

overly hasty, but they will tend to generate meaningful interaction. They will provide an opportunity for the Academy to tap the talents, perceptions, and potential contributions of more of its members. Any promising ideas generated by the groups could be followed up with more serious study.

How can we encourage our more reticent members to participate in the interactive question portion of the presentations rather than only the distinguished members whose presence and stature and articulate skill tend to intimidate the rest of us?

Should the Academy sponsor more continuing education programs at the regional level, on specific subject areas and/or procedures, or use smaller groups and more interactive learning processes, inviting prospective members to participate?

Are we taking full advantage of technological advances in videos and computers in updating our educational opportunities?

I cannot resist ending on a controversial question: Should members be required to attend the continuing education programs on a periodic basis in order to maintain their membership in the Academy in good standing?

II. THE NATIONAL ACADEMY OF ARBITRATORS: TRADE ORGANIZATION OR PROFESSIONAL SOCIETY?

STEVEN BRIGGS*

On September 13, 1947, at the Stevens Hotel in Chicago, 43 members of the small but expanding "occupation" of labor arbitration met to discuss how their activity as arbitrators might advance to professional status.¹ They resolved that a professional society of arbitrators should be formed, and out of that resolution was born the National Academy of Arbitrators.

Industrial relations scholars and practitioners regard the Academy as *the* professional association for labor arbitrators. Indeed, a standard labor relations text characterizes Academy

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¹Murphy, *The Presidential Address: The Academy at Forty*, in *Arbitration 1987: The Academy at Forty, Proceedings of the 40th Annual Meeting, National Academy of Arbitrators*, ed. Gladys W. Gruenberg (Washington: BNA Books, 1988).

members as "the most highly regarded arbitrators in the country."²

But is the Academy truly a professional association? In the years since 1947 has it met the standards generally used to evaluate such bodies? This paper focuses on those questions by comparing the Academy's originally stated objectives and historical performance against the evaluation criteria generally used today to identify and appraise professional associations.

Characteristics of a Professional Society

The literature on professionals in general and on their associations in particular is rich and abundant. There are a few recognized classics³ and a plethora of current articles. Review of this literature has identified five characteristics of professional societies.

First, a professional society should educate its members. Typical methods of doing so are newsletters, regional seminars, and national conferences.⁴ The value of these activities to members of the profession is underscored by the fact that numerous employers not only encourage professional employees to join, but in many cases pay their membership dues as well.⁵ The educational benefit members receive is not limited to substantive issues of the occupation itself. To the extent that members have increasingly responsible opportunities to participate in the operation and governance of the professional organization, they develop personally in a variety of ways.⁶ Newer members of professional associations enhance their personal development by mere association with other members, many of whom had entered the profession decades earlier.

Second, a professional association is charged with educating the public. This obligation has been linked to the profession's broad charter to enhance the welfare of society.⁷ Both the medi-

²Fossum, *Labor Relations: Development, Structure, Process* (Homewood, Ill.: BPI-Irwin, 1989), 407.

³See, e.g., Car-Saunders, *Professions: Their Organization and Place in Society* (Oxford: Clarendon Press, 1928); Wardwell, *Social Integration, Bureaucratization and the Professions*, *Social Forces* (May 1955), 356-59; Vollmer and Mills, *Professionalization* (Englewood Cliffs, NJ: Prentice-Hall, 1966).

⁴Phillips, *Training Supervisors Outside the Classroom*, 40 *Training & Dev. J.* 46 (1986).

⁵Siebeneicher, *Educated, Trained Employees Are Key to Success for Today's Businesses*, 19 *Indus. Engineering*, 44 (1987).

⁶Stokes, *Feeding the Professional Mind*, *Computerworld*, 66-67 (May 16, 1988).

⁷Gahala, *Do You Measure Up? The Credit Executive as a Professional*, 87 *Credit & Fin. Mgmt.* 13 (1985).

cal and legal professions, for example, cite this noble objective. The idea seems to be that the relative privilege of being a professional carries a concomitant obligation to share knowledge and expertise with the larger numbers of people who do not possess these attributes. Thus, the professional society that sponsors research in the field should not limit dissemination of the results to its members.

Third, a fully developed professional society should identify appropriate work-related ethical standards and monitor its members' adherence to them. For example, a concern for client interest has been identified in the insurance industry as an important consideration for life underwriters.⁸ That concern should permeate all the professions, placing client well-being ahead of member individual income.

Numerous professional societies have established their own review boards for auditing and appraising member practices and behaviors. Published codes of ethics are another way in which these organizations enhance the professional status of their members and attempt to regulate their work-related behavior.⁹

Fourth, controlled admission procedures are a benchmark of a strong professional association.¹⁰ Such screening mechanisms are designed to maintain high standards of performance within the field. Prospective clients regard membership in leading professional societies as an indication of competence. In many fields being allied with the leading professional group adds credibility and status to members. This raises a question of whether professional associations should strive for a goal similar to affirmative action, particularly when their membership does not reflect the minority and sex characteristics of the general population. If becoming a member of a professional society begets opportunity, it would seem that opportunity should be available on an equitable basis.

Some professional associations certify or license their members. Among the approaches used are straightforward testing, the establishment of standards and examinations by the associa-

⁸Walton, *For the Long Term—Professional Ethics and the Life Underwriter*, *Life A. News*, 72–82 (Dec. 1985); for a related discussion in another industry, see Pittenger, *The Appraiser: A Different Perspective*, *Mortgage Banking*, 125–130 (Sept. 1985).

⁹Frankel, *Professional Codes: Why, How, and With What Impact?* *J. Bus. Ethics*, 109–15 (Feb./Mar. 1989).

¹⁰Gahala, *supra* note 7.

tion itself, and observation of skills in use.¹¹ Certification by professional societies is not unanimously endorsed across occupational categories. At this point it can merely be stated that some do it, but some do not.

Fifth, political action and lobbying in support of issues important to the field is another trait of the professional association. As one author suggests, the day-to-day minutia of their practices can so envelop professionals that they have no time to consider longer range and more global issues in the field. This task falls appropriately to the professional organization.¹²

The Academy's Objectives

The Academy's founders set forth its objectives in Article II of its Constitution and By-Laws. Those objectives have remained nearly constant since 1947. The only amendments have been (1) changing the term "industrial disputes," wherever it occurred, to "labor-management disputes," and (2) changing item no. 2 below to reflect the formal establishment of the Code of Ethics for Labor Arbitrators. As originally written, the "purposes for which the Academy [was] formed" are as follows:

1. to establish and foster the highest standards of integrity, competence, honor and character among those engaged in the arbitration of industrial disputes;
2. to adopt and encourage acceptance of and adherence to canons of ethics to govern the conduct of arbitrators;
3. to promote the study and understanding of the arbitration of industrial disputes;
4. to encourage friendly association among the members of the profession;
5. to cooperate with other organizations, institutions and learned societies interested in industrial relations; and
6. to do any and all things which shall be appropriate in the furtherance of these purposes.

The task of writing the foregoing must have been incredibly ambiguous in 1947. Well-accepted standards for professional societies were not nearly so firmly established as they are today. Certainly there were not so many models to which the Academy's founders could look for comparison. As former Academy President William Murphy put it in his 1987 Presidential Ad-

¹¹Lee, *Certification for Trainers: Thumbs Up*, Training, 56-64 (Nov. 1986).

¹²Ayal, *Planning for a Professional Association*, Long Range Plan, 51-58 (June 1986).

dress, “it was the beginning of a journey on uncharted waters—an act of hope and faith.”¹³

Recall that one of the reasons for which the Academy was formed was to elevate labor arbitration from a mere occupation to a recognized profession. The passage of time has shown those who wrought the society’s original objectives to have been very astute if not inspired by some notion of a higher order. A brief comparison of their stated objectives against the previously identified benchmarks of professional societies illustrates this conclusion.

The Academy’s objective to establish and foster standards of integrity and competence meshes nicely with the obligation of a professional society to identify appropriate work-related ethical standards. It also relates to the prescribed control of entrance to the profession as a way to maintain quality. The Academy’s second objective, to “adopt and encourage acceptance of and adherence to” ethical canons relates to the need for a professional association to regulate and review member behavior. The Academy’s aim to “promote the study and understanding of . . . arbitration” focuses on educating Academy members and non-members alike. Its objective to “encourage friendly association among members of the profession” is not expressly limited to Academy members, rather it is all-inclusive. Presumably, “friendly” association was intended for personal development reasons as well as for pleasurable social interaction. The Academy’s stated focus on cooperation with “other organizations, institutions and learned societies” parallels the expectation that professional associations will use their collective strength to further their legitimate political objectives, whether through a joint lobbying effort or other appropriate means.

The Academy’s Performance

Setting objectives consistent with benchmarks used to differentiate professional societies from mere trade associations is a great deal easier than making progress toward those objectives. How does the Academy’s performance since its establishment in 1947 rate when judged against the five characteristics of professional associations?

¹³Murphy, *supra* note 1, at 3.

Educate Its Members

The Academy has done an increasingly good job on this task over the years. At first the Annual Meeting was the only formal Academy-sponsored function where members could learn from each other. Thereafter, regional meetings contributed. The establishment of the annual Continuing Education Conferences about five years ago has accomplished a great deal toward the education of Academy members, as have Academy publications such as the *Chronicle* and the *Proceedings of the Annual Meetings*.

Educate the Public

Academy performance on this criterion has also been strong. Copies of the Annual Meeting Proceedings are available to anyone. Academy members regularly share their expertise with various labor and management practitioners through training programs sponsored by the American Arbitration Association. Academy officers generously share their time and expertise as speakers for various occasions. On the other hand, some have criticized the Academy for its "members only" policy for the annual Continuing Education Conferences. By and large, however, the Academy has contributed significantly toward educating the general labor-management audience with regard to the arbitration process.

Identify and Enforce Ethical Standards

The Academy's establishment of a Code of Ethics for Arbitrators of Labor-Management Disputes was a landmark achievement. The fact that it was jointly developed with the Federal Mediation and Conciliation Service and the American Arbitration Association helped the Code achieve widespread acceptance and legitimacy. The establishment of the Committee on Professional Responsibility and Grievances is further evidence of the Academy's concern for maintaining integrity and the highest ethical behavior within the profession.

Control Admission to the Profession

Clearly, the Academy does not control entrance to the labor arbitration profession. Anyone who is asked by the parties may serve as an arbitrator. However, some would argue that, since Academy membership is viewed as an indication of compe-

tence,¹⁴ it tends to solidify an arbitrator's survival in the profession.

In my view it is not appropriate to judge the Academy's performance on this dimension. One of the strengths of the arbitration process has always been the parties' control over who becomes and remains a labor arbitrator. Essentially, it is the parties themselves who determine whether a given arbitrator will be able to meet the Academy's principal membership criterion, demonstrated widespread acceptability. The parties control entrance into the profession through their arbitrator selection procedures; the Academy merely controls entrance into the Academy itself. Accordingly, the fact that the Academy has not moved to certify or license labor arbitrators is not, in my view, a negative aspect of its performance. The parties already informally certify arbitrators by allowing them through continued selection to serve in that capacity.

The Academy has been criticized for its predominantly white male membership. While it may have an obligation to encourage minorities and women to enter the field, and even to counsel them with regard to appropriate avenues of preparation and to provide related educational opportunities, I do not believe that the Academy itself should bear the entire blame for its white male character. There has been increasing concern within the organization about the lack of minority and sex diversity within the Academy. That concern is openly expressed in program planning sessions so that programs exclusively composed of white male presenters are a phenomenon of the past. To that extent, at least, the Academy influences the perceptions of persons who select arbitrators.

Develop Legislative Support for the Profession

The Academy does not employ a lobbyist, nor does it involve itself in the election of candidates. However, it does from time to time offer its perspective in significant court cases. The Academy's *amicus curiae* brief in the *Misco* case¹⁵ is illustrative. It helped maintain the final and binding character of arbitration awards to the benefit of employers and unions as well as the profession.

¹⁴Fossum, *supra* note 2.

¹⁵*Paperworkers v. Misco, Inc.*, 484 U.S. 29, 126 LRRM 3113. (1987).

Concluding Comments

It should be fairly obvious from the foregoing analysis that the National Academy of Arbitrators is a full-fledged professional society. Its stated objectives are generally consistent with benchmarks associated with professional associations, and its performance over the years meets appropriate professional standards. Clearly, the Academy has room for improvement as a professional society. The establishment by President Murphy in 1986 of a Special Committee on Professionalism¹⁶ was a step in the right direction. If past performance is any measure of what the future may hold, the Academy should maintain its status as a professional society well into the 21st century and beyond.

III. COMMENTS ON GOVERNANCE

BARBARA Z. TENER*

When I talked to Panel Chairman Bruce Fraser about my role on this panel, we agreed that I would discuss members' perceptions of governance. He shared his survey results¹ with me this morning, and I have discussed the subject with many of our recent and long-standing NAA colleagues over the past several months.

Bruce's questionnaire, which was sent to 315 NAA members who have joined the Academy since 1980, yielded a number of interesting statistics: 315 "newer" members are almost half our membership; 190 members returned questionnaires, and Bruce recently reported results based on 165 of the responses on hand at the time of his tabulation. The response rate is quite high. In the context of recent rumors and grumbling among the rank and file, the most interesting statistic is that 76 percent of the respondents agreed with the statement: "The NAA reflects well my sense of what it should be." Only 11 percent disagreed.

The survey questions which touch on the governance of the Academy are as follows: "The NAA is under the influence of a

¹⁶The Committee's report can be found in Seward, *Appendix B: Report of the Special Committee on Professionalism*, in *Arbitration 1987: The Academy at Forty*, *supra* note 1, at 221-68.

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¹The results of the questionnaire sent to newer members by Bruce Fraser appear in Appendix D of this volume.