	Total
Mean number cases in 1986 not involving a union	4.12 (n = 33)	3.45 (n = 85)	3.93 (n = 118)
Mean number nonunion cases in 1986 mutually selected by parties	2.58 (n = 33)	1.89 (n = 70)	2.39 (n = 112)
Mean number of those cases resulting in advisory decision*	0 (n = 8)	.2 (n = 5)	.018 (n = 13)
Mean number of those cases resulting in final and binding decision*	6.5 (n = 8)	26.20 (n = 5)	8.23 (n = 13)

*These means were calculated using only the respondents whose response to Q. No. 28 was equal to the sum of advisory and final and binding decisions, therefore the n sizes are smaller than would be expected.

Nonarbitration Dispute Resolution. Table 13 shows that only 35.6 percent of all labor arbitrators were involved in labor-management mediation, med-arb, or fact-finding cases in 1986, and did so infrequently. The average number of cases mediated was about 6; only 3.22 cases involved med-arb and about 2 were fact findings.

Alternative Dispute Resolution. ADR, a more distant relative of arbitration than mediation or fact finding, is receiving increasing attention as an alternative to legal proceedings. Table 14 shows that work as a neutral outside labor arbitration constitutes a small portion of the labor arbitrator's caseload. The few cases where labor arbitrators have been involved in ADR have been in commercial and court-annexed sectors. One NAA respondent commented:

There is presently no economic incentive to take ADR cases. If the parties want ADR, some mechanism must be devised whereby the arbitrator is assured of payment for his services comparable to his compensation for labor arbitration.

Table 13. Labor-Management Dispute Resolution Not Involving Labor Arbitration

Nonarbitration Cases	Non-NAA	NAA	Total
Percent involved in labor-management mediation, med-arb, or fact-finding cases in 1986*	33.2	45.2	35.6
Mean number cases mediated in 1986	6.18 (n = 67)	4.45 (n = 146)	5.74 (n = 213)
Mean number involving med-arb in 1986	3.25 (n = 65)	3.16 (n = 153)	3.22 (n = 218)
Mean number cases involving fact finding in 1986	2.03 (n = 65)	2.23 (n = 150)	2.08 (n = 215)

*Difference between proportions for the non-NAA and NAA groups statistically significant at $\alpha = .10$.

Table 14. *Alternative Dispute Resolution*

ADR	Non-NAA	NAA	Total
Mean number ADR cases in 1986	1.46 (n = 106)	1.14 (n = 221)	1.38 (n = 327)
Mean number ADR cases by sector			
Commercial	.413	.335	.394
Community/neighborhood	.133	.014	.104
Intercorporate	0	.090	.022
Environmental	0	.032	.007
Family/divorce	.105	.023	.085
Court annexed	.164	.561	.262

Summary

Several generalizations about the practice of labor arbitration in North America can be made:

1. Most labor arbitrators practice on a part-time basis, and a sizable group does not practice at all during any given year.
2. Labor arbitration services are not in short supply since many are inactive and a large number of part-timers desire to arbitrate full time.
3. There are marked distinctions between the NAA member's practice and that of the nonmember. (Academy arbitrators hear more cases both over their careers and per year, and the average per diem charged by NAA members is higher than that of nonmembers.)
4. Labor arbitrators are minimally active in the nonunion sector, and only a small proportion practice as professionals in nonarbitration labor-management dispute resolution and in ADR.

Conclusions

Several general conclusions can be posited from this study:

1. The paucity of information about labor arbitrators and the nature of the arbitration practice is significantly overcome by our study, and representative estimates about the size and characteristics of the North American labor arbitration population are now available.

2. There were 3,669 labor arbitrators in North America during 1986, with 17 percent Academy members. The typical labor arbitrator is a married, white male, near 60 years of age, well-educated, and practicing part time. The part-time arbitrator is most likely working as an educator. (This profile fits the Academy member better than the nonmember).

3. Female arbitrators constitute a larger share of the non-NAA group.

4. The large fraction of inactive and part-time labor arbitrators, the willingness of many part-timers to convert to full-time practice, and the modest number of cases heard per year make it difficult to credit the assertion about arbitrator "shortages."

5. Labor arbitrators as a group have not been caught up in the development of grievance procedures to resolve nonunion arbitration disputes.

Finally, areas requiring future research include the following:

1. Examine why women and minorities constitute such a small fraction of all labor arbitrators and why the Academy's membership has proportionally fewer women than the set of nonmember arbitrators.
2. Examine the factors differentiating part-time from full-time labor arbitrators. What effects do age, earnings, and membership status variables have on the work status decision?
3. Analyze the actual and preferred workloads of labor arbitrators to identify small and large pockets of "shortages" or "surpluses" in the flow of labor arbitration services.
4. Examine the determinants of interarbitrator caseload differences. Do age, gender, educational background, affiliations, and membership status variables account for these differences?
5. Investigate avenues for entry into the arbitration profession. Examine the role of the public sector as part of this investigation. Is there a geographic effect?
6. Examine the determinants of interarbitrator fee differences. Is there an "NAA fee effect," *ceteris paribus*?