

MARK YOUR CALENDARS

PLAN TO ATTEND...

2015 Fall Education Conference

October 23 – 25, 2015
Four Seasons Hotel Denver
Denver, CO

2016 Annual Meeting

June 22 – 25, 2016
Wyndham Grand Pittsburgh Downtown
Pittsburgh, PA

2016 Fall Education Conference

September 30 – October 2, 2016
Loews New Orleans Hotel
New Orleans, LA

2017 Annual Meeting

May 24 – 27, 2017
Fairmont Chicago, Millennium Park
Chicago, IL

2017 Fall Education Conference

September 15 – 17, 2017
Four Seasons Miami
Miami, FL

2018 Annual Meeting

May 23 – 26, 2018
The Fairmont Hotel Vancouver
Vancouver, BC

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PRESIDENT’S CORNER
BACK COVER



*By Jane Devlin and Paula Knopf,
FEC Co-Chairs*

Why bother coming to the Fall Education Conference in Denver? We are all busy. We have hearings to attend, decisions to write, families and friends to enjoy, and we deserve to spend precious time on weekends relaxing. So why would we get on yet another plane and voluntarily subject ourselves to yet another set of airports?

Well, if you don’t attend the Fall Education Conference, you will miss out on Denver, the chance to see friends and colleagues, and you will miss a program that will be unforgettable. There will be material for history buffs and for “techies.” There will be important sessions about ethics, the impact of our decisions, and about legal and illegal drugs. Also, the Research and Education Fund has teamed up with the CPRG to sponsor a session about the realities of aging and how they affect our working lives. All this will be presented in the safe atmosphere of a “members only session,” where we can explore and discuss important issues with our peers.

We are committed to making the program both educational and fun. To that end, and in an effort to foster an even better understanding between our Canadian and U.S. colleagues, you will have the chance to be entertained and

stimulated by the Mock Hearing. It will have leading attorneys from Canada and the U.S. presenting a discharge case complicated by allegations of human rights violations. The case will be heard and “decided” by two distinguished U.S. Arbitrators and two equally distinguished Canadian Arbitrators. The case will highlight differing approaches to procedure, jurisdiction, and substantive issues. The facts are designed to be both humorous and thought-provoking. Some of our members take on the role of witnesses and will be able to demonstrate their acting skills. Their evidence will kindle your intellectual curiosity and make you laugh. Those of you who choose not to attend will miss the priceless chance to see one of our members playing the role of a grade four student caught in the dilemma of adoring his teacher but being confused by the curriculum that has led to her discharge.

Finally, ten new members will be inducted. This will give you the chance to make new friends, hear fresh ideas, and enjoy the growth of our organization.

As Mark Twain taught us, “Twenty years from now, you will be more disappointed by the things that you didn’t do than by the ones you did do.” So don’t be disappointed about not coming to Denver. Come, learn, and enjoy this great city with friends and colleagues. 🛠️

Submissions

The Chronicle runs several features and columns highlighting the lives, stories, and work of the members of the Academy. We are always in need of new subjects for the articles and new story ideas. If you have any suggestions, want to write, or would like to see someone profiled in one of these columns, please contact Daniel Zeiser, Managing Editor, at danzeiser@aol.com or contact the feature author directly.

On The Job Training provides first person accounts of arbitrators who experience hands-on the work lives of employees who appear before them.

NAA Book Review is a review by an NAA member of a book written by an NAA member.

Off Duty Conduct, written by Barry Goldman (bagman@ameritech.net), highlights the esoteric passions that members pursue in their time away from the hearing room.

Tales from the Hearing Room is a compilation of members' stories of strange, funny, and unusual happenings during arbitration proceedings.

We hope these features, complementing our current roster of outstanding columns and features like *Technology Corner*, *Canadian Perspective*, and *Arbitration Outside the CBA*, capture your attention and interest. 🏠

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September 30 – October 2, 2016



Loews New Orleans Hotel
New Orleans, LA

The Chronicle

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Alongside Every Good Arbitrator

Barbara Dichter, Wife of Fred Dichter

By Fred Dichter

This team has been together since 1969 when we met at a dude ranch in upstate New York. Our children, Erica and Ron, came along in 1973 and 1974.

When Fred got a job offer in Alaska, it was Barb who said let's pack up the kids and go. She then made the most of it. She became the library manager in Anchorage for 25 different law firms and accounting houses. As if that were not enough, she became the Librarian for their Synagogue and catalogued the entire collection. She also volunteered at their Temple for numerous other projects and at the children's elementary school.

In 1991, Fred and Barb left the frozen tundra for the Midwest. There she volunteered with AARP. She taught classes to elderly individuals about how to avoid being lured into schemes or buying products that were not needed. She traveled around the Milwaukee area meeting with groups to convey the message.

The Academy has also benefitted from Barbara's generosity and skills. She has made it her mission to see that Academy members receive CLE credits for meetings they attend, regional and national. When Fred became National Coordinator of Regional Activities, they discovered that some regions were providing CLE credits and others were not. When Fred discussed this with Barb, she immediately jumped to the challenge. Initially, this CLE challenge was to be done for only a few years. However, when Fred's position ended, Barb chose to continue her work for the Academy. She has continued to be the force behind the continuing ability of the Academy to get CLE in every state where people have requested it. She has now done this for close to 10 years and counting. She has learned the needs of each state and has become an authority on the subject. When it comes to an organization for which she deeply cares, she does whatever she can to support us. The NAA is one of those organization to which her commitment cannot be measured. 🛠️

Secretary Petersen to Step Aside in 2017

At the Business Meeting in San Francisco on May 23, 2015, Executive Secretary-Treasurer David Petersen announced to the Membership that he had decided not to seek re-election but to end his service as EST when his current term expires at the conclusion of the Business Meeting in Chicago on May 27, 2017. Petersen has been the Academy's EST since 2002. The Nominating Committee will propose Petersen's successor at the 2015 Fall Education Conference in Denver and his successor will be elected at the 2016 Annual Meeting in Pittsburgh. The EST-Elect will become EST at the conclusion of the 2017 Annual Meeting. 🛠️



FROM THE EDITOR

With this issue, I take over from Kathryn VanDagens as Managing Editor of *The Chronicle*. First, I would like to thank Kathryn for her work as Managing Editor these last three years. *The Chronicle* was in very capable hands and she published a professional, informative newsletter. Under her stewardship, *The Chronicle* continued to grow and became even better. Second, I realize I have very big shoes to fill, but Kathryn has been very helpful in the transition. She got me involved last year and has kept me in the loop during publication of the last issues. At the annual meeting, she sat down with me, walked me through the publication process, gave me a great deal of helpful information, and offered her continued assistance and guidance. On behalf of The Chronicle Committee and the Academy, I thank Kathryn for her hard work on and dedication to *The Chronicle*. Finally, for those who have wished me well as I take the reins, I thank you. If I do half as well as Kathryn, I will have done a good job. I look forward to being Managing Editor, working with Katie and the Academy staff, and welcome any contributions and suggestions. 🛠️

Dan Zeiser
Managing Editor



Denver Awaits Your Arrival

By John F. Sass, FEC Host Chair

As you should certainly know by now, the Fall Education Conference this year will be at the beautiful Four Seasons Hotel in Denver – rated by *Travel and Leisure* as one of the top 20 hotels in the country. Our conference rate of \$199/night is a bargain that you won't want to miss. You also won't want to miss the great program that has been planned for you by the Program Committee chaired by Paula Knopf and Jane Devlin. The President's Dinner will be Thursday, October 22, at the Oceanaire Seafood Room just across the street from the hotel, and everyone is invited – just be sure to make your menu selections and register for it in advance when the information is sent to you. Weather permitting, on Friday night we will have cocktails in the bar and lounge area on the hotel's pool deck, which overlooks the city and has been reserved specifically for our use. The dinner that night will be indoors in the hotel's Grand Ballroom.

The Four Seasons is right in the bustling heart of the city, and there are many great restaurants within easy walking distance or a free shuttle ride away. On Saturday night, there will be the traditional dine-arounds for anyone who is interested. If you want to participate in one of the dine-arounds, you will need to sign up **before the cutoff date** shown in the materials that will be sent to you. If you do not want to participate in one of the dine-arounds, a list of restaurants (with descriptions, addresses, and phone numbers) will be sent to all registrants in advance of the meeting, and you are strongly advised to **make a reservation before you get to Denver** because that night is going to be a busy one downtown. The

Performing Arts Center is practically across the street from our hotel, and there will be three plays in different venues there on Saturday night, including *If/Then* starring Tony Award winner and Broadway superstar Idina Menzel as Elizabeth. The other plays that evening are *As You Like It* and *Tribes*. For more information, or to order tickets, go to www.Denvercenter.org/shows. In addition, the Colorado Symphony will be performing “*Strauss Conducted by Andrew Litton*” that night at Boetcher Concert Hall, which is also in the Performing Arts Center. For tickets to the concert, go to www.coloradosymphony.org.

While the members are attending the meeting, their spouses/significant others can enjoy the Spa at the Four Seasons, or shop in Larimer Square (the city's oldest and most historic block, which now offers fine dining, shopping, and nightlife), the Tabor Center, or the Denver Pavilions – all of which are easily accessible from our hotel. Or they can simply stroll along the 16th Street Mall downtown, or ride one of the free shuttle buses that run up and down the mile long Mall between the beautifully restored and revitalized Union Station on one end, and the gold domed State Capitol building on the other. And for a real treat, anyone attending the meeting can enjoy afternoon tea in the fabulous eight-story atrium lobby of the Brown Palace Hotel – as long as you make reservations with the hotel well before you get to Denver. In its 120-year history, the Brown Palace has hosted every President since Teddy Roosevelt (with the exception of Calvin Coolidge), several Prime Ministers, and more celebrities than you can count.

Denver is beautiful in the fall, and the city has several great parks where you can enjoy the beautiful blue skies and fall sunshine outdoors. Parks that are easily accessible from the hotel include Civic Center Park, Confluence Park, and the Cherry Creek walk and bikeway that runs for miles through the city. Denver is also part of the B-Cycle program, which has 82 bike stations around the city where bikes can be rented and then returned to any other station. Other city attractions that might be of interest include the Denver Art Museum, Denver Botanic Gardens, Downtown Aquarium, Molly Brown House Museum, Denver Museum of Nature and Science, Cowboy Museum, Black American West Museum and Heritage Center, American Museum of Western Art, Museum of Contemporary Art, Byers-Evans House Museum, Denver Firefighters Museum, Forney Museum of Transportation, Clifford Still Museum, and the wonderful new and interactive Colorado History Museum. And for the sports fans, Coors Field in downtown Denver is the beautiful home of the Colorado Rockies, while Mile High Stadium is the home of the Denver Broncos and the Pepsi Center is the home of the Colorado Avalanche and the Denver Nuggets.

Come to Denver for the meeting, and then stick around to enjoy some of the beautiful scenery and attractions that Colorado is famous for. Rocky Mountain National Park is just an hour and half drive northwest of Denver. Its 416 square miles includes some 150 beautiful alpine lakes and 60 peaks over 12,000 feet high. An hour or so to the south of Denver is Colorado Springs, home of the Air Force Academy, Pro Rodeo Hall of Fame, Garden of the

Gods, Cave of the Winds, and the world famous Broadmoor Hotel. To the west of Colorado Springs is Pikes Peak (with its Cog Railway and automobile road to the top) and the historic mining (and current gambling) town of Cripple Creek. If you would rather head west out of Denver, then it is only about 15 miles to the town of Golden, home of the Coors Brewery. Continue west out of Golden, and you can visit the historic mining towns of Black Hawk and Central City, where you can play limited stakes poker, blackjack, roulette, and slot machines. Also west of Denver is the scenic drive up 14,271 foot Mt. Evans. Or just stay on I-70 west and stop in Georgetown for a ride on the Georgetown Loop Narrow Gauge Railway. And if you still have time, you can continue on I-70 over the Continental Divide and visit the mountain ski towns of Breckenridge, Vail, and Aspen; see scenic Glenwood Canyon; and soak in the famous hot springs pool in Glenwood Springs.

The Host Committee is looking forward to welcoming you to Denver. Whatever your interests might be (except perhaps deep sea fishing), Denver really does have a lot to offer. So pack your bags for an educational and fun fall vacation in Colorado. You've earned it! 🍷



ROCKY MOUNTAINS



TABOR CENTER



DENVER ART MUSEUM



UNION STATION



LARIMAR SQUARE



DOWNTOWN DENVER

MILESTONES

Edited by Michael P. Long

NOTEWORTHY HONORS & PROFESSIONAL ACTIVITIES

Barry Goldman – is part of a team that was recently awarded a grant from the NSF to make a series of television programs on *Judgment, Decision Making, and Persuasion*. The working title is "Hacking Your Mind." Barry states that he and his associates will be working with some of the top thinkers in the field to produce a 4-part PBS Special. Barry will be a co-writer on the series and principal author of the accompanying book. Production is expected to take 24 months. So watch your local listings in early 2018!



Elizabeth C. Wesman – has been named by President Barack Obama as Chair of the Presidential Emergency Board No. 248, whose duty is to investigate and make recommendations for settlement of the recent disputes between the New Jersey Transit Rail and certain of its employees. The Executive Order established the Presidential Emergency Board effective July 16, 2015, with the Board to report its findings and recommendations for settlement to the President within thirty days of its creation. President Obama said, "The transit rail system is vital to our nation's economy, and it's crucial that we ensure it runs smoothly. That's why I'm grateful these talented individuals have agreed to serve the American people by helping to swiftly and appropriately resolve these labor-management disputes."

PUBLICATIONS & PRESENTATIONS

Norman Brand and **Melissa H. Biren** – have completed work on the Third Edition of *Discipline and Discharge in Arbitration*, published by BNA in 2015. Notably, this edition introduces a new chapter concerning social media.



Laura J. Cooper, Mario F. Bognanno, & Stephen F. Befort – have written a book entitled *More Than We Have Ever Known About Discipline and Discharge in Labor Arbitration: An Empirical Study* based on the comprehensive analysis of a uniquely large data set of published and unpublished labor arbitration decisions in discharge and discipline cases. In great detail, Laura, Mario, and Stephen coded more than two thousand decisions issued over a twenty-four year period. They provide a rich array of data describing multiple aspects of each decision's arbitrator, grievant, and other case characteristics. The book's overarching focus is the arbitrator's decision – who wins, who loses, and why – including unique comparisons of outcomes in discharge, as compared to disci-

pline cases, and in private, as compared to public, sector cases. The book also reports on the relationship between the type of employee offense and outcomes, and the effect of attorney representation on case outcomes. Other relationships to arbitration decision making examined by the authors include the independent effects of last-chance agreements, quantum of proof standards, job tenure, and the much-debated "Seven Tests of Just Cause." ISBN: 978-1-60042-242-3, May 2015, Paperback.



Marty Malin – recently presented a paper (co-authored with Sara Slinn of Osgoode Hall Law School, York University and Jon Werner of the University of Wisconsin - Whitewater and funded by the NAA REF), entitled "An Empirical Comparison of the Handling of Human Rights Claims in Labour Arbitration in Ontario and Before the Human Rights Tribunal of Ontario," at the Labor Law Research Network's biennial conference at the University of Amsterdam in Amsterdam, Netherlands. Marty's presentation was part of a panel on "The Privatization of Workplace Justice." Another presenter on that panel was NAA President Allen Ponak who, along with Daphne Taras, presented a paper on the Arbitration Council of Cambodia.



Allen Ponak – has been chosen by a blue ribbon selection committee as the 2015 recipient of the *Bora Laskin Award*. This award, named in honor of the late Canadian Chief Justice (and well respected arbitrator) Bora Laskin, has been established by the University of Toronto to honor those who have made outstanding contributions to Canadian labor law. Allen's contributions to Canadian labor law have been recognized as extensive. He is recognized as having devoted himself to the education of generations of students in law and industrial relations, and to the intellectual advancement of countless professionals in Canadian labor relations and labor law. He has done so as a professor at the Universities of Calgary and Saskatchewan, as author of numerous well-regarded research articles, and as co-author of the leading Canadian text on union-management relations. Allen continues to conduct and publish research and is Chair of the editorial board of *Relations Industrielles – Industrial Relations*, Canada's leading academic journal of industrial relations. Past Academy recipients of the Bora Laskin Award are **Andrew Sims, Michel Picher, Vince Ready, Kevin Burkett, Donald Carter, Martin Teplitsky, and Innis Christie.**

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MILESTONES *(Continued from Page 6)*

ON A PERSONAL NOTE

Bonnie Bogue's – “other life” as a bassoonist has marked several landmarks recently. The Prometheus Symphony Orchestra just wrapped up its 50th Anniversary Season, with the grand finale being a performance of Beethoven’s heroic masterpiece, Symphony No. 9, to a *standing room only* audience. Bonnie has played with the Prometheus for 49 of those years, is on the executive committee, and administers its youth concerto competition. She has penned the history of this all-volunteer orchestra’s five decades of bringing professional level, free-admission concerts to the Oakland, California community. See its website: www.PrometheusSymphony.org to read that history and about the orchestra. Bonnie is celebrating her 60th year of playing the bassoon and describes the experience as - Perseverance in the face of adversity!



Tim Bornstein – is looking for advice. After 40 years and over 3500 cases, he has retired to the leisurely life. Tim says that though he’ll miss arbitration colleagues and some parties -- not to speak of the challenge of novel issues -- he looks forward to new opportunities, especially those in the public interest. He welcomes suggestions from NAA colleagues and wishes all “joy and success in doing God's work -- labor arbitration!”



Linda Byars – is high on life. She recently received a birthday present from those she terms “so-called friends.” She states that she should have known better after signing 4 pages of waivers, but convinced herself that her friends would not sign her up for something unsafe even if she had been saying for years that she wanted to learn how. They went with her to watch – from a safe vantage point. Linda says she endured severe “nausea and terror” in order to get this picture.



Alan Symonette – and Vanessa Bullock were wed at their home in Lansdowne Pennsylvania on May 9, before family and a few close friends. Vanessa is a Commissioner in the Philadelphia Office of the FMCS. The couple honeymooned in Paris after the wedding.



Jerry Wallin – is getting real -- estate that is. Jerry says that he needed to add some variety to a seemingly unending string of discharge cases so he took and passed the required exam to become a licensed real estate professional (a.k.a. Realtor®) in Nevada. He is affiliated with Dickson Realty in the Reno-Tahoe area, which is a member of the *Leading Real Estate Companies of the World* network. Jerry quips that for those of you who have not yet fainted, please be assured that he is primarily providing back-up for his daughter and better half that make up the other two-thirds of The Wallin Team. 🏠

Continuing Call for MILESTONES

Honors? Publications? Exceptional activities - professional or otherwise?

Please alert us if you know of a noteworthy activity or event, whether it involves you or another member. We are a diverse and vigorous group, and, while one may be modest and restrained regarding personal accomplishments with the parties to disputes, friends and colleagues in the National Academy from around Canada and the USA enjoy hearing about not only your professional service but also your noteworthy activities outside the hearing room as well.

Please send your news to Mike Long by e-mail at mlong@oakland.edu (preferred way). If you are not on line, just mail it to:

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Oakland University, Rochester, MI 48309.
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REGIONAL ROUNDUP

Reported by Kathy L. Eisenmenger
National Coordinator of Regional Activities

CANADA

Regional Chair is Jules Bloch — jbloch@sympatico.ca

CENTRAL MIDWEST

Regional Chair is Brian Clauss —
brianclauss@claussadr.com

METROPOLITAN D.C.

The NAA DC Region held its regular Sunday breakfast meeting on June 21, 2015. The breakfast was attended by 10 NAA DC Region members and two guests. The guest speaker was Arthur Pearlstein, FMCS Director of Arbitration Services. Mr. Pearlstein spoke on the FMCS arbitrator selection processes.

The next breakfast meeting will be Sunday, August 23, 2015 at Jake's American Grille, 5018 Connecticut Avenue, NW, at 9:30 a.m. (Corner of Connecticut & Nebraska, NW) opposite Politics and Proses book store. (See: <http://jakesdc.com/>). Elizabeth Ginsburg, Esq., Director, Representation Department, ALPA is scheduled to speak. All NAA members are invited. Remember, parking is free on Sunday.

METROPOLITAN NEW YORK

For our spring program, NAA Region 2 first invited a panel of Union-side lawyers to discuss best practices, as previously reported in the Chronicle. We followed this panel with Management-side lawyers from NYC and NJ. NAA Arbitrator Randi Lowitt moderated the session. Attendees posed questions as part of the sessions. The panel discussed what they liked, and what they did not like, in current labor arbitration practice. As might be expected, there was more similarity than difference in what the Management and Union lawyers shared with the audiences. With a lovely dinner at the 101 Club, the meeting also provided a wonderful opportunity for NAA members and non-members alike to socialize.

As in prior years, in May, NAA Region 2, represented by Randi Lowitt, participated with the Mid-Atlantic and other NAA regions in a day-long training program in Atlantic City prior to the annual FMCS meeting.

Regional Chair is Melissa Biren — Mhbiren@aol.com

MICHIGAN

Regional Chair is George T. Roumell, Jr. —
Roumell2000@yahoo.com

MID-ATLANTIC

The Mid-Atlantic Regional Chapter celebrated summer with a "Do-Dah" at the lovely Philadelphia home of member Martha Cooper and her family on Sunday July 12 from 5 – 8 p.m.. Martha's husband, Fred, the cook in the family, made fabulous meatballs, and members contributed salads, desserts, and many libations. Such a good time was had by the crowd of colleagues and spouses that Martha has generously offered to make this get-together an annual event. Our revitalized chapter currently has three business meetings annually, one of which is a joint May meeting with the local LERA chapter. Our Fall dinner meeting, with President Allen Ponak, will be held on November 5th at Maggiano's, 12th and Filbert Streets, Philadelphia. The restaurant is close to the Loews Hotel, the locale for the annual meeting of the ABA's Labor and Employment Section. Any member attending the conference who would like to participate in the chapter's dinner meeting should contact chair Mariann Schick at schickarb@comcast.net as soon as convenient.

Regional Chair is Mariann Schick —
schickarb@comcast.net

MISSOURI VALLEY

Regional Chair is George Fitzsimmons —
georgefitzsimmonsllc@hotmail.com

NEW ENGLAND

Regional Chair is Mary Ellen Shea —
ArbitratorMEShea@gmail.com

NORTHERN CALIFORNIA

The Northern California Region is still smiling with great satisfaction as hosts of the 2015 grandest Annual Meeting in San Francisco. Laura Cooper did a phenomenal job as program chair, while NorCal called in the troops to make the local arrangements and had many Regional members involved in programming as well. All in all, we had a great time and hope you did, too. For now, we are resting on our laurels and catching our breath.

After taking the summer off, we will kick off the fall season with a Regional Dinner on November 5. We are in the process of selecting new restaurants for our future NorCal meetings. The "foodies" in our Region—and there is no lack of them in Northern California—have come from far and wide with suggestions, which, of course, means lots of testing in advance by the hard-working Region's Executive Committee. It's a mean job, but someone has to do it!

Regional Chair is Nancy Hutt — Nancyhutt@naarb.org

(Continued on Next Page)

REGIONAL ROUNDUP *(Continued from Page 8)*

OHIO-KENTUCKY

The OH-KY Region held its annual meeting on April 30 and co-chaired the Arbitrator and Advocate Symposium in Columbus along with the FMCS and the Columbus, Ohio LERA on April 30 and May 1. The Symposium has been held almost 40 years, though the Region has co-chaired for the last several years only. Shyam Das met with the Region members and then opened the Symposium with an address. The Symposium was well attended with approximately 175 attendees.

Regional Chair is Daniel Zeiser — danzeiser@aol.com

PACIFIC NORTHWEST

The Pacific Northwest Region plans to hold its Arbitrators' Day conference in Seattle, WA. The conference will probably be held in March 2016, though the exact date has not yet been set. Please check the NAA website for more information or contact the Regional Chair.

Regional Chair is Michael Cavanaugh — mec@cavanaugh-adr.com

SOUTHEAST

The NAA Southeast Region has scheduled its annual regional meeting on February 26-27, 2016 in Atlanta, Georgia. The region will hold an Advocates Training program on Friday, February 26th featuring NAA arbitrators from throughout the Southeast region. Participants will prepare and present two mock cases to NAA arbitrators. The training program will begin at 9 a.m. and conclude at 4:30 p.m.

The NAA Southeast regional meeting will begin with a cocktail reception at 6 p.m. followed by dinner at 7 p.m. NAA President Allen Ponak will give the Presidential Address on Saturday morning, February 27th. The program will feature an agency update from AAA, FMCS, and the NMB, along with advocates and arbitrators addressing the latest labor law and arbitration issues facing the labor and management communities. For further information please go to the NAA SE region website at www.NAASoutheast.org or contact Regional Chair Phil LaPorte at plaporte@gsu.edu or 404-316-6798.

Regional Chair is Philip LaPorte — plaporte@gsu.edu

SOUTHERN CALIFORNIA

The Southern California Region (16) has had a busy Spring. Approximately 15 members attended the NAA National Conference in San Francisco. We had a great time and found the conference to be among the best ever. Congratulations to Claude Ames and his fellow arbitrators for putting on a first-rate conference.

Region 16 held its own meeting in June 2015. NLRB

Regional Directors made an excellent presentation on the new Board policy on deferral as contained in Babcock & Wilcox. A spirited debate followed, especially involving members who had formally worked for the Board in the past.

The Region's next meeting is in September 2015. The speaker will be Chris Cameron, law professor from Southwest Law School in Los Angeles. The meeting is planned to be held at the law school.

Regional Chair is Jon Monat — j.monat@verizon.net

SOUTHWEST ROCKIES

The SWR Region happily announces it will hold its 39th Annual Labor-Management Conference, March 3-5, 2016, in Houston, Texas, at the Houston Hobby Airport DoubleTree hotel (a Hilton property). The conference will include as guest speaker our NAA President Allen Ponak. The SWR will also offer new programs for its traditional full-day Arbitration Advocacy training and separate Arbitrator Training. The second day offers the agency update session, an ethics session, a session for the USPS and APWU, NALC, NRLCA, and NPMHU. The final program will be published this winter and can be accessed by checking the NAA's website for the "Regional Activities," "Regional Meetings" menu at <http://naarb.org/regionalmeetings.asp>. For more information, you may contact Tom Cipolla, SWR Chair, at the email address below. The conference committee is developing special interest sessions, so more to follow.

Regional Chair is Thomas Cipolla — tcipollapc@msn.com

UPSTATE NEW YORK

Regional Chair is Douglas J. Bantle — bantle@rochester.rr.com

WESTERN PENNSYLVANIA

The Western PA region has been keeping busy in 2015. In March, the NAA arbitrators met for an "arbitrators only" session to network and share ideas with each other in an informal setting. The meeting was well received and very informative. Our region also met for a quarterly luncheon in April and had the opportunity for NAA President Shyam Das to address our group. The next meeting of this region is scheduled for September 18, 2015 at the Pittsburgh Athletic Association. We look forward to the NAA Annual Conference being held in Pittsburgh next summer to showcase our beautiful city.

Regional Chair is Michelle Miller-Kotula — millerkotula@comcast.net 

COMMITTEE ON PROFESSIONAL RESPONSIBILITY REPORT

By Paula Knopf, CPRG Chair 2012-2015

Why do people file complaints to the CPRG? Is it because our members are offending the provisions of the Code? Is it because our esteemed colleagues are forgetting the precepts of professionalism?

The truth is that most of the complaints we receive do not amount to actual breaches of the Code. Many complaints raise “no probable cause to proceed” because they do not invoke the Code or all they really amount to is dissatisfaction with the results. But there is no solace in this. The fact that the complaints are made can signal a profound dissatisfaction with arbitration that should not be ignored. In my final Chronicle Report as the outgoing Chair of the CPRG, I want to share my impressions about what prompts people to lodge complaints about arbitrators’ conduct so that similar situations do not arise in the future.

I am not aware of the CPRG ever receiving a complaint from a winning party or a winning grievant. So what is it about a loss that triggers allegations of Code violations? First and foremost, complainants allege that they were not properly treated or that the arbitrator failed to listen to what they were trying to say. There are also complaints about arbitrators seeming to be cavalier about the hearing proceeding expeditiously, on time or for a full working day. Similarly, complaints allege that the arbitrator seemed as if she was not attentive at the hearing or took too long to issue the award. Someone who has lost a case will often allege that the procedural and evidentiary rulings throughout the hearing always seemed to favour the other side, prompting suspicions of bias.

Many of these kinds of complaints are easy to answer. The delays in the hearing are often caused by counsel, problems of scheduling, and our desires to accommodate everyone’s busy calendars. Nevertheless, it is always helpful to make it clear that you are doing everything in your

power to move the case along. Someone’s perception that we are “not listening” might be the result of your exhibiting signs of fatigue or boredom from repeated evidence or irrelevant evidence, rather than lapses in attention. This can be cured on the spot by more coffee, asking counsel to “move on,” or assisting the parties in focusing on the essence of the dispute. In any event, it is critical that we appear to be alert and interested in what is being said. A losing party’s concern about procedural rulings can be allayed by taking a little more time to explain those rulings as they are issued.

The point I am trying to make here is a simple one. It isn’t enough for us to simply conduct a procedurally correct hearing and issue a competent award. We have to conduct ourselves at all times in a manner that is sensitive to the fact that we are dealing with real people, who may not understand our processes and who have a right to expect us to display “honesty, integrity, impartiality and competence.” The key here is that we have to DISPLAY those essential characteristics. The people who appear in front of us need to see that their case is being determined by someone who cares about what she is hearing, has no preconceptions about which party should succeed, and who will ensure that the matter is heard and concluded as efficiently as possible.

Let’s go back to basics. Arbitration was designed to be an efficient and speedy way to resolve workplace disputes. Arbitrators are supposed to be professionals who understand the parties’ need for clarity and results and who would treat them with respect. When we fail to meet those standards, we fail to fulfill our purpose. We hold a unique and exclusive position, with a daunting amount of power over people’s lives and employers’ enterprises. This means there should never be any conduct that could be construed as arrogance, disrespect, or neglect of duty in the exercise of our professional responsibilities.

As Chair of the CPRG, I have listened to complainants who tell me that their arbitrator seemed “arrogant,” “distracted,” “late for the hearings,” “too cozy with one of the lawyers,” “didn’t listen,” “seemed out of it,” or took far too long to issue a decision. Whether these criticisms are grounded in fact or perception, they remain the defining factors that cause the dissatisfaction. They also diminish the effectiveness of the process and cast a pall on our profession.

It is too easy for us to get complacent about what we do. We take it for granted that counsel have educated their clients about how the process works, how long it might take, or who we are. It is too easy to forget that a nervous grievant may not understand how we can be impartial if we chat or joke with the other side’s advocate whom we’ve known for years. Further, how can someone understand why it may take many months to write a decision while they are facing the loss of their home or the breakdown of their family due to financial pressures?

We are effectively the last stage for the unions and the employers who are in dispute. Our decision marks the definitive moment that seals their situations. No matter what gave rise to their dispute in the first place, our behaviour will become the focus of their concern after all hope is lost. So it is absolutely critical that we behave and act in a manner that is beyond reproach. It is much easier for a losing party to accept a loss when they feel that they have been treated with respect and that their decision-maker listened to what they said.

I don’t presume that I am saying anything profound or innovative. You may even think this is all trite. In truth, all I am hoping to do is to remind us all that even though we have achieved the coveted “Academy” status, we should never forget to treat everyone involved with the level of dignity and respect that the Code and our professionalism expects. Not only will this help to enhance our profession, but it will also minimize the kind of discontent that prompts complaints to the CPRG.

According to our Procedures, it is my duty to provide a brief summary of all resolved disciplinary matters once a year for publication in the Chronicle. The following shows the disposition of the formal complaints received since the last Report. However, it should be noted that it is sometimes difficult to summarize the nature of the allegations, especially where the complaints did not raise any actual Code violations.

No.	Nature of Complaint	Resolution
1	lack of qualifications	Informal Resolution
1	not being impartial	Complaint dismissed
1	lack of good judgment	“no probable cause to proceed”

This summary does not reflect the number of informal inquiries received from people who indicated dissatisfaction with our members’ conduct or the arbitration process. While all are advised of their right to file formal complaints, most do not follow through and many come to a better understanding of our processes after a brief chat.

In closing, may I express my deep gratitude to the Academy and the members of the CPRG for the honour of being asked to serve as Chair of this important Committee. I have never seen my role as being the protector of our members. Instead, the CPRG is the protector of the Code of Professional Responsibility. That Code sets the standards of practice and personal integrity that are essential for arbitration to function properly and to be able to continue to serve the needs of labour and management alike. Fortunately, the task of the Chair of this Committee has not been onerous, given that there have been relatively few complaints over the years. More importantly, the role has been very fulfilling, given the quality of the members of the CPRG and the projects we have undertaken. I am delighted that the CPRG and the Code will now be in good hands as Dan Nielsen takes over as Chair. Thank you!

Editor's note: This report was submitted in March, for the Spring issue but was not included because of a mix-up in transmission. Dan Nielsen, the new CPRG Chair, will provide a CPRG summary report for the next issue of the Chronicle. 🖊

Research and Education Foundation


By Elizabeth C. Wesman

At the Research and Education Foundation Board of Directors meeting in San Francisco in May, we evaluated the progress of on-going projects and discussed two new proposals and one re-submitted proposal.

The joint study conducted by Queen's University and Northern Illinois University is complete. Their excellent paper, *Labour Arbitration: Achieving Timely and Effective Dispute Resolution in a Radically Changed Environment*, was presented at the NAA Annual Meeting in May and was very well received, as is described at length in Susan Grody Ruben's review of the session. Two other studies are proceeding well and on schedule: the study on *Adjudication of Statutory Claims*, led by NAA member Martin Malin; and the Cornell University study led by Professor Alexander Colvin and Mark D. Gough. Both are on target for completion.

A fourth project for which the REF awarded "seed money" – the creation of an arbitration web site – is progressing very well. Professor Rafael Gely of the University of Missouri Law School and NAA Member Robert Bailey, also of the Missouri Law School, are overseeing the project, with the assistance of the special NAA advisory committee led by NAA Member Kathleen Miller. It is clear from the progress of this project that the resulting web site will prove an excellent and objective source of information on labor- management arbitration to which we can refer those unfamiliar with the workings and terminology of our profession. One essential goal of this web site is to minimize the misconceptions regarding labor-management arbitration that have been appearing all-too-frequently in news coverage and political discourse.

In addition, the REF Directors agreed to fund a proposal under our "Education" rubric. They approved a small grant for an honorarium and expenses to support inviting a renowned psychologist to speak at a plenary session meeting entitled "Aging Gently" at the Fall Education Conference in Denver. Fall program chairs Paula Knopf and Jane Devlin proposed the session, with the support of REF President Elizabeth Wesman (who recused herself for the ultimate deliberations). By occasionally supporting speakers for particularly timely sessions at the "Members-Only" Fall Education Conference, the REF believes that it is better fulfilling the "Education" portion of the REF's mandate in a way that directly benefits all NAA members..

The REF continues to seek worthwhile research and educational proposals, whether from Academy members or others. Those who are engaged in such projects are encouraged to contact the REF President, Elizabeth Wesman, at ecwesman@aol.com. Specifications for submitting proposals can be found on the NAA Web site. Finally, the REF thanks the NAA members who have so generously supported us so far this year. We could not carry on our function without you. Remember, support for the REF is support of our profession. 

LRF IMPORTANT REMINDERS



If you are sued or subpoenaed you absolutely **MUST** contact one of the LRF Coordinators **BEFORE** notifying your insurance company!! Failure to do so will make you ineligible for LRF coverage.

The Coordinators for 2015-16 are:

Sara Adler, Coordinator
310-474-5170; sadlerarb@earthlink.net

Barbara Deinhardt, Assistant Coordinator
718-237-8693; bdeinhardt@aol.com

The reason for this requirement is that the vast majority of matters involving our members will not require action by the insurance company, but every, and I do mean every, notification is counted as an occurrence for underwriting purposes. Thus, notification to the insurer eventually increases our premiums without any corresponding benefit from the insurance – a result we are trying to avoid.

The LRF is not insurance. It is a fund for the protection of labor-management arbitrators. The insurance many of our (most prudent) members carry covers a different range of neutral activity, but not all neutral activity unless you also purchase additional riders. To get the most complete information, contact our broker, Complete Equity Markets, Inc. Our main contact person is Kaitlyn Hassall who can be reached at khassall@cemins.com or 847-777-7416.

Please note, the maximum reimbursement from the LRF is \$3,000 and most members carry a policy with a \$3,000 deductible. If you choose, you can get a higher deductible with a somewhat lower premium, but the extra deductible will not be reimbursed by the LRF.

The procedure for reimbursement requires a recommendation from the LRF Coordinator with the final decision being made by the President and Secretary-Treasurer. If the reimbursement is approved, it is necessary to submit some acceptable document showing the amount paid.

Please feel free to contact Sara Adler with any questions or concerns. In a few cases, issues relate to both legal matters and ethics. For ethics advice, go to the CPRG. If you are not sure which advice you need, contact either committee and we will get you to the right place. 📌

INTERNATIONAL CONFERENCE IN LABOR RELATIONS IN VIETNAM

By Richard Fincher

In March 2015, two members of the Academy led workshops at the “International Conference in Labor Relations and Dispute Resolution” in Vietnam (Jeanne Vonhof and the writer). The three day conference was hosted by the School of Labor Relations at Ton Duc Thang University (TDTU) in Ho Chi Minh City. The conference attracted sixty-eight guests, including twenty-one foreign guests from five countries. The labor conference was funded by the International Labor Organization (ILO), the Scheinman Institute on Conflict Resolution at Cornell University, and Michigan State University. The context is that the US-led TPP trade negotiators are pressuring the Vietnamese government to enact substantial reforms to their industrial relations system.

Jeanne Vonhof facilitated the conference session on “comparative labor arbitration,” which included speakers from the Cambodia Arbitration Council. Prior to the conference, Jeanne conducted a highly successful workshop on labor arbitration, allowing students to engage in a simulation as advocates for union and management. Currently, Vietnam labor law allows only interest arbitration during collective bargaining.

Richard Fincher co-chaired the conference and facilitated a session on “Innovation in Dispute Resolution,” which included research on preventing wildcat strikes in the garment industry. Vietnam does not yet have an FMCS-like agency of mediators. Richard was teaching for the spring semester at TDTU on a Fulbright Scholarship in Law and Dispute Resolution. ⚖️



The Chronicle - 20 Years Ago



National Academy of Arbitrators

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REMEMBERING...

REMEMBERING DAVID G. HEILBRUN

by Bonnie G. Bogue



David G. Heilbrun, an Academy member for 43 years, passed away on May 19, 2015, four days shy of the annual meeting in San Francisco, where he was to receive his 40-year pin. His sister, Rachel Krause, and younger daughter, Carol High, stepped up to accept the honor for David.

For most of David's long membership, he was inactive in the Academy because he left arbitration in 1974 to become an Administrative Law Judge in the San Francisco office of the NLRB. Upon his retirement from that post in 1997, he reactivated his Academy membership and his arbitration career. He regularly attended Northern California Region meetings, an active participant in our discussions and camaraderie. He will be missed.

David was born in Sabula, PA, April 30, 1930, but claimed the San Francisco Bay Area as his home in the early 1940s when he lived in Alameda, the island community. Most of his youth was spent in Detroit, MI, where David graduated from high school in 1947. He earned his law degree at Wayne State University in Detroit in 1958, and worked in both labor law and other law practice. In 1973, he accepted the opportunity to teach a course in labor law at the University of Hawaii. In 1974, he received a Career Appointment as an ALJ with the NLRB in San Francisco, where he remained until retirement in 1997.

David was physically active and enjoyed ski trips to Lake Tahoe, Aspen, and Switzerland. His love of professional hockey was unmatched and he was a founding member of a tennis club in Larkspur, CA. As an avid world traveler, he delighted in trips to Australia, Bahamas, Canada, China, Costa Rica, Germany, France, New Zealand, Switzerland, and Scandinavia among other places.

David was brilliant, possessed an amazing vocabulary, yet had great humility. He is survived by a sister and brother, one son and two daughters, three grandchildren, and two great-granddaughters. A private memorial was held in late June

REMEMBERING SHLOMO "SOL" SPERKA

by George T. Roumell, Jr. and Ruthanne Okun,

Director, Michigan Employment Relations Commission


It is with great sadness and fond memories that we report the recent death (in Israel) of former Director of the Bureau of Employment Relations/Michigan Employment Relations Commission (MERC) and member of the National Academy of Arbitrators – Shlomo "Sol" Sperka. Sol was a renowned and respected arbitrator and a member of the MERC Panel of Arbitrators and Fact Finders, as well as the Labor Panel of the American Arbitration Association and the Federal Mediation and Conciliation Service. He attended the National Judicial College in Reno, Nevada. He was an adjunct professor at Wayne State University Law School and Interim Director of the Master of Arts Program in Industrial Relations at Wayne. Sol was a past president of the Association of Labor Relations Agencies - an organization comprised of state, federal, and Canadian agencies whose mission is similar to that of MERC. He was a true mentor to many and a friend to the entire labor constituency. Sol "wore shoes" that I (as his successor as Bureau Director) could never hope to fill. Those of us who worked with or were acquainted with Sol will always remem-

(Continued on Next Page)

ber his kindness, along with his calm demeanor and good humor - even when challenged by the most difficult lawyers. His knowledge of labor law and labor issues, in general, and especially of public sector labor law was infinite. He was always willing to share his wisdom with others - available to respond to any question that a constituent may have and ready to debate at the first opportunity.

After Sol retired from the MERC, he embarked on his career as a labor arbitrator. His acceptability by all parties was immediate. Sol arbitrated throughout the Midwest. His impeccable knowledge of labor relations was welcomed by all of those who used him as a labor arbitrator. Sol was able to blend his knowledge into his many fine opinions and awards. As one advocate mentioned on learning of Sol's passing, "He was a great man and a fine arbitrator."

Sol will be remembered as a really wise and decent man who was dedicated to finding the right answer and doing the right thing. Sol will be missed by all of us in the labor-management community.

To put it another way, the caption on Sol's obituary appearing in the publication of the Labor Law Section of the State Bar of Michigan captures the esteem in which Sol is held – "Renowned Labor Arbitrator Shlomo "Sol" Sperka Dies." 

IN MEMORIAM

*It was recently learned that the following
Members have passed away:*

Arvid Anderson

NAA Member since 1956

Neil N. Bernstein

NAA Member since 1972

Robert W. Foster

NAA Member since 1976

Theodore K. High

NAA Member since 1973

Joseph Lazar

NAA Member since 1972

James C. McBrearty

NAA Member since 1981

A Remembrance will appear
in a future *Chronicle*.

THE PRESIDENT'S CORNER *(Continued from Page 20)*

public or private sector, is an unfair labor practice. As a result, unions have the financial resources to engage in collective bargaining, contract administration, and they generally represent bargaining unit employees they are legally required to represent, whether union members or not. In our paper, we concluded that the right to an agency shop (and the absence of right to work) was a significant factor in explaining higher collective agreement coverage in Canada. My point is that the outcome of *Friedrichs* matters. And it is not likely to be the last challenge to the underpinnings of meaningful collective bargaining rights.

Why am I talking about this? Labor arbitration is inextricably connected to collective bargaining. Can labor arbitration continue to exist if the very institution in which it is embedded is weakened to the point of extinction? In my view, the answer is obvious.

I am aware that the Board of Governors debated this issue as recently as 2012. In a close vote, the Board rejected an amendment to Article II, Section 1 of the Constitution, the sec-

tion that addresses the purposes of the Academy. The amendment, recommended by a committee of senior Academy members, would have added the following words to that section: "to support protection of the right of workers to engage in collective bargaining to permit the democratic establishment of mechanisms for workplace dispute resolution."

While the amendment was defeated, one result of the discussion was the decision to work with the University of Missouri to develop a website to inform the public, the media, practitioners, and educators about arbitration issues. This is a wonderful initiative that will enhance general understanding of what we do as arbitrators.

Still unresolved, in my respectful opinion, is whether it is possible for the NAA, the pinnacle organization of neutral labor and employment arbitrators, to support the institution of collective bargaining without jeopardizing our neutrality? And, if it is possible, how should it be done? I do not know the answers, but it is a conversation worth having. 📌

MARK YOUR CALENDAR

**2017 Annual Meeting
May 24 – 27, 2017**



**Fairmont Chicago, Millennium Park
Chicago, IL**

PLEASE JOIN US

**2018 Annual Meeting
May 23 – 26, 2018**



**The Fairmont Hotel Vancouver
Vancouver, BC**



**Plan to Attend
2017 Fall Education
Conference
September 15 – 17, 2017**

**Miami Four Seasons
Miami, FL**

THE PRESIDENT'S CORNER



By Allen Ponak

The Supreme Court's June 30, 2015 decision to hear *Friedrichs vs. California Teachers Association* ("Friedrichs") produced a lively discussion on the unofficial mail list and prominent labor blogs. Commenters debated the merits of the case and its potential implications for the future of public sector collective bargaining. At the same time, the Academy's Amicus Committee began deliberating on whether the Academy should file an amicus brief (as I write this column in late July, the Committee has not made a decision and my comments are not intended to influence the Committee's deliberations).

The Court will examine two questions: (1) whether *Abood v. Detroit Bd. of Ed.*, 431 U.S. 209 (1977), should be overruled and public sector agency shop arrangements invalidated under the First Amendment; and (2) whether it violates the First Amendment to require that public employees affirmatively object to subsidizing non-chargeable speech by public sector unions, rather than requiring that employees affirmatively consent to subsidizing such speech.

The petitioners are teachers who are challenging the right of their bargaining agent to require all bargaining unit members to pay fees to support negotiations, contract administration, and directly related activities. At the risk of oversimplifying, if the petitioners succeed, it would likely end agency shop arrangements for public employees nationwide and turn California and all other states into "right to work" states for public employees. Indeed, the Center for Individual Rights, which strongly supports the petitioners, states on its website that "effectively, such a decision would convert the twenty-six

states that now require union membership into open-shop states."

Whatever the Court ultimately decides, and we should have the answer next summer, *Friedrichs* is another example of the accelerating attempt to erode the institution of collective bargaining. When I attended the University of Wisconsin during the 1970s, the state was a leader in providing public sector collective bargaining rights. It was the first state to adopt a public sector bargaining law. The Wisconsin Employment Relations Commission was a model to be emulated as "PERBs" sprouted in other states. Many Academy members, like past presidents Arvid Anderson and George Fleischli, cut their professional teeth with the WERC. Today the Wisconsin labor relations landscape is unrecognizable. Public sector collective bargaining has been eviscerated and the state has adopted right to work legislation for both the public and private sectors.

Wisconsin is hardly unique. Professor Richard Hurd of Cornell addressed the Academy in 2013 and

spoke eloquently about the systematic weakening of laws protecting the right to collective bargaining around the country (Richard Hurd & Tamara Lee, "Can U.S. Public Sector Collective Bargaining Survive the Tea Party?" *Proceedings of the 2013 Annual Meeting*). One consequence of this trend is that only 11 percent of American workers are covered by collective agreements; coverage in the private sector is less than seven percent.

These developments stand in sharp contrast to trends in Canada where more than 30 percent of workers are covered by collective agreements. In a 2001 article, Daphne Taras and I explored the reasons for this difference, focusing on our two countries' contrasting approaches to agency shop (*Journal of Labor Research*, Vol. 23-3, 541-568). The Wagner Act model, with exclusive recognition and representation obligations to the entire bargaining unit, was adopted in Canada during World War II. But right to work never crossed the 49th parallel. Most provinces and the federal sector have the opposite of right to work. While there are slight variations in the legal terrain across the country, the legislative thrust is clear – bargaining agents have a legal right to insist on at least an agency shop and refusal by the employer to agree, whether in the

(Continued on Page 19)



ACADEMY HOLDS ITS 2015 ANNUAL MEETING IN SAN FRANCISCO

See the insert in this edition of The Chronicle for details and pictures from the San Francisco Meeting